UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of
the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported) **February 27, 2013**

AVALONBAY COMMUNITIES, INC.

(Exact Name of Registrant as Specified in Its Charter)

Maryland
(State or Other Jurisdiction of Incorporation)

1-12672	**77-0404318**
(Commission File Number)	(I.R.S. Employer Identification No.)
671 N. Glebe Road, Suite 800, Arlington, Virginia	**22203**
(Address of Principal Executive Offices)	(Zip Code)

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

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

o Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

o Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

o Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

ITEM 1.01 ENTRY INTO A MATERIAL DEFINITIVE AGREEMENT.

ITEM 2.01 COMPLETION OF ACQUISITION OR DISPOSITION OF ASSETS.

Closing of the Archstone Acquisition

On February 27, 2013, pursuant to an asset purchase agreement (the "Purchase Agreement") dated November 26, 2012, by and among us, Equity Residential and its operating partnership, ERP Operating Limited Partnership (together, "Equity"), Lehman Brothers Holdings, Inc. ("Lehman"), and Archstone Enterprise LP ("Archstone"), we, together with Equity, acquired, directly or indirectly, all of Archstone's assets, including all of the ownership interests in joint ventures and other entities owned by Archstone, and assumed Archstone's liabilities, with certain limited exceptions. The execution of the Purchase Agreement was previously reported on our Current Report on Form 8-K filed on November 26, 2012, and a copy of the Purchase Agreement was previously filed as Exhibit 2.1 to that Current Report on Form 8-K.

Under the terms of the Purchase Agreement, we acquired approximately 40% of Archstone's assets and liabilities and Equity acquired approximately 60% of Archstone's assets and liabilities (the "Archstone Acquisition"). We acquired the following:

- 60 apartment communities that will be consolidated for financial reporting purposes, containing 20,089 apartment homes, of which six communities are under construction and/or in lease-up and are expected to contain 1,667 apartment homes upon completion;
- five parcels of land and options to acquire two more parcels of land that will be consolidated for financial reporting purposes which, if developed as expected, will contain a total of 2,214 apartment homes;
- interests in unconsolidated joint ventures in which we are the general partner or managing member, which own 12 apartment communities containing 2,851 apartment homes; and
- a 40% ownership interest in unconsolidated joint venture arrangements with Equity which will hold assets and liabilities that we and Equity will jointly manage, and that we and Equity intend to sell to or resolve with third parties, and/or subsequently transfer to Equity or to us.

Operating Apartment Communities

The table below provides community level detail for the operating apartment communities in which we have acquired a direct or indirect interest in connection with the Archstone Acquisition.

Community	Location	Number of Homes	Average SF per Home	Year Built (1)	Revenue per Occupied Home (2)

New England					
Archstone North Point(3)	Cambridge, MA	426	900	2008	$ 3,228
Archstone Station 250(4)	Dedham, MA	285	1,075	2011	1,839
Archstone Quincy	Quincy, MA	224	705	1977	1,726
Archstone Bear Hill	Waltham, MA	324	1,208	1999	2,533
Subtotal - New England		1,259	984		$ 2,467
Metro New York/New Jersey					
Archstone Meadowbrook Crossing	Westbury, NY	396	1,014	2006	$ 2,542
Archstone Midtown West	New York, NY	550	716	1998	3,886

Archstone Clinton North	New York, NY	339	536	2008	2,950
Archstone Clinton South	New York, NY	288	557	2007	3,014
Kips Bay(4)	New York, NY	209	729	1997	4,540
Subtotal - Metro New York/New Jersey		1,782	724		$ 3,345
Mid-Atlantic					
Archstone Ballston Place	Arlington, VA	383	871	2001	$ 2,570
Crystal House I(5)	Arlington, VA	426	880	1969	2,028
Crystal House II(5)	Arlington, VA	401	913	1965	1,951
Archstone Ballston Square	Arlington, VA	714	877	1992	2,350
Archstone Courthouse Place	Arlington, VA	564	849	1999	2,428
Oakwood Arlington(6)	Arlington, VA	184	839	1987	1,738
Archstone Woodland Park(3)	Herndon, VA	392	1,003	2000	1,688
Archstone Reston Landing	Reston, VA	400	995	2000	1,813
Archstone Tysons Corner	Vienna, VA	217	967	1980	1,790
The Albemarle	Washington, DC	228	1,123	1966	2,569
Tunlaw Gardens	Washington, DC	166	816	1944	1,807
The Statesman	Washington, DC	281	678	1961	1,943
Archstone Glover Park	Washington, DC	120	869	1953	2,346
The Consulate	Washington, DC	268	843	1978	2,193
Brandywine(7)(8)	Washington, DC	305	1,280	1954	N/A
Archstone Russett	Laurel, MD	238	1,154	1999	1,817
Grosvenor Tower(4)	North Bethesda, MD	236	972	1987	2,040
Archstone Wheaton Station	Wheaton, MD	243	884	2005	1,809
Oakwood Philadelphia(6)	Philadelphia, PA	80	831	1945	1,573
Subtotal - Mid-Atlantic		5,846	928		$ 2,085
Pacific Northwest					
Kirkland at Carillon Point(4)	Kirkland, WA	130	1,344	1990	$ 2,209
Archstone Redmond Campus	Redmond, WA	422	1,017	1991	1,639
Archstone Redmond Lakeview	Redmond, WA	166	849	1987	1,402

Subtotal - Pacific Northwest		718	1,037		$ 1,687
Northern California					
Archstone Walnut Creek	Walnut Creek, CA	510	746	1987	$ 1,549
Archstone Walnut Ridge	Walnut Creek, CA	106	764	2000	1,869
Archstone Walnut Creek Station	Walnut Creek, CA	360	700	1989	1,592
Archstone San Bruno	San Bruno, CA	300	891	2004	2,240
Archstone San Bruno II	San Bruno, CA	185	846	2007	2,145
Archstone San Bruno III	San Bruno, CA	187	1,237	2005	2,965
Mountain View at Middlefield(9)	Mountain View, CA	402	651	1969	N/A
Archstone Willow Glen	San Jose, CA	412	928	2002	1,976
West Valley(9)	San Jose, CA	789	639	1970	N/A
Archstone Sunnyvale(4)	Sunnyvale, CA	192	1,063	1991	2,271
Subtotal - Northern California		3,443	790		$ 1,969
Southern California					
Archstone Los Feliz	Los Angeles, CA	263	767	1989	$ 1,686
Oakwood Toluca Hills(6)	Los Angeles, CA	1,151	691	1973	1,183
Archstone Marina Bay(4)(10)(11)	Marina del Rey, CA	205	815	1967	N/A
Archstone Pasadena	Pasadena, CA	120	854	2004	2,272
Archstone Del Mar Station	Pasadena, CA	347	975	2006	2,133
Archstone Old Town Pasadena	Pasadena, CA	96	692	1972	1,723
Archstone Santa Monica on Main	Santa Monica, CA	133	921	2007	3,887
Archstone Studio City	Studio City, CA	450	736	1987	1,786
Archstone Studio City II	Studio City, CA	101	834	1991	1,891
Archstone Studio City III	Studio City, CA	276	955	2002	2,303
Archstone Studio 4041(4)	Studio City, CA	149	841	2009	2,031

Venice on Rose(4)	Venice, CA	70	1,207	2011	4,663
Archstone Woodland Hills(9)	Woodland Hills, CA	883	655	1971	N/A
Seal Beach(9)	Seal Beach, CA	549	706	1971	N/A
Archstone La Mesa	La Mesa, CA	168	830	1989	1,538
Archstone La Jolla Colony	San Diego, CA	180	761	1987	1,642

Archstone Oak Creek	Agoura Hills, CA	336	1,084	2004	2,230
Archstone Calabasas	Calabasas, CA	600	844	1988	1,708
Archstone Simi Valley	Simi Valley, CA	500	860	2007	1,655
Archstone Thousand Oaks	Thousand Oaks, CA	154	873	1992	1,828
Archstone Thousand Oaks Plaza	Thousand Oaks, CA	148	949	2002	1,930
Archstone Vanoni Ranch	Ventura, CA	316	936	2005	1,757
Subtotal - Southern California		7,195	806		$ 1,806
Non-Core Markets					
Archstone Lexington	Flower Mound, TX	222	983	2000	$ 1,254
Archstone Memorial Heights	Houston, TX	556	781	1996	1,348
Boca Town Center(4)	Boca Raton, FL	252	1,064	1988	1,404
Subtotal - Non-Core Markets		1,030	894		$ 1,342
Total Portfolio/Portfolio Average		21,273	852		$ 2,078

(1) Represents the date that construction of the apartment community was completed, and does not consider any subsequent capital expenditures to redevelop the applicable apartment community or for other purposes.

(2) Represents the average monthly revenue per occupied home for the year ending December 31, 2012, or (in the case of communities that Archstone acquired during 2012) for the period of Archstone's ownership.

(3) This apartment community is owned by a joint venture in which we own a 20.0% interest.

(4) This apartment community is owned by a joint venture in which we own a 28.6% interest.

(5) Interest in this apartment community is subject to a ground lease which expires in November 2060. The apartment community is under contract for disposition as of the date of this report.

(6) This apartment community is leased to a single master tenant operator under a master lease that expires in July 2017.

(7) This apartment community is managed by a third party and rent per home for 2012 was not available to us as of the date of this report.

(8) This apartment community is owned by a joint venture in which we own a 26.1% interest.

(9) Revenue per Occupied Home is not presented for this apartment community as it was subject to a master lease agreement to one master tenant operator for a portion of 2012, transitioning to conventional operations during the year.

(10) Revenue per Occupied Home is not presented for this apartment community as it is under redevelopment. This apartment community also includes the ownership of 218 boat slips in the adjoining marina.

(11) Interest in this apartment community is subject to a ground lease which expires in June 2051.

Properties Planned, Under Construction or in Lease-Up

The table below provides details with respect to properties under construction and/or in lease-up or planned for development in which we acquired a direct or indirect interest in connection with the Archstone Acquisition. You should carefully review information about our Development Communities, Redevelopment Communities and Development Rights (as defined in our Annual Report on Form 10-K for the year ended December 31, 2012) under Item 1a., "Risk Factors," Item 2., "Communities," and Item 7., "Management's Discussion and Analysis of Financial Condition and Results of Operations" in that Form 10-K for discussions of the risks associated with our development and redevelopment activity.

Property	Location	Start Date	Expected Apartment Homes
Under Construction and/or in Lease-up(1)			
Archstone First+M Phase I	Washington, DC	Q3 2010	469
Archstone Toscano	Houston, TX	Q2 2011	474
Parkland Gardens	Arlington, VA	Q2 2012	228
Memorial Heights Phase I	Houston, TX	Q3 2012	318
Archstone Berkeley on Addison	Berkeley, CA	Q3 2012	94
Archstone West Valley Expansion	San Jose, CA	Q3 2012	84
Land Held, In Planning and Owned(2)			
Archstone First+M Phase II	Washington, DC	TBD	436
Oakwood Toluca Hills Land	Toluca Hills, CA	TBD	150

Huntington Beach(3)	Huntington Beach, CA	TBD	384
Maple Leaf	Cambridge, MA	TBD	103
North Point II	Cambridge, MA	TBD	341
Land Under Option(2)			
Opera Warehouse	San Francisco, CA	TBD	338
Hillwood Square	Falls Church, VA	TBD	462

(1) Total expected investment for consolidated apartment communities under construction and/or in lease-up is $490 million with $140 million remaining to invest.

(2) Commencement of construction of projects in planning is subject to regulatory approval, acquisition of financing and/or suitable market conditions.

(3) Land is owned by a consolidated joint venture in which we have a 95.0% interest.

Joint Venture Agreements

On February 27, 2013, in connection with the Archstone Acquisition, certain of our subsidiaries and subsidiaries of Equity entered into three limited liability company agreements (collectively, the "Residual JV") through which they acquired certain assets of Archstone, including Archstone's interests in certain joint ventures in both the United States as well as in Germany, certain development land parcels, certain loans, subsidiaries which employ certain of Archstone's employees, insurance policies, various licenses and contracts, and other miscellaneous assets such as commercial leases and corporate office equipment. The Residual JV plans to divest (to third parties or to us or Equity) or otherwise wind up these assets, subject to market conditions. The respective percentage interests of our and Equity's subsidiaries in the Residual JV are 40% and 60%, respectively, and the parties will jointly control the Residual JV.

In connection with the Archstone Acquisition, the Residual JV also assumed or succeeded to various liabilities of Archstone, including employment related obligations such as severance and accrued bonuses. The Residual JV also

assumed or succeeded to responsibility for the defense (or pursuit) of certain existing or future litigation and claims related to Archstone and its affiliates arising from periods before the close of the Archstone Acquisition, subject to certain exceptions for liabilities or claims that principally relate to the physical condition of the assets acquired directly by us or Equity, which generally remain the sole responsibility of us or Equity, as applicable.

On February 27, 2013, in connection with the Archstone Acquisition, we entered into a limited liability company agreement with Equity to acquire and own directly and indirectly certain Archstone entities (the "Archstone Legacy Entities") which hold indirect interests in real estate assets, including certain of the Archstone properties acquired by us as described above. The Archstone Legacy Entities have outstanding preferred interests held by unrelated third parties with an aggregate liquidation preference of approximately $175,000,000 (including accrued but unpaid distributions), of which approximately $102,000,000 are subject to redemption at the election of the holders of such interests. One of the Archstone Legacy Entities has previously entered into tax protection arrangements with the holders of certain of the preferred interests, which arrangements may limit for varying periods of time our and Equity's ability to dispose of the properties held indirectly by the Archstone Legacy Entities or to refinance certain related indebtedness, without making payments to the holders of such preferred interests. Pursuant to this LLC agreement, we have agreed to bear 40% of the economic cost of these preferred redemption obligations, as well as the tax protection payments that may arise from our disposition or refinancing of properties of the Archstone Legacy Entities that were contributed to a subsidiary that will be consolidated by us for financial reporting purposes, as described below. As part of the Archstone Acquisition, we and Equity have agreed with Lehman and Archstone to cause the acquired Archstone Legacy Entities to have sufficient funds available to honor their redemption obligations and to make any payments under its tax protection arrangements, when they may become due. Following the closing transactions, the principal assets indirectly held by the limited liability company that acquired the Archstone Legacy Entities are interests in a subsidiary of us (the "AvalonBay Legacy Subsidiary") and a subsidiary of Equity, each of which subsidiaries acquired certain properties formerly owned by the Archstone Legacy Entities. We expect to consolidate, for financial reporting purposes, the assets, liabilities and results of operations of the AvalonBay Legacy Subsidiary.

The foregoing description of the agreements described above does not purport to be complete and is subject to, and qualified in its entirety by reference to, the full text of the relevant agreements, copies of which are attached as Exhibits 10.3 — 10.6 hereto.

Consideration

Pursuant to the Purchase Agreement and separate arrangements between us and Equity governing the allocation of liabilities assumed under the Purchase Agreement, our portion of consideration under the Purchase Agreement was approximately $6.5 billion, consisting of the following:

- the issuance of 14,889,706 shares of our common stock;
- a cash payment of approximately $667,000,000;
- the assumption of indebtedness with a fair value of approximately $4.0 billion, consisting of $3,600,000,000 principal amount of consolidated indebtedness, $200,000,000 principal amount for our proportionate share of debt related to unconsolidated joint ventures and, $200,000,000 representing the amount by which the aforementioned debt fair value exceeds the principal face value;
- the acquisition with Equity of interests in entities that have preferred units outstanding some of which may be presented for redemption from time to time. Our 40% share of the value of the collective obligation, including accrued dividends on these outstanding Archstone preferred units as of the date of this transaction is approximately $70,000,000 and
- the assumption with Equity of all other liabilities, known or unknown, of Archstone, other than certain excluded liabilities. We will share in approximately 40% of the cost of these liabilities.

Registration Rights Agreement

On February 27, 2013, in connection with the closing of the Archstone Acquisition, we entered into a registration rights agreement with Lehman and Archstone, or the Registration Rights Agreement, pursuant to which we are required to register under the Securities Act of 1933, as amended, or the Securities Act, the resale of the 14,889,706 shares of common stock issued to Archstone as partial consideration for the Archstone Acquisition. Under the Registration Rights Agreement we are obligated to file a resale shelf registration statement by March 8, 2013 pursuant to which, after the expiration of Lehman's lock-up described below on April 26, 2013, it will be able to sell, generally without restrictions, shares received in the transaction. We have the right to suspend sales under the shelf registration statement in limited circumstances for up to 90 days in any twelve-month period. We are obligated to maintain the effectiveness of the registration statement until the earlier of the fifth anniversary of the closing of the Archstone Acquisition or when Lehman owns less than $250,000,000 market value of the shares it originally received under the Purchase Agreement.

The Registration Rights Agreement gives Lehman the right to conduct two underwritten offerings of our shares during any twelve-month period. We are obligated to cooperate with, and assist in, those offerings and to enter into a 30-day lock-up with Lehman's underwriters. Following the first anniversary of the closing, we have the right once in any twelve-month period to delay an underwritten offering requested by Lehman so that we may undertake our own underwritten offering. If we effect an underwritten offering of our shares, Lehman has agreed to enter into a 30-day lock-up with the underwriters so long as it owns over 5% of our outstanding shares.

The foregoing description of the Registration Rights Agreement does not purport to be complete and is subject to, and qualified in its entirety by reference to, the full text of the Registration Rights Agreement, a copy of which is attached as Exhibit 10.1 hereto.

Shareholders Agreement

On February 27, 2013, in connection with the closing of the Archstone Acquisition, we entered into a shareholders agreement (the "Shareholders Agreement") , pursuant to which Lehman agreed to a lock-up, starting from the date of the Purchase Agreement and ending on April 26, 2013, with respect to the shares of common stock acquired in connection with the Archstone Acquisition. Under the Shareholders Agreement, so long as Lehman owns more than 5% of our common stock, Lehman has agreed it will not (i) acquire beneficial ownership of any additional shares of our common stock; (ii) participate in any voting or similar arrangement with a third party; (iii) enter into, propose or facilitate any change in control transaction (or other extraordinary transaction involving us); or (iv) otherwise act, alone or in concert with others, to seek to control, or influence, our board of directors or our management or policies.

Additionally under the Shareholders Agreement, for one year starting from the date of the closing of the Archstone Acquisition, Lehman will vote all of its shares of our common stock in accordance with the recommendation of our board of directors on any matter other than an extraordinary transaction. After the first year, and for so long as Lehman holds more than 5% of our common stock, Lehman will vote all of its shares of our common stock (i) in accordance with the recommendations of our board of directors with respect to any election of directors, compensation and equity plan matters, and any amendment to our charter to increase our authorized capital stock; (ii) on all matters proposed by other shareholders, either proportionately in accordance with the votes of the other shareholders or, at its election, in accordance with the recommendation of our board of directors; and (iii) on all other matters, in its sole and absolute discretion.

The foregoing description of the Shareholders Agreement does not purport to be complete and is subject to, and qualified in its entirety by reference to, the full text of the Shareholders Agreement, a copy of which is attached as Exhibit 10.2 hereto.

Prior to the issuance of our shares of common stock to Archstone, our board of directors waived the stock ownership limit in our charter, which generally prohibits a stockholder from holding more than 9.8% of the issued and outstanding shares of any class or series of our stock. The waiver permits Lehman to hold the 14,889,706 shares of our common stock received in the Archstone Acquisition. Our board of directors granted this waiver based on the belief that such waiver will not jeopardize our ability to qualify as a REIT.

Federal National Mortgage Association Master Credit Facility Agreement and Related Notes

On February 27, 2013, subsidiaries of the Company entered into a Master Credit Facility Agreement and related notes with Federal National Mortgage Association ("Fannie Mae") pursuant to which certain of the Company's subsidiaries assumed approximately $2,270,000,000 of Archstone's indebtedness with Fannie Mae and modified the terms of such indebtedness (the "Fannie Mae Loan"). As assumed and modified, the Fannie Mae Loan is divided into three separate loan pools which we refer to as Pools 2, 6 and 9. The properties securing Pools 2 and 6 are cross-defaulted but not cross-collateralized, and Pool 9 was repaid in its entirety at closing. See Item 2.03 below for additional information regarding the Fannie Mae Loan and the related loan pools.

The foregoing description of the Fannie Mae Loan does not purport to be complete and is subject to, and qualified in its entirety by reference to, the full text of the Fannie Mae Loan, a copy of which is attached as Exhibit 10.7 hereto.

ITEM 2.03 CREATION OF A DIRECT FINANCIAL OBLIGATION OR AN OBLIGATION UNDER AN OFF-BALANCE SHEET ARRANGEMENT OF A REGISTRANT.

As part of the Archstone Acquisition, on February 27, 2013, we assumed $3,597,000,000 principal amount of Archstone's existing indebtedness. Concurrent with the closing of the Archstone Acquisition we repaid $1,562,000,000 principal amount of this outstanding indebtedness. Principal amounts of consolidated indebtedness assumed and repaid are detailed further in the following table (dollars in thousands).

Community / Debt Facility	Stated Interest Rate	Principal Final Maturity Date	Principal Balance Assumed (1)	Principal Repayments at Assumption	Net Principal Balance Assumed (1)
Tax-exempt bonds					
Fixed Rate					
Meadowbrook	4.61%	Nov-2036	$ 62,200	$ —	$ 62,200
Variable Rate					
Clinton	SIFMA + 1.53%	Nov-2038	268,500	—	268,500
Midtown West	SIFMA + 1.13%	May-2029	100,500	—	100,500
San Bruno	SIFMA + 1.35%	Dec-2037	64,450	—	64,450
Calabasas	SIFMA + 1.48%	Apr-2038	44,410	—	44,410
			540,060	—	540,060
Conventional loans					
Fixed Rate					
Fannie Mae Pool 6 (2)	6.19%	Nov-2015	940,923	443,000	497,923
Fannie Mae Pool 2 (2)	6.26%	Nov-2017	692,192	—	692,192
First and M	5.57%	May-2053	128,826	—	128,826
San Bruno II	5.37%	Apr-2021	31,700	—	31,700

Meadowbrook	4.70%	Nov-2036	22,665	—	22,665
Lexington	5.55%	Mar-2016	16,984	—	16,984
			1,833,290	443,000	1,390,290
Variable Rate					
Fannie Mae Pool 9	LIBOR + 1.27%	Nov-2014	636,756	636,756	—
Freddie Mac Pool	LIBOR + 0.96%	Nov-2014	270,943	270,943	—
South San Francisco	DMBS + 1.00%	Apr-2013	76,706	76,706	—
Calabasas	DMBS + 1.44%	Aug-2018	57,472	—	57,472
San Bruno III	LIBOR + 2.60%	May-2013	47,000	—	47,000
Wheaton Station	DMBS + 1.00%	Apr-2013	44,539	44,539	—
La Mesa	DMBS + 1.00%	Apr-2013	24,755	24,755	—
Parkland Gardens	LIBOR + 2.25%	May-2017	18,176	18,176	—
Toscano	LIBOR + 6.00%	May-2016	42,805	42,805	—
Memorial Heights	LIBOR + 2.50%	May-2017	4,806	4,806	—
			1,223,958	1,119,486	104,472
Total Indebtedness			$ 3,597,308	$ 1,562,486	$ 2,034,822

(1) Balances are for consolidated debt assumed and do not include our share of the principal amount of debt held by unconsolidated joint ventures of approximately $200 million. Balances also do not consider amounts held in principal reserve funds that were received by the Company, and are held for the repayment for the respective borrowing.

(2) Borrowings are cross-defaulted.

In addition to the assumed consolidated indebtedness discussed above, as disclosed in footnote 5 to the table detailing the operating communities we acquired as part of the Archstone Acquisition in this report, two of the consolidated operating communities are subject to ground leases that expire in November 2060. We expect to sell these communities in first quarter of 2013.

ITEM 3.02 UNREGISTERED SALES OF EQUITY SECURITIES.

The information set forth above in "Item 1.01 — Entry into a Material Definitive Agreement" and "Item 2.01 — Completion of Acquisition or Disposition of Assets" is incorporated herein by reference. In connection with the Archstone Acquisition, we issued 14,889,706 shares of our common stock to Archstone or its successors, valued at $1.88 billion as of the market's close on February 27, 2013. The issuance of our common stock pursuant to the Purchase Agreement as described above was not registered under the Securities Act, in reliance upon the exemption from registration provided by Section 4(2) thereof for transactions not involving a public offering. We have agreed to register the resale of these shares under the terms of the Registration Rights Agreement, as described above.

ITEM 7.01 REGULATION FD DISCLOSURE.

On February 27, 2013, we issued a press release announcing the closing of the Archstone Acquisition. A copy of our press release is furnished as Exhibit 99.1 and is incorporated herein by reference.

The information disclosed under this Item 7.01, including Exhibit 99.1 hereto, is being furnished and shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and shall not be deemed incorporated by reference into any filing under the Securities Act of 1933, as amended, except as expressly set forth by specific reference in such filing.

ITEM 9.01 FINANCIAL STATEMENTS AND EXHIBITS.

(a) Financial Statements of Businesses Acquired

The financial statements required to be filed pursuant to this Item 9.01 have been previously filed and are incorporated herein by reference to our Current Report on Form 8-K filed with the Securities and Exchange Commission on February 26, 2013.

(b) Pro Forma Financial Information.

The pro forma financial information required by this Item 9.01 is not being filed herewith. It will be filed by amendment to this Current Report on Form 8-K not later than 71 days after the date on which this Current Report on Form 8-K is required to be filed.

(d) Exhibits.

The Exhibit Index appearing immediately after the signature page of this Form 8-K is incorporated herein by reference.

FORWARD-LOOKING STATEMENTS

This report 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 press release, that predict or indicate future events and trends and that do not report historical matters.

Forward-looking statements or forecasts relating to the business, prospects, operating statistics or financial results that relate to or may be expected to result from the Archstone Acquisition are based on expectations, forecasts and assumptions that are inherently speculative and are subject to substantial risks and uncertainties, many of which we cannot predict with accuracy and some of which we may not have anticipated. As a result, the actual operating statistics and financial results that relate to or may be expected to result from the Archstone Acquisition may differ materially from the Company's forecasts. Risks, uncertainties and other factors related to the Archstone Acquisition that might cause such differences include, among other things, the following: we may not be able to integrate the assets and operations acquired in the Archstone Acquisition in a manner

consistent with our assumptions and/or we may fail to achieve expected efficiencies and synergies; we may encounter liabilities related to the Archstone Acquisition for which we may be responsible that were unknown to us at the time we agreed to the Archstone Acquisition or at the time of this report; and our assumptions concerning risks relating to our lack of control of joint ventures and our ability to successfully dispose of certain assets may not be realized.

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 on which this report was filed. 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, and which 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. In addition to the factors referred to above, you should carefully review the discussion in our Annual Report on Form 10-K for the year ended December 31, 2012, filed with the Securities and Exchange Commission on February 22, 2013, under Item 1a., "Risk Factors," and the other disclosures elsewhere in the Form 10-K and our subsequent reports on Form 10-Q and 8-K and other filings with the SEC for further discussion of additional risks and uncertainties associated with our business and these forward-looking statements.

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 hereunto duly authorized.

AVALONBAY COMMUNITIES, INC.

March 5, 2013

By: /s/ Thomas J. Sargeant
Name: Thomas J. Sargeant
Title: Chief Financial Officer

EXHIBIT INDEX

Exhibit No.	Description
10.1	Registration Rights Agreement, dated February 27, 2013, by and between Lehman Brothers Holdings Inc. and AvalonBay Communities, Inc.
10.2	Shareholders Agreement, dated February 27, 2013, by and among AvalonBay Communities, Inc., Archstone Enterprise LP and Lehman Brothers Holdings Inc.
10.3	Archstone Residual JV, LLC Limited Liability Company Agreement
10.4	Archstone Parallel Residual JV, LLC Limited Liability Company Agreement
10.5	Archstone Parallel Residual JV 2, LLC Limited Liability Company Agreement
10.6	Legacy Holdings JV, LLC Limited Liability Company Agreement
10.7	Master Credit Facility Agreement, dated February 27, 2013, by and among Federal National Mortgage Association and the parties named therein.
99.1	Press Release dated February 27, 2013

Exhibit 10.1

Execution Copy

AVALONBAY COMMUNITIES, INC.
REGISTRATION RIGHTS AGREEMENT

THIS REGISTRATION RIGHTS AGREEMENT, dated as of February 27, 2013 (this "***Agreement***"), is by and among Lehman Brothers Holdings Inc., a Delaware corporation ("***LBHI***"), Archstone Enterprise LP, a Delaware limited partnership ("***Enterprise***"), and AvalonBay Communities, Inc., a Maryland corporation (the "***Company***"). LBHI and the Company are sometimes referred to herein as the "***Parties***" and each, a "***Party***."

R E C I T A L S

WHEREAS, the Company, ERP Operating Limited Partnership, an Illinois limited partnership, Equity Residential, a Maryland real estate investment trust, LBHI and Enterprise have entered into that certain Asset Purchase Agreement, dated as of November 26, 2012 (the "***Purchase Agreement***");

WHEREAS, as a result of the initial closing of the Contemplated Transactions (as defined in the Purchase Agreement) (the "***Initial Closing***"), Enterprise owns directly, and LBHI (by reason of Enterprise's direct ownership) beneficially owns, as of the date of this Agreement, 14,889,706 AVB Common Shares acquired from the Company (of which 1,216,521 AVB Common Shares are to be held in escrow for the benefit of Enterprise in accordance with the provisions of the Purchase Agreement)as a portion of the consideration received by Sellers (as defined in the Purchase Agreement) in connection with such transactions (the "***Shares***");

WHEREAS, the execution and delivery of this Agreement is a condition precedent to the obligations of the Parties to consummate the transactions contemplated by the Purchase Agreement; and

WHEREAS, each of the Parties desires to enter into this Agreement in order to establish registration rights of the LBHI Group with respect to the Shares.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

SECTION 1. DEFINITIONS

As used in this Agreement, the following terms have the respective meanings set forth below:

"***Affiliate***" means as to any Person, any other Person which, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with such specified Person. For purposes of this definition, "control" of any Person means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract, or otherwise.

"***Agreement***" has the meaning set forth in the Preamble.

"***ATM Program***" has the meaning set forth in Section 2(h).

"***Automatic Shelf Registration Statement***" means an "Automatic Shelf Registration Statement," as defined in Rule 405 under the Securities Act.

"***AVB Common Shares***" means the shares of common stock, par value $0.01 per share, of the Company.

"***beneficial owner***" and words of similar import have the meaning assigned to such terms in Rule 13d-3 under the Exchange Act.

"***Black-Out Period***" has the meaning set forth in Section 2(l).

"***Board of Directors***" means the board of directors of the Company.

"***Business Day***" means each day, other than a Saturday, Sunday or other day on which banks in New York, New York are required by Law to close.

"***Commission***" means the Securities and Exchange Commission or any other federal agency at the time administering the Securities Act.

"***Company***" has the meaning set forth in the Preamble.

"***Demand Notice***" has the meaning set forth in Section 2(b).

"***Demand Registration***" has the meaning set forth in Section 2(b).

"***Exchange Act***" means the Securities Exchange Act of 1934, as amended, or any successor Law thereto, and the rules and regulations issued pursuant to that statute or any successor Law.

"***FINRA***" means the Financial Industry Regulatory Authority, Inc., or any successor thereto.

"***Governmental Authority***" means any government or political subdivision, whether federal, state, local or foreign, or any agency or instrumentality of any such government or political subdivision, or any federal, state, local or foreign court, authority, tribunal, department, bureau or commission, in each case having jurisdiction over the applicable matter.

"***Indemnified Party***" has the meaning set forth in Section 4(c).

"***Indemnifying Party***" has the meaning set forth in Section 4(c).

"***Initial Closing***" has the meaning set forth in the Recitals.

"***Issuer Free Writing Prospectus***" means an "Issuer Free Writing Prospectus," as defined in Rule 433 under the Securities Act, relating to an offer of Registrable Securities.

"***Launch Date***" means, with respect to an Underwritten Offering, the commencement of marketing activities or, if no such marketing activities are contemplated, the earliest of (x) the filing of a preliminary Prospectus covering such Underwritten Offering, (y) the public announcement of the Company's intention to conduct such Underwritten Offering, and (z) the public announcement of the pricing of such Underwritten Offering.

"***Law***" means, with respect to any Person, any federal, state, county, municipal, local, multinational or foreign statute, treaty, law, common law, ordinance, rule, regulation, code, order, writ, stipulation, injunction, judicial decision, decree, ruling, determination, finding, permit, constitutional provision or other legally binding requirement of any Governmental Authority applicable to such Person or any of its respective properties, assets, officers, directors, employees, consultants or agents (in connection with such officer's, director's, employee's, consultant's or agent's activities on behalf of such Person).

"***LBHI***" has the meaning set forth in the Preamble.

"***LBHI Group***" means LBHI together with its Subsidiaries (including, without limitation, Enterprise) and any liquidating trust established pursuant to the Plan that beneficially own Shares, in each case, for so long as LBHI or such Subsidiary or liquidating trust beneficially own any Shares. When this Agreement requires the LBHI Group to provide notice or give consent, such notice or consent shall be given by LBHI and not by any other LBHI Group Member. Notice provided to the LBHI pursuant to Section 5(c) shall constitute valid notice to LBHI and each other LBHI Group Member.

"***LBHI Group Member***" means any member of the LBHI Group.

"***Losses***" has the meaning set forth in Section 4(a).

"***Parties***" and "***Party***" have the meaning set forth in the Preamble.

"***Permitted Assignee***" has the meaning set forth in Section 5(d).

"***Person***" means any individual, a corporation (including any non-profit corporation), a limited liability company, a general partnership, a limited partnership, a limited liability partnership, a trust, a venture, a business, a union, a society, an association, a firm, a Governmental Authority or any other entity or organization.

"***Piggyback Registration***" has the meaning set forth in Section 2(h).

"***Plan***" shall mean that certain Modified Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and its Affiliated Debtors, dated December 6, 2011 and that certain Order Confirming Modified Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and its Affiliated Debtors, dated December 6, 2011, [Docket No. 23023].

"***Priced Underwritten Offering Requests***" has the meaning set forth in Section 2(a)(ii).

"***Prospectus***" means the prospectus (including any preliminary, final or summary prospectus) included in any Registration Statement, all amendments and supplements to such prospectus and all other material incorporated by reference in such prospectus.

"***Purchase Agreement***" has the meaning set forth in the Recitals.

"***Qualifying Employee Stock***" means the rights, options and other securities issued under employee benefit plans of the Company or any predecessor thereof, or otherwise to executives, directors and/or employees in compensation arrangements approved by the Board of Directors or any predecessor thereof, and any securities issued after the date hereof upon exercise of such rights, options and other securities.

"***Register***," "***Registered***" and "***Registration***" means a registration effected by preparing and (a) filing a Registration Statement in compliance with the Securities Act (and any post-effective amendments filed or required to be filed) and the declaration or ordering of effectiveness of such Registration Statement, or (b) filing a Prospectus and/or Prospectus supplement in respect of an appropriate effective Registration Statement.

"***Registrable Securities***" means all Shares that are beneficially owned by a LBHI Group Member at any time and any AVB Common Shares that may be issued or distributed by way of a share split, recapitalization or reclassification in respect of the Shares; provided, however, that a Share shall cease to be a Registrable Security when (a) it has been effectively Registered under the Securities Act and disposed of in accordance with the Registration Statement covering it, (b) it is transferred in compliance with Rule 144 under the Securities Act (but not Rule 144A under the Securities Act) or any successor provision, such that no restrictive legend is required after giving effect to such transfer, or (c) it has ceased to be outstanding. Notwithstanding anything herein to the contrary, all Shares shall cease to be Registrable Securities upon the Termination Date.

"***Registration Expenses***" means any and all expenses incurred by the Company and its Subsidiaries in effecting any Registration pursuant to this Agreement, including, all (a) Registration and filing fees, and all other fees and expenses payable in connection with the listing of securities on any securities exchange or automated interdealer quotation system, (b) fees and expenses of compliance with any securities or "blue sky" Laws (including reasonable fees and disbursements of counsel in connection with "blue sky" qualifications of the Registrable Securities), (c) expenses in connection with the preparation, printing, mailing and delivery of any Registration Statements, Prospectuses, Issuer Free Writing Prospectus and other documents in connection therewith and any amendments or supplements thereto, (d) security engraving and printing expenses, (e) internal expenses of the Company (including, all salaries and expenses of its officers and employees performing legal or accounting duties), (f) fees and disbursements of counsel for the Company and fees and expenses for independent certified public accountants retained by the Company (including, the expenses associated with the delivery by independent certified public accountants of any "comfort letters" requested pursuant to the terms hereof), (g) fees and expenses of any special experts retained by the Company in connection with such Registration, (h) fees and expenses in connection with any review by FINRA of any underwriting arrangements or other terms of the offering, and all reasonable fees and expenses of any "qualified independent underwriter," (i) reasonable fees and disbursements

of Underwriters customarily paid by issuers or sellers of securities, but excluding any underwriting fees, discounts and commissions attributable to the sale of Registrable Securities and excluding any fees or expenses of counsel to the Underwriters, other than as referred to in clause (b) above, (j) costs of printing and producing any agreements among Underwriters, underwriting agreements, any "blue sky" or legal investment memoranda and any selling agreements and other documents in connection with the offering, sale or delivery of the Registrable Securities, (k) transfer agents' and registrars' fees and expenses and the fees and expenses of any other agent or trustee appointed in connection with such offering, and (xii) expenses incurred by the Company relating to any analyst or investor presentations or any "road shows" undertaken in connection with the Registration, marketing or selling of the Registrable Securities. Registration Expenses shall not include, and the Company shall not have any obligation to pay, any out-of-pocket expenses of the LBHI Group or Selling Expenses.

"***Registration Statement***" means any registration statement of the Company that covers the resale of any Registrable Securities pursuant to the provisions of this Agreement filed with, or to be filed with, the Commission under the rules and regulations promulgated under the Securities Act, including the related Prospectus, amendments and supplements to such registration statement, including pre- and post-effective amendments, and all exhibits, financial information and all other material incorporated by reference in such registration statement.

"***Resumption Date***" has the meaning set forth in Section 2(a)(iii).

"***Securities Act***" means the Securities Act of 1933, as amended, or any successor Law thereto, and the rules and regulations issued pursuant to that statute or any successor Law.

"***security***" and "***securities***" have the meaning set forth in Section 2(a)(1) of the Securities Act.

"***Selling Expenses***" means all underwriting discounts, selling commissions and stock transfer taxes applicable to the sale of Registrable Securities and all fees and disbursements of counsel for the LBHI Group, which do not constitute Registration Expenses.

"***Shares***" has the meaning set forth in the Recitals.

"***Shelf Registration Statement***" means a "shelf" registration statement of the Company that covers all the Registrable Securities (and may cover other securities of the Company) on Form S-3 and under Rule 415 under the Securities Act or, if the Company is not then eligible to file on Form S-3, on Form S-11 under the Securities Act, or any successor rule that may be adopted by the Commission, including without limitation any such registration statement filed pursuant to Sections 2(a), 2(b) or 2(h), and all amendments and supplements to such "shelf" registration statement, including, post-effective amendments, in each case, including the Prospectus contained therein, all exhibits thereto and any document incorporated by reference therein.

"***Stand-Down Notice***" has the meaning set forth in Section 2(a)(iii).

"***Subsidiary***" with respect to any Person (including the Company), means any other Person of which the specified Person, either directly or through or together with any other

of its Subsidiaries, owns securities or other ownership interests or equity interests having voting power to elect a majority of the board of directors or other governing body or Persons performing similar functions on behalf of such other Person.

"***Termination Date***" has the meaning set forth in Section 2(o).

"***Underwriter***" means, with respect any Underwritten Offering, a securities dealer who purchases any Registrable Securities as a principal in connection with a distribution of such Registrable Securities.

"***Underwritten Offering***" means a public offering of securities Registered under the Securities Act in which an Underwriter participates in the distribution of such securities, including on a firm commitment basis for reoffer and resale to the public, including any such offering that is a "bought deal" or a block trade.

"***Underwritten Offering Request***" has the meaning set forth in Section 2(a)(ii).

SECTION 2. REGISTRATION RIGHTS

(a) Shelf Registration; Underwritten Offering.

(i) Subject to the provisions of Section 2(l), on or prior to the tenth (10th) day following the Initial Closing, the Company will file a Shelf Registration Statement (which Shelf Registration Statement shall be an Automatic Shelf Registration Statement if the Company is then eligible to file an Automatic Shelf Registration Statement) registering for resale the Registrable Securities under the Securities Act. Until such time as all Registrable Securities cease to be Registrable Securities or the Company is no longer eligible to maintain a Shelf Registration Statement, the Company will keep current and effective such Shelf Registration Statement and file such supplements or amendments to such Shelf Registration Statement (or file a new Shelf Registration Statement (which Shelf Registration Statement shall be an Automatic Shelf Registration Statement if the Company is then eligible to file an Automatic Shelf Registration Statement) when such preceding Shelf Registration Statement expires pursuant to the rules of the Commission) as may be necessary or appropriate in order to keep such Shelf Registration Statement continuously effective and useable for the resale of Registrable Securities under the Securities Act. The Company represents and warrants to LBHI that as of the date of this Agreement, the Company is not an "ineligible issuer" and is a "well known seasoned issuer", in each case as defined under the Securities Act.

(ii) Upon the written request of LBHI from time to time (an "***Underwritten Offering Request***"), the Company will cooperate with the LBHI Group and any Underwriter in effecting an Underwritten Offering pursuant to a Shelf Registration Statement as promptly as reasonably practicable following receipt of such Underwritten Offering Request; provided, however, that (x) LBHI shall not be entitled to make more than two (2) Underwritten Offering Requests that result in priced Underwritten Offerings in any twelve (12) month period (the "***Priced Underwritten Offering Requests***"); (y) LBHI will be deemed to have requested the removal of any Registrable Securities held by any LBHI Group Member from any Underwritten Offering Request and to have rescinded the Underwritten Offering Request, with the same effects as provided in Section 2(g), automatically if: (I) the Launch Date in respect of such

Underwritten Offering has not occurred by the end of the fifth (5th) Business Day after the following conditions have been met: (I-i) the Company has made available to LBHI a Prospectus under an effective Registration Statement naming the designated member or members of the LBHI Group as selling stockholders and the Underwriter(s) and containing such other information as is required under the Securities Act and the rules of the Commission in a form ready for filing, assuming that as of such time (X) the Company has otherwise complied with its applicable obligations in Section 2(k) and (Y) LBHI has otherwise complied with its obligations in Section 2(m), and (I-ii) the Company has notified LBHI in writing that the Company has complied with the provisions of this clause (I) and that the five (5) Business Day period referenced in this clause (I) is commencing), or (II) the Underwritten Offering has not been priced by the end of the third (3rd) Business Day after the Launch Date, assuming that the Launch Date occurred before the expiration of the five (5) Business Day period referenced in clause (II) above); provided, further, that in the case of both clause (I) and clause (II) above such Underwritten Offering Request shall not be counted as a utilized Underwritten Offering Request for purposes of the limits in this Section 2(a)(ii) (other than clause (z) hereof) and Section 2(g); and (z) LBHI shall not be entitled to make in the aggregate more than four (4) Underwritten Offering Requests, including two (2) Priced Underwritten Offering Requests and two (2) Underwritten Offering Requests that are deemed rescinded or affirmatively rescinded, in any twelve (12) month period (for the avoidance of doubt, if there are two (2) Priced Underwritten Offering Requests in any twelve (12) month period this clause shall not be interpreted as allowing LBHI to make any further Underwritten Offering requests until the expiration of the then current twelve (12) month period). Each Underwritten Offering Request will specify the number of Registrable Securities proposed by LBHI to be included in such Underwritten Offering, the intended method of distribution and the estimated gross proceeds of such Underwritten Offering, which may not be less than $100 million. LBHI may change the number of Registrable Securities proposed to be offered in any Underwritten Offering at any time prior to the Launch Date of the Underwritten Offering so long as such change would not reduce the estimated gross proceeds of the Underwritten Offering to less than $100 million.

(iii) The Company will have the right to delay an Underwritten Offering by LBHI following receipt of an Underwritten Offering Request if the Company intends to effect its own Underwritten Offering by giving LBHI written notice of such intent (a "***Stand-Down Notice***"), whereby the Company's obligation to cooperate with the LBHI Group and any Underwriter in effecting an Underwritten Offering pursuant to Section 2(a)(ii) shall be suspended until the later of the Resumption Date or the date of expiration of any "lock-up" agreement required to be entered into by LBHI pursuant to Section 3(b) with respect to the Company's Underwritten Offering; provided, however, that (w) the Company will not be entitled to give a Stand-Down Notice until after the first (1st) anniversary of the Initial Closing; (x) the Company will not be entitled to deliver a Stand-Down Notice in respect of an Underwritten Offering Request later than 5 p.m. New York time on the next Business Day following receipt of such Underwritten Offering Request; (y) the Company will not be entitled to more than one (1) Stand-Down Notice in any twelve (12) month period; and (z) the Company will be deemed to have rescinded the Stand-Down Notice automatically, whereby the Company's obligation to cooperate with the LBHI Group and any Underwriter in effecting an Underwritten Offering pursuant to Section 2(a)(ii) shall resume, if (I) the Launch Date in respect of the Company's Underwritten Offering has not occurred by the end of the seventh (7th) Business Day after the date of the Underwritten Offering Request or (II) the Company's Underwritten Offering has not been priced

by the end of the third (3rd) Business Day after the Launch Date (the date following automatic rescission of a Stand-Down Notice pursuant to either clause (I) and clause (II) above, a "***Resumption Date***"). LBHI acknowledges and agrees that the receipt of any Stand-Down Notice may constitute material non-public information regarding the Company and shall keep the existence and contents of any Stand-Down Notice confidential. Notwithstanding anything to the contrary contained herein, if LBHI determines to rescind any prior Underwritten Offering Request or Demand Notice following receipt of a Stand-Down Notice, then LBHI may, at its election, give written notice of such election to the Company; provided, however, that such rescinded Underwritten Offering Request or Demand Notice shall not be counted as an Underwritten Offering Request or Demand Notice for purposes of the limits in Section 2(a)(ii) and Section 2(b)(i), respectively, without any requirement to reimburse the Company for any related expenses incurred by the Company.

(b) Demand Registration Rights. If, at any time while there still remain Registrable Securities, the Company is no longer eligible to use or, notwithstanding its obligations under Section 2(a)(i), otherwise ceases to maintain an effective Shelf Registration Statement, within ten (10) days after LBHI's written request to Register the resale of a specified amount of the Registrable Securities under the Securities Act (a "***Demand Notice***"), the Company will file a Registration Statement, on an appropriate form which the Company is then eligible to use, to Register the resale of such Registrable Securities, which Registration Statement will (if specified in LBHI's notice) contemplate the ability of the LBHI Group to effect an Underwritten Offering in accordance with Section 2(a)(ii) (each such Registration, a "***Demand Registration***"); provided, however, that LBHI shall not be entitled to request more than two (2) Demand Registrations in any twelve (12) month period. A request that does not result in an effective Registration Statement under the Securities Act shall not be counted as a utilized request for purposes of the limits in the preceding sentence. Each Demand Notice will specify the number of Registrable Securities proposed to be offered for sale, the intended method of distribution thereof and the estimated gross proceeds of such Demand Registration, which may not be less than $100 million. LBHI may change the number of Registrable Securities proposed to be offered pursuant to any Demand Registration at any time prior to the Registration Statement with respect to the Demand Registration being declared effective by the Commission, so long as such change would not reduce the estimated gross proceeds of the Demand Registration to less than $100 million. The Company shall have the right to satisfy a Demand Notice by filing a Shelf Registration Statement.

(c) Reserved.

(d) Effectiveness. The Company will use its reasonable best efforts to (i) cause any Registration Statement to be declared effective (unless it becomes effective automatically upon filing) as promptly as practicable after the filing thereof with the Commission and (ii) keep such Registration Statement current and effective for a period necessary for the completion of the resale of Registrable Securities Registered thereon. The Company further agrees to supplement or make amendments to each such Registration Statement as may be necessary to keep such Registration Statement effective for the period referred to in clause (ii) above, including (A) to respond to the comments of the Commission, if any, (B) as may be required by the registration form utilized by the Company for such Registration Statement or by the instructions to such registration form, (C) as may be required by the

Securities Act, (D) as may be required in connection with an Underwritten Offering, subject to Section 2(a)(iii), or (E) as may be reasonably requested in writing by LBHI or any Underwriter and reasonably acceptable to the Company, subject to Section 2(a)(iii). The Company agrees to furnish to the LBHI Group one electronic copy of any such supplement or amendment no later than the time it is first being used or filed with the Commission.

(e) Choice of Underwriter. In the event an Underwritten Offering of Registrable Securities involves one or more Underwriters, such Underwriters will be selected by LBHI; provided, that any Underwriter must be approved by the Company, which approval will not be unreasonably withheld. Any nationally recognized investment banking firm selected by LBHI will be deemed approved by the Company for purposes of the preceding sentence. The Company shall take such actions as the Underwriters may reasonably request in their efforts to sell Registrable Securities pursuant to such Registration Statement. LBHI agrees that it will use its commercially reasonable efforts to direct such Underwriters to engage the Company's existing designated underwriters' counsel (previously identified by the Company to LBHI) as its underwriters' counsel with respect to such Underwritten Offering; provided, however, that the deemed consent referred to in the second sentence of this Section 2(e) shall not be affected if, notwithstanding the use by LBHI of its commercially reasonable efforts, such Underwriters fail to so engage the Company's existing designated underwriters' counsel.

(f) LBHI Determinations. LBHI will be permitted to determine in good faith, matters affecting the structure of Underwritten Offerings undertaken pursuant to Section 2(a)(ii) or Demand Registrations, as applicable, including the price, underwriting discount and other financial terms for the Registrable Securities.

(g) Ability to Rescind Underwritten Offering Requests and Demand Registrations. LBHI will be permitted to request the removal of any Registrable Securities held by any LBHI Group Member from any Underwritten Offering Request or Demand Registration at any time prior to the pricing of the Underwritten Offering or the effective date of the applicable Registration Statement, as applicable, by providing written notice thereof to the Company; provided, that LBHI reimburses the Company for all reasonable, out-of-pocket expenses incurred by the Company in connection with such Underwritten Offering Request, Demand Notice or Demand Registration; provided, further, that (x) such Underwritten Offering Request or Demand Registration shall not be counted as a utilized Underwritten Offering Request or Demand Registration, as the case may be, for purposes of the limits in Section 2(a)(ii) (other than clause (z) thereof) and Section 2(b), respectively, and (y) LBHI shall not be entitled to make more than four (4) Underwritten Offering Requests and Demand Registrations in the aggregate, regardless of the combination or sequence thereof, whether or not they result in the pricing of an Underwritten Offering or an effective Registration Statement under the Securities Act, in any twelve (12) month period.

(h) Piggyback Registration. Subject to Section 2(l), if, at any time while there still remain Registrable Securities, the Company is no longer eligible to use or, notwithstanding its obligations under Section 2(a)(i), otherwise a Shelf Registration Statement registering the Shares for resale is not effective, the Company proposes to file a new registration statement under the Securities Act with respect to an offering of AVB Common Shares for (i) the Company's own account (other than a registration statement on Form S-4 or S-8 (or any

substitute form that may be adopted by the Commission) or with respect to a Company at-the-market offering program ("***ATM Program***") or Company dividend reinvestment plans) or (ii) the account of any holder of AVB Common Shares (other than a LBHI Group Member), then the Company shall give written notice of such proposed filing to LBHI as soon as reasonably practicable (but in no event less than ten (10) days before the anticipated filing date of such new registration statement). Upon a written request, given by LBHI to the Company within five (5) days after delivery of any such notice by the Company, to include Registrable Securities in such Registration (which request shall specify the number of Registrable Securities proposed to be included in such new registration statement if such registration statement is not a "pay as you go" Automatic Shelf Registration Statement), the Company shall, subject to Section 2(i), include all such requested Registrable Securities in such new registration statement on the same terms and conditions as applicable to the Company's or such holder's AVB Common Shares (a "***Piggyback Registration***"). Notwithstanding the foregoing, if at any time after giving written notice of such proposed filing and prior to the effective date of such new registration statement, the Company or such holders shall determine for any reason not to proceed with the proposed filing of the new registration statement, then the Company may, at its election, give written notice of such determination to the LBHI Group and, thereupon, will be relieved of its obligation to Register any Registrable Securities in connection with such new registration statement.

(i) Reduction of Size of Underwritten Offering. Notwithstanding anything to the contrary contained herein, if the lead Underwriter or Underwriters of an Underwritten Offering advise LBHI and the Company in writing that, in their reasonable opinion the number of AVB Common Shares (including any Registrable Securities) that the Company, the LBHI Group Members and any other Persons intend to dispose of pursuant to any Underwritten Offering is such that the success of any such Underwritten Offering would be materially and adversely affected, including with respect to the price at which the securities can be sold, then such Underwritten Offering shall include only such securities as the Company and LBHI are advised by such lead Underwriter or Underwriters can be sold without such material and adverse effect, in accordance with the following priorities:

(X) priority in the case of an Underwritten Offering initiated by the Company for its own account which gives rise to a Piggyback Registration pursuant to Section 2(h) will be (A) first, AVB Common Shares proposed to be offered by the Company for its own account, (B) second, *pro rata* among (1) the Registrable Securities requested to be disposed of pursuant to the Underwritten Offering for the account of the LBHI Group Members pursuant to Section 2(h) and (2) any AVB Common Shares requested to be disposed of for the account of other holders of AVB Common Shares pursuant to rights existing on the date hereof and set forth on Schedule I and (C) third *pro rata* among any other holders of AVB Common Shares requested to be disposed of, so that the total number of AVB Common Shares to be included in any such offering for the account of all such Persons will not exceed the number recommended by such lead Underwriter or Underwriters, if any; and

(Y) priority in the case of an Underwritten Offering initiated by holders of AVB Common Shares (other than the LBHI Group Members) which gives rise to a Piggyback Registration pursuant to Section 2(h) will be (A) first, all AVB

Common Shares requested to be disposed of for the account of the initiating holder or holders pursuant to rights existing on the date hereof and set forth on Schedule I, (B) second, *pro rata* among the LBHI Group Members and any other holders of AVB Common Shares requested to be disposed of pursuant to rights existing on the date hereof and set forth on Schedule I, (C) third, *pro rata* among any other holders of AVB Common Shares requested to be disposed of, and (D) fourth any AVB Common Shares proposed to be offered by the Company for its own account, so that the total number of AVB Common Shares to be included in any such offering for the account of all such Persons will not exceed the number recommended by such lead Underwriter or Underwriters, if any.

(j) Expenses of Registration. Except as otherwise provided in Section 2(g), all Registration Expenses incurred in connection with any Underwritten Offering, any Demand Registration or any Piggyback Registration, or any qualification or compliance pursuant to this Section 2 shall be borne by the Company, and all Selling Expenses shall be borne by the LBHI Group.

(k) Registration and Underwritten Offering Procedures. In the case of each Registration or Underwritten Offering, as applicable, effected by the Company pursuant to this Section 2, the Company will keep the LBHI Group advised in writing as to the initiation of each Registration or Underwritten Offering and as to the completion thereof. At its expense, the Company shall:

(i) before filing a Registration Statement, the Prospectus, any supplement to the Prospectus and any amendments or supplements to any Issuer Free Writing Prospectus containing information pertaining to the LBHI Group, provide the LBHI Group with the opportunity to reasonably object to any information pertaining to the LBHI Group that is contained therein and the Company shall make the corrections reasonably and timely requested by the LBHI Group with respect to such information prior to filing any such Registration Statement, Prospectus, any amendment or supplement thereto or any amendment or supplement to any Issuer Free Writing Prospectus;

(ii) as promptly as practicable, prepare and file with the Commission such pre- and post-effective amendments to such Registration Statement, supplements to the Prospectus and such amendments or supplements to any Issuer Free Writing Prospectus as may be (A) reasonably and timely requested by any LBHI Group Member or (B) necessary to keep such Registration Statement effective for the period of time required by this Agreement, and comply with provisions of the applicable

securities Laws with respect to the sale or other disposition of all Registrable Securities covered by such Registration Statement during such period in accordance with the intended method or methods of disposition by the sellers thereof set forth in such Registration Statement;

(iii) promptly notify the LBHI Group and the lead Underwriter or Underwriters, if any, and, if requested, confirm such notification in writing and provide copies of the relevant documents, as promptly as reasonably practicable: (A) of the filing or effectiveness, as applicable, of the applicable Registration Statement or any amendment thereto or the applicable Prospectus or Issuer Free Writing Prospectus or any amendment or supplement

thereto, (B) of the receipt of any written comments from the Commission or any request by the Commission or any other Governmental Authority for amendments or supplements to such Registration Statement, Prospectus or Issuer Free Writing Prospectus or for additional information, (C) of the issuance by the Commission of any stop order suspending the effectiveness of such Registration Statement or any order by the Commission or any other regulatory authority preventing or suspending the use of any Prospectus or any Issuer Free Writing Prospectus or the initiation or threatening of any proceedings for such purposes, (D) if, at any time, the representations and warranties of the Company in any applicable underwriting agreement cease to be true and correct in all material respects, and (E) of the receipt by the Company or its legal counsel of any notification with respect to the suspension of the qualification of the Registrable Securities for offering or sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose;

(iv) promptly notify the LBHI Group and the lead Underwriter or Underwriters, if any: (A) when the Company becomes aware of the occurrence of any event as a result of which the applicable Registration Statement, the Prospectus included in such Registration Statement (as then in effect) or any Issuer Free Writing Prospectus contains any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary in order to make the statements therein (in the case of such Prospectus or any Issuer Free Writing Prospectus, in light of the circumstances under which they were made) not misleading, and (B) when any Issuer Free Writing Prospectus includes information that may conflict with the information contained in the Registration Statement, or, if for any other reason it shall be necessary during such time period to amend or supplement such Registration Statement, Prospectus or Issuer Free Writing Prospectus in order to comply with the Securities Act and, in either case, as promptly as practicable thereafter, prepare and file with the Commission, and furnish without charge to the LBHI Group and the lead Underwriter or Underwriters, if any, any amendment or supplement to such Registration Statement, Prospectus or Issuer Free Writing Prospectus which shall correct such misstatement or omission or effect such compliance;

(v) use its reasonable best efforts to prevent, or obtain the withdrawal of, any stop order or other order suspending the use of any Prospectus or any Issuer Free Writing Prospectus;

(vi) deliver to each LBHI Group Member and each Underwriter, if any, without charge, as many copies of the applicable Prospectus, any Issuer Free Writing Prospectus and any amendment or supplement thereto as such LBHI Group Member or Underwriter may reasonably request (it being understood that the Company consents to the use of such Prospectus, any Issuer Free Writing Prospectus and any amendment or supplement thereto by such LBHI Group Member and Underwriters, if any, in connection with the offering and sale of the Registrable Securities thereby) and such other documents as such LBHI Group Member and each Underwriter, if any, may reasonably request in order to facilitate the disposition of the Registrable Securities by such LBHI Group Member and Underwriters, if any;

(vii) subject to the terms set forth in Section 2(l), on or prior to the date on which the applicable Registration Statement is declared effective, use its reasonable best efforts to register or qualify the Registrable Securities covered by such Registration Statement under

such other securities or "blue sky" Laws of such jurisdictions in the United States as any LBHI Group Member reasonably (in light of its intended plan of distribution) requests and do any and all other acts and things that may be reasonably necessary or advisable to enable such LBHI Group Member to consummate the disposition of the Registrable Securities owned by such LBHI Group Member pursuant to such Registration Statement; provided, however, that the Company shall not be obligated to qualify as a foreign corporation to do business under the Laws of any such state in which it is not then qualified or to file any general consent to service of process in any such state;

(viii) make such representations and warranties to the LBHI Group and the Underwriters or agents, if any, in form, substance and scope as are customarily made by issuers in underwritten public offerings;

(ix) enter into such customary agreements (including underwriting and indemnification agreements) and take such other actions as the lead Underwriter, if any, reasonably request in order to expedite or facilitate the Registration and disposition of such Registrable Securities;

(x) use its reasonable best efforts to obtain for delivery to the lead Underwriter, if any, an opinion or opinions from counsel for the Company dated the effective date of the Registration Statement or, in the event of an Underwritten Offering, the date of the closing under the underwriting agreement, in form and substance as is customarily given to Underwriters in an underwritten secondary public offering;

(xi) in the case of an Underwritten Offering, use its reasonable best efforts to obtain for delivery to the Company and the lead Underwriter, if any, a "comfort" letter from the Company's independent certified public accountants in form and substance as is customarily given by independent certified public accountants in an underwritten secondary public offering;

(xii) cooperate with each LBHI Group Member and the Underwriters, if any, of such Registrable Securities and their respective counsel in connection with any filings required to be made with FINRA;

(xiii) use its reasonable best efforts to cause all Registrable Securities covered by the applicable Registration Statement to be listed or quoted on a national securities exchange or trading system and each securities exchange and trading system, if any, on which similar securities issued by the Company are then listed;

(xiv) cooperate with the LBHI Group and the Underwriters, if any, to facilitate the timely preparation and delivery of certificates, with requisite CUSIP numbers, representing Registrable Securities to be sold and not bearing any restrictive legends;

(xv) in the case of an Underwritten Offering, ensure that two (2) senior officers of the Company who are reasonably acceptable to LBHI (A) reasonably participate in good faith in the customary "road show" presentations and other customary marketing efforts that may be reasonably requested by the lead Underwriter or Underwriters in any such Underwritten Offering, and (B) take such actions as the lead Underwriter or Underwriters or the LBHI Group may reasonably request in order to expedite or facilitate the sale of Registrable Securities;

(xvi) use its reasonable best efforts to procure the cooperation of the Company's transfer agent in settling any offering or sale of Registrable Securities, including with respect to the transfer of physical security instruments into book-entry form in accordance with any procedures reasonably requested by the LBHI Group or any lead Underwriter or Underwriters; and

(xvii) (A) make available for inspection by LBHI if the LBHI Group Members are collectively selling at least five percent (5%) of the Registrable Securities included in such Registration, the lead Underwriter or Underwriters, if any, and any attorneys or accountants retained by the LBHI Group or the lead Underwriter or Underwriters, at the offices where normally kept, during reasonable business hours, financial and other records and pertinent corporate documents of the Company as shall be reasonably necessary to enable them to exercise their due diligence responsibility, (B) cause the officers, directors and employees of the Company to supply all information in each case reasonably requested by any such representative, lead Underwriter, attorney or accountant in connection with such Registration Statement, and (C) make the Company's independent certified public accountants available for any such lead Underwriter's or Underwriters' due diligence if so requested by counsel to the Underwriters or LBHI; provided, however, that the Company shall not be required to provide any information pursuant to this section if (1) the Company believes in good faith based on the advice of counsel that to do so would cause the Company to forfeit an attorney-client privilege that was applicable to such information, (2) the Company has requested and been granted from the Commission confidential treatment of such information or (3) any such information is identified by the Company as being confidential or proprietary, unless, with respect to clause (2) or (3) of this sentence, each Person receiving such information shall take such actions as are reasonably necessary to protect the confidentiality of such information and shall sign customary confidentiality agreements reasonably requested by the Company prior to the receipt of such information; and provided, further that, the foregoing inspection and information gathering shall be conducted in such a way as not to materially disrupt the Company's conduct of its business, and such inspection and information gathering shall, to the greatest extent possible, be coordinated on behalf of the parties entitled thereto by one counsel designated by and on behalf of such parties.

(l) Right to Defer Registration.

(i) Notwithstanding anything to the contrary contained in this Agreement, the Company shall be entitled, from time to time, by providing prior written notice to LBHI, to require the LBHI Group Members to suspend the use of the Shelf Registration Statement and the Prospectus included therein for resales of Registrable Securities pursuant to Section 2(a) or Section 2(b) or to postpone the filing or suspend the use of any Registration Statement pursuant to Section 2(a), Section 2(b) or Section 2(h) for a reasonable period of time not to exceed forty-five (45) consecutive days (a "***Black-Out Period***") if the chief executive officer or chief financial officer of the Company determines in his or her good faith judgment that it would be materially detrimental to the Company and/or its securityholders not to defer the filing, or not to suspend the use by LBHI Group, of a Registration Statement or Prospectus by reason of: (A) the Company being in possession of material non-public information, so long as the chief executive officer or chief financial officer of the Company determines in good faith that the disclosure of such information during the period specified in such notice would be required to be disclosed

and that such disclosure would be materially detrimental to the Company and/or its securityholders, (B) a contemplated financing, acquisition, disposition, corporate reorganization, merger, or other similar transaction or other material event or circumstance affecting the Company or its securities, so long as the chief executive officer or chief financial officer of the Company determines in good faith that the disclosure of such transaction, event or circumstance at such time would be required to be disclosed and that such disclosure would be materially detrimental to the Company and/or its securityholders, or (C) a requirement to include pro forma or other information, which requirement the Company is reasonably unable to comply with at such time; provided, that the Company shall not be permitted to (x) require the LBHI Group Members to suspend the use of such Prospectus or (y) postpone the filing, or suspend the use, of such Registration Statement pursuant to this Section 2(l), for more than ninety (90) days, in the aggregate, in any twelve (12) month period. For the avoidance of doubt, the Company shall not be permitted to require the LBHI Group Members to suspend the use of such Prospectus or postpone the filing, or suspend the use, of such Registration Statement pursuant to this Section 2(l) unless the purpose of invoking the Company's rights under this Section 2(l) is separate from, and not related to, the Company's desire or intent to give precedence or confer an advantage (in terms of timing or otherwise) to an Underwritten Offering that the Company might wish to effect, or which it might be contemplating, for its own account or for the account of a holder of AVB Common Shares other than the LBHI Group in connection with an Underwritten Offering of Registrable Securities sought to be effected by LBHI on behalf of the LBHI Group. If, for any reason, the Company files a Registration Statement or, subject to Section 2(a)(iii), commences an Underwritten Offering (on its own behalf or on behalf of a holder of AVB Common Shares) during the Black-Out Period, (1) the Black-Out Period shall immediately cease and no Black-Out Period shall be re-instituted for so long as the Company or another holder of AVB Shares is permitted to sell AVB Common Shares under such Registration Statement or such Underwritten Offering is ongoing, (2) the LBHI Group shall be permitted to resume the use of any effective Shelf Registration Statement for resales of Registrable Securities or to recommence an Underwritten Offering pursuant to a Demand Registration, (3) the obligation of the Company to file a Shelf Registration Statement pursuant to Section 2(a)(i), or to effect any Underwritten Offering pursuant to Section 2(a)(ii) (subject to Section 2(a)(iii)), or any Demand Registration pursuant to Section 2(b)(i), shall immediately recommence, and (4) the LBHI Group shall be permitted to participate pursuant to Section 2(h) in a new Registration Statement filed by the Company during the Black-Out Period pursuant to Section 2(h). Notwithstanding anything to the contrary contained herein, if LBHI determines to rescind any prior Underwritten Offering Request or Demand Notice following receipt of a notice from the Company pursuant to this Section 2(l), then LBHI may, at its election, give written notice of such election to the Company; provided, however, that such rescinded Underwritten Offering Request or Demand Notice shall not be counted as an Underwritten Offering Request or Demand Notice for purposes of the limits in Section 2(a)(ii) and Section 2(b)(i), respectively, without any requirement to reimburse the Company for any related expenses incurred by the Company.

(ii) In the event of any suspension pursuant to this Section 2(l), the Company shall use its reasonable best efforts to keep LBHI Group apprised of the estimated length of the anticipated delay and such information shall be kept confidential and used by the LBHI Group solely for purposes of planning in connection with the exercise of its rights hereunder. The Company will notify the LBHI Group promptly upon the termination of the Black-Out Period. Upon notice by the Company to the LBHI Group of any determination to commence a Black-Out

Period, the LBHI Group Members shall, except as required by applicable Law, including any disclosure obligations under Section 13 of the Exchange Act, keep the fact of any such Black-Out Period strictly confidential, and during any Black-Out Period, promptly halt any offer, sale, trading or transfer of any AVB Common Shares for the duration of the Black-Out Period under the applicable Registration Statement or Shelf Registration Statement until the Company has provided notice to the LBHI Group that the Black-Out Period has been terminated.

(iii) After the expiration of any Black-Out Period and without any further request from any member of the LBHI Group, the Company shall as promptly as reasonably practicable prepare a Registration Statement or post-effective amendment or supplement to the applicable Shelf Registration Statement or Prospectus, or any document incorporated therein by reference, or file any other required document so that, as thereafter delivered to purchasers of the Registrable Securities included therein, the Prospectus will not include a material misstatement or omission or be not effective and useable for resale of Registrable Securities.

(m) Obligations of the Members of the LBHI Group.

(i) Each LBHI Group Member shall furnish to the Company such information regarding such LBHI Group Member and its partners and members, and the distribution proposed by such LBHI Group Member, as the Company may reasonably request and as shall be reasonably requested in connection with any Registration, qualification or compliance referred to in this Section 2.

(ii) In the event that, either immediately prior to or subsequent to the effectiveness of any Registration Statement, any LBHI Group Member shall distribute Registrable Securities to its stockholders, partners or members, such LBHI Group Member shall so advise the Company and provide such information as shall be necessary or advisable to permit an amendment to such Registration Statement or supplement to any Prospectus to provide information with respect to such stockholders, partners or members, in their capacity as selling security holders. As soon as reasonably practicable following receipt of such information, the Company shall file an appropriate amendment to such Registration Statement or supplement to any Prospectus reflecting the information so provided. Any incremental expense to the Company resulting from such amendment shall be borne by such LBHI Group Member.

(n) Rule 144. With a view to making available the benefits of certain rules and regulations of the Commission which may permit the sale of restricted securities to the public without Registration, the Company agrees to use its reasonable best efforts to file with the Commission in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act at any time after it has become subject to such reporting requirements (or, if the Company is not required to file such reports, it will, upon the reasonable request of LBHI, make publicly available such necessary information for so long as necessary to permit sales pursuant to Rules 144 under the Securities Act).

(o) Termination. Notwithstanding anything herein to the contrary, this Agreement, other than Section 4 and Section 5, shall terminate and cease to be available as to any securities held by a LBHI Group Member upon the earlier of (i) the fifth (5th) anniversary of the date of the Initial Closing and (ii) such time as the LBHI Group Members collectively hold

Shares having an aggregate fair market value for any consecutive ten (10) trading-day period (measured by the average daily closing price per share of the AVB Common Shares during such ten (10) trading-day period) of less than $250 million (the "***Termination Date***").

SECTION 3. LOCK-UP AGREEMENTS

(a) Obligations of the Company. The Company agrees that, if requested by the lead Underwriter or Underwriters in any Underwritten Offering of Registrable Securities contemplated by this Agreement, it will enter into (and will use its reasonable best efforts to cause each of its directors and executive officers to enter into) a customary "lock-up" agreement pursuant to which the Company (or such director or executive officer) will agree not to, directly or indirectly, sell, offer to sell, grant any option for the sale of, or otherwise dispose of any AVB Common Shares or securities convertible into or exchangeable or exercisable for AVB Common Shares for a period of thirty (30) days (or such shorter period to which the LBHI Group is subject) from the pricing date of such Underwritten Offering; provided, however, that (i) any such "lock-up" agreement shall not prohibit or in any way restrict the Company from, directly or indirectly, selling, offering to sell, granting any option for the sale of, or otherwise disposing of (A) any Qualifying Employee Stock (or otherwise maintaining its employee benefits plans in the ordinary course of business) or (B) AVB Common Shares upon the redemption or exchange of any securities redeemable or exchangeable for AVB Common Shares (including the redemption of any units of Upper Falls Limited Partnership), (ii) any restrictions on the Company's ability to file registration statements with the SEC shall not apply to the filing and effectiveness of any amendments to the Company's existing resale registration statements or the addition of any subsidiary guarantor registrants thereto, as applicable, any shelf registration statements relating to existing employee or director compensation-related plans or distribution reinvestment plans, or a new universal shelf registration statement, provided that the securities registered under such new universal shelf registration statement shall remain subject to the lockup provisions; (iii) any restrictions on the ability of Affiliates of the Company to enter into transactions relating to the Company's securities shall not apply to (A) transfers by gift, will or intestacy so long as the transferee delivers a similar lock-up, (B) transfers or sales pursuant to contracts, instructions or plans to transfer AVB Common Shares pursuant to Rule 10b5-1 existing on the date of the applicable underwriting agreement, or the amendment or replacement of any such contract, instruction or plan so long as the number of AVB Common Shares subject thereto is not increased, and the exercise of options in connection therewith, and (C) the withholding of securities to pay taxes upon the vesting of certain equity awards granted by the Company.

(b) Obligations of LBHI. During the period beginning on the date of this Agreement and ending on the Termination Date, if requested by the lead Underwriter or lead Underwriters in any Underwritten Offering effected by the Company (other than on behalf of the LBHI Group) in which any LBHI Group Member participates as a selling holder, so long as the LBHI Group Members collectively beneficially own in excess of five percent (5%) of the AVB Common Shares outstanding, LBHI, on behalf of the LBHI Group, will enter into a customary "lock-up" agreement providing that they will not sell, grant any option for the sale of, or otherwise dispose of any AVB Common Shares outside of such public offering for a period of thirty (30) days (or such shorter period to which the Company is subject (without regard to clause (i) of the proviso contained in Section (3)(a))) from the pricing date of such Underwritten Offering.

SECTION 4. INDEMNIFICATION

(a) Indemnification by the Company. With respect to each Underwritten Offering or Registration which has been effected pursuant to Section 2, the Company agrees to indemnify and hold harmless, to the fullest extent permitted by Law, (i) each of the LBHI Group Members and each of their respective officers, directors, limited or general partners and members, (ii) each member, limited or general partner of each such member, limited or general partner, (iii) each of their respective Affiliates, officers, directors, stockholders, employees, advisors, and agents, and (iv) each Person who controls (within the meaning of the Securities Act or the Exchange Act) such Persons, against any and all claims, losses, damages, penalties, judgments, suits, costs, liabilities and expenses (or actions in respect thereof) (collectively, the "***Losses***") arising out of or based on (A) any untrue statement (or alleged untrue statement) of a material fact contained in any Registration Statement (including any Prospectus or Issuer Free Writing Prospectus) or any other document incorporated by reference therein, (B) any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading (in the case of any Prospectus or Issuer Free Writing Prospectus, in light of the circumstances under which they were made), or (C) any violation by the Company of the Securities Act, the Exchange Act or any state securities or "blue sky" Laws applicable to the Company and relating to action or inaction required of the Company in connection with any such Registration, qualification or compliance, and will reimburse each of the Persons listed above, for any reasonable and documented out-of-pocket legal and any other expenses reasonably incurred in connection with investigating and defending any such Losses; provided, that the Company will not be liable in any such case to the extent that any such Losses arise out of or are based on any untrue statement or omission based upon written information furnished to the Company by the LBHI Group or any Underwriter and stated to be specifically for use in such Registration Statement, Prospectus or Issuer Free Writing Prospectus.

(b) Indemnification by the LBHI Group. In connection with a Registration Statement in which any LBHI Group Member participates, each of the LBHI Group Members agrees, jointly and severally, to indemnify and hold harmless, to the fullest extent permitted by Law, (i) the Company, each of its directors, officers and employees, (ii) each of their respective Affiliates, employees, advisors and agents, and (iii) each Person who controls the Company (within the meaning of the Securities Act or

the Exchange Act), against any and all Losses arising out of or based on (A) any untrue statement (or alleged untrue statement) of a material fact contained in any Registration Statement (including any Prospectus or Issuer Free Writing Prospectus) or any other document incorporated by reference therein made by such LBHI Group Member or (B) any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements by such LBHI Group Member therein not misleading (in the case of any Prospectus or Issuer Free Writing Prospectus, in light of the circumstances under which they were made), and will reimburse the Persons listed above for any reasonable and documented legal or any other expenses reasonably incurred in connection with investigating or defending any such Losses, in each case to the extent, but only to the extent, that such untrue statement (or alleged untrue statement) or omission (or alleged omission) is made in reliance upon and in conformity with written information furnished to the Company by such LBHI Group Member and stated to be specifically for use in such Registration Statement, Prospectus or Issuer Free Writing Prospectus, provided, however, that the obligations of each of the LBHI Group Members hereunder shall be limited to an amount equal to the net proceeds

(after giving effect to any underwriters discounts and commissions) it receives in the disposition of any Registrable Securities.

(c) Conduct of the Indemnification Proceedings. Each Person entitled to indemnification under this Section 4 (the "***Indemnified Party***") shall give notice to the Person required to provide indemnification (the "***Indemnifying Party***") promptly after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought, and shall permit the Indemnifying Party to assume the defense of any such claim or any litigation resulting therefrom; provided, that counsel for the Indemnifying Party, who shall conduct the defense of such claim or any litigation resulting therefrom, shall be approved by the Indemnified Party (whose approval shall not unreasonably be withheld) and the Indemnified Party may participate in such defense at such Indemnified Party's expense (unless the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in such action, in which case the fees and expenses of counsel shall be at the expense of the Indemnifying Party); and provided, further, that the failure of any Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations under this Section 4 unless the Indemnifying Party is actually and materially prejudiced thereby. It is understood and agreed that the Indemnifying Party shall not, in connection with any proceeding or related proceeding in the same jurisdiction, be liable for the fees and expenses of more than one separate legal counsel for all Indemnified Parties; provided, however, that where the failure to be provided separate legal counsel would be reasonably likely to result in a conflict of interest on the part of such legal counsel for all Indemnified Parties, separate counsel shall be appointed for the Indemnified Parties to the extent needed to alleviate such potential conflict of interest. No Indemnifying Party, in the defense of any such claim or litigation shall, except with the prior written consent of each Indemnified Party, consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect to such claim or litigation. Each Indemnified Party shall furnish such information regarding itself or the claim in question as an Indemnifying Party may reasonably request in writing and as shall be reasonably required in connection with the defense of such claim and litigation resulting therefrom.

(d) If the indemnification provided for in this Section 4 is held by a court of competent jurisdiction to be unavailable to an Indemnified Party with respect to any Losses, then the Indemnifying Party, in lieu of indemnifying such Indemnified Party hereunder, shall contribute to the amount paid or payable by such Indemnified Party as a result of such Losses in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party, on the one hand, and of the Indemnified Party, on the other, in connection with the statements or omissions (or alleged statements or omissions) which resulted in such Losses, as well as any other relevant equitable considerations. The relative fault of the Indemnifying Party and of the Indemnified Party shall be determined by reference to, among other things, whether the untrue (or alleged untrue) statement of a material fact or the omission (or alleged omission) to state a material fact relates to information supplied by the Indemnifying Party or by the Indemnified Party and such parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission; provided, however, that the obligations of each of the LBHI Group Members shall be limited to an amount equal to the net proceeds (after giving effect to any underwriters discounts and commissions) it receives in such Registration; and

provided, further, that no Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

(e) Subject to the limitations on the LBHI Group's liability set forth in Section 4(b) and Section 4(d), the remedies provided for in this Section 4 are not exclusive and shall not limit any rights or remedies which may otherwise be available to any Indemnified Party at Law or equity. The remedies shall remain in full force and effect regardless of any investigation made by or on behalf of the LBHI Group or any Indemnified Party and survive the transfer of such securities by the LBHI Group and the termination of the registration rights set forth in Section 2.

SECTION 5. MISCELLANEOUS

(a) Adjustments. References to the Shares contained herein will be deemed adjusted or modified to account for any reclassification, exchange, substitution, combination, stock split or reverse stock split of AVB Common Shares.

(b) Governing Law; Jurisdiction.

(i) This Agreement shall be construed, performed and enforced in accordance with the laws of the State of New York (without giving effect to its principles or rules of conflict of laws to the extent such principles or rules would require or permit the application of the Laws of another jurisdiction).

(ii) The Parties agree that any suit, action or other proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought in any state or federal court located in the State of New York, and each of the Parties hereby irrevocably consents to the exclusive jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or other proceeding and irrevocably waives, to the fullest extent permitted by Law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or other proceeding in any such court or that any such suit, action or other proceeding brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or other proceeding may be served on any Party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each Party agrees that service of process on such Party as provided in Section 5(c) shall be deemed effective service of process on such Party.

(c) Notices. All notices, consents and other communications hereunder shall be in writing (including facsimile, electronic mail or similar writing) and shall be deemed to have been duly given (i) when delivered by hand or by Federal Express or a similar overnight courier to (or if that day is not a Business Day, or if delivered after 5:00 p.m., New York, New York time on a Business Day, on the first following day that is a Business Day), (ii) five (5) days after being deposited in any United States Post Office enclosed in a postage prepaid, registered or certified envelope addressed to, (iii) when successfully transmitted by facsimile (with a confirming copy of such communication to be sent as provided in clauses (i) or (ii) above) or

(iv) upon confirmation of receipt when transmitted by electronic mail (with a confirming copy of such communication to be sent as provided in clauses (i) or (ii) above) to, the Party for whom intended, at the address or facsimile number for such Party set forth below (or to such other address or facsimile number and with such other copies, as such Party may hereafter specify for the purpose by notice to the other Party):

if to the Company, to:

AvalonBay Communities, Inc.
Ballston Tower
671 N. Glebe Road, Suite 800
Arlington, VA 22203
Facsimile No.: (703) 329-4830
E-mail address: ted_schulman@avalonbay.com
Attention: Edward M. Schulman, Executive Vice President — General Counsel and Secretary

with copies (which shall not constitute notice) to:

Goodwin Procter LLP
Exchange Place
53 State Street
Boston, MA 02109
Facsimile No.: (617) 523-1231
E-mail address: jhaggerty@goodwinprocter.com
Attention: John T. Haggerty

if to the LBHI Group, to:

c/o Lehman Brothers Holdings Inc.
1271 Avenue of the Americas
New York, New York 10020
Facsimile No.: (646) 834-4340
E-mail address: doug.sesler@lehmanholdings.com
Attention: Douglas Sesler

with copies (which shall not constitute notice) to:

Weil Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Facsimile No.: (212) 310-8007
E-mail address: michael.bond@weil.com
raymond.gietz@weil.com
Attention: W. Michael Bond, Esq.
Raymond O. Gietz, Esq.

(d) Successors and Assigns. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, delegated or otherwise transferred by any Party (whether by operation of Law or otherwise) without the prior written consent of the other Parties; provided, however, that the rights and obligations hereunder of a LBHI Group Member may be assigned, in whole or in part, to any Person who acquires such Registrable Securities (provided, that any such rights and obligations may be assigned solely with respect to such Registrable Securities) (each such Person, a "***Permitted Assignee***"). Any assignment pursuant to this Section 5(d) shall be effective and any Person shall become a Permitted Assignee only upon receipt by the Company of (A) a written notice from LBHI stating the name and address of the transferee and identifying the number of shares of Registrable Securities with respect to which the rights under this Agreement are being transferred and, if fewer than all of the rights attributable to a LBHI Group Member hereunder are to be so transferred, the nature of the rights so transferred and (B) a written instrument by which the transferee agrees to be bound by all of the terms and conditions applicable to a holder of such Registrable Securities, including, without limitation, pursuant to this Agreement. Any attempted assignment, delegation or transfer in violation of this Section 5(d) shall be null and void.

(e) Additional Shareholders. The parties hereto acknowledge that certain Persons may become shareholders of the Company and the Company may grant such Persons registration rights with respect to the AVB Common Shares issued to such Persons; provided, however, that such registration rights do not conflict with, and do not impair the registration rights granted to the LBHI Group hereunder.

(f) Entire Agreement. This Agreement sets forth the entire agreement and understanding of the Parties in respect of the transactions contemplated by this Agreement and supersedes all prior discussions, negotiations, agreements, arrangements and understandings, whether oral or written, relating to the subject matter hereof and thereof. There are no

warranties, representations or other agreements between the Parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement.

(g) Amendments and Waivers.

(i) Any provision of this Agreement may be amended or modified only by a written instrument signed by all of the Parties hereto and any such amendment shall apply to all holders of Registrable Securities and all of their Registrable Securities; provided, that notwithstanding the foregoing, additional Persons may

become party hereto upon an assignment of rights and obligations hereunder pursuant to Section 5(d); and provided, further, that other than as set forth in Section 5(d), the Company may not add additional parties hereto without the consent of LBHI.

(ii) No waiver hereunder shall be valid or binding unless set forth in writing and duly executed by the Party against whom enforcement of the waiver is sought. Any such waiver shall constitute a waiver only with respect to the specific matter described in such writing and shall in no way impair the rights of the Party granting such waiver in any other respect or at any other tune. Any valid or binding waiver of the observance of any term of this Agreement shall apply to all holders of Registrable Securities and all of their Registrable Securities only if made by LBHI. Neither the waiver by any of the Parties of a breach of or a default under any of the provisions of this Agreement, nor the failure by any of the Parties, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder, shall be construed as a waiver of any other breach or default of a similar nature, or as a waiver of any of such provisions, rights or privileges hereunder. Except as otherwise provided herein, no action taken pursuant to this Agreement, including any investigation by or on behalf of any Party, shall be deemed to constitute a waiver by the Party taking such action of compliance with any representations, warranties, covenants or agreements contained in this Agreement.

(h) Specific Performance. The Parties agree that irreparable damage would occur in the event any of the provisions of this Agreement were not performed in accordance with the terms hereof and that each of the Parties shall be entitled to specific performance of the terms hereof pursuant to this Section 4(h), in addition to any other remedy at Law or in equity. It is accordingly agreed that the Company or any holder of Registrable Securities shall be entitled to an injunction, specific performance and other equitable relief to prevent breaches of this Agreement by the other Parties and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which they are entitled at Law or in equity, without the necessity of posting bonds or other undertaking in connection therewith. Any requirements for the securing or posting of any bond with such remedy are hereby waived.

(i) WAIVER OF JURY TRIAL.

(i) **EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY OR CLAIM WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY**

LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. THIS WAIVER MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 5(i)(i)) AND EXECUTED BY EACH OF THE PARTIES HERETO). THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT OR ANY OTHER AGREEMENTS OR DOCUMENTS RELATING TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. The scope of this waiver is intended to be all-encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of the transactions contemplated by this Agreement, including contract claims, tort claims, breach of duty claims and all other common law and statutory claims. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

(ii) **EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE EITHER OF SUCH WAIVERS, (B) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVERS, (C) IT MAKES SUCH WAIVERS VOLUNTARILY, AND (IV) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 5(i).**

(j) No Conflicting Agreements. The Company represents and warrants to LBHI that it is not currently a party to any agreement which conflicts with or impairs the rights granted to the LBHI Group by this Agreement.

(k) Binding Effect. This Agreement will be binding upon, inure solely to the benefit of and be enforceable by the Parties and their respective permitted successors and assigns.

(l) Interpretation of this Agreement. As used in this Agreement and required by the context, the singular shall be deemed to include the plural and the plural shall be deemed to include the singular; all genders shall be deemed to include all other genders; words importing persons shall include partnerships, corporations and other entities; when reference is made in this Agreement to a Section or Schedule, such reference shall be to a Section or Schedule of this Agreement unless otherwise indicated; and the terms “herein,” “hereof” and “hereunder” or other similar terms, refer to this Agreement as a whole and not only to the particular sentence, subsection or section in which any such term may be employed. Whenever in this Agreement the word “including” is used, it shall be deemed to be for purposes of identifying only one or more of the possible alternatives, and the entire provision in which such word appears shall be read as if the phrase “including without limitation” were actually used in the text. The section headings herein are for convenience only and shall not affect the construction hereof. Where any provision in this Agreement refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether the action in question is taken

directly or indirectly by such Person. Except when used together with the word “either” or otherwise for the purpose of identifying mutually exclusive alternatives, the term “or” has the inclusive meaning represented by the phrase “and/or”. With regard to each and every term and condition of this Agreement, the Parties understand and agree that the same have or has been mutually negotiated, prepared and drafted, and that if at any time the Parties desire or are required to interpret or construe any such term or condition or any agreement or instrument subject thereto, no consideration shall be given to the issue of which Party actually prepared, drafted or requested any term or condition of this Agreement.

(m) Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other Governmental Authority to be invalid, void or unenforceable, such term, provision, covenant or restriction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement, and the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated by this Agreement is not affected in any manner materially adverse to any Party. Upon such determination, the Parties shall use their commercially reasonable efforts to negotiate in good faith to modify this Agreement so as to affect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated by this Agreement shall be consummated as originally contemplated to the fullest extent possible.

(n) Counterparts. This Agreement may be executed and delivered in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. It is the express intent of the Parties to be bound by the exchange of signatures on this Agreement via facsimile or electronic mail via the portable document format (PDF). A facsimile or other copy of a signature shall be deemed an original. This Agreement shall become effective when

each Party hereto shall have received a counterpart hereof signed by all of the other Parties hereto. Until and unless each Party has received a counterpart hereof signed by the other Parties hereto, this Agreement shall have no effect and no Party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication).

(o) Third Parties. Except as otherwise expressly provided herein, no provision of this Agreement is intended or shall confer on any Person, other than the Parties (and their successors and permitted assigns), any rights under this Agreement and no other Person shall be entitled to rely thereon.

(p) Further Assurances. The parties hereto will do such further acts and things necessary to assure that the terms of this Agreement are carried out and observed.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the undersigned have executed this Registration Rights Agreement as of the date first set forth above.

AVALONBAY COMMUNITIES, INC.

By: /s/ Kevin P. O'Shea
Name: Kevin P. O'Shea
Title: Executive Vice President - Capital Markets

LEHMAN BROTHERS HOLDINGS INC.

By: /s/ Jeffrey Fitts
Name: Jeffrey Fitts
Title: Authorized Signatory

ARCHSTONE ENTERPRISE LP

By: /s/ Jeffrey Fitts
Name: Jeffrey Fitts
Title: Authorized Signatory

Schedule I

Existing Registration Rights Agreements

None.

Exhibit 10.2

EXECUTION COPY

AVALONBAY COMMUNITIES, INC.
SHAREHOLDERS AGREEMENT

This Shareholders Agreement (this "Agreement") is entered into as of February 27, 2013, by and among AvalonBay Communities, Inc., a Maryland corporation ("AVB"), Archstone Enterprise LP, a Delaware limited partnership ("Archstone") and Lehman Brothers Holdings Inc., a Delaware corporation ("LBHI"). AVB, Archstone and LBHI are sometimes referred to herein as the "Parties" and each, a "Party."

WHEREAS, on November 26, 2012, Archstone, LBHI, AVB, ERP Operating Limited Partnership, an Illinois limited partnership ("ERPOP"), and Equity Residential, a Maryland real estate investment trust, entered into an Asset Purchase Agreement (as it may be amended from time to time, the "Asset Purchase Agreement") pursuant to which, among other things, (i) ERPOP and AVB or one or more Buyer Designees (as defined in the Asset Purchase Agreement) have agreed to acquire all of the assets and assume all of the liabilities of Archstone (other than as provided therein), (ii) ERPOP has agreed to deliver, or cause its Buyer Designees to deliver, to Archstone (or, if so directed by Archstone, to LBHI and/or a Lehman Designee (as defined in the Asset Purchase Agreement)) the ERPOP Equity Consideration (as defined in the Asset Purchase Agreement), and (iii) AVB has agreed to deliver, or cause its Buyer Designees to deliver, to Archstone (or, if so directed by Archstone, to LBHI and/or a Lehman Designee) the AVB Equity Consideration (as defined in the Asset Purchase Agreement); and

WHEREAS, pursuant to and in accordance with Section 10.1.6(a) of the Asset Purchase Agreement, as a condition precedent to receiving the AVB Equity Consideration, each of the LBHI Parties have agreed to be bound by the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound hereby, agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Definitions. When used in this Agreement, the following terms in all of their tenses, cases and correlative forms shall have the meanings assigned to them in this Section 1.1 or elsewhere in this Agreement. Capitalized terms used herein and not otherwise defined have the meanings assigned to them in the Asset Purchase Agreement. "Beneficial Ownership" and "Beneficially Own" shall have the meaning given to such term in Rule 13d-3 under the Exchange Act (disregarding the reference to "within 60 days" in Rule 13d-3(d)(1)(i)).

"Extraordinary Transactions" means (a) any merger, consolidation, sale of all or substantially all of the assets, other business combination, liquidation, reclassification, recapitalization, restructuring or other similar action to which AVB is a constituent party, or (b) any issuance of securities to any Person or Group (within the meaning of Section 13(d)(3) of the

---

Exchange Act) requiring approval of the common shareholders of AVB in accordance with any Law or the rules and regulations of the New York Stock Exchange as to such matters, as in effect from time to time.

"LBHI Party" means Archstone, LBHI and any Lehman Designee holding AVB Common Shares.

"Permitted Transfers" shall mean, in each case, so long as (x) such Transfer is in accordance with applicable Law and (y) each LBHI Party is and at all times has been in compliance with Article 3 of this Agreement (other than any unintentional noncompliance that was cured as promptly as practicable upon the applicable LBHI Parties becoming aware of such noncompliance): (i) any Transfer to an Affiliate of the applicable LBHI Party or a liquidating trust established pursuant to the Plan, so long as such Person, in connection with such Transfer, executes a joinder to this Agreement in the form attached hereto as Exhibit A, pursuant to which such Person or Group (within the meaning of Section 13(d)(3) of the Exchange Act) agrees to become a Party to this Agreement and subject to the restrictions applicable to a LBHI Party and otherwise become a Party for all purposes of this Agreement; provided that no such Transfer(s) shall relieve the transferring LBHI Party or LBHI Parties from the obligations of such LBHI Party or LBHI Parties under this Agreement, and (ii) any Transfer solely to tender any of the AVB Equity Consideration into a tender or exchange offer commenced by AVB or a third party if the board of directors of AVB has affirmatively publicly recommended to the AVB shareholders acceptance of such tender offer or exchange offer pursuant to Rule 14d-9 under the Exchange Act with respect to a third party tender or exchange offer or has determined not to oppose (as evidenced by its filings pursuant to such Rule 14d-9) the tender or exchange offer.

"Plan" shall mean that certain Modified Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and its Affiliated Debtors, dated December 6, 2011 and that certain Order Confirming Modified Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and its Affiliated Debtors, dated December 6, 2011, [Docket No. 23023].

"Qualified Successor Transfer" shall mean any Transfer of common equity securities of AVB: (i) through an underwritten offering, (ii) to an underwriter that participates in a public offering (including a "bought deal" or a registered block trade) of common equity securities of AVB, but only to the extent necessary to facilitate such public offering, (iii) to Persons that are and will remain (for so long as such Persons own a sufficient number of common equity securities of AVB to require a filing on Schedule 13G under the Exchange Act) eligible to file a Schedule 13G with the Securities and Exchange Commission with respect to such common equity securities of AVB, (iv) pursuant to Rule 144 under the Securities Act, (v) to any bona fide financing source pursuant to a pledge by any LBHI Party of any of the AVB Equity Consideration as collateral securing indebtedness of such LBHI Party or any of its Affiliates, (vi) pursuant to a sale conducted by a bona fide financing source described in the preceding clause (v) in connection with a foreclosure with respect to any of the AVB Equity Consideration or a conveyance in lieu of foreclosure to any such financing source or its Affiliates, (vii) in a transaction described in clause (ii) of the definition of Permitted Transfers or (viii) during a "subsequent offering period" (as referenced in Rule 14d-11 of the Exchange Act) to any Person who has made a tender or exchange offer for all outstanding AVB Common Shares and who has purchased a number of AVB Common Shares tendered pursuant to such tender or exchange offer

---

such that such Person, together with its Affiliates, Beneficially Owns in excess of 50% of the outstanding AVB Common Shares following the expiration of the initial offering period for such tender or exchange offer.

"Standstill Period" shall mean the period beginning on the date hereof and ending on the first date on which the LBHI Parties (and any Affiliate transferees) in the aggregate cease to Beneficially Own 5% or more of the outstanding common equity securities of AVB.

"Transfer" means (i) any direct or indirect offer, sale, assignment, encumbrance, pledge, hypothecation, disposition, loan or other transfer (by operation of law or otherwise), either voluntary or involuntary, or entry into any contract, option or other arrangement or understanding with respect to any offer, sale, assignment, encumbrance, pledge, hypothecation, disposition, loan or other transfer (by operation of law or otherwise), of any capital stock (or any security convertible or exchangeable into capital stock) or interest in any capital stock or (ii) during the Lock-Up Period only, in respect of any capital stock or interest in any capital stock, to enter into any swap or any other agreement, transaction or series of transactions that hedges or transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of such capital stock or interest in capital stock, whether any such swap, agreement, transaction or series of transactions is to be settled by delivery of securities, in cash or otherwise (and with respect to the AVB Equity Consideration, this clause (ii) shall be deemed to include, without limitation, any hedging arrangement or transfer based on the FTSE NAREIT All Residential Capped Index, the FTSE NAREIT Equity Residential Index, the FTSE NAREIT Equity Apartments Index or any other index of which the capital stock of AVB represents at least 5% of the value at the time such hedging arrangement or transfer is entered into).

ARTICLE 2
LOCK-UP AGREEMENT

2.1 Other than in the case of a Permitted Transfer, no LBHI Party shall Transfer any of the AVB Equity Consideration for the period beginning on the date hereof and ending on April 26, 2013 (such period, the "Lock-Up Period"). For the avoidance of doubt, nothing in this Section 2.1 shall prohibit any LBHI Party, from and after the expiration of the Lock-Up Period, from entering into any swap, derivative or any other agreement, transaction or series of transactions that hedges or transfers, in whole or in part, directly or indirectly, the economic consequence or ownership of the AVB Equity Consideration or interest in the AVB Equity Consideration, whether any such swap, derivative, agreement, transaction or series of transactions is to be settled by delivery of securities, in cash or otherwise, including, without limitation, any hedging arrangement or transfer based on any index referenced in the definition of "Transfer".

2.2 Any Transfer or attempted Transfer of any of the AVB Equity Consideration in violation of this Article 2 shall, to the fullest extent permitted by Law, be null and void ab initio, and AVB shall not, and shall instruct its transfer agent and other third parties not to, record or recognize any such purported Transfer on the share register of AVB.

ARTICLE 3
STANDSTILL AGREEMENT

3.1 During the Standstill Period, the LBHI Parties shall not, directly or indirectly, without the prior written consent of AVB:

3.1.1 Acquire, agree to acquire or make any public proposal to acquire, directly or indirectly, Beneficial Ownership of common equity securities of AVB or any other securities of AVB entitled to vote generally in the election of directors of AVB (collectively, "Voting Securities"), or securities of the Company that are convertible, exchangeable or exercisable into Voting Securities (other than (i) the receipt of common equity securities of AVB pursuant to the Asset Purchase Agreement, (ii) the acquisition of common equity securities of AVB or other Voting Securities as a result of any stock splits, stock dividends or other distributions or recapitalizations, reclassifications, reorganizations or similar transactions or offerings made available by AVB to holders of Voting Securities, including rights offerings, and (iii) from an Affiliate of any LBHI Party in a Permitted Transfer);

3.1.2 Deposit any Voting Securities in a voting trust or similar arrangement or subject any Voting Securities to any voting agreement, pooling arrangement or similar arrangement (other than (x) with another LBHI Party or any direct or indirect subsidiary of the LBHI Parties or (y) in connection with any transaction contemplated by the Asset Purchase Agreement or this Agreement), or grant any proxy with respect to any Voting Securities (other than (x) to AVB or a person specified by AVB, in a proxy card provided to shareholders of AVB by or on behalf of AVB, (y) to another LBHI Party or any direct or indirect subsidiary of the LBHI Parties, or (z) as otherwise necessary to permit any LBHI Party to vote Voting Securities as expressly permitted by Section 4.2);

3.1.3 Enter, agree to enter, propose or offer to enter into or facilitate any merger, business combination, tender offer, recapitalization, restructuring, change in control transaction or other similar extraordinary transaction involving AVB or any of its subsidiaries (excluding voting as a shareholder with respect to such a transaction, to the extent permitted by Section 4.2, or tendering shares in a tender offer);

3.1.4 Make, or in any way participate or engage in, any "solicitation" of "proxies" (as such terms are used in the proxy rules of the Securities and Exchange Commission) to vote, or advise or knowingly influence any Person (other than a controlled Affiliate of any LBHI Party) with respect to the voting of, any voting securities of AVB or any of its subsidiaries;

3.1.5 Call, or seek to call, a meeting of the shareholders of AVB or initiate any shareholder proposal for action by the shareholders of AVB;

3.1.6 Form, join or in any way participate in a Group (within the meaning of Section 13(d)(3) of the Exchange Act) (other than with another LBHI Party or an Affiliate of any LBHI Party, or any direct or indirect subsidiary, of any LBHI Party), with respect to any voting securities of AVB;

3.1.7 Otherwise act, alone or in concert with others, to seek to control or influence the board of directors of AVB, or the management or policies of AVB (including, without limitation, the submission of nominees for election to the board of directors of AVB);

3.1.8 Publicly disclose any intention, plan or arrangement prohibited by, or inconsistent with, the foregoing;

3.1.9 Advise or knowingly assist or encourage or enter into any discussions, negotiations, agreements or arrangements with any other Person or Group (within the meaning of Section 13(d)(3) of the Exchange Act) in connection with the foregoing; or

3.1.10 Propose, seek or request permission to do any of the foregoing, request to amend or waive any provision of this Article 3 (including, without limitation, this clause 3.1.10), make or seek permission to make any public announcement with respect to any of the foregoing or take any action that such Person reasonably believes will require AVB to make a public announcement regarding the possibility of a business combination, merger or other type or transaction described above.

ARTICLE 4
VOTING AGREEMENT

4.1 From and after the date hereof through and including the first anniversary of the date hereof (but in any event only so long as the Standstill Period is continuing), the LBHI Parties shall vote (including, through the execution of one or more written consents, if applicable) all common equity securities of AVB with respect to which the LBHI Parties have the power to vote (including the AVB Equity Consideration), in accordance with the recommendations of the board of directors of AVB with respect to any action, proposal or other matter to be voted on by the respective common equity holders of AVB; provided that, so long as each of the LBHI Parties is and has at all times been in compliance with the provisions of Article 3 of this Agreement (other than any unintentional noncompliance that was cured as promptly as practicable upon the applicable LBHI Parties becoming aware of such noncompliance), the LBHI Parties may vote their common equity securities of AVB in their sole discretion with respect to Extraordinary Transactions if and to the extent submitted to a vote of AVB common equity holders.

4.2 Following the first anniversary of the date hereof and continuing until the termination of the Standstill Period, the LBHI Parties shall vote (including, through the execution of one or more written consents, if applicable) all common equity securities of AVB held by the LBHI Parties (including the AVB Equity Consideration): (i) in accordance with the recommendation of the board of directors of AVB with respect to (A) any election of directors, (B) compensation matters and matters relating to equity or other incentive plans (including the adoption of any new plan or the amendment of any existing plan, including to increase the amount of equity or other compensation issuable thereunder), and (C) any amendment to AVB's articles of incorporation to increase the authorized capital stock, (ii) on all shareholder proposals, in one of the following two manners, at the election of the LBHI Parties (x) proportionally in accordance with the votes of other shareholders of AVB or (y) in accordance with the

recommendation of the board of directors of AVB, and (iii) on all other matters, in the sole and absolute discretion of the LBHI Parties.

ARTICLE 5
TRANSFERS

5.1 Until the one-year anniversary of the last day of the Standstill Period, prior to and as a condition to any Transfer (other than solely in the case of a Qualified Successor Transfer) by a LBHI Party of AVB Common Shares (including the AVB Equity Consideration) to any Person or Group (within the meaning of Section 13(d)(3) of the Exchange Act) that would result in such Person or Group acquiring more than 5% of AVB's outstanding common equity securities from the LBHI Parties or their Affiliates, such Person or Group shall be required to execute a joinder to this Agreement, in the form attached hereto as Exhibit A, pursuant to which such Person or Group agrees to become a Party to this Agreement and subject to the restrictions applicable to a LBHI Party and otherwise become a Party for all purposes of this Agreement; provided that no such Transfer(s) shall relieve the transferring LBHI Party or LBHI Parties from their obligations under this Agreement.

ARTICLE 6
REPRESENTATIONS AND WARRANTIES OF AVB

6.1 AVB hereby represents and warrants to the other Parties as follows:

6.1.1 AVB has been duly formed, is validly existing, and, where such concept is applicable, is in good standing under the laws of its jurisdiction of organization. AVB has all requisite power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement.

6.1.2 The execution and delivery by AVB of this Agreement and the performance by AVB of its obligations under this Agreement do not and will not conflict with or violate any provision of, or require the consent or approval of any Person (except for any such consents or approvals which have been obtained) under, (i) applicable Law, or (ii) the organizational documents of AVB.

6.1.3 The execution and delivery by AVB of this Agreement and the performance by AVB of its obligations under this Agreement have been duly authorized by all necessary corporate or other analogous action on the part of AVB. This Agreement has been duly executed and delivered by AVB and, assuming the due authorization, execution and delivery by the other Parties hereto, constitutes a legal, valid and binding obligation of AVB, enforceable against AVB in accordance with its terms, subject to bankruptcy, insolvency and other Laws of general applicability relating to or affecting creditors' rights and to general principles of equity.

ARTICLE 7
REPRESENTATIONS AND WARRANTIES OF LBHI AND ARCHSTONE

7.1 Each of LBHI and Archstone hereby severally, and not jointly and severally, represents and warrants to the other Parties as follows:

7.1.1 Each LBHI Party has been duly formed, is validly existing, and, where such concept is applicable, is in good standing under the laws of its jurisdiction of organization. LBHI and Archstone have all requisite power and authority to execute and deliver this Agreement and each LBHI Party has all requisite power and authority to perform its obligations under this Agreement.

7.1.2 The execution and delivery by LBHI and Archstone of this Agreement and the performance by each of the LBHI Parties of their obligations under this Agreement do not and will not conflict with or violate any provision of, or require the consent or approval of any Person (except for any such consents or approvals which have been obtained) under, (i) applicable Law, or (ii) the organizational documents of any LBHI Party.

7.1.3 The execution and delivery by LBHI and Archstone of this Agreement and the performance by LBHI and Archstone of their obligations under this Agreement have been duly authorized by all necessary corporate or other analogous action on the part of LBHI and Archstone. This Agreement has been duly executed and delivered by LBHI and Archstone and, assuming the due authorization, execution and delivery by the other parties hereto, constitutes a legal, valid and binding obligation of LBHI and Archstone, enforceable against LBHI and Archstone in accordance with its terms, subject to bankruptcy, insolvency and other laws of general applicability relating to or affecting creditors' rights and to general principles of equity.

7.1.4 Each of LBHI and Archstone acknowledges that the securities included in the AVB Equity Consideration have not been registered under the Securities Act or any state securities laws.

ARTICLE 8
MISCELLANEOUS PROVISIONS

8.1 Notices. All notices, consents and other communications hereunder shall be in writing (including telecopy or similar writing) and shall be deemed to have been duly given (a) when delivered by hand or by Federal Express or a similar overnight courier to (or if that day is not a Business Day, or if delivered after 5:00 p.m., New York, New York time on a Business Day, on the first following day that is a Business Day), (b) five (5) days after being deposited in any United States Post Office enclosed in a postage prepaid, registered or certified envelope addressed to, or (c) when successfully transmitted by facsimile to, the Party for whom intended, at the address or facsimile number for such Party set forth in Section 16.1 of the Asset Purchase Agreement.

8.2 LBHI Parties. LBHI shall cause each LBHI Party to perform and observe all obligations applicable to such LBHI Party hereunder.

8.3 Entire Agreement. This Agreement sets forth the entire agreement and understanding of the Parties in respect of the provisions contained herein and supersedes all prior discussions, negotiations, agreements, arrangements and understandings, whether oral or written, relating to the subject matter hereof and thereof. There are no warranties, representations or other agreements between the Parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement.

8.4 Amendments and Waivers.

8.4.1 Any provision of this Agreement may be amended or modified only by a written instrument signed by all of the Parties hereto.

8.4.2 No waiver hereunder shall be valid or binding unless set forth in writing and duly executed by the Party against whom enforcement of the waiver is sought. Any such waiver shall constitute a waiver only with respect to the specific matter described in such writing and shall in no way impair the rights of the Party granting such waiver in any other respect or at any other time. Neither the waiver by any of the Parties of a breach of or a default under any of the provisions of this Agreement, nor the failure by any of the Parties, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder, shall be construed as a waiver of any other breach or default of a similar nature, or as a waiver of any of such provisions, rights or privileges hereunder. Except as otherwise provided herein, no action taken pursuant to this Agreement, including any investigation by or on behalf of any Party, shall be deemed to constitute a waiver by the Party taking such action of compliance with any representations, warranties, covenants or agreements contained in this Agreement.

8.5 Governing Law. This Agreement shall be construed, performed and enforced in accordance with the laws of the State of Maryland (without giving effect to its principles or rules of conflict of laws to the extent such principles or rules would require or permit the application of the laws of another jurisdiction).

8.6 Remedies; Specific Performance. The Parties hereto agree that monetary damages would not be an adequate remedy in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms. It is expressly agreed that the Parties hereto shall be entitled to equitable relief, including injunctive relief and specific performance of the terms hereof, this being in addition to any other remedies to which they are entitled at law or in equity.

8.7 WAIVER OF TRIAL BY JURY. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY OR CLAIM WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. THIS WAIVER MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 8.7 AND EXECUTED BY EACH OF THE PARTIES HERETO). The scope of this waiver is intended to be all-encompassing of any and all disputes that may be filed in any court and that relate to the subject matter herein, including contract claims, tort claims, breach of duty claims and all other common law and statutory claims. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE EITHER OF SUCH WAIVERS, (II) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVERS, (III) IT MAKES SUCH WAIVERS VOLUNTARILY, AND (IV) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 8.7.

8.8 Binding Effect. This Agreement will be binding upon, inure solely to the benefit of and be enforceable by the Parties and their respective permitted successors and assigns.

8.9 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other Governmental Authority to be invalid, void or unenforceable, such term, provision, covenant or restriction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement, and the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

8.10 Counterparts. This Agreement may be executed and delivered in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. It is the express intent of the Parties to be bound by the exchange of signatures on this Agreement via facsimile or electronic mail via the portable document format (PDF). A facsimile or other copy of a signature shall be deemed an original. This Agreement shall become effective when each Party hereto shall have received a counterpart hereof signed by all of the other Parties hereto. Until and unless each Party has received a counterpart hereof signed by the other Parties hereto, this Agreement shall have no effect and no Party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication).

8.11 Third Parties. Except as otherwise expressly provided herein, no provision of this Agreement is intended or shall confer on any Person, other than the Parties (and their successors and permitted assigns), any rights under this Agreement and no other Person shall be entitled to rely thereon.

8.12 Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, delegated or otherwise transferred by any Party (whether by operation of law or otherwise) without the prior written consent of the other Parties. Notwithstanding the foregoing, (i) AVB shall have the right to assign all or certain provisions of this Agreement, or any interest herein, and may delegate any duty or obligation hereunder, without the consent of the other Parties, to any Affiliate of AVB, and (ii) the LBHI Parties shall have the right to assign certain provisions of this Agreement, without the consent of the other Parties, only as specifically permitted by Articles 2 and 5 of this Agreement; provided that, in the case of each of clauses (i) and (ii), no such assignment or delegation shall relieve such Party of

any of its obligations hereunder. Any attempted assignment, delegation or transfer in violation of this Section 8.12 shall be null and void.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date set forth above.

AVALONBAY COMMUNITIES, INC.

By: /s/ Kevin P. O'Shea
Name: Kevin P. O'Shea
Title: Executive Vice President - Capital Markets

ARCHSTONE ENTERPRISE LP

By: /s/ Jeffrey Fitts
Name: Jeffrey Fitts
Title: Authorized Signatory

LEHMAN BROTHERS HOLDINGS INC.

By: /s/ Jeffrey Fitts
Name: Jeffrey Fitts
Title: Authorized Signatory

[SIGNATURE PAGE TO AVALONBAY COMMUNITIES, INC. SHAREHOLDERS AGREEMENT]

EXHIBIT A

FORM OF JOINDER AGREEMENT

The undersigned is acquiring, simultaneously with the execution of this Joinder Agreement, [·] shares of [·] (the "Securities"), of AvalonBay Communities, Inc., a Maryland corporation ("AVB").

WHEREAS, as a condition to the acquisition of the Securities, the undersigned has agreed to join in a certain Shareholders Agreement (as it may be amended from time to time the "Shareholders Agreement"), dated as of February [·], 2013 among AVB, Archstone Enterprise LP, a Delaware limited partnership ("Archstone"), Lehman Brothers Holdings, Inc., ("LBHI") and the other parties signatory thereto; and

WHEREAS, the undersigned understands that the execution of this Joinder Agreement is a condition precedent to the acquisition of the Securities.

NOW, THEREFORE, as an inducement to AVB and to the holder from whom or which the undersigned is acquiring the Securities to consummate the transfer of the Securities to the undersigned, the undersigned hereby agrees to join in the Shareholders Agreement and agrees to be bound by all of the terms, restrictions, obligations and agreements thereof applicable to an "LBHI Party" thereunder, and the undersigned hereby represents and warrants that:

The undersigned has been duly formed, is validly existing and, where such concept is applicable, is in good standing under the laws of its jurisdiction of organization. The undersigned has all requisite power and authority to execute and deliver this Joinder Agreement and the Shareholders Agreement and to perform its obligations hereunder and thereunder.

The execution and delivery by the undersigned of this Joinder Agreement and the Shareholders Agreement and the performance by the undersigned of its obligations hereunder and thereunder do not and will not conflict with or violate any provision of, or require the consent or approval of any Person (except for any such consents or approvals which have been obtained) under, (i) applicable Law (as such term is used in the Shareholders Agreement), or (ii) the organizational documents of the undersigned.

The execution and delivery by the undersigned of this Joinder Agreement and the performance by the undersigned of its obligations hereunder and under the Shareholders Agreement have been duly authorized by all necessary corporate or other analogous action on the part of the undersigned. This Agreement has been duly executed and delivered by the undersigned, and assuming the due authorization, execution and delivery by the other parties hereto, each of this Joinder Agreement and the Shareholders Agreement constitutes a legal, valid and binding obligation of the undersigned, enforceable against the undersigned in accordance with its terms, subject only to bankruptcy, insolvency and other laws of general applicability relating to or affecting creditors' rights and to general principles of equity.

IN WITNESS WHEREOF, the undersigned has executed this Joinder Agreement as of the [·] day of [·], 20[·].

[·]
a [·]

By: _____
Name:
Title:

Accepted by:

AvalonBay Communities, Inc., a Maryland corporation

By: _____
Name:
Title:

[SIGNATURE PAGE TO JOINDER AGREEMENT TO AVALONBAY COMMUNITIES, INC. SHAREHOLDER AGREEMENT]

LIMITED LIABILITY COMPANY AGREEMENT

ARCHSTONE RESIDUAL JV, LLC

by and between

AVB DEVELOPMENT TRANSACTIONS, INC.

and

EQR-RESIDUAL JV MEMBER, LLC

FEBRUARY 27, 2013

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

TABLE OF CONTENTS
(continued)

TABLE OF CONTENTS
(continued)

LIMITED LIABILITY COMPANY AGREEMENT

This Limited Liability Company Agreement (this "**Agreement**") is made and entered into as of February 27, 2013 (the "**Effective Date**") between AVB Development Transactions, Inc., a Maryland corporation ("**AVB Member**"), and EQR-Residual JV Member, LLC, a Delaware limited liability company ("**ERP Member**").

R E C I T A L S

A. WHEREAS, AVB (as such term and any other capitalized term used in this Agreement is defined in Article II), Equity Residential and ERP have entered into the Purchase Agreement with Seller, pursuant to which they have agreed to acquire certain assets of Enterprise from Seller; and

B. WHEREAS, AVB, Equity Residential and ERP have entered into the Buyers Agreement, which sets forth certain understandings among AVB, Equity Residential and ERP concerning the acquisition of the assets of Enterprise pursuant to the Purchase Agreement; and

C. WHEREAS, the Buyers Agreement provides for the formation of a joint venture (referred to therein as "Archstone Residual JV") and attaches a term sheet setting forth the terms applicable to the governance of such joint venture (referred to therein as the "Archstone Residual JV Term Sheet") which are to be set forth in a definitive joint venture agreement (referred to therein as the "Definitive Archstone Residual JV Agreement"); and

D. WHEREAS, AVB Member is a wholly-owned subsidiary of AVB and ERP Member is a wholly-owned subsidiary of ERP; and

E. WHEREAS, AVB Member and ERP Member desire to form the Company and to set forth in this Agreement the definitive terms for the governance of the Company, in furtherance of the provisions of the Buyers Agreement calling for the formation of Archstone Residual JV and the execution and delivery of the Definitive Archstone Residual JV Agreement consistent with the Archstone Residual JV Term Sheet.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, AVB Member and ERP Member hereby agree as follows:

ARTICLE I

IN GENERAL

Section 1.1 Name.

The name of the limited liability company is Archstone Residual JV, LLC (the "**Company**").

Section 1.2 Formation of Limited Liability Company.

The Company was duly formed upon the filing of a certificate of formation of the Company with the Secretary of State of the State of Delaware on February 15, 2013, which certificate sets forth the information required by Section 18-201 of the Delaware Limited Liability Company Act (the "**Certificate of Formation**"). Michelle La Pelle, as an "authorized person" within the meaning of the Act, has executed, delivered and filed the Certificate of Formation of the Company with the Secretary of State of the State of Delaware, such execution, delivery and filing being hereby ratified and approved by the Members. Upon the filing of the Certificate of Formation with the Secretary of State of the State of Delaware, such person's powers as an "authorized person" ceased.

Section 1.3 Agreement; Inconsistencies with Act.

(a) This Agreement constitutes the "limited liability company agreement" of the Company within the meaning of the Act.

(b) This Agreement shall govern the relationship of the Members, except to the extent a provision of this Agreement is expressly prohibited under the Act. If any provision of this Agreement is prohibited under the Act, this Agreement shall be considered amended to the least degree possible in order to make such provision effective under the Act.

Section 1.4 Principal Place of Business.

The principal place of business of the Company shall be c/o Equity Residential, Two North Riverside Plaza, Suite 400, Chicago, Illinois 60606. The Company may locate its place of business at any other place or places as may be Approved by the Members from time to time.

Section 1.5 Registered Office and Registered Agent.

The Company's initial registered office shall be at the office of its registered agent at 1209 Orange Street, Wilmington, Delaware 19801, and the name of its initial registered agent is The Corporation Trust Company. The registered office and registered agent may be changed with the Approval of the Members from time to time by filing the address of the new registered office and/or the name of the new registered agent with the Secretary of State of the State of Delaware pursuant to the Act.

Section 1.6 Term.

The term of existence of the Company (the "**Term**") shall continue until the Company is terminated, dissolved or liquidated in accordance with this Agreement and the Act.

Section 1.7 Permitted Businesses.

(a) The business of the Company shall be: (i) to acquire (in accordance with the Purchase Agreement and the Buyers Agreement), own, manage, operate, improve, develop, sell and otherwise deal with the Archstone Residual Assets, and any other assets that may, from time to time, be acquired by the Company pursuant to this Agreement, directly or through Subsidiary

Entities; (ii) to incur, assume, pay, perform, discharge, satisfy, settle or otherwise resolve the Assumed Archstone Liabilities and any other liabilities that may, from time to time, be incurred by the Company pursuant to this Agreement, directly or through Subsidiary Entities; and (iii) to do all other lawful acts and things as may be necessary, desirable, expedient, convenient for or incidental to the furtherance and accomplishment of the foregoing objectives and purposes and for the protection and benefit of the Company. The Company shall not engage in any other business without the Approval of the Members.

(b) In connection with the Company's business, the Company shall have the power and authority, subject to any Approval of the Members or Approval of the Management Committee required under this Agreement:

(i) to acquire, hold and dispose of any real or personal property;

(ii) to borrow money from banks, other lending institutions, Members, or Affiliates of Members, and in connection therewith, to hypothecate, encumber and grant security interests in the assets of the Company to secure repayment of the borrowed sums;

(iii) to purchase liability and other insurance to protect the Company's property and business and to protect the assets of the Members and Management Committee Representatives;

(iv) to invest any Company funds temporarily (by way of example but not limitation) in demand deposits, money-market mutual funds, short-term governmental obligations, commercial paper or other investments;

(v) to sell or otherwise dispose of any, all or substantially all of the assets of the Company;

(vi) to execute all instruments and documents, including, without limitation, checks; drafts; notes and other negotiable instruments; mortgages or deeds of trust; security agreements; financing statements; documents providing for the acquisition, mortgage or disposition of the Company's property; assignments; bills of sale; leases; contracts; partnership agreements, operating agreements of other limited liability companies; and any other instruments or documents necessary to conduct the business of the Company;

(vii) to employ accountants, legal counsel, managing agents or other experts to perform services for the Company and to compensate them from Company funds;

(viii) to enter into any and all other agreements, with any other Person as may be necessary or appropriate to the conduct of the Company's business; and

(ix) to do and perform all other acts as may be necessary or appropriate to the conduct of the Company's business.

(c) In connection with the formation of the Company and the execution of this Agreement, on or prior to the date hereof, the Company acquired the interests in certain Subsidiary Entities certain of which may be reflected on the organizational chart that is or may

hereafter be attached hereto as Schedule A, and the Members hereby authorize ERP Member as the applicable Designated Manager to execute such documents and instruments, deliver such notices, make such filings and take such other acts as it may consider to be necessary to reflect in any official records in accordance with applicable legal requirements the acquisition by the Company of ownership or control over such Subsidiary Entities or otherwise further to effectuate the acquisition by the Company of ownership or control over such Subsidiary Entities.

Section 1.8 Qualification in Other Jurisdictions; Ongoing Organizational Maintenance.

ERP Member as the applicable Designated Manager is authorized to cause the Company to be qualified or registered as required under applicable laws in any jurisdiction in which the Company transacts business and to execute, deliver and file any certificates and documents necessary to effect such qualification or registration. ERP Member as the applicable Designated Manager is authorized to cause the Company to comply with all applicable requirements of the State of Delaware for the filing of annual statements with the Secretary of State of the State of Delaware, and shall be responsible for the maintenance of minute books and the organizational documents of the Company.

Section 1.9 Rules of Construction.

The following rules of construction shall apply to this Agreement:

(a) Unless otherwise specifically and expressly limited in the context, any reference herein to a decision, determination, act, action, exercise of a right, power or privilege, or other procedure by a Member, Transition Team member or Management Committee Representative shall mean and refer to the decision, determination, act, action, exercise of a right, power, privilege, or other procedure by the Member, Transition Team member or Management Committee Representative in its sole and absolute discretion acting in the best interests of such Member (or, in the case of a Management Committee Representative or Transition Team member, the best interests of the Member which appointed such Management Committee Representative or Transition Team member) and not as a fiduciary for the Company or the other Member.

(b) All references in this Agreement to "Dollars" as a unit of currency shall be deemed a reference to United States dollars and United States currency.

(c) Unless explicitly stated to the contrary, the term "includes", "including" and other expressions of inclusion shall be construed in each instance to mean "includes without limitation", "including but not limited to" or other phraseology denoting the non-exclusive nature of the item to which reference is being made.

(d) The Members acknowledge that, as identified pursuant to express statements that appear on the face or cover page of certain schedules attached to this Agreement, certain schedules attached to this Agreement are incomplete or have been left blank. In such cases, the references to such schedule in this Agreement shall be disregarded (except for the provisions which are included in such schedule as attached hereto on the date hereof) unless and until the Management Committee or Members Approve the form of the complete, final form of the schedule that is to be considered so referenced herein.

Section 1.10 Title to Company Assets.

All Company assets, whether real or personal, tangible or intangible, shall be deemed to be owned by the Company as an entity, and no Member, individually, shall have any direct ownership interest in such property.

ARTICLE II

DEFINITIONS

Section 2.1 Defined Terms.

As used in this Agreement, the following terms shall have the following meanings:

"**Accountants**" means the independent certified public accountants Approved by the Members and engaged from time to time by the Company for purposes of reviewing or auditing the Company's financial statements and performing such other services as are required to be performed by the Accountants by this Agreement.

"Act" means the Delaware Limited Liability Company Act, as amended or superseded from time to time.

"**Additional Capital Requested Amount**" has the meaning set forth in Section 3.3(b).

"Adjusted Asset Value" means, with respect to any asset of the Company, such adjusted basis of such asset for federal income tax purposes, except as follows:

(i) The Adjusted Asset Value of any asset contributed to the Company by a Member shall be the gross fair market value of such asset as determined jointly by the Management Committee and the contributing Member, in their joint and reasonable discretion.

(ii) If the Management Committee reasonably determines that an adjustment is necessary or appropriate to reflect the relative Proportionate Shares of the Members in the Company, the Adjusted Asset Values of all Company assets shall be adjusted to equal their gross fair market value, as determined by the Management Committee, taking Section 7701(g) of the Code into account, as of the following times: (a) a Capital Contribution (other than a *de minimis* capital contribution) to the Company by a new or existing Member; (b) any distribution by the Company to an Member of more than a *de minimis* amount of Company property (other than cash); (c) any distribution by the Company to an Member of more than a *de minimis* amount of cash in connection with the redemption of all or a portion of a Member's Membership Interest in the Company; and (d) at such other times as the Management Committee reasonably determines necessary or advisable in order to comply with Treasury Regulations Sections 1.704-1(b) and 1.704-2.

(iii) The Adjusted Asset Values of Company property shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Section 734(b) or 743(b) of the Code, but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Section 1.704-1(b)(2)(iv)(m) of the Treasury

Regulations; provided, however, that Adjusted Asset Values shall not be adjusted pursuant to this paragraph to the extent that the Management Committee reasonably determines that an adjustment pursuant to paragraph (ii) above is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this paragraph (iii).

(iv) The Adjusted Asset Value of an asset shall be adjusted by the Depreciation taken into account with respect to such asset, for purposes of computing Profits and Losses.

Any determination to be made by the Management Committee pursuant to this definition shall be made with the Approval of the Management Committee.

"Adjusted Capital Account" means, with respect to any Member, such Member's Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments: (i) credit to such Capital Account any amounts which such Member is obligated or treated as obligated to restore with respect to any deficit balance in such Capital Account pursuant to Section 1.704-1(b)(2)(ii)(c) of the Treasury Regulations, or is deemed to be obligated to restore with respect to any deficit balance pursuant to the penultimate sentences of Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Treasury Regulations; and (ii) debit to such Capital Account the items described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) and 1.704-1(b)(2)(ii)(d)(6). The foregoing definition of Adjusted Capital Account is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations and shall be interpreted consistently therewith.

"Affiliate" or **"Affiliated"** means, with respect to any Person, (i) any Person who directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with such Person, or (ii) any Person in which such Person has, directly or indirectly, a twenty five percent (25%) or more ownership or beneficial interests. A Person shall be deemed to control a Person if it owns, directly or indirectly, at least twenty five percent (25%) of the ownership interest in such Person or otherwise has the power to direct the management, operations or business of such Person. Notwithstanding the foregoing, an Affiliate of the Company that is controlled by the Company shall not be deemed to be an Affiliate of any Member for any of the purposes of this Agreement.

"Agreement" means this Limited Liability Company Agreement and any amendments hereto.

"**Annual Budget**" means, for the Company, any Archstone Subsidiary, any Outside Partnership, an annual operating and, if applicable, capital budget. Each Annual Budget for the assets in the Germany Portfolio in which Parallel JV 1 holds a 10% interest shall relate to such assets in their entirety (and not merely the Company's 90% interest therein).

"**Approval of the Management Committee**," "**Approval by the Management Committee**" or similar phrases means the unanimous approval of the AVB Representatives and ERP Representatives excluding, with respect to any matter as to which a Capital Defaulting Member has no approval rights pursuant to Section 3.4, the Management Committee Representatives appointed by the Capital Defaulting Member.

"**Approval of the Members**," "**Approval by the Members**" or similar phrases means the unanimous approval of the Members, excluding, with respect to any matter as to which a Capital Defaulting Member has no approval rights pursuant to Section 3.4, such Capital Defaulting Member.

"**Approved Business Plan**," means (i) with respect to any Archstone Residual Asset, each Initial Business Plan and each amendment or revision thereto or update thereof which is Approved by the Members or Approved by the Management Committee, and (ii) with respect to any Outside Partnership, the then current business plan approved pursuant to the terms of the Outside Partnership Agreement. Each Approved Business Plan with respect to an Archstone Residual Asset is anticipated to set forth the mutually-agreed-upon plan for the ownership, operation, management and disposition of the relevant Archstone Residual Asset through the anticipated holding period therefor. Each Approved Business Plan for the assets in the Germany Portfolio in which Parallel JV 1 holds a 10% interest shall relate to such assets in their entirety (and not merely the Company's 90% interest therein).

"**Archstone Claims**" means the interests acquired by the Company from Enterprise pursuant to the Purchase Agreement and the Buyers Agreement in and to causes of action, claims under insurance policies, claims for indemnification, and similar claims.

"**Archstone Intangible Property**" means the interests acquired, directly or indirectly, by the Company from Enterprise pursuant to the Purchase Agreement and the Buyers Agreement in and to intangible property and intellectual property, including, without limitation, rights and claims under certain contracts, warranties, guaranties, indemnification agreements, insurance policies, claims and causes of action (including with respect to certain pending lawsuits), licenses, permits, trademarks, tradenames (including, without limitation, the Archstone

trademark, the name "Archstone" and derivatives thereof), logos, domain names and the content maintained on and other rights with respect to the website(s) under such domain name(s), and all other assets to be acquired pursuant to the Purchase Agreement and the Buyers Agreement that are not acquired directly by ERP or AVB or their affiliates, or acquired by Trademark JV, Legacy JV or any Parallel JV.

"**Archstone Residual Assets**" means the assets, interests, rights and claims acquired, directly or indirectly, by the Company pursuant to the Purchase Agreement and the Buyers Agreement, in the Archstone Residual Real Estate Assets, the Land Options, the Archstone Subsidiaries, the Office Leases, the Archstone Claims, the Archstone Intangible Property and the Miscellaneous Archstone Assets.

"**Archstone Residual Real Estate Asset Adjusted Value**" means, with respect to any Archstone Residual Real Estate Asset, the value (if any) designated for such Archstone Residual Real Estate Asset on Schedule C attached hereto, plus 100% of all costs capitalized to the basis for such asset on Seller's books from September 30, 2012 to the date of this Agreement, plus any costs capitalized to the basis for the applicable asset on the Company's books from and after the date of this Agreement to the date of the acquisition of such Archstone Residual Real Estate Asset by ERP Member or AVB Member or their respective designees pursuant to this Agreement.

"**Archstone Residual Real Estate Assets**" means, collectively, the Lake Mendota Portfolio, the Germany Portfolio, the National Gateway Asset and Harlem Parcel C. "**Archstone Residual Real Estate Asset**" means any one of the Archstone Residual Real Estate Assets.

"**Archstone Subsidiaries**" means the subsidiaries acquired, directly or indirectly, by the Company from Enterprise pursuant to the Purchase Agreement and the Buyers Agreement. Certain of the Archstone Subsidiaries are or may hereafter be listed on Schedule D.

"**Asset Option Expiration Date**" means the date which is sixty (60) days following the date of this Agreement.

"**Asset Transfer Date**" has the meaning set forth in Section 9.2(e).

"**Assumed Archstone Liabilities**" means the liabilities assumed by the Company pursuant to the Purchase Agreement and the Buyers Agreement (or for which the Archstone Subsidiaries are obligors), including, without limitation, the liabilities allocated to the Company more fully described in and allocated pursuant to Schedule E attached hereto, exclusive of any liabilities that have been assumed or incurred by Legacy JV or its subsidiaries in accordance with the terms of the Legacy JV Agreement or that are allocated to Legacy JV or its subsidiaries pursuant to Schedule E and any liabilities that have been assumed or incurred by any Parallel JV or its subsidiaries in accordance with the terms of any Parallel JV Agreement or that are allocated to a Parallel JV or its subsidiaries pursuant to Schedule E.

"**Assumed Liability Claim**" has the meaning set forth in Section 4.15(a).

"**Auction Process**" means, with respect to the particular Archstone Real Estate Assets that this Agreement indicates will be subject to an Auction Process, a process for the determination, as between the Members, which Member shall acquire such Archstone Real Estate Asset. The Auction Process shall commence through the delivery by one Member (the "**Initiating Member**") of a written notice to the other Member which identifies an Archstone Real Estate Asset and the valuation for such Archstone Real Estate Asset at which such Initiating Member would propose to acquire such Archstone Real Estate Asset. Within thirty (30) days following the delivery of such notice, the other Member may, by written notice given to the Initiating Member, identify the higher valuation for such Archstone Real Estate Asset at which such other Member would propose to acquire such Archstone Real Estate Asset. If the other Member does not provide such notice within such thirty (30) day period, it shall be deemed to have elected not to acquire the Archstone Real Estate Asset, and the Initiating Member shall be deemed to have elected to acquire the Archstone Real Estate Asset for the valuation proposed in its initiating notice. If, however, the other Member does timely provide notice to the initiating Member of the higher valuation for such Archstone Real Estate Asset at which the other Member would propose to acquire such Archstone Real Estate Asset, then within a ten (10) Business Day period following the delivery of the other Member's notice, the Members shall meet and confer to determine which Member is prepared to elect to acquire such Archstone Real Estate Asset for the highest valuation, through such formal or informal auction procedures as may be Approved by the Members, and the Member that elects in such procedures to acquire such Archstone Real Estate Asset for the highest valuation shall be allocated the applicable Archstone Real Estate Asset, subject to the terms more fully set forth in Section 9.2.

"**Authorized Assumed Liability Payment**" has the meaning set forth in Section 4.15(b).

"**Authorized Unilateral Decision**" means any action, decision or transaction which a Member has the authority to undertake pursuant to this Agreement without the Approval of the Management Committee or Members hereunder.

"**AVB**" means AvalonBay Communities, Inc., a Maryland corporation, and its successors and permitted assigns.

"**AVB Member**" has the meaning set forth in the introductory paragraph of this Agreement and includes its successors and permitted assigns.

"**AVB Representatives**" has the meaning set forth in Section 4.1(a).

"**AVB-Designated Land Options**" means the Land Options designated to AVB pursuant to the Buyers Agreement, as more fully set forth on Schedule N attached hereto.

"**Business Day**" means any day excluding a Saturday, Sunday or any other day during which there is no scheduled trading on the New York Stock Exchange.

"**Buyers Agreement**" means that certain Joint Buyers Agreement, dated as of November 26, 2012, among Equity Residential, ERP and AVB.

"Capital Account" means the capital account established on behalf of each Member on the books of the Company. In general, the Capital Account of each Member shall be initially credited with the amount of such Member's initial Capital Contribution to the Company, as set forth on Schedule G. Thereafter, each such Member's Capital Account shall be increased by (a) the amount of money contributed by such Member to the Company, (b) the Adjusted Asset Value of any property contributed by such member to the Company (net of liabilities securing such contributed property that the Company is considered to assume or take subject to under Code Section 752), and (c) allocations to such Member of Profits and other items of book income and gain, and is decreased by (d) the amount of money distributed to the Member by the Company, (e) the Adjusted Asset Value of property distributed by the Company to the Member (net of liabilities securing such distributed property that the Member is considered to assume or take subject to under Code Section 752) and (f) allocations to such Member of Losses and other items of book loss and deduction, and is otherwise adjusted in accordance with the additional rules set forth in Treasury Regulations Section 1.704-1(b)(2)(iv). The Capital Accounts shall also be adjusted (x) as reasonably determined by the Management Committee, to reflect any redemption, forfeiture or transfer of Membership Interests, and (y) in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(m). It is the intent of the Members that the Capital Accounts of all Members be determined and maintained in accordance with the principles of Treasury Regulations Section 1.704-1(b)(2)(iv) at all times throughout the full term of the Company. Accordingly, the Management Committee is authorized to make any other adjustments to the Capital Accounts so that the Capital Accounts and allocations thereto comply with said Section of the Treasury Regulations, provided that such adjustments do not have a material adverse effect on any Member. Any determination to be made by the Management Committee pursuant to this definition shall be made with the Approval of the Management Committee.

"Capital Contribution" means any contribution to the capital of the Company in cash or other assets or property by a Member in accordance with Article III.

"**Capital Default Amount**" has the meaning set forth in Section 3.4.

"**Capital Default Loan**" has the meaning set forth in Section 3.4(a).

"**Capital Defaulting Member**" has the meaning set forth in Section 3.4.

"**Capital Transaction**" means the sale, financing, refinancing, total or partial destruction, condemnation or other disposition of any Archstone Residual Asset or any other substantial asset of the Company or any Subsidiary Entity.

"Certificate of Formation" has the meaning set forth in Section 1.2 of this Agreement.

"**Change in Board Control**" means, with respect to any Person, during any period beginning on or after the date hereof, individuals who at the beginning of such period constituted such Person's board of directors (or equivalent governing body), and any new member of such board whose nomination to or election by such board was approved by a vote of at least a majority of the board members then still in office who either were board members at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute at least a majority of such board.

"Code" means the Internal Revenue Code of 1986 as amended, or corresponding provisions of subsequent superseding federal revenue laws.

"Company" has the meaning set forth in Section 1.1.

"Company Minimum Gain" means "partnership minimum gain" set forth in Section 1.704-2(b)(2) of the Treasury Regulations.

"**Confidential Materials**" means books, computer software, records or files (whether in a printed or electronic format) to the extent that they consist of or contain any of the following information developed exclusively for a Member in its individual capacity and not for the Company or with information obtained by such Member in its capacity as (or in the course of the performance of its duties or exercise of its rights as) a Member or Designated Manager; economic and other internal analyses developed in connection with the Member's consideration of the amount that it would intend to bid for any asset pursuant to Section 9.2; attorney and accountant work product that is not covered by the Common Interest Agreement (as defined in the Buyers Agreement); attorney-client privileged documents that are not covered by the Common Interest Agreement; and internal correspondence.

"**Contingent Obligation**" means (a) any Guaranty Obligation or (b) any direct or indirect obligation or liability, contingent or otherwise, incurred pursuant to any Rate Contract.

"**Contracting Member**" means, in relation to any contract that is entered into between the Company, any Subsidiary Entity or any Outside Partnership and a Member or that Member's Affiliates, the Member that is or whose Affiliate is the party to that contract.

"**Covered Person**" has the meaning set forth in Section 7.1.

"Depreciation" means, with respect to any Company asset for any Fiscal Year or other period, the depreciation, depletion or amortization, as the case may be, allowed or allowable for federal income tax purposes in respect of such asset for such fiscal year or other period; provided, however, that if there is a difference between the Adjusted Asset Value and the adjusted tax basis of such asset, Depreciation means with respect to such asset "book depreciation, depletion or amortization" as determined under Section 1.704-1(b)(2)(iv)(g)(3) of the Treasury Regulations; provided however that, if any property has a zero adjusted basis for federal income tax purposes, Depreciation may be determined under any reasonable method selected by the Management Committee.

"**Designated Manager**" has the meaning set forth in Section 4.2(a).

"**Discussion Period**" has the meaning set forth in Section 12.13.

"**Dissolution Event**" has the meaning set forth in Section 10.1.

"**Distributable Cash**" means, for any period, the excess, if any, of (a) the aggregate Gross Receipts during such period of any kind and description over (b) the sum of the aggregate Expenditures paid during such period, subject to the reserve requirements set forth in Section 4.6.

"**Economic Capital Account**" means, with respect to any Member, such Member's Capital Account as of the date of determination, after crediting to such Capital Account any amounts that the Member is deemed obligated to restore under Treasury Regulations Section 1.704-2.

"**Electing Member**" has the meaning set forth in Section 9.8(a).

"**Electing Member Call Right Election Date**" has the meaning set forth in Section 9.8(e).

"**Electing Member Call Transaction**" has the meaning set forth in Section 9.8(e).

"**Electing Member Proportionate Interest**" has the meaning set forth in Section 9.8(b).

"**Emergency Costs**" means costs and expenses which are (or are to be) incurred in the reasonable belief that such expenditures are required to (i) correct a condition that if not corrected would endanger imminently the preservation or safety of an Archstone Residual Asset or asset of an Outside Partnership, (ii) avoid the imminent suspension of any necessary service in or to such Archstone Residual Asset or asset of an Outside Partnership, or (iii) prevent the Company, any Subsidiary Entity, any of the Members or Parents or any of their respective agents, officers, employees or representatives from being subjected imminently to criminal or substantial civil penalties in connection with an Archstone Residual Asset or an asset of an Outside Partnership.

"**Enterprise**" means Archstone Enterprise LP, a Delaware limited partnership.

"**Entity**" means any general partnership, limited partnership, corporation, limited liability company, limited liability partnership, joint venture, trust, business trust, cooperative or association or other comparable business entity.

"**EQR-Designated Land Options**" means the Land Options designated to Equity Residential and ERPOP pursuant to the Buyers Agreement, as more fully set forth on Schedule N attached hereto.

"**Equity Residential**" means Equity Residential, a Maryland real estate investment trust, and its successors and permitted assigns.

"**ERP**" means ERP Operating Limited Partnership, an Illinois limited partnership and its successors and permitted assigns.

"**ERP Member**" has the meaning set forth in the introductory paragraph of this Agreement and includes its successors and permitted assigns.

"**ERP Representatives**" has the meaning set forth in Section 4.1(a).

"**Expenditures**" means, for any period, the sum of all cash expenditures or reserves during such period (determined on a consolidated basis for the Company and all Subsidiary Entities) including, without limitation: (i) all cash expenditures for operating expenses, (ii) principal, interest, fees, debt service payments and other payments on account of any indebtedness, (iii) expenditures for capital improvements and other expenses of a capital nature with respect to any Archstone Residual Asset, (iv) additions to reserves pursuant to Section 4.6, (v) any and all expenditures related to any acquisition, development, sale, disposition, financing or refinancing of any Archstone Residual Asset or other capital asset, (vi) any expenses incurred in connection with any Assumed Archstone Liabilities, (vii) any other expenses incurred in connection with the Company's business, and (viii) any organizational expenses incurred by or on behalf of the Company (but not any costs or expenses incurred by ERP Member or AVB Member in connection with the formation of the Company and its Subsidiary Entities as applicable, including the costs and expenses incurred in connection with the negotiation, execution and delivery of this Agreement, which costs and expenses shall be the sole responsibility of ERP Member and AVB Member, respectively). In no event shall any deduction be made for non-cash expenses such as depreciation or amortization.

"**Extraordinary Transaction**" has the meaning set forth in Section 8.4.

"Fiscal Year" means the Company's fiscal year. The Company's fiscal year shall be its taxable year. The Company's taxable year shall be the calendar year, unless otherwise required by the Code or Treasury Regulations, or other applicable law in the case of the Company's taxable year(s) for foreign, state or local tax purposes, as reasonably determined by the Management Committee.

"**Funding Notice**" has the meaning set forth in Section 3.3(b).

"**Germany Portfolio**" means the Germany I Portfolio, any other German multi-family assets that are owned by entities acquired, directly or indirectly, from Enterprise pursuant to the

Purchase Agreement and the Buyers Agreement, and the Germany II Entities. The Members intend to wind up and dissolve the Germany II Entities.

"**Germany I Portfolio**" means the interests acquired, directly or indirectly, by the Company from Enterprise pursuant to the Purchase Agreement and the Buyers Agreement in and to ASN Europe Trading Incorporated (a 100% interest), ASN Holdings LLC (a 90% interest), Archstone Holdings Germany LLC (a 90% interest) and Archstone Management Germany LLC (a 49.9% interest), the principal assets of which (directly or indirectly) are interests in U.S. and foreign subsidiaries that own apartment projects located in Germany that are more particularly described in Schedule J attached hereto.

"**Germany II Entities**" means the interests acquired, directly or indirectly, from Enterprise pursuant to the Purchase Agreement and the Buyers Agreement in and to Archstone Holdings Germany II LLC, Archstone Management Germany II LLC and their direct or indirect subsidiaries.

"**Governmental Authority**" means any governmental or political subdivision, whether federal, state, local or foreign, or any agency or instrumentality of any such government or political subdivision, or any federal, state, local or foreign court, authority, tribunal, department, bureau or commission, in each case having jurisdiction over the matter.

"**Gross Receipts**" means, for any period, any and all cash receipts (including, without limitation, gross proceeds resulting from a Capital Transaction) during such period (determined on a consolidated basis for the Company and all Subsidiary Entities), including, without limitation, Capital Contributions and amounts released from (or paid from) reserves.

"**Guaranty Equalization Payment**" has the meaning set forth in Section 3.6(b).

"**Guaranty Obligation**" means, as applied to any Person, any direct or indirect liability of that Person with respect to, or the pledge or encumbrance by that Person of any of its property as collateral for, any Indebtedness, lease, dividend, letter of credit or other obligation (the "primary obligation") of another Person (the "primary obligor"), including any obligation of that Person, whether or not contingent, (a) to purchase, repurchase or otherwise acquire such primary obligations or any property constituting direct or indirect security therefor, or (b) to advance or provide funds (i) for the payment or discharge of any such primary obligation, or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency or any balance sheet item, level of income or financial condition of the primary obligor, or (c) to purchase securities, other properties or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, (d) on account of any letter of credit issued to any creditor or obligee of the primary obligor or (e) otherwise to assure or hold harmless the holder of any such primary obligation against loss in respect thereof.

"**Harlem Parcel C**" means the interests acquired, directly or indirectly, by the Company from Enterprise pursuant to the Purchase Agreement and the Buyers Agreement in and to Archstone 125 Parcel C Member GP LLC and Archstone 125 Parcel C Member LP, the principal assets of which (directly or indirectly) are interests in entities that own rights and interests in a

parcel known as "Parcel C 125th Street MEC" that is more particularly described in Schedule K attached hereto.

"**Hypothetical Liquidation**" shall mean a hypothetical liquidation of the Company in accordance with the terms of this Agreement that includes (i) a sale of all of the assets of the Company for cash at prices equal to their Adjusted Asset Values and (ii) the cash contribution by the Members of the aggregate maximum amounts, if any, that the Members would be required to contribute to the Company under this Agreement as and to the extent such amounts would be needed to pay all partnership recourse liabilities.

"**Implicit Value of the Company's Outside Partnership Interest**" has the meaning set forth in Section 9.8(a).

"**Indebtedness**" of any Person means without duplication, (a) all indebtedness for borrowed money, (b) all obligations issued, undertaken or assumed as the deferred purchase price of property or services, (c) all reimbursement obligations with respect to surety bonds, letters of credit, bankers' acceptances and similar instruments (in each case, to the extent non-contingent), (d) all obligations evidenced by notes, bonds, debentures or similar instruments, (e) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to properties acquired by the Person (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such properties), and (f) all obligations under capital leases, (g) all indebtedness referred to in clauses (a) through (f) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any lien upon or in any property (including accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness.

"Indemnified Losses" has the meaning set forth in Section 7.1 of this Agreement.

"**Initial Business Plan**," with respect to any Archstone Residual Asset, means the business plan for such asset that is described on Schedule L (or, if Schedule L does not contain a reference to a business plan for an asset, the first business plan for such asset that is developed and Approved by the Management Committee subsequent to the date hereof pursuant to Section 4.3(a)). Each Initial Business Plan shall include an Annual Budget for the applicable Archstone Residual Asset for the remainder of the 2013 calendar year. The Members have targeted the completion of the Initial Business Plans for the quarterly meeting anticipated to occur in June, 2013.

"**JAMS**" has the meaning set forth in Section 12.13.

"**Lake Mendota Portfolio**" means the interests to be acquired, directly or indirectly, by the Company from entit(y)(ies) controlled by Enterprise pursuant to the Purchase Agreement and the Buyers Agreement in and to ASN Lake Mendota Investments LLC, which owns a managing member interest in Lake Mendota Investments LLC, a limited liability company which indirectly, through various subsidiaries, owns a portfolio of apartment projects located in

California, Florida, Georgia and Texas that is more particularly described in Schedule M attached hereto.

"**Land Option Expiration Date**" means the date which is sixty (60) days following the date of this Agreement.

"**Land Option Take-Out Price**" means, with respect to any Land Option, (i) two times the value designated for such Land Option on Schedule N, which is 50% of the GAAP basis for such Land Option as of September 30, 2012, plus (ii) 100% of all costs capitalized to the basis for such Land Option on Seller's books during the period from September 30, 2012 through the date of this Agreement plus any costs capitalized to the basis for such Land Option on the Company's books from and after the date of this Agreement to the date of the acquisition of such Land Option by ERP Member or AVB Member or their respective designees pursuant to this Agreement, plus (iii) the value of replacement collateral necessary to have the Company's collateral released (e.g., if a letter of credit is in place).

"**Land Options**" means the option rights and rights under purchase and sale agreements in and to in various land parcels held by entities, the interests in which were acquired, directly or indirectly, by the Company from Enterprise pursuant to the Purchase Agreement and the Buyers Agreement. The land parcels to which such rights relate are more particularly described in Schedule N attached hereto, which Schedule identifies those Land Options allocated to the Equity Residential Parties and those Land Options allocated to AVB.

"**Legacy JV**" means Legacy Holdings JV, LLC, a Delaware limited liability company.

"**Legacy JV Agreement**" means that certain Limited Liability Company Agreement for Legacy JV, dated of even date herewith, entered into between EQR-Legacy Holdings JV Member, LLC and AVB.

"**Major Decision**" has the meaning set forth in Section 4.3.

"**Management Agreement**" means a written contract between a Subsidiary Entity, as the property manager, and any other Subsidiary Entity, Outside Partnership or Third Party Entity, as the owner, for the provision of property management services.

"**Management Committee**" has the meaning set forth in Section 4.1(a).

"**Management Committee Representative**" has the meaning set forth in Section 4.1(a).

"Member" or **"Members"** means AVB Member, ERP Member or any successors or Substitute Members thereto.

"Member Nonrecourse Debt" means "partner nonrecourse debt" as set forth in Treasury Regulations Section 1.704-2(b)(4).

"Member Nonrecourse Deductions" means "partner nonrecourse deductions" as set forth in Treasury Regulations Section 1.704-2(i)(2).

"Membership Interest" means the entire ownership interest of a Member in the Company at any particular time, including all economic rights and voting rights of the Member in the Company, the right of such Member to any and all benefits to which a Member may be entitled as provided in this Agreement and under law, and the obligations of such Member to comply with all of the terms and provisions set forth in this Agreement and under applicable law.

"Minimum Gain Attributable to Member Nonrecourse Debt" means "partner nonrecourse debt minimum gain" as determined in accordance with Treasury Regulations Section 1.704-2(i)(2).

"**Miscellaneous Archstone Assets**" means the interests acquired, directly or indirectly, by the Company from Enterprise pursuant to the Purchase Agreement and the Buyers Agreement (or to which the Company has succeeded through the acquisition of interests in entities acquired by the Company from Enterprise pursuant to the Purchase Agreement and the Buyers Agreement) in and to personal property, service contracts, software/licenses, insurance policies and employee plans as identified in the Buyers Agreement, as well as certain mezzanine loans, profit participation interests and other receivables. Without limitation, certain of the Miscellaneous Archstone Assets are more particularly described in Schedule P attached hereto.

"**National Gateway Asset**" means the interests acquired, directly or indirectly, by the Company from Enterprise pursuant to the Purchase Agreement and the Buyers Agreement in and to (i) Archstone National Gateway I GP LLC and Archstone National Gateway I LP, the principal assets of which (directly or indirectly) are interests in a land parcel commonly referred to as "National Gateway @ Potomac" and (ii) Archstone National Gateway II GP LLC and Archstone National Gateway II LP, the principal assets of which (directly or indirectly) are interests in a land parcel commonly referred to as "National Gateway II @ Potomac". National Gateway @ Potomac and National Gateway II @ Potomac are more particularly described in Schedule Q attached hereto.

"**Non-Contracting Member**" means, in any relation to any contract that is entered into between the Company, any Subsidiary Entity or any Outside Partnership and a Member or that Member's Affiliates, the Member that is not the Contracting Member.

"**Non-Discretionary Funding Requirements**" means funds needed to meet any or all of the following obligations of the Company or any Subsidiary Entity (including, without limitation, in relation to a Subsidiary Entity's proportional obligations with respect to any Outside Partnership), except to the extent that an Approved Business Plan expressly provides for the non-payment of any of the following amounts:

(i) real estate taxes and assessments on any Archstone Residual Asset or any asset of an Outside Partnership;

(ii) payment required to be made pursuant to any mortgage or mezzanine loan on, or any ground lease of, any Archstone Residual Asset or any asset of an Outside Partnership, any lease of any portion of any Archstone Residual Asset, or any contractual obligations relating to an Archstone Residual Asset or any asset of an Outside Partnership (except in each case for payment of principal, interest or other sums on any nonrecourse indebtedness);

(iii) insurance premiums and utility payments relating to an Archstone Residual Asset or any asset of an Outside Partnership;

(iv) any alteration, repair or replacement relating to an Archstone Residual Asset or any asset of an Outside Partnership required by any present or future law, ordinance, order, rule, regulation or requirement of any Governmental Authority except to the extent that the Management Committee or Members have Approved the failure to perform such alteration, repair or replacement, or have Approved action to contest the application of such law, ordinance, rule, regulation or requirement or have Approved action to appeal such order; and

(v) any amount required to be paid pursuant to any final non-appealable order, judgment, or decree of any Governmental Authority having jurisdiction over any Archstone Residual Asset or any asset of an Outside Partnership.

"Nonrecourse Deductions" has the meaning set forth in Sections 1.704-2(b)(1) and (c) of the Treasury Regulations.

"Nonrecourse Liabilities" has the meaning set forth in Section 1.704-2(b)(3) of the Treasury Regulations.

"**Office Leases**" means the interests acquired, directly or indirectly, by the Company from Enterprise pursuant to the Purchase Agreement and the Buyers Agreement (or to which the Company has succeeded through the acquisition of interests in entities acquired by the Company from Enterprise pursuant to the Purchase Agreement and the Buyers Agreement) in and to the office leases as described in Section 6.3 of the Buyers Agreement and more particularly described in Schedule S attached hereto.

"**Outside Partner**" means, with respect to any Outside Partnership, any Third Party Entity that is a partner or member in such Outside Partnership.

"**Outside Partner Offered Interest**" has the meaning set forth in Section 9.8(a).

"**Outside Partner Purchase Notice**" has the meaning set forth in Section 9.8(a).

"**Outside Partner Purchase Offer**" has the meaning set forth in Section 9.8(a).

"**Outside Partner Purchase Offer Election Date**" has the meaning set forth in Section 9.8(b).

"**Outside Partnership**" means (a) any partnership, limited liability company or fund between (i) the Company or any Subsidiary Entity and (ii) one or more Third Party Entities, and (b) any subsidiaries of any Outside Partnerships.

"**Outside Partnership Agreement**" means the partnership agreement, limited liability company agreement or fund documentation governing an Outside Partnership.

"**Over-Guarantying Member**" has the meaning set forth in Section 3.6(b).

"**Parallel JV**" means either Archstone Parallel Residual JV, LLC, a Delaware limited liability company, or Archstone Parallel Residual JV 2, LLC, a Delaware limited liability company, or both as the context may require. Archstone Parallel Residual JV, LLC is sometimes referred to herein as "**Parallel JV 1**."

"**Parallel JV Agreement**" means (i) with respect to Archstone Parallel Residual JV, LLC, that certain Limited Liability Company Agreement, dated of even date herewith, entered into between ERP Member and AVB Member and (ii) with respect to Archstone Parallel Residual JV 2, LLC, that certain Limited Liability Company Agreement, dated of even date herewith, entered into between EQR-Parallel Residual JV 2 Member, LLC and AVB.

"**Parent**" means (a) in relation to ERP Member, ERP, and (b) in relation to AVB Member, AVB.

"**Parent Guaranty**" means (a) that certain Guaranty, of even date herewith, executed and delivered by ERP in favor of AVB Member (but not any other person), pursuant to which ERP has guaranteed the obligations of ERP Member to fund its Capital Contributions to the Company and to pay and perform its other obligations under this Agreement, and (b) that certain Guaranty, of even date herewith, executed and delivered by AVB in favor of ERP Member (but not any other person), pursuant to which AVB has guaranteed the obligations of AVB Member to fund its Capital Contributions to the Company and to pay and perform its other obligations under this Agreement. The form of each such Parent Guaranty is substantially in the form of Exhibit 2 attached hereto.

"**Person**" means any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so permits.

"Profits" and **"Losses"** means, for each Fiscal Year or other period, the Company's items of taxable income or loss for such year or other period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments: (i) any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses shall be added to such taxable income or loss; (ii) any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i) shall be subtracted from such taxable income or loss; (iii) gain or loss resulting from any disposition of a property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Adjusted Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Adjusted Asset Value; (iv) in lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, the Company shall compute such deductions based on the Depreciation of a property; (v) if the Adjusted Asset Value of an asset is adjusted pursuant to the definition of Adjusted Asset Value (except with respect to Depreciation), then the amount of such adjustment shall be treated as an item of gain or loss and included in the computation of Profits and Losses; and (vi) items of Company gross income, gains, deductions and losses allocated pursuant to Sections B(1) through (and including) B(7) of Schedule T shall not be included in the computation of Profits and Losses.

"**Proportionate Share**" means, unless and until there has been a transfer of an interest in the Company or an admission of a new Member, with respect to AVB Member, 40%, and with respect to ERP Member, 60%.

"**Purchase Agreement**" means that certain Asset Purchase Agreement, dated as of November 26, 2012, among Equity Residential, ERP, AVB, Lehman Brothers Holdings, Inc., a Delaware corporation, and Enterprise.

"**Rate Contract**" means interest rate and currency swap agreement, cap, floor and collar agreement, interest rate insurance, currency spot and forward contract and other agreement or arrangement designed to provide protection against fluctuations in interest or currency exchange rates.

"**Real Estate Asset Election Notice**" has the meaning set forth in Section 9.2(a).

"**Recipient Member**" has the meaning set forth in Section 9.8(a).

"**Recipient Member Proportionate Interest**" has the meaning set forth in Section 9.8(b).

"**Recipient Member Put Right Election Date**" has the meaning set forth in Section 9.8(d).

"**Recipient Member Put Transaction**" has the meaning set forth in Section 9.8(d).

"**REIT**" means a "real estate investment trust" as defined in Section 856 of the Code.

"**Responsible Member**" has the meaning set forth in Section 3.6(c).

"Restricted Holder" has the meaning set forth in Section B(1) of Schedule T.

"**Seller**" means Enterprise and Lehman Brothers Holdings, Inc., collectively.

"**Subsidiary Entity**" means any Entity that is directly or indirectly wholly-owned and controlled by the Company or by the Company and Parallel JV 1.

"Substitute Member" means a Person that acquires a Membership Interest and that has been admitted as a Member pursuant to Article VIII of this Agreement.

"**Successor Parent**" has the meaning set forth in Section 8.4.

"**Target Balance**" means, with respect to any Member as of the close of any period for which allocations are made under Schedule T, the net amount such Member would receive (or be required to contribute) in a Hypothetical Liquidation of the Company as of the close of such period, expressed as a negative number if the Member is required to contribute a net amount to the Company in connection with a Hypothetical Liquidation and expressed as a positive number if the Member would receive a net distribution in connection with a Hypothetical Liquidation.

"Tax Items" has the meaning set forth in Section C(1) of Schedule T.

"Tax Matters Member" means the "tax matters partner" as defined in Section 6231(a)(7) of the Code.

"Term" has the meaning set forth in Section 1.6 of this Agreement.

"**Third Party Entity**" means any Entity that is not an Affiliate of the Company.

"**Trademark JV**" means Archstone Trademark JV, LLC, a Delaware limited liability company.

"Transfer" means sell, assign, transfer, mortgage, pledge, hypothecate, encumber, exchange or otherwise dispose of, whether or not for value, and whether voluntarily, by operation of law or otherwise.

"**Transition Team**" means the working group of representatives appointed by ERP Member and AVB Member to assist with the administration of routine decisions related to the Company's acquisition of the Archstone Residual Assets, as more fully described in Section 4.2(j).

"Treasury Regulations" means the temporary and final regulations issued by the U.S. Treasury Department under the Code, as amended or superseded from time to time.

"**Under-Guarantying Member**" has the meaning set forth in Section 3.6(b).

ARTICLE III

MEMBERS; MEMBERSHIP INTERESTS; CAPITAL CONTRIBUTIONS; GUARANTEES

Section 3.1 One Class of Members.

All Members of the Company shall be of one class.

Section 3.2 Members of the Company.

Effective upon the adoption and execution of this Agreement, AVB Member and ERP Member are the sole Members of the Company. The respective addresses and Proportionate Shares in the Company of AVB Member and ERP Member are set forth in Schedule G. Additional Members may not be admitted to the Company except in accordance with Section 8.7 hereof.

Section 3.3 Capital Contributions and Capital Accounts

(a) Initial Capital Contributions. Each Member has contributed or agrees to contribute to the Company the amount of capital having the value set forth opposite such Member's name on Schedule G in exchange for its Membership Interest which capital shall be contributed in such form as may be required to enable the Company to acquire the Archstone Residual Assets pursuant to the Purchase Agreement and the Buyers Agreement.

(b) Additional Capital Contributions. If a Member, in connection with an Archstone Residual Asset, Assumed Archstone Liability or administrative function or responsibility for which it has been designated as a Designated Manager, determines (after taking into account any existing cash reserves of the Company) that capital is needed to (i) restore operating reserves to a level as contemplated in the applicable Approved Business Plan or Annual Budget, (ii) fund any cash needs of the Company as contemplated in any applicable Approved Business Plan or as would not exceed the amounts that may be expended in accordance with Section 4.3(i), or arise pursuant to Authorized Unilateral Decisions, (iii) fund Emergency Costs (provided that, in the case of any Emergency Costs applicable to the asset of any Outside Partnership, the amount of capital that may be called under this Section 3.3(b) by the applicable Designated Manager without the Approval of the Management Committee or the Members shall be limited to the Company's or applicable Subsidiary Entity's proportional funding share in such Outside Partnership), (iv) fund Non-Discretionary Funding Requirements (provided that, in the case of any Non-Discretionary Funding Requirements applicable to the asset of any Outside Partnership, the amount of capital that may be called under this Section 3.3(b) by the applicable Designated Manager without the Approval of the Management Committee or the Members shall be limited to the Company's or applicable Subsidiary Entity's proportional funding share in such Outside Partnership), or (v) fund to any Designated Manager any fees or

expense reimbursements due to it hereunder or fund to any Covered Person any amounts due on account of any of the Company's indemnification obligations or obligations to advance expenses as provided for in Section 7.1 or 7.2, such Designated Manager shall issue a notice (a "**Funding Notice**") substantially in the form attached hereto as Exhibit 1 setting forth the amount of capital being requested (the "**Additional Capital Requested Amount**"). A Member may also deliver a Funding Notice as provided in Section 4.15(c). Within ten (10) Business Days following the date of receipt of a Funding Notice, each Member shall pay to the Company as a Capital Contribution such Member's Proportionate Share of the Additional Capital Requested Amount. Any funds advanced by the Members to the Company pursuant to this Section constitute additional Capital Contributions to the Company.

(c) Limitations. No Member shall have any liability for the repayment of the Capital Contribution of any other Member and, subject to Section 3.6, each Member shall look only to the assets of the Company for return of its Capital Contributions.

(d) No Right to Return of Contribution; No Interest on Capital. Except as provided in this Agreement, no Member shall have the right to withdraw or receive any return of, or interest on, any Capital Contribution or on any balance in such Member's Capital Account. If the Company is required to return any Capital Contribution to a Member, the Member shall not have the right to receive any property other than cash.

(e) Capital Accounts. The Company shall establish and maintain an individual Capital Account for each Member.

Section 3.4 Failure to Contribute Capital.

If any Member fails to make a Capital Contribution required under Section 3.3(b) by the date such Capital Contribution is due and such failure continues for ten (10) Business Days after written notice from the Member which has not failed to make its Capital Contribution (any such

failing Member shall be a "**Capital Defaulting Member**" and the amount of the failed Capital Contribution shall be the "**Capital Default Amount**"), then the non-Capital Defaulting Member shall have any one and only one of the following remedies:

(a) to advance to the Company on behalf of, and as a loan to, the Capital Defaulting Member, an amount equal to the Capital Default Amount (each such loan, a "**Capital Default Loan**"). The Capital Account of the Capital Defaulting Member shall be credited with the amount of such Capital Default Loan, which shall be deemed to be a Capital Contribution made by the Capital Defaulting Member, and such amount shall constitute a debt owed by the Capital Defaulting Member to the non-Capital Defaulting Member. Any Capital Default Loan shall bear interest at a rate equal to 15% per annum and shall be payable from any distributions due the Capital Defaulting Member hereunder, but shall in all events be payable in full by the ninetieth (90^{th}) day following the date such Capital Default Loan was made. Interest on a Capital Default Loan to the extent unpaid shall accrue and compound monthly. A Capital Default Loan shall be prepayable at any time or from time to time without penalty. While any Capital Default Loan is outstanding, notwithstanding anything in this Agreement to the contrary, all distributions to the Capital Defaulting Member hereunder shall be applied first to payment of any interest due under any Capital Default Loan and then to principal until all amounts due thereunder are paid in full. All payments made in repayment of any Capital Default Loan shall be applied first toward payment of unpaid accrued interest and then (if any remains) toward payment of principal. If a Capital Default Loan is not paid on or prior to the date such Capital Default Loan becomes due, the non-Capital Defaulting Member may pursue all available rights and remedies against the Capital Defaulting Member and, pursuant to the applicable Parent Guaranty, its Parent;

(b) to revoke the Funding Notice for both Members, whereupon any Capital Contributions paid by the non-Capital Defaulting Member pursuant to such Funding Notice shall be returned, in which event the Members may reconsider the needs of the Company for additional Capital Contributions, and any Member may thereafter issue any Funding Notice as permitted hereunder following such reconsideration; or

(c) to contribute its required Capital Contribution and pursue its rights under the Parent Guaranty delivered by the Parent of the Capital Defaulting Member with respect to such Capital Default Amount.

Unless the non-Capital Defaulting Member shall have elected to revoke the Funding Notice for both Members pursuant to Section 3.4(b), then, until either the Capital Default Loan made by the non-Capital Defaulting Member shall have been repaid in full or the amounts due with respect to such Capital Contribution have been funded by the Capital Defaulting Member or its Parent pursuant to the Parent Guaranty, the Capital Defaulting Member and the Management Committee Representatives appointed by it shall have no voting or approval rights with respect to the applicable Archstone Residual Asset or Assumed Archstone Liability with respect to which the Capital Contribution as to which such Capital Default Loan has been funded was originally called. Such voting and approval rights shall be restored in the event that the Capital Defaulting Member (or its Parent, pursuant to its Parent Guaranty) repays the Capital Default Loan in accordance with the terms of this Agreement, but the Capital Defaulting Member and the Management Committee Representatives appointed by it shall be bound by all decisions that were made with respect to such Archstone Residual Asset or Assumed Archstone Liability

without its or their approval while the Capital Default Loan was outstanding. Notwithstanding the foregoing, under no circumstances shall the non-Capital Defaulting Member or the Management Committee Representatives appointed by it have any authority, without the written consent of the Capital Defaulting Member or, as applicable, the Management Committee Representatives appointed by it, to cause the Company to incur on behalf of the Company any indebtedness which includes any recourse obligations of any Member, to engage in any transaction with any Affiliate of the non-Capital Defaulting Member, or to amend this Agreement, nor shall the Capital Defaulting Member forfeit any of its rights to receive distributions, to receive reports or obtain information as a result of the making of any Capital Default Loan.

Section 3.5 Parent Guaranties Delivered to the Members.

Concurrently with the execution and delivery of this Agreement, AVB has delivered its Parent Guaranty to ERP Member, and ERP has delivered its Parent Guaranty to AVB Member. No creditor or third party shall have rights to enforce any obligations under any Parent Guaranty.

Section 3.6 Parent Guaranties delivered to Third Parties.

(a) Allocation of Guaranty Liability. Subject to Section 3.6(c) below, liability under any Guaranty Obligation that is delivered by any of the Members or their Parents with respect to any Indebtedness or Contingent Obligation of the Company, any Subsidiary Entity or any Outside Partnership shall, as between the Members and their Parents, be apportioned in proportion to the Members' Proportionate Shares, and any payments made under any such Guaranty Obligation (other than payments made by a Responsible Member) shall be deemed additional Capital Contributions to the Company.

(b) Guaranty Equalization Payments. Subject to Section 3.6(c), if at any time a Member or its Affiliate or Parent shall have made a payment under or otherwise satisfied any Guaranty Obligation with respect to any Indebtedness or Contingent Obligation of the Company, any Subsidiary Entity or any Outside Partnership, and on or prior to such time, the other Member or its Affiliate or Parent shall not have made a payment under or otherwise satisfied an equivalent Guaranty Obligation with respect to the same Indebtedness or Contingent Obligation of the Company, any Subsidiary Entity or any Outside Partnership in an amount that is in proportion to its Proportionate Share of the aggregate cumulative amounts by which both Members and their Affiliates and Parents have made payments under or otherwise satisfied such Guaranty Obligations, then the Member (the "**Under-Guarantying Member**") that has (together with its Affiliates and Parent) paid amounts or otherwise satisfied amounts on account of such aggregate Guaranty Obligations that are less than its Proportionate Share of the aggregate cumulative amounts paid or satisfied by both Members and their Affiliates and Parents under such aggregate Guaranty Obligations shall, immediately upon demand by the other Member (the "**Over-Guarantying Member**"), pay or cause to be paid to the Over-Guarantying Member (on behalf of itself and as applicable its Affiliates and Parent) such sums (each, a "**Guaranty Equalization Payment**") as may be sufficient to cause the sum of the amounts by which such aggregate Guaranty Obligations have been paid or satisfied by the Over-

Guarantying Member and its Affiliate and Parent, minus the amount of the Guaranty Equalization Payment so paid to the Over-Guarantying Member, to equal the Over-Guarantying Member's Proportionate Share of

the aggregate cumulative amounts by which such aggregate Guaranty Obligations have been paid or satisfied by both Members and their Affiliates and Parents. The obligation of the Under-Guarantying Member and its Parent to make such Guaranty Equalization Payment shall be absolute, irrevocable and unconditional under any and all circumstances whatsoever and irrespective of any set-off, counterclaim or defense to payment which the Under-Guarantying Member or its Affiliate or Parent may have or claim to have against the obligee of the Guaranty Obligations. If the Under-Guarantying Member does not pay the Guaranty Equalization Payment or cause it to be paid to the Over-Guarantying Member (on behalf of itself and as applicable its Affiliates and Parent) immediately upon demand therefor, then the unpaid amount of such Guaranty Equalization Payment shall bear interest at the rate applicable to Capital Default Loans until paid in full (which interest shall be immediately due and payable), and, without limiting any other available rights or remedies of the Over-Guarantying Member against the Under-Guarantying Member or its Parent (including any rights or remedies under such Parent's Parent Guaranty), any distributions or payments thereafter otherwise payable by the Company to the Under-Guarantying Member shall be withheld from such Member and instead paid to the Over-Guarantying Member until such time as the full amount of the Guaranty Equalization Payment (plus all accrued but unpaid interest thereon) has been paid to the Over-Guarantying Member. The Under-Guarantying Member shall be deemed a Capital Defaulting Member for purposes of this Agreement and shall lose voting rights as more particularly set forth in Section 3.4 until the Under-Guarantying Member has paid, or caused to be paid, the Guaranty Equalization Payment.

(c) Carveout Exposure. Notwithstanding the provisions of Sections 3.6(a) or (b) to the contrary, if any amount is paid or payable under any Indebtedness or Contingent Obligation of the Company, any Subsidiary Entity or any Outside Partnership, or under any Guaranty Obligation of any Member or its Parent with respect to any Indebtedness or Contingent Obligation of the Company, any Subsidiary Entity or any Outside Partnership, as a result of any act or omission on the part of one of the Members or their Affiliates which is not an Authorized Unilateral Decision or not reasonably within the scope of decisions, actions or transactions that were Approved by the Members or Approved by the Management Committee, then the Member whose act or omission (or whose Affiliate's act or omission) solely resulted in the obligation to make such payment (such Member, the "**Responsible Member**") shall have exclusive responsibility, as between the Members, for satisfying the payment obligations arising under such Indebtedness, Contingent Obligation or Guaranty Obligation as a result of such act or omission of the Responsible Member or its Affiliate; the Responsible Member shall have no rights to require the other Member or its Parent to make any Guaranty Equalization Payment on account of any such payment obligations; and the Responsible Member shall indemnify, defend, protect and hold harmless the Company, the other Member and its Parent from any losses, damages, liabilities, costs and expenses, including prepayment premiums, default rate interest, legal fees and disbursements, arising from any such act or omission under any such Indebtedness, Contingent Obligation or Guaranty Obligation, except, in each case, to the extent that the amount so paid or payable under such Indebtedness, Contingent Obligation or Guaranty Obligation is applied to reduce the principal balance due upon such Indebtedness or the principal balance due upon Indebtedness that is guaranteed or supported by such Contingent Obligation or Guaranty Obligation.

(d) Schedule U which is or may be attached hereto identifies the Guaranty Obligations of the Members, their Parents and Affiliates as of the date of this Agreement and may include certain additional provisions applicable thereto.

(e) If any Member or Parent shall recover from any Outside Partnership or Outside Partner any sums in reimbursement of or contribution for any amounts paid by the Company, any Subsidiary Entity, any Member or Parent on account of any Guaranty Obligation with respect to any Indebtedness or Contingent Obligation of such Outside Partnership, the applicable Member shall cause the amounts so recovered (net of the costs of collection) to be paid to the Members or their Parents in proportion to the aggregate amounts theretofore paid by the Members and their Parents on account of any such Guaranty Obligations to which such rights of reimbursement or contribution as against such Outside Partnership or Outside Partner apply.

Section 3.7 Members as Creditors.

With the Approval of the Members and subject to any other applicable terms in this Agreement, any Member may lend money to and transact other business with the Company as a creditor and, subject to applicable law, any Member has the same rights and obligations with respect thereto as a person who is not a Member.

Section 3.8 No Right of Withdrawal or Resignation.

No Member shall have the right to withdraw or resign from the Company except with the Approval of the Members, and then only upon such terms and conditions as may be specifically agreed upon between the Members. Notwithstanding any other provision of this Agreement, unless otherwise Approved by the Members, the withdrawing or resigning Member shall not be entitled to any return or repayment of its Capital Contribution or other distribution or transfer in the event of withdrawal or resignation. The foregoing provisions are exclusive and no Member shall be entitled to claim any distribution or transfer upon withdrawal or resignation under Section 18-604 of the Act or otherwise.

Section 3.9 Limited Liability.

Except as expressly set forth in this Agreement or required by law, no Member shall (a) be personally liable for any Indebtedness, Contingent Obligation or other liability or obligation of the Company, whether that Indebtedness, Contingent Obligation or liability or obligation arises in contract, tort, or otherwise, solely by reason of being a Member of the Company, or (b) have any obligation to restore any deficit or negative balance in the Capital Account of such Member.

Section 3.10 No Third Party Rights.

Any obligations or rights of the Company or the Members to make or require any Capital Contribution under this Article III shall not result in the grant of any rights or confer any benefits upon any Person who is not a Member.

ARTICLE IV

MANAGEMENT AND CONTROL OF THE ARCHSTONE RESIDUAL ASSETS, THE ARCHSTONE ASSUMED LIABILITIES, THE ARCHSTONE SUBSIDIARIES AND THE BUSINESS

Section 4.1 Management Committee

(a) Composition. The Company shall have a Management Committee (the "**Management Committee**") which shall be composed of four (4) individuals (each, a "**Management Committee Representative**"). Two (2) Management Committee Representatives shall be Persons appointed by AVB Member (the "**AVB Representatives**") and two Management Committee Representatives shall be Persons appointed by ERP Member (the "**ERP Representatives**"). As of the date hereof, the initial AVB Representatives are Sean Breslin and Matthew Birenbaum, and the initial ERP Representatives are Alan George and Mark Parrell.

(b) Vacancies; Removal. Each Management Committee Representative shall hold office at the discretion of the Member appointing such Management Committee Representative. Any AVB Representative may be removed and replaced, with or without cause and for any reason at any time, by (and only by) AVB Member. Any ERP Representative may be removed and replaced, with or without cause and for any reason at any time, by (and only by) ERP Manager. A Management Committee Representative may also resign of its own volition at any time, by written notice to the Members. In the event of any vacancy in the office of a Management Committee Representative, such vacancy shall be filled, by written notice to the Members, by an individual designated by (i) AVB Member if such vacancy relates to an AVB Representative, and (ii) ERP Member if such vacancy relates to an ERP Representative.

(c) Meetings.

(i) Meetings of the Management Committee shall be held once per fiscal quarter of the Company on such dates and at such places and times as may be Approved by the Members. The agenda items for each quarterly meeting shall include a review of the Company's business and the progress in implementing the Approved Business Plans and the other activities of the Company.

(ii) With the Approval of the Members, Management Committee meetings may be held more frequently than quarterly.

(iii) Management Committee Representatives may vote in person or by proxy; such proxy may be granted in writing, by electronic transmission (as defined in the Act), or as otherwise permitted by applicable law.

(iv) At the election of either Member, Management Committee meetings may be held by telephone conference or other communications equipment by means of which all participating Management Committee Representatives can simultaneously hear each other during the meeting.

(v) Any action required or permitted to be taken by the Management Committee may be taken without a meeting, if a consent to such action is delivered in writing or via electronic transmission (as defined in the Act) by the requisite number of the Management Committee Representatives. Such written consent or a record of such electronic transmission shall be filed with the records of the Management Committee.

(d) Attendance at Management Committee Meetings. Subject to Section 3.4, no action may be taken at a meeting of the Management Committee unless at least one Management Committee Representative appointed by each Member is present in person or as otherwise permitted in Section 4.1(c). Notwithstanding the foregoing, during any period when a Member shall be a Capital Defaulting Member, action may be taken at a meeting of the Management Committee without regard to the attendance at such meeting of the Management Committee Representatives appointed by such Capital Defaulting Member, but only with respect to matters as to which its Management Committee Representatives have no voting rights as more fully provided in Section 3.4, and only if at least five (5) Business Days' notice of the meeting shall have been provided to the Capital Defaulting Member and an opportunity to be present at such meeting (in person or via telephone) shall have been provided to such Capital Defaulting Member.

(e) Voting Rights; Required Votes. Except as provided below, and subject to Section 3.4, each Management Committee Representative shall be entitled to cast one vote with respect to any matter requiring Approval of the Management Committee. Any action, decision or transaction considered by the Management Committee at a meeting thereof must be Approved by the Management Committee in order to be authorized; provided that any action to be considered by the Management Committee involving any contract or agreement between the Company and a Contracting Member shall not be effective or authorized unless it is unanimously approved by the Management Committee Representatives appointed by the Non-Contracting Member (which approval shall constitute "Approval by the Management Committee" for all purposes hereof) and the Management Committee Representatives appointed by the Contracting Member shall have no right to vote or approve of any such action. Notwithstanding anything to the contrary contained herein, if only one of the Management Committee Representatives appointed by a Member is present in person, via other means permitted pursuant to Section 4.1(c) or by proxy at a meeting of the Management Committee, the votes cast by such Management Committee Representative shall count as two (2) votes and shall be deemed to consist of the entire voting power of both Management Committee Representatives appointed by such Member.

(f) Approval by Members in Lieu of the Management Committee. At any time, the Members may consider and Approve or disapprove any action, decision or transaction that this Agreement contemplates will be considered, Approved or disapproved by the Management Committee. In the event of any conflict or inconsistency between any action, decision or transaction that has been Approved by the Members and any action, decision or transaction that has been Approved by the Management Committee, the action, decision or transaction Approved by the Members shall govern and control, and shall not be overridden or superseded by an action, decision or transaction Approved by the Management Committee unless such action, decision or transaction is also Approved by the Members.

(g) Delegation to Subcommittees, Etc. Either the Management Committee or the Members may Approve from time to time the delegation of authority with respect to the administration or management of certain decisions or functions to subcommittees, working groups or individuals, whose authority shall be limited to the decisions or functions so delegated to them. Consistent with the limited authority so delegated to them, such subcommittees, working groups or individuals shall be considered to be Designated Managers for the purposes of this Agreement. Any such subcommittee, working group or individual, if appointed by Approval of the Management Committee, shall be subject to all limits upon the authority of the Management Committee provided for in this Agreement, including, without limitation, the limits set forth in Section 4.1(f). As of the date hereof, the Members have delegated to the Transition Team the authority to administer routine decisions related to the Company's acquisition of the Archstone Residual Assets, as more fully described in Section 4.2(j).

Section 4.2 Designated Managers; Officers; Transition Team.

(a) As expressly provided in this Agreement, or at any time and from time to time hereafter with the Approval of the Members or the Approval of the Management Committee, Members or other Persons may be designated as managers or authorized signatories or agents of the Company with respect to the performance of specific duties, actions, functions or tasks, with respect to the execution of documents or consummation of transactions, or otherwise with respect to specific assets or obligations of the Company, and the scope of the authority of each such designated manager, signatory or agent, and applicable period of time within which such authority may be exercised, shall (if not expressly stated in this Agreement) be as provided for in the applicable Approval of the Members or Approval of the Management Committee. Each such designated manager, signatory or agent is referred to herein as a "**Designated Manager**" and is intended to be a "manager" as defined in the Act having the specific authority expressly described herein or in the applicable Approval of the Members or Approval of the Management Committee.

(b) The Designated Managers shall include, throughout the Term, general administrative managers. In accordance with the allocation of responsibilities for the administrative management of the Company that is or hereafter shall be provided for in Schedule Z or as otherwise specifically allocated pursuant to this Agreement, the applicable Designated Manager as designated in Schedule Z or otherwise in this Agreement shall have the sole authority on behalf of the Company with respect to the administrative functions and responsibilities that are allocated to it on Schedule Z or otherwise in this Agreement, together with the authority, rights and powers to do any and all acts and things necessary, proper, appropriate, advisable, incidental or convenient in connection with such functions and responsibilities, but all subject to the limitations, restrictions, conditions and requirements set forth in this Agreement. The Members acknowledge that the allocation of administrative functions and responsibilities as provided on Schedule Z may be revisited pursuant to Section 4.12(b).

(c) The Designated Managers shall also include, throughout the Term, (i) Designated Managers having the principal administrative responsibility to take the lead with respect to the development of proposals for and proposed revisions to business plans with respect to specific Archstone Residual Assets and, following the approval of such business plans by the Approval

of the Members or the Approval of the Management Committee, having the sole authority, subject to the terms of this Agreement, to act on behalf of the Company with respect to the implementation and monitoring of the applicable Approved Business Plans therefor and (ii) a Designated Manager with respect to administration, management, resolution and pursuit of the Assumed Archstone Liabilities and the Archstone Claims. Pending the Approval of an Approved Business Plan for any Archstone Residual Asset for which it has been designated as the Designated Manager, the applicable Designated Manager for such asset shall have the authority to make operational decisions with respect to such asset in the ordinary course of business, consistent with the standards of operation for such asset in the past and in compliance with the terms of any applicable Outside Partnership Agreement and the standard of care set forth in Section 4.9, provided that the Approval of the Management Committee for any Major Decision related thereto shall be obtained. The Designated Managers that are allocated responsibility in accordance with this Section 4.2(c) for specific Archstone Residual Assets consisting of interests in Outside Partnerships shall be responsible for the preparation of such reports related to such Outside Partnership as is the responsibility of the Company or a Subsidiary Entity under the applicable Outside Partnership Agreement, and shall provide such reports to AVB Member in connection with its preparation of the Company-level reporting required to be prepared by it pursuant to Section 6.3.

(d) ERP Member is hereby appointed to be the Designated Manager with respect to the Germany Portfolio, the EQR-Designated Land Options and the Miscellaneous Archstone Asset referred to as the La Brea "hope certificate." ERP Member is also hereby appointed as the Designated Manager with respect to the administration, management and resolution of the Assumed Archstone Liabilities and the pursuit of Archstone Claims, the costs, liabilities and/or recoveries with respect to which are to be allocated to the Company pursuant to Schedule E.

(e) AVB Member is hereby appointed to be the Designated Manager with respect to the Lake Mendota Portfolio, the National Gateway Asset, Harlem Parcel C and the AVB-Designated Land Options.

(f) Unless a Designated Manager is hereafter designated with the Approval of the Members or the Approval of the Management Committee to implement any Approved Business Plans or other action on behalf of the Company other than as described in Section 4.2(d) or (e), Schedule Z or in another provision of this Agreement, the Management Committee shall retain the administrative responsibilities with respect to the development of proposals for and proposed revisions to business plans, the implementation and monitoring of the applicable Approved Business Plans therefor, and the other actions of the Company.

(g) Each Person appointed as a Designated Manager shall serve at the discretion of the Members, and such Person may be removed upon the Approval of the Members (if such Person was appointed with the Approval of the Members or the Approval of the Management Committee) or removed upon the Approval of the Management Committee (if such Person was appointed with the Approval of the Management Committee).

(h) Without limiting any Designated Manager's express obligations under this Agreement, the Members hereby agree that no Designated Manager shall have any fiduciary duty to the Company or the Members, any such requirement of fiduciary duty being forever and

unconditionally waived by the Members to the extent permitted by the Act. Notwithstanding anything to the contrary in this Agreement, in addition to the express limitations set forth in this Agreement with respect to the duties and obligations of the Designated Manager, no Designated Manager shall be in default of its duties and obligations under this Agreement in the event that (i) such Designated Manager is unable to cause the Company or a Member to take any action because the action to be taken constitutes a Major Decision and such Major Decision is not then Approved, or (ii) such Designated Manager is unable to cause the Company or a Member to take any action due to a lack of available Company funds.

(i) The Members acknowledge that certain officers have been appointed prior to the date hereof with respect to certain Subsidiary Entities and Outside Partnerships, and from time to time hereafter, with the Approval of the Management Committee or the Members, officers of the Subsidiary Entities and Outside Partnerships may be appointed, removed or replaced. Notwithstanding the foregoing, any officer of a Subsidiary Entity and Outside Partnerships who is an employee of a Member (or its Parent or any Affiliate thereof) shall hold office at the discretion of such Member, and may be removed and replaced, with or without cause and for any reason at any time, by (and only by) such Member. In the event of any vacancy in any office of any Subsidiary Entity, such vacancy shall be filled by an individual designated by (i) AVB Member if such vacancy relates to an office that was previously filled by an employee of AVB Member (or its Parent or any Affiliate thereof), and (ii) ERP Member if such vacancy relates to an office that was previously filled by an employee of ERP Member (or its Parent or any Affiliate thereof).

(j) Pursuant to Section 4.1(g), the Members have delegated to the Transition Team the authority to administer routine decisions related to the Company's acquisition of the Archstone Residual Assets, as more fully described in this Section 4.2(j). The initial members of the Transition Team includes representatives who have been appointed by ERP Member and representatives who have been appointed by AVB Member, and decisions may be made by the Transition Team only with the agreement of at least one member who has been appointed by ERP Member and one member who has been appointed by AVB Member, and without any objection to the proposed decision from any member of the Transition Team. Vacancies on the Transition Team shall be filled by the Member whose appointee has resigned or been removed. At any time, at the election of any Member, effective upon written notice to the other Member, the authority of the Transition Team to administer certain classes or categories of decisions shall be suspended, and the authority to administer such classes or categories of decisions shall revert to the Management Committee. If the Transition Team is unable to agree upon a proposed decision, then that decision shall be referred to the Management Committee for Approval in accordance with this Agreement.

Section 4.3 Major Decisions.

Notwithstanding any other provision of this Agreement to the contrary, no Member, Transition Team member or Designated Manager shall take or cause any of the following actions, make any of the following decisions or enter into any of the following transactions (each a "**Major Decision**"), whether by or on behalf of the Company directly, or by or on behalf of any of the Subsidiary Entities and Outside Partnerships, without first obtaining the Approval of the Management Committee (or, pursuant to Section 4.1(f), the Approval of the Members) (it being

understood that such Approval may be obtained through the approvals that are granted in an Approved Business Plan or Annual Budget and that the Members' or the Management Committee's approval of any such Approved Business Plan or Annual Budget shall be deemed to include the approval of all matters identified therein and of the implementation thereof by the applicable Designated Managers in good faith and in the ordinary course of business) or take any other action which contravenes the conditions or limitations that expressly apply to any Approval by the Members or Approval by the Management Committee pursuant to the terms of this Agreement:

(a) Approval of or Modification to Business Plans. Approval of any Initial Business Plan or any modification of, departure from or suspension of any Approved Business Plan outside the ordinary course of business.

(b) Acquisition of Interests in Real Property. Invest in, purchase or otherwise acquire (whether by merger, consolidation or acquisition of equity interests or assets, or any other business combination, and whether directly or indirectly) any real property or direct or indirect interest therein, or elect to extend, pay further refundable or non-refundable consideration for, elect to exercise or otherwise exercise any material right with respect to any of the Land Options or any rights under any Outside Partnership Agreement with respect to assets of such Outside Partnership.

(c) Acquire or Form New Subsidiary Entities. Purchase or otherwise acquire (whether by merger, consolidation or acquisition of equity interests or assets, or any other business combination) or form any Subsidiary Entity.

(d) Amend Organizational Documents. Amend or otherwise change any material provision of any organizational document of any Subsidiary Entity or Outside Partnership.

(e) Enter into New Partnership. Enter into or establish any partnership, joint venture or similar arrangement (including, without limitation, funds or other investment vehicles) with a Third Party Entity.

(f) Changes to Governing Boards of Subsidiary Entities or Outside Partnerships. Voluntarily permit any changes to any board, management committee or similar governing board of any Subsidiary Entity or, to the extent within the Company's control, any Outside Partnership.

(g) Sales and Dispositions. Cause any sale, transfer, assignment, conveyance, exchange or other disposition of any Archstone Residual Asset, except in accordance with the Approved Business Plan for an Archstone Residual Asset (it being understood that, in developing the Approved Business Plans, the Members intend to consider whether such plans should prescribe maximum thresholds for any seller indemnities and maximum periods for survival of post-closing seller liabilities for purchase and sale agreements that could be entered into without the Approval of the Management Committee) and for a price that is (i) not less than 95% of the target price designated in the Approved Business Plan (if such target price is expressed as a single value and not as a range of values) and (ii) not less than the lowest value designated in the Approved Business Plan (if the target price is expressed as a range of values).

(h) Restrictive Agreements. Enter into, amend or modify any agreement that would restrict the sale, transfer, assignment, conveyance, exchange or other disposition of any of the Archstone Residual Assets.

(i) Annual Budget. Approval of an Annual Budget, or modify an Annual Budget or expend (or commit to expend) sums in excess of the amounts budgeted in an Annual Budget, if such modifications or expenditures on an aggregate cumulative basis for any year would exceed 110% of the total budgeted amount in the original Annual Budget for such year (unless such modification or expenditure arises from Emergency Costs or Non-Discretionary Funding Requirements, or arises from costs incurred in connection with marketing activities for the disposition of assets in accordance with Section 4.3(g), or in connection with the defense, pursuit, satisfaction of judgments with respect to, or settlement of claims consistent with Section 4.3(q), or in connection with the review, pursuit or settlement of insurance claims or condemnation proceedings consistent with Section 4.3(u)).

(j) Additional Capital Contributions. Issue a Funding Notice other than in accordance with Section 3.3(b).

(k) Indebtedness; Contingent Obligations. Cause the Company or any Subsidiary Entity or, to the extent within the Company's control, any Outside Partnership to incur, assume, prepay, purchase, amend, extend, renew, refinance, recast, compromise or otherwise deal with any Indebtedness or incur, assume, amend, extend, renew, refinance, recast, compromise or otherwise deal with any Contingent Obligations (other than receivables and payables incurred and equipment leases entered into in the ordinary course of business (i) in accordance with an applicable Approved Business Plan (as adjusted pursuant to Section 4.3(i)) or (ii) in accordance with an Authorized Unilateral Decision).

(l) Additional Advances/Drawdowns on Credit Facilities. Obtain advances or drawdowns on construction or development loans or any other credit facility, in each case, other than advances and drawdowns on construction or development loans or credit facilities that are in existence on the date hereof provided that such advances or drawdowns are in accordance with the terms of such loans or credit facilities and are pursuant to the applicable Approved Business Plan.

(m) Liens. Mortgage, pledge, hypothecate or subject to any type of lien (other than inchoate liens for contractors and subcontractors, real estate taxes and utility charges established by applicable law) any of the assets of the Company or any Subsidiary Entity or, to the extent within the Company's control, any Outside Partnership, or amend, extend or renew any of the agreements entered into in connection with the foregoing.

(n) Accountants. Engage, remove or appoint any accountants for the Company or any Subsidiary Entity (other than the Accountants) or, to the extent within the Company's control, any Outside Partnership.

(o) Change Accounting Principles or Policies. Except as required by changes in law or changes in generally accepted accounting principles, change any financial accounting principles or policies in any material respect.

(p) Repatriate Funds. Repatriate funds held in overseas accounts.

(q) Legal Proceedings. (i) Commence any legal or arbitration proceeding on behalf of the Company, any Subsidiary Entity or, to the extent within the Company's control, any Outside Partnership (except for routine collection matters, tenant disputes or matters that arise from disputes the resolution of which is within the settlement authority of the applicable Designated Manager under this Section 4.3(q)); (ii) confess a judgment against the Company, any Subsidiary Entity or, to the extent within the Company's control, any Outside Partnership; (iii) settle on behalf of the Company, any Subsidiary Entity or, to the extent within the Company's control, any Outside Partnership any claim that has been asserted in any legal or arbitration proceeding or that has been threatened (regardless of whether any such proceeding has been commenced) except (A) with respect to the Assumed Archstone Liabilities, in accordance with a settlement agreement approved by the ERP Member as the applicable Designated Manager in which the claimant's claims against any Parent, the Company or applicable Subsidiary Entity or Outside Partnership on account of the matters so asserted or threatened are fully released and the amount paid or payable in connection with the settlement of any claim or claims asserted or threatened by any single claimant with respect to the subject matter of such proceeding or threat does not exceed the sum of $250,000 and (B) with respect to any liabilities other than Assumed Archstone Liabilities arising from acts or occurrences after the Effective Date related to any Archstone Residual Asset or other subject matter for which a Member has been designated the Designated Manager, in accordance with a settlement agreement approved by such Designated Manager in which the claimant's claims against any Parent, the Company or applicable Subsidiary Entity or Outside Partnership (as applicable) on account of the matters so asserted or threatened are fully released and the amount paid or payable in connection with the settlement of any claim or claims asserted or threatened by any single claimant with respect to the subject matter of such proceeding or threat does not exceed the sum of $250,000; or (iv) except in connection with the management and administration of the Assumed Archstone Liabilities by the ERP Member as the applicable Designated Manager or in connection with the management and administration of the Archstone Residual Assets within the authority of the applicable Designated Manager, engage legal counsel for the Company or any Subsidiary Entity. Each Designated Manager that enters into a settlement agreement on behalf of the Company as provided in clause (A) or (B) shall provide prompt notice of such settlement to the other Member, and shall provide prompt notification to the other Member from time to time of material developments and material anticipated costs and expenses in connection with any material legal or arbitration proceeding for any Archstone Residual Asset for which it has been designated the Designated Manager and the Assumed Archstone Liabilities.

(r) Transactions with Members, Affiliates. Enter into, consummate, amend, modify or terminate any transaction or arrangement between the Company, any Subsidiary Entity or Outside Partnership and any Member or any Affiliate of any Member.

(s) Bankruptcy. Cause any of the following to occur with respect to the Company, any Subsidiary Entity or Outside Partnership: (i) making an assignment for the benefit of creditors; (ii) filing a voluntary petition in bankruptcy; (iii) filing a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation; (iv) filing an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of this nature; (v)

filing a petition seeking, consenting to or acquiescing in the appointment of a trustee, receiver or liquidator, whether for itself or for all or any substantial part of its properties; or (vi) taking any action in furtherance of the foregoing.

(t) Lending Company Funds. Lend funds belonging to the Company, any Subsidiary Entity or Outside Partnership, or extend credit on behalf of the Company, any Subsidiary Entity or Outside Partnership, to any Person other than to a Subsidiary Entity in connection with the implementation of the funding of capital which has been Approved by the Members or Approved by the Management Committee but only if the funding of such capital in the form of a loan, rather than as an equity contribution (unless Approved by the Members or Approved by the Management Committee) would not reasonably be anticipated to have any material adverse impact upon any Member; and if such funds are so lent or credit is so extended, extend, renew, recast, compromise or otherwise deal with such lent funds or extension of credit.

(u) Insurance and Condemnation Awards. Except for the settlement of insurance claims or condemnation or eminent domain proceedings that are within the Assumed Archstone Liabilities for which ERP Member is the Designated Manager, settle any insurance claims or condemnation or eminent domain proceedings affecting any of the Archstone Residual Assets where the damage arising from any single casualty event or series of related casualty events or any single exercise or threatened exercise of the power or condemnation or eminent domain would reasonably be expected to be in excess of $5,000,000.

(v) Reorganization. Cause the formation of any Subsidiary Entity or any Affiliate of the Company, or merge the Company or any Subsidiary Entity or Outside Partnership into any other Person, or convert the form of such Entity into a different form of Entity or otherwise enter into any similar entity reorganization.

(w) Dissolution of the Company; In-Kind Distributions. Except in accordance with Section 10.1, cause the dissolution and winding-up of the Company or any Subsidiary Entity, except for the dissolution and liquidation of a Subsidiary Entity following the approved sale of all of the assets owned by such Subsidiary Entity, or make any in-kind distribution of the assets of the Company or any Subsidiary Entity.

(x) Insurance. Determine, modify or waive the requirements of the Company's insurance program, including insurers, coverage and policy amounts, as set forth in or to be set forth in Schedule V.

(y) Material Liabilities. Take any action that is not contemplated in the Approved Business Plans and is not an Authorized Unilateral Decision that would reasonably be anticipated to create a material liability, obligation, cost or expense for the Company, any Subsidiary Entity or, to the extent within the Company's control, any Outside Partnership other than on account of Emergency Costs or Non-Discretionary Funding Requirements.

(z) Employees. Except for routine decisions as approved by the Transition Team: hire or terminate (except in accordance with the Transition Plan referenced in Section 9.6) any employee of the Company or any Subsidiary Entity; increase the compensation or benefits payable to any employee of the Company or any Subsidiary Entity; grant any (or any increase in)

employment, retention, bonus, severance, change of control or termination pay awards or equity-based cash awards (including cash bonuses or dividend equivalent rights); or establish, adopt, enter into or amend any collective bargaining (or similar), bonus, profit-sharing, thrift, compensation, stock option, restricted stock, stock unit, dividend equivalent, pension, retirement, deferred compensation, employment, loan, retention, consulting, indemnification, termination, severance or other similar plan, agreement, trust, fund, policy or arrangement with any director, officer, employee or independent contractor.

(aa) Tax Elections. Make, rescind or revoke any material tax election (whether or not such election is filed with a tax return) or change a material method of tax accounting, amend any material tax return, agree to waive or extend any period of adjustment, assessment or collection of material taxes, or settle or compromise any material federal, state, local or foreign income tax liability, audit, claim or assessment, or enter into any material closing agreement related to taxes, or surrender any right to claim any material tax refund unless in each case such action is required by applicable law.

(bb) Prohibited Tax Shelter Transactions. Use any assets of the Company or any Subsidiary Entity in a "prohibited tax shelter transaction" within the meaning of Code Section 4965(e)(1).

(cc) Reserves. Except for reserves that are expressly provided for in the Approved Business Plans or the Annual Budgets or that are consistent with Section 4.6, establish reserves for future working capital or other capital needs or for any other purpose of the Company or any Subsidiary Entity.

(dd) Initiation of Buy/Sell and Similar Processes under Outside Partnership Agreements. Any election to initiate on behalf of the Company any buy/sell, forced sale or marketing process under any Outside Partnership Agreement, and the determination of the applicable valuation to be established for the relevant asset or interest as to which such process would be initiated.

(ee) Election to Respond to Buy/Sell and Similar Processes under Outside Partnership Agreements. With respect to the initiation by any Outside Partner or any buy/sell, forced sale or marketing process under any Outside Partnership Agreement, the determination on behalf of the Company or applicable Subsidiary Entity that is the partner in the applicable Outside Partnership of the election to be made in response to the initiation of such process (i.e., the election to buy, or to sell or to choose such other option as may be permitted under the applicable Underlying Partnership Documents). Unless the Approval of the Management Committee is obtained, the Company (or the applicable Subsidiary Entity) shall be the seller (or, if applicable, shall choose the election by which the applicable asset shall be marketed in an auction-type process).

(ff) Exercise of Buy/Sell and Similar Rights by a Member under Outside Partnership Agreements. Any election by any Member to initiate for itself (and not on behalf of the Company) any buy/sell, forced sale or marketing process under any Outside Partnership Agreement.

(gg) Acquire Outside Partner's Interest. Purchase or otherwise acquire the interest of any Outside Partner in any Partnership in any other manner, subject to the terms set forth in Section 9.8.

(hh) Designation of any Designated Manager. Except for the appointment of members of the Transition Team in accordance with Section 4.2(j), appoint or remove any Person as a Designated Manager or, subject to Section 4.2(i), appoint or remove any Person as a member, manager or officer of any Subsidiary Entity.

(ii) Outside Partnership Capital Calls. Cause any capital call under any Outside Partnership Agreement unless the applicable Designated Manager has the right to call capital from the Company for such purpose pursuant to Section 3.3(b).

It is understood and agreed that any Member or Designated Manager may initiate a request to the Management Committee for consideration of a proposed Major Decision.

Section 4.4 Budgets and Business Plans.

(a) On or before October 15th of each year during the term hereof, the applicable Designated Manager shall prepare and submit to the Members for Approval of the Members a proposed update to the Initial Business Plan and a proposed annual budget for the next calendar year for each of the Archstone Residual Assets for which it has been appointed the Designated Manager

(b) At the first quarterly Management Committee meeting following the completion of each Fiscal Year, the agenda items shall include a review of the then-current Approved Business Plans and the proposed updates and proposed annual budget submitted by the applicable Designated Managers to determine whether the proposed updates or other adjustments thereto should be Approved, and to approve of proposed Annual Budgets for the ensuing year. However, unless the Approval of the Management Committee is obtained for proposed adjustments to any previously-approved Approved Business Plan (or any previously-approved Annual Budgets), the previously-approved Approved Business Plan (including, where applicable, any capital budgets, to the extent that such previously-approved capital budgets and the Approved Business Plan contemplated the continuation of capital expenditures for particular projects in future periods inclusive of the period in question) shall remain in full force and effect (except with respect to the elements of any Approved Business Plan that consist of the portion of the previously-approved Annual Budget that involves an operating budget, as provided below). If the Management Committee does not approve of an Annual Budget that includes an operating budget for any Archstone Residual Asset for any year, then, until an operating budget for such asset for such year is Approved by the Management Committee, the operating budget included in the prior year's Annual Budget shall be utilized with adjustments thereto to reflect (i) any increases in particular line items that have been Approved by the Management Committee, (ii) as to other items, adjustments to reflect increases in the cost of living and increases in the cost of non-discretionary items (such as debt service payments, property taxes, insurance premiums (for coverages required pursuant to the applicable Approved Business Plan), utility charges or costs required to be incurred pursuant to the requirements of contracts (including, where applicable,

requirements of applicable Outside Partnership Agreements)), and (iii) increases resulting from emergencies or force majeure events.

(c) The Members acknowledge that one of the purposes of the Company is to realize upon and dispose of the Archstone Residual Assets and, accordingly, the Approved Business Plans for the Archstone Residual Assets shall include the anticipated timelines for the holding of such Archstone Residual Assets and the agreed-upon floor prices (and other applicable minimum terms) at which the Company would be authorized to dispose of its interest in the applicable assets. The applicable Designated Manager shall have the principal responsibility for coordinating the implementation of the aspects of the Approved Business Plan relating to the initiation and pursuit of the marketing of the applicable Archstone Residual Assets for which it has been appointed the Designated Manager, and for keeping the Members informed of the status of such marketing efforts. Transfers of the Archstone Residual Assets by the Company (or any Subsidiary Entity or Outside Partnership) shall be authorized subject to Section 4.3(g).

Section 4.5 Implementation of Approved Business Plans by the Designated Managers.

Each of the Designated Managers shall, subject to the availability of Company revenues and Capital Contributions, implement the then applicable Approved Business Plans for the respective Archstone Residual Assets in good faith and in the ordinary course of business and implement its strategies for the administration, management, resolution and pursuit of the Assumed Archstone Liabilities and Archstone Claims for which it has been appointed the Designated Manager in good faith and in the ordinary course of business, and, subject to Section 4.3 and the other terms of this Agreement, shall have the sole authority to manage the Company's business in accordance therewith and to incur all expenses reasonably necessary in connection therewith. In performing their duties under this Section 4.5, the Designated Managers shall have the sole power and authority, acting alone, and in the name and on behalf of the Company, to execute for and on behalf of the Company (both on behalf of itself and on behalf of any Subsidiary Entity and, to the extent within the Company's control, any Outside Partnership) any and all documents and instruments which may be necessary to carry on the business of the Company, the Subsidiary Entities or the Outside Partnerships, except to the extent that the prior Approval of the Members or Approval of the Management Committee is required pursuant to any provision of this Agreement (including Section 4.3) and subject, in the case of any Outside Partnership, to the terms of the applicable Outside Partnership Agreement.

Section 4.6 Reserves — General.

The Company shall maintain and shall cause the Subsidiary Entities to maintain such reserves as are Approved by the Members or Approved by the Management Committee or set forth in the Approved Business Plans. The Members intend the Approved Business Plans to provide for the retention of sufficient amounts of cash on hand in the accounts of the Company and the Subsidiary Entities to pay reasonably anticipated costs and expenses for the applicable Archstone Residual Assets covered by such Approved Business Plans.

Section 4.7 Contracts With Contracting Members; Management Agreements.

(a) Except pursuant to Section 4.7(b) or as expressly set forth in an Approved Business Plan, an Outside Partnership Agreement or otherwise Approved by the Members or Approved by the Management Committee, neither any Member nor any Designated Manager shall cause or permit the Company or any Subsidiary Entity or Outside Partnership to engage or pay any compensation to a Member or any Affiliate of a Member for the provision of services to the Company or any Subsidiary Entity or Outside Partnership.

(b) Notwithstanding the provisions of Section 4.7(a), the Designated Manager shall have the right to replace a Subsidiary Entity (or cause an Affiliate to act in a sub-agency or similar arrangement) as the property manager and/or, with respect to the Lake MendotaInvestments LLC and the Lake Mendota Portfolio, asset manager or other service provider for any Archstone Residual Real Estate Asset, provided that any required consent from the asset owner, lender and Outside Partner has been obtained. If a Designated Manager replaces a Subsidiary Entity as the property manager and/or asset manager or other service provider for any Archstone Residual Real Estate Asset with itself or its Affiliate, then the fees thereafter earned under the applicable property or asset management agreement or other arrangements (including, without limitation, any "Management Fees" as defined in the governing documents for Lake Mendota Investments LLC), shall be retained by or assigned to such Member or its Affiliate as an expense of the Company, and any liabilities under the applicable agreements and costs and expenses for providing such services accruing after the date of such replacement shall be the sole responsibility of such Member or its Affiliate.

(c) Notwithstanding any provision herein to the contrary, in its sole discretion, the Non-Contracting Member, acting on behalf of the Company or any Subsidiary Entity or Outside Partnership, may terminate (or otherwise exercise the rights and remedies of the Company or a Subsidiary Entity or Outside Partnership under) any Management Agreement or any other agreements with any Contracting Member or any Affiliate of the Contracting Member pursuant to the terms of any such agreement (after it complies with the requirements set forth in the immediately following paragraph), provided that the Non-Contracting Member may not so act on behalf of the Company or any Subsidiary Entity or Outside Partnership to terminate any such agreement pursuant to any "without cause" termination right. No decision under any such agreement that would constitute a "Major Decision" under this Agreement may be made on behalf of the Company or any Subsidiary Entity or Outside Partnership without the Approval of the Members or Approval of the Management Committee.

(d) Notwithstanding the provisions of Section 4.7(c), if the Non-Contracting Member reasonably believes that the Contracting Member or any Affiliate of the Contracting Member is not fulfilling its obligations under any Management Agreement or other relevant agreement, the Non-Contracting Member shall, before exercising any termination right or other right or remedy thereunder, (i) obtain any and all necessary consents and approvals (including, without limitation, any necessary consents and approvals from mortgage lenders or Outside Partners), and (ii) provide the Contracting Member (or Affiliate) with written notice thereof, which shall have 30 days from its receipt of the notice to remedy the situation to the Non-Contracting Member's reasonable satisfaction; provided, that if such situation is reasonably susceptible of cure, but a period longer than 30 days is reasonably required to complete the cure, then such

Contracting Member (or Affiliate) shall have an additional period to remedy the situation so long as such Contracting Member (or Affiliate) promptly commences to remedy the situation and diligently prosecutes the same to completion, but such additional period shall not exceed an additional 60 days. If the Non-Contracting Member is not reasonably satisfied that the situation has been remedied within such period, the Non-Contracting Member shall have the right to terminate the Management Agreement or other applicable agreement pursuant to the terms thereof, and replace such Contracting Member (or Affiliate) with an Entity selected by the Contracting Member from a list provided by the Non-Contracting Member provided that the list includes the names of at least three (3) Persons unaffiliated with the Non-Contracting Member, all of whom have at least ten (10) years' experience in performing the management or other services that were provided under the applicable terminated agreement.

Section 4.8 Limited Liability of Management Committee Representatives, Transition Team Members and Designated Managers.

Except as expressly set forth in this Agreement or as required by law, no Management Committee Representative, Transition Team member or Designated Manager shall be personally liable for any debt, obligation or liability of the Company whether that liability or obligation arises in contract, tort or otherwise, solely by reason of being a Management Committee Representative, Designated Manager or Transition Team member of the Company.

Section 4.9 Standard of Care of Management Committee Representatives, Transition Team Members and Designated Managers.

Each Management Committee Representative, Transition Team member and Designated Manager shall perform the respective duties as Management Committee Representative, Transition Team member and Designated Manager in good faith, and in the ordinary course of business, consistent with the terms of this Agreement, subject, in the case of Management Committee Representatives, to the terms of Section 1.9, and subject, in the case of Management Committee Representatives, Transition Team members and Designated Managers, to the terms of Section 7.4. Management Committee Representatives, Transition Team members and Designated Managers do not, in any manner, guarantee the return of the Members' Capital Contributions or a profit for the Members from the operations of the Company. Management Committee Representatives, Designated Managers and Transition Team members shall not be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of fraud, gross negligence, willful misconduct, a willful, knowing or intentional breach of this Agreement, or the result of any act or omission performed or omitted by it not in good faith.

Section 4.10 Transactions between the Company and an Interested Management Committee Representative or Designated Manager.

Notwithstanding that it may constitute a conflict of interest, a Management Committee Representative or Designated Manager that is not a Member or Affiliate of a Member may directly or indirectly engage in any transaction (including without limitation the purchase, sale, lease, or exchange of any property, or the lending of funds, or the rendering of any service, or the establishment of any salary, other compensation, or other terms of employment) with the

Company; provided however that in each case (a) such transaction is not expressly prohibited by this Agreement, (b) the terms and conditions of such transaction on an overall basis are fair and reasonable to the Company, and (c) the transaction has been Approved by the Members after disclosure of all material facts relating to the conflict or potential conflict.

Section 4.11 Bank Accounts.

Subject to cash management protocols to be Approved by the Management Committee (or Transition Team) (which protocols shall include, without limit, protocols with respect to the signing of checks and the authorization of wire transfers) the applicable Designated Manager as is or hereafter shall be set forth in Schedule Z may from time to time open bank accounts in the name of the Company (which shall be segregated from, and not commingled with the funds of any Person other than a Subsidiary Entity) in accordance with the terms of Schedule Z.

Section 4.12 Reimbursement of Expenses; Compensation.

(a) In connection with their respective services hereunder, the Management Committee Representatives and Designated Managers shall be entitled to reimbursement from the Company of all third-party out-of-pocket expenses of the Company reasonably incurred and paid by such Management Committee Representative or Designated Manager on behalf of the Company.

(b) In connection with their respective services as a Designated Manager, ERP Member and AVB Member shall be entitled to receive fees from the Company, as an Expenditure of the Company, in the amounts, for the term, and payable at the times set forth on Schedule W as and when Approved by the Management Committee; provided, however, that, if not provided for on Schedule W or otherwise Approved by the Management Committee, then such fees shall be paid on a quarterly basis, in advance. On a quarterly basis, the Members shall review in good faith the appropriateness of the compensation arrangements under this Agreement (including, if applicable, any fees provided for on Schedule W) in light of the magnitude of work and services that are being provided by the applicable Designated Managers in consideration thereof, and the allocation of administrative responsibilities and functions as between the Members, and shall, if mutually agreed to, make appropriate adjustments thereto. Each Member acknowledges and agrees that, unless both Members are satisfied with the compensation arrangements that are provided for pursuant to this Agreement, either Member shall have the right, in connection with the quarterly review provided for in this Section 4.12(b), to require the allocation of administrative responsibilities and functions as between the Members to be revisited, in order to obtain an allocation of the work and services required to be performed in connection with such administrative responsibilities and functions as between the Members in a manner that is consistent with their respective Proportionate Shares.

(c) Nothing contained in this Section 4.12 shall restrict the rights of any Member to receive amounts payable to it pursuant to the provisions of Schedule E attached hereto.

(d) Except as specifically provided in this Section 4.12 or in Schedule W or as Approved by the Members, Members, Management Committee Representatives and Designated Managers shall not otherwise be entitled to compensation.

Section 4.13 Reliance by Third Parties.

Any Person dealing with the Company or any Subsidiary Entity may rely upon a certificate signed by any Member or Designated Manager as to:

(i) the identity of the Members or Designated Managers;

(ii) the existence or non-existence of any fact or facts that constitute a condition precedent to acts by the Company or any Subsidiary Entity or that are in any other manner germane to the affairs of the Company or any Subsidiary Entity;

(iii) the Persons or Designated Managers that are authorized to execute and deliver any instrument or document of, or on behalf of, the Company or any Subsidiary Entity; or

(iv) any act or failure to act by the Company or any Subsidiary Entity, or any other matter whatsoever, involving the Company or any Subsidiary Entity.

Section 4.14 Authorization of the Transactions under the Purchase Agreement and Related Transactions.

The Members have determined that it is in the best interests of the Company to acquire the interests in the Archstone Residual Assets and Subsidiary Entities and to assume or succeed to the obligations with respect to the Assumed Archstone Liabilities in accordance with Schedule E, all in accordance with the Purchase Agreement and the Buyers Agreement, and

to consummate the closing under the Purchase Agreement, the transactions relating to the assumption of indebtedness and guaranties referenced in the Buyers Agreement and all transactions related thereto. The Members have approved the form, terms and provisions of the bills of sale, assignments and other transfer and other instruments by which such acquisition and other transactions are to occur, as well as the other documents identified on Schedule AA. The execution and delivery by the ERP Member or AVB Member as a Member or Designated Manager on behalf of the Company (whether in its individual capacity or in its capacity, after giving effect to the Initial Closing, as the member or manager of any Subsidiary Entity) of any such bills of sale, assignments, other transfer instruments and other documents identified on Schedule AA shall constitute the binding act of the Company (and as applicable, such Subsidiary Entity) in all respects, and all such bills of sale, assignments, other transfer and other instruments, and other documents identified on Schedule AA, are hereby approved, adopted and confirmed in all respects. The ERP Member and the AVB Member each in its capacity as a Member or Designated Manager is also hereby authorized on behalf of the Company (whether in its individual capacity or in its capacity, after giving effect to the Initial Closing (as defined in the Purchase Agreement), as the member or manager of any Subsidiary Entity) to do or cause to be done any and all such acts or things and to execute and deliver any and all such further documents and papers as it may deem necessary or appropriate to carry out the full intent and purpose of the authorizations in this Section 4.14 connection with the consummation of the transactions under the Purchase Agreement by which the Company will acquire the interests in the Archstone Residual Assets and Subsidiary Entities and assume or succeed to the obligations with respect to the Assumed Archstone Liabilities in accordance with Schedule E and all transactions related thereto, and, to the extent that ERP Member or AVB Member in its capacity

as a Member or Designated Manager has already done any actions or things to effectuate the consummation of such transactions or any other purposes of the authorizations in this Section 4.14, the doing of such actions is hereby ratified, approved, confirmed and adopted in all respects. Any such documents executed or actions taken by a Member in the purported capacity of a "Designated General Administrative Co-Manager" of the Company shall be deemed for all purposes to have been executed or taken by it in its capacity as a Designated Manager, shall constitute the binding act of the Company (and as applicable, such Subsidiary Entity) in all respects, and are hereby approved, adopted and confirmed in all respects.

Section 4.15 Administration of Claims related to Assumed Archstone Liabilities.

(a) If Affiliates of AVB Member or ERP Member, in connection with any AVB Property or EQR Property (as such terms are defined in the Buyers Agreement), respectively, or any other asset acquired by such Affiliates directly from Enterprise or any of its subsidiaries pursuant to the Asset Purchase Agreement, suffer any claim for any liability that is an Assumed Archstone Liability and that is asserted to be due to a third party, such claim is referred to herein as an "**Assumed Liability Claim.**" AVB Member shall provide notice to ERP Member, in its capacity as the Designated Manager for administration and management of the Assumed Archstone Liabilities, promptly upon identifying any such Assumed Liability Claim suffered by Affiliates of AVB Member. Following such notice from AVB Member (with respect to Assumed Liability Claims suffered by Affiliates of AVB Member) and following its own knowledge of any Assumed Liability Claim suffered by Affiliates of ERP Member, ERP Member, in its capacity as the Designated Manager for administration and management of the Assumed Archstone Liabilities, shall manage and administer any such Assumed Liability Claim, including, where applicable, the defense thereof (and such claim shall be included within the meaning of "Assumed Archstone Liability" hereunder).

(b) Except as provided in this Section 4.15, neither the Member whose Affiliate has suffered such claim, nor any of its Affiliates, shall pay any amounts directly on account of such Assumed Liability Claim, unless either (i) the Approval of the Members for the payment of such amounts directly by such Member or its Affiliates has been obtained, or (ii) the approval of ERP Member, in its capacity as the Designated Manager for the Assumed Archstone Liabilities, for the payment of such amounts directly by such Member or its Affiliates has been obtained, or (iii) such amounts are required to be paid pursuant to a final, non-appealable judgment of a court of competent jurisdiction. Amounts so paid by a Member or its Affiliates on account of any Assumed Liability Claim either with the Approval of the Members, or with the approval of ERP Member, in its capacity as the Designated Manager for the Assumed Archstone Liabilities as aforesaid, or pursuant to such a final, non-appealable judgment, are referred to herein as "**Authorized Assumed Liability Payments**." If (i) the Company fails to pursue the administration and management or, if applicable, the defense of any Assumed Liability Claim in accordance with this Agreement, and such failure continues for a period of thirty (30) days after written notice of such failure by the applicable Member to ERP Member, in its capacity as the Designated Manager for the Assumed Archstone Liabilities, then such Member shall be authorized to assume the responsibility for the administration and management of such claim and, where applicable, the defense of such claim, and to incur reasonable costs and expenses in connection therewith, and any amounts thereafter so paid by such Member shall also be deemed to be "**Authorized Assumed Liability Payments**."

(c) Notwithstanding the provisions of Section 4.15(b), except as provided below in this Section 4.15(c), AVB Member may pay any Assumed Liability Claim that is an item of expense incurred in the ordinary course of operating an AVB Property without first notifying the ERP Member thereof pursuant to Section 4.15(b), if the amount of such item of expense does not exceed $10,000, and then seek reimbursement thereof from the Company through the presentation of a claim for the reimbursement thereof to the ERP Member in its capacity as a Designated Manager for the Assumed Archstone Liabilities. If AVB Member or any of its Affiliates (or their respective officers, employees, attorneys or agents) receives any service of process regarding any cause of action or claim of liability of any type described on Schedule E (whether an Assumed Archstone Liability or a liability allocated to Equity Residential, ERP or AVB, and regardless of the amount claimed), other than those that are unambiguously allocated 100% to AVB on Schedule E and for which AVB reserves no rights as against the Company or ERP Member), then AVB Member shall deliver prompt written notice of such service of process, together with a copy of the service of process, to ERP Member. If AVB Member believes that any particular claim or cause of action reflected in such service of process that is an Assumed Archstone Liability would best be resolved through the administration and management of such claim by AVB Member alone, AVB shall provide notice of such position in the written notice by which such service of process is transmitted to ERP Member, and the Members shall thereupon promptly confer to evaluate and Approve of the appropriate course of action that should be pursued.

(d) If a Member or its Affiliate suffers or incurs any Authorized Assumed Liability Payments for which ERP Member, in its capacity as a Designated Manager for the Assumed Archstone Liabilities, has not issued a Funding Notice, then the Member that has (or whose Affiliate has) suffered or incurred such Authorized Assumed Liability Payments shall have the right to deliver a Funding Notice pursuant to Section 3.3(b) requesting the funding by the Members of their respective Proportionate Shares of an Additional Capital Requested Amount equal to the amount of such Authorized Assumed Liability Payments, and the Members shall be obligated to fund their respective Proportionate Shares thereof in accordance with Section 3.3(b).

(e) Nothing contained in this Section 4.15 or this Agreement shall alter the obligations of AVB and the Equity Residential Parties under Section 7.2 of the Buyers Agreement with respect to any liabilities that are allocated to them pursuant to the provisions of Exhibit A to the Archstone Residual JV Term Sheet (which is also Schedule E hereto), whether as a result of liabilities that are to "follow the asset" (as described therein) or otherwise.

(f) AVB Member may reasonably confer from time to time with ERP Member, as Designated Manager for the administration and management of the Assumed Archstone Liabilities, on the status of any litigation in connection with the Assumed Archstone Liabilities and AVB Member may, upon request made by AVB Member upon ERP Member, and subject to the terms of a common interest privilege agreement, consult with outside counsel regarding the status of such litigation and receive copies of any briefs, motions or work product. No such right or conference or consultation in any way affects ERP Member's status as Designated Member for the administration and management of the Archstone Assumed Liabilities.

ARTICLE V

TAXES, ALLOCATIONS AND DISTRIBUTIONS

Section 5.1 Allocations and Tax Provisions.

Notwithstanding any contrary provision of this Agreement, rules governing allocations of income, gains, losses and deductions, certain tax matters and related items are set forth in Schedule T attached hereto and made a part hereof.

Section 5.2 Distributions.

Subject to Section 3.4, distributions of Distributable Cash or other assets of the Company if any, may be made to the Members and in such amounts as may be Approved by the Management Committee from time to time not less frequently than quarterly (and, in the case of proceeds of sale, promptly following the remittance of the proceeds of sale to the Company), to the Members *pro rata* in accordance with their respective Proportionate Shares.

Section 5.3 Withholding.

(a) General. Each Member shall, to the fullest extent permitted by applicable law, indemnify and hold harmless the Company and each Covered Person who is or who is deemed to be the responsible withholding agent for U.S. federal, state or local or non-U.S. income tax purposes against all claims, liabilities and expenses of whatever nature relating to the Company's or such Covered Person's obligation to withhold and to pay over, or otherwise pay, any withholding or other taxes payable by the Company with respect to such Member or as a result of such Member's participation in the Company.

(b) Authority to Withhold; Treatment of Withheld Tax. Notwithstanding any other provision of this Agreement, each Member hereby authorizes the Company to withhold and to pay over, or otherwise pay, any withholding or other taxes payable or required to be deducted by the Company or any of its Affiliates (pursuant to the Code or any provision of U.S. federal, state or local or non-U.S. tax law) with respect to such Member or as a result of such Member's participation in the Company (including as a result of a distribution in kind to such Member). If and to the extent that the Company shall be required to withhold or pay any such withholding or other taxes, such Member shall be deemed for all purposes of this Agreement to have received from the Company as of the time that such withholding or other tax is withheld or paid, whichever is earlier, a distribution of Distributable Cash in the amount thereof, pursuant to the Section 5.2, to the extent that such Member would have received a cash distribution, pursuant to Section 5.2, but for such withholding. To the extent that such withholding or payment exceeds the cash distribution that such Member would have received but for such withholding, ERP Member shall notify such Member as to the amount of such excess and such Member shall make a prompt payment to the Company of such amount by wire transfer, which payment shall not constitute a Capital Contribution and, consequently, shall not increase the Capital Account of such Member.

(c) Withholding Tax Rate. Any withholdings referred to in this Section 5.3 shall be made at the maximum applicable statutory rate under the applicable tax law unless ERP

Member shall have received an opinion of counsel, or other evidence, reasonably satisfactory to the ERP Member to the effect that a lower rate is applicable or that no withholding or payment is required.

(d) Withholding from Distributions to the Company. In the event that the Company or any Subsidiary Entity receives a distribution or payment from or in respect of which tax has been withheld, the Company shall be deemed to have received cash in an amount equal to the amount of such withheld tax, and amounts withheld shall be deemed to be Distributable Cash that has been paid to the Member to whom such withholding is attributable. To the extent that such payment exceeds the cash distribution that such Member would have received but for such withholding, ERP Member shall notify such Member as to the amount of such excess and such Member shall make a prompt payment to the Company of such amount by wire transfer, which payment shall not constitute a Capital Contribution and, consequently, shall not increase the Capital Account of such Member.

ARTICLE VI

ACCOUNTING, RECORDS AND REPORTING

Section 6.1 Accounting and Records.

The books and records of the Company shall be kept, and its financial position and the results of its operations recorded, in accordance with generally accepted accounting principles. The books and records of the Company shall reflect all Company transactions and shall be appropriate and adequate for the Company's business in accordance with the Act. Except as specifically provided herein, all books and records of the Company shall be maintained for the Company by AVB Member.

Section 6.2 Access to Accounting and Other Records.

The following provisions of this Section 6.2 shall supersede and act in lieu of the provisions of Section 18-305 of the Act:

(a) Upon request of any Member, the other Member shall promptly deliver or cause to be delivered to the requesting Member, at the expense of the Company, a copy of the following records, to the extent that such other Member is responsible hereunder for the maintenance of such records: (i) a current list of the full name and last known address of each Member and the Capital Contributions and Proportionate Share held of record by each Member; (ii) a current list of the Management Committee Representatives and Designated Managers; and (iii) the Company's federal, state and local income tax returns and reports, if any, for each of its taxable years.

(b) Each Member also has the right to inspect and copy during normal business hours any of the Company's books and records required to be maintained by the other Member, including (i) the Certificate of Formation of the Company, any amendments to the Certificate of Formation, and executed copies of any powers of attorney granted for the purpose of executing the Certificate of Formation; (ii) this Agreement and any amendments to this Agreement; (iii) financial statements of the Company; and (iv) the written minutes of any meeting of the

Management Committee or the Members and any written consents of the Management Committee or the Members for actions taken without a meeting.

(c) Management Committee Representatives and Designated Managers shall also have the right to inspect any and all books and records of the Company required to be maintained hereunder by the Members for purposes reasonably related to their duties as Management Committee Representatives or Designated Managers.

(d) Each Member shall also have the right to inspect any and all books and records maintained by the other Member in connection with in connection with an Archstone Residual Asset, Assumed Archstone Liability or administrative function or responsibility for which that other Member has been designated as a Designated Manager.

Section 6.3 Required Reports.

The applicable Designated Manager as is or hereafter shall be designated on Schedule Z shall furnish to each Member the following reports prepared for and at the expense of the Company. The Designated Manager indicated in Section 4.2(c) shall also furnish to AVB Member the reports with respect to Outside Partnerships as are set forth in Section 4.2(c), in order to assist AVB Member in the preparation of the Company-level reports required hereunder. The AVB Member shall be the Designated Manager for the preparation and distribution of Company-level reports:

(a) Annual Financial Reports. Within the time period designated on Schedule Z (or, if not designated thereon, as Approved by the Management Committee), the applicable Designated Manager as is or hereafter shall be designated on Schedule Z shall arrange for, and furnish to the Members, annual audited financial statements for such (full or partial) calendar year accurately reflecting the financial condition of the Company and each Subsidiary Entity, all prepared by the Accountants in accordance with generally accepted accounting principles consistently applied. The audit shall be performed by the Accountants.

(b) Quarterly Reports; Other Information. The applicable Designated Manager as is or hereafter shall be designated on Schedule Z shall, within the time period designated on Schedule Z (or, if not designated thereon, as Approved by the Management Committee), cause to be prepared and furnished to the Members unaudited balance sheets and profit and loss statements and unaudited cash flow statements accurately reflecting the operating results of the Company and each Subsidiary Entity, a comparison to the Annual Budget, and containing a narrative executive summary. The applicable Designated Manager as is or hereafter shall be designated on Schedule Z shall provide to the Members, promptly upon receipt, copies of any and all monthly reports delivered to the Company or any Subsidiary Entity pursuant to any Management Agreement. Each Member is entitled to receive all information reasonably requested to permit such Member to complete deferred tax/FAS 109 calculations on a quarterly basis.

(c) Bank Accounts. With respect to the bank account or accounts maintained by a Member as the Designated Manager in the name of the Company, that Member shall:

(i) promptly following the receipt of any bank account statement, send a copy of such bank account statement to the other Member;

(ii) to the extent permitted and reasonably practicable, arrange to have the applicable bank send such bank account statements directly to the other Member; and

promptly following request, provide to the other Member information regarding deposits or withdrawals from any such bank accounts or any other information related to such bank accounts as reasonably requested by the other Member.

(d) The costs and expenses incurred by the Company or a Designated Manager in establishing and maintaining the books and records of the Company, as well as the annual audit of the books and records of the Company and the Subsidiary Entities, and the costs and expenses incurred in preparing and furnishing any and all such reports and information shall be borne by the Company.

Section 6.4 Tax Returns.

ERP Member shall cause to be prepared by the Accountants all tax returns required of the Company and each Subsidiary Entity. Not later than August 1 of each year, ERP Member shall distribute or cause to be distributed to the Members drafts of the proposed tax returns to be filed on behalf of the Company or any Subsidiary Entity. Following the distribution of such draft tax returns, but prior to ten (10) Business Days prior to the due date for the filing thereof (or such alternative date as may be Approved by the Management Committee), any of the Members may provide comments and input to such Designated Manager, and such Member and the Designated Manager shall consult with the Accountants concerning the comments and input so provided, as to the advisability of incorporating such comments and input into the tax returns to be so filed. Following the preparation of revised tax returns reflecting such input and comments (to the extent deemed appropriate by the Accountants), such Designated Manager shall timely file or cause to be timely filed all such tax returns required to be filed by the Company as reasonably determined by the Members. All decisions regarding or affecting the reporting or characterization for tax purposes of any material items of Company income, gain, loss or deduction shall require the Approval of the Members (which approval shall not be unreasonably withheld).

Section 6.5 Tax Matters Partner.

ERP Member is designated the Tax Matters Member of the Company as provided in Section 6231(a)(7) of the Code and corresponding provisions of applicable state law. This designation is effective only for the purpose of activities performed pursuant to the Code, corresponding provisions of applicable state law and under this Agreement. ERP Member shall inform the Members of all tax audits and other tax proceedings, promptly update the Members of all material developments with respect thereto and provide copies of all correspondence with and submissions to the tax authorities. ERP Member shall not make any material decision or take any material action as the Tax Matters Member that could adversely affect a Member or its Parent or Affiliate without the prior consent of such Member. ERP Member, as the Tax Matters

Member, shall permit the Members at the Company's expense to participate in any tax audit or other proceeding which could affect the taxes of the Company or income or loss allocable to or taxes payable by any Member with respect to its interest in the Company. ERP Member shall also perform its obligations with respect to tax matters under Schedule T.

ARTICLE VII

INDEMNIFICATION, INSURANCE AND EXCULPATION

Section 7.1 Indemnification.

(a) To the fullest extent permitted by law, the Company shall indemnify, hold harmless and defend ERP Member, AVB Member, each Parent, each Affiliate of any Member, each Management Committee Representative, each Designated Manager, each Member's, Affiliate's, Parent's agents, officers, partners, members, employees, representatives, directors or shareholders (including, without limitation, any members of the Transition Team) and each Subsidiary Entity's officers, agents and employees (each, a "**Covered Person**") from and against any and all losses, claims, damages, liabilities, whether joint or several, expenses (including legal fees and expenses), judgments, fines and other amounts paid in settlement (collectively, "**Indemnified Losses**"), incurred or suffered by such Covered Person, as a party or otherwise, in connection with any threatened, pending or completed claim, demand, action, suit or proceeding, whether civil, criminal, administrative or investigative, and whether formal or informal, arising out of or in connection with the business or the operation of the Company or any Subsidiary Entity, unless the Indemnified Losses were the result of fraud, gross negligence, willful misconduct or a willful, knowing or intentional breach of this Agreement by such Covered Person, or the result of any act or omission performed or omitted by such Covered Person not in good faith (in which case the Company shall have no indemnification obligation with respect to such Indemnified Losses) or the Indemnified Losses arise pursuant to a Guaranty Obligation (in which case the Company shall have no indemnification obligation with respect to such Indemnified Losses but the provisions of Section 3.6 shall apply).

(b) Except for the Assumed Archstone Liabilities which have been allocated to a Member or its Affiliates in accordance with Schedule E, no Covered Person shall be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of fraud, gross negligence, willful misconduct or a willful, knowing or intentional breach of this Agreement by such Covered Person, or the result of any act or omission performed or omitted by such Covered Person not in good faith.

(c) To the fullest extent permitted by law, unless it is determined that a Covered Person is not entitled to be indemnified therefor pursuant to this Section 7.1, expenses incurred by such Covered Person in defending any claim, demand, action, suit or proceeding subject to this Section shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking by or on behalf of the Covered Person to repay such amount.

(d) The indemnification provided by this Section 7.1 shall be in addition to any other rights to which any Covered Person may be entitled under this Agreement, any other agreement, as a matter of law or otherwise, and shall inure to the benefit of the heirs, legal representatives, successors, assigns and administrators of the Covered Person.

Section 7.2 Procedures; Survival.

(a) If a Covered Person wishes to make a claim under Section 7.1, the Covered Person should notify the Company in writing within ten (10) days after receiving written notice of the commencement of any action that may result in a right to be indemnified under Section 7.1; provided however that the failure to notify the Company shall not relieve the Company of any liability for indemnification pursuant to Section 7.1 (except to the extent that the failure to give notice will have been materially prejudicial to the Company).

(b) A Covered Person shall have the right to employ separate legal counsel in any action pursuant to Section 7.1 and to participate in the defense of the action. The fees and expenses of such legal counsel shall be at the expense of the Covered Person unless (i) the Members or Management Committee have Approved the Company's payment of such fees and expenses, (ii) the Company has failed to assume the defense of the action without reservation and employ counsel within a reasonable period of time after being given the notice required above, or (iii) the named parties to any such action (including any impleaded parties) include both the Covered Person and the Company and the Covered Person has been advised by its legal counsel that representation of the Covered Person and the Company by the same counsel would be inappropriate under applicable standards of professional conduct because of actual or potential differing interests between them. It is understood, however, that the Company shall, in connection with any one such action or separate but substantially similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances, be liable for the reasonable fees and expenses of only one separate firm of attorneys at any time for all such Covered Persons having actual or potential differing interests with the Company.

(c) The Company shall not be liable for any settlement of any action against any Covered Person for which the Company is required to indemnify such Covered Person hereunder which is agreed to without the Approval of the Members or Management Committee.

(d) The indemnification obligations set forth in this Article VII hereof shall survive the termination of this Agreement.

Section 7.3 Insurance.

The Company shall maintain, for the benefit of the Company, its Subsidiary Entities, the Members, the Management Committee Representatives and the Designated Managers, and at the expense of the Company, policies of insurance in compliance with Schedule V.

Section 7.4 Rights to Rely on Legal Counsel, Accountants.

No Covered Person shall be liable, responsible or accountable in damages or otherwise to the Company or any Member for any performance or omission to perform any acts in reliance on the advice of accountants or legal counsel for the Company.

ARTICLE VIII

TRANSFER OF MEMBERSHIP INTERESTS; ADMISSION OF ADDITIONAL MEMBERS

Section 8.1 Transfer or Assignment of Membership or Manager Interests.

No Member shall be entitled to assign, convey, sell, encumber or in any manner alienate or otherwise Transfer all or part of such Member's Membership Interest *except* in strict compliance with each and all of the other Sections of this Article VIII. No Designated Manager shall be entitled to assign, convey, sell, encumber or in any manner alienate or otherwise Transfer all of part of such Designated Manager's rights, interests, duties or obligations under this Agreement, in its capacity as a Designated Manager, without the Approval of the Members, except, in the case of a Designated Manager which is also a Member, to a successor to which the entire Membership Interest of such Designated Manager has been Transferred in full compliance with this Agreement.

Section 8.2 Conditions to Transfer by Member.

Except as provided in Section 8.3 or Section 8.4, no Member may Transfer all or part of such Member's Membership Interest, nor shall the direct or indirect interests in any Member be transferred to any Person if, as a result thereof, that Member would no longer be directly or indirectly wholly-owned by ERP or Equity Residential (in the case of a Transfer of the interests in ERP Member) or AVB (in the case of a Transfer of the interests in AVB Member), unless such Transfer has been approved in writing by the other Member in its sole and absolute discretion.

Section 8.3 Permitted Transfers.

A Member shall be permitted to Transfer all or any part of its Membership Interest without further consent hereunder to an Affiliate of that Member which is directly or indirectly wholly-owned by ERP or Equity Residential (in the case of a Transfer by ERP Member) or by AVB (in the case of a Transfer by AVB Member), so long as, in connection with such Transfer that Member's Parent provides to the other Member a ratification and reaffirmation of its Parent Guaranty and such Transfer would not be a violation of or an event of default under, or give rise to a right to accelerate any indebtedness described in, any note, mortgage, loan agreement or similar instrument or document to which the Company or any Subsidiary Entity or Outside Partnership is a party unless such violation or event of default shall be waived by the parties thereto.

Section 8.4 Transfer of Interests in Equity Residential, ERP or AVB.

Notwithstanding anything to the contrary contained in this Agreement, (a) neither Transfers of interests in ERP, nor the issuance or redemption of interests in ERP, nor Transfers of common or preferred shares or other equity interests in Equity Residential, nor issuance or redemption of common or preferred shares or other equity interests in Equity Residential (other than those occurring in connection with an Extraordinary Transaction), shall constitute a "Transfer" of the interest of ERP Member under this Agreement, or constitute a default, breach

or withdrawal by ERP Member or any other violation of this Agreement by ERP Member; (b) neither Transfers of shares of stock in AVB, nor issuance or redemption of shares of stock in AVB (other than those occurring in connection with an Extraordinary Transaction), shall constitute a "Transfer" of the interest of AVB Member under this Agreement, or constitute a default, breach or withdrawal by AVB Member or any other violation of this Agreement by AVB Member; and (c) notwithstanding clauses (a) and (b) above, neither any merger or other consolidation of Equity Residential, ERP or AVB with any other Person, nor any transfer of all or substantially all of the common equity of Equity Residential, ERP or AVB (including by way of tender offer), nor any sale of all or substantially all of the assets of Equity Residential, ERP or AVB, nor any transfer, issuance or redemption of common or preferred shares or other equity interests in ERP or Equity Residential or AVB, as applicable, in connection with such a merger or consolidation of Equity Residential, ERP or AVB, as applicable (each, an "**Extraordinary Transaction**"), shall constitute a "Transfer" of the interest of ERP Member or AVB Member, as applicable, under this Agreement, or constitute a default, breach or withdrawal by ERP Member or AVB Member, as applicable, or any other violation of this Agreement by ERP Member or AVB Member, as applicable, so long as, in the case of any such Extraordinary Transaction, the surviving Entity or buyer (the "**Successor Parent**"), as applicable, in any such transaction provides notice of such transaction to the other Member within five (5) Business Days thereafter and certifies that as of the date of consummation of, and after giving effect to, such transaction, it is either (i) a publicly traded company which continues to qualify as a REIT and has total equity as determined in accordance with U.S. generally accepted accounting principles of not less than $1.5 billion, or (ii) it has total equity as determined in

accordance with U.S. generally accepted accounting principles of not less than $2 billion. If the Successor Parent delivers a notice and certificate in accordance with clause (ii) of the immediately preceding sentence, then, within ninety (90) days following the end of each fiscal year of the Successor Parent thereafter, the Successor Parent shall deliver a certificate to the other Member that certifies that, at the end of such fiscal year, it had total equity as determined in accordance with U.S. generally accepted accounting principles of not less than $2 billion. For the avoidance of doubt, a Change in Board Control of Equity Residential or AVB shall not constitute a "Transfer" of the interest of ERP Member or AVB Member, as applicable, under this Agreement, or constitute a default, breach or withdrawal by ERP Member or AVB Member, as applicable, or any other violation of this Agreement by ERP Member or AVB Member, as applicable.

Section 8.5 Unauthorized Transfers Void.

Any Transfer or purported Transfer in violation of the provisions of this Article VIII shall be null and void *ab initio* and shall constitute a material breach of this Agreement. In the event of any Transfer or purported Transfer of all or any part of a Member's Membership Interest in violation of this Agreement, without limiting any other rights or remedies of the Company or the other Members, the assignee or purported assignee shall have no right to participate in the management of the business and affairs of the Company or to become a Member, or to receive any distributions of any kind or to receive any part of the share of profits or other compensation by way of income and the return of contributions, or any allocation of income, gain, loss, deduction, credit or other items to the owner of such Membership Interest in the Company would otherwise be entitled.

Section 8.6 Admission of Substitute Member; Liabilities.

(a) An assignee of all or any part of Membership Interest shall be admitted as a Substitute Member only if (i) the Transfer of such Membership Interest complies in all respects with this Article VIII and (ii) the prospective Substitute Member delivers a signed instrument pursuant to which the assignee agrees to all of the terms and conditions of, and to be bound by, this Agreement, and to assume all of the obligations of the transferring Member and to be subject to all the restrictions and obligations to which the transferring Member is subject under the terms of this Agreement. The admission of a Substitute Member shall not release the transferring Member from any liability to the Company or to the other Members in respect of its Membership Interest that may have existed prior to such admission.

(b) ERP Member shall reflect the admission of such Substitute Member in the records of the Company as soon as possible after satisfaction of the conditions set forth in this Agreement. Schedule G of this Agreement shall be deemed to be amended to reflect the admission of the Substitute Member upon such admission; and each of Members then of record hereby consents to such amendment to the extent required by law or this Agreement.

Section 8.7 Admission of Additional Members.

Unless the Approval of the Members has been obtained, and then, only in accordance with the terms and conditions Approved by the Members, the Company shall not admit any additional Members.

ARTICLE IX

SPECIAL RIGHTS AND OBLIGATIONS OF MEMBERS AND THE COMPANY

Section 9.1 Land Options.

(a) Prior to the Land Option Expiration Date, upon five (5) Business Days' notice to the other Member, the Member that has been allocated a Land Option on Schedule N attached hereto shall have the right to elect, by written notice to the other Member, to acquire the applicable Land Option, by paying a price equal to the Land Option Take-Out Price for such Land Option. In the event of such election, the Company (or applicable Subsidiary Entity) shall assign to the electing Member or its designee in a form Approved by the Members its interest in such Land Option in exchange for the payment to the Company by such Member or its designee of such price, in immediately available funds, which assignment shall be without any representation or warranty whatsoever.

(b) If the Member that has been allocated a Land Option on Schedule N does not exercise its rights under Section 9.1(a) to acquire the applicable Land Option on or before the Land Option Expiration Date, the other Member shall have the right, for a period of sixty (60) days after the Land Option Expiration Date by written notice to the other Member, to require the Company to transfer or distribute such Land Option to it or its designee in exchange for the payment to the Company in immediately available funds of an amount equal to the Land Value Take-Out Price therefor. In the event of such election, the Company (or applicable Subsidiary Entity) shall assign to the electing Member or its designee in a form Approved by the Members

its interest in such Land Option in exchange for the payment by such Member or its designee of such price, in immediately available funds, which assignment shall be without any representation or warranty whatsoever.

(c) If the Member entitled to exercise the rights under Section 9.1(b) with respect to any Land Option shall not have exercised such rights within the sixty (60) day period stated in Section 9.1(b), then either Member shall have the right, at any time thereafter, by written notice to the other Member, to elect for an Auction Process to commence between the Members with respect to such Land Option. Within ten (10) Business Days after the delivery of such notice, the Members shall commence and thereafter continue the Auction Process for such Land Option, until such Auction Process has been completed. Upon the completion of such Auction Process, the Company (or applicable Subsidiary Entity) shall assign to the electing Member or its designee in a form Approved by the Members its interest in such Land Option in exchange for the payment by such Member or its designee of the final price for such Land Option bid by it in the Auction Process, in immediately available funds, which assignment shall be without any representation or warranty whatsoever.

(d) At the election of the Member acquiring a Land Option pursuant to this Section 9.1, and immediately prior to the consummation of such acquisition, the Company shall make a distribution in-kind to the Members of undivided interests, in proportion to their respective Proportionate Shares, in and to the Company's interests in such Land Option, and the Member or its designee acquiring such Land Option shall concurrently purchase the undivided interest of the other Member in the Company's interests in the applicable Land Option for a price equal to the other Member's Proportionate Share of the applicable Land Option Take-Out Price, provided that proceeding with such acquisition in the fashion described in this Section 9.1(d) would not reasonably be anticipated to have any adverse financial, tax or other consequence to the non-electing Member or the Company.

(e) If neither Member exercises the rights pursuant to Section 9.1 prior to the date on which such Land Option is scheduled to lapse, then, unless otherwise Approved by the Members or Approved by the Management Committee, such Land Option shall be allowed to lapse.

(f) Time is of the essence of the provisions of this Section 9.1.

Section 9.2 Archstone Real Estate Assets and Certain Archstone Non-Real Estate Assets.

(a) Prior to the Asset Option Expiration Date, upon five (5) Business Days' written notice to the other Member (a "**Real Estate Asset Election Notice**"), the Member that has been allocated a specific Archstone Residual Real Estate Asset on Schedule C attached hereto shall have the right to elect to acquire such Archstone Residual Real Estate Asset by paying a price equal to the applicable Archstone Residual Real Estate Asset Adjusted Value therefor. Each such Archstone Residual Real Estate Asset Adjusted Value has been determined net of the

applicable indebtedness that relates to the applicable Archstone Residual Real Estate Asset, and accordingly the Member that acquires any Archstone Residual Real Estate Asset pursuant to this Section 9.2(a) shall acquire such asset subject to such indebtedness.

(b) Notwithstanding the foregoing, if a Member delivers a Real Estate Asset Election Notice, then the other Member shall have a right to initiate an Auction Process with respect to such Archstone Residual Real Estate Asset, by delivering written notice of such election within five (5) Business Days after its receipt of the applicable Real Estate Asset Election Notice, and the Member that delivers the highest bid in connection with such Auction Process shall have the right to acquire or cause its designee to acquire the applicable Archstone Residual Real Estate Asset subject thereto, by paying to the Company a price equal to the amount so bid in immediately available funds. Notwithstanding the foregoing provisions in this Section 9.2 (b), if AVB Member delivers a Real Estate Asset Election Notice with respect to the National Gateway Asset or Harlem Parcel C, such Member shall have the right to acquire such Archstone Residual Real Estate Asset in accordance with Section 9.2(a) based on the applicable Archstone Residual Real Estate Asset Adjusted Value therefor, and the other Member shall have no right to initiate an Auction Process with respect thereto pursuant to this Section 9.2(b).

(c) As of the date of this Agreement, the Members have not agreed upon an Archstone Residual Real Estate Asset Adjusted Value for the Germany Portfolio or the Lake Mendota Portfolio, and the rights provided for in Section 9.2(a) shall be exercisable with respect to any such Archstone Residual Real Estate Asset only if and when the Members agree upon a valuation for such Archstone Residual Real Estate Asset (which valuation, if and when agreed to, shall be deemed to be the "Archstone Residual Real Estate Asset Adjusted Value" therefor), and the Asset Option Expiration Date shall be calculated from the date such valuation is agreed upon by the Members.

(d) If either Member has an interest at any time after the date hereof in acquiring any Archstone Residual Real Estate Asset that is not identified on Schedule C or, after the Asset Option Expiration Date, with respect to any Archstone Residual Real Estate Asset that is identified on Schedule C but as to which neither Member has exercised its rights in Section 9.2(a) or (b), then such Member may elect, by written notice to the other Member, and only if at such time the Company is not party to a binding letter of intent or purchase agreement with a Third Party Entity providing for the sale of any such Archstone Residual Real Estate Asset, for an Auction Process to commence between the Members with respect to such Archstone Residual Real Estate Asset. Within ten (10) Business Days after the delivery of such notice, the Members shall commence and thereafter continue the Auction Process for such Archstone Residual Real Estate Asset until such Auction Process has been completed. Upon the completion of such Auction Process, the Company (or applicable Subsidiary Entity) shall transfer and assign to the Member that delivered the highest bid or its designee its interest in such Archstone Residual Real Estate Asset in compliance with Section 9.2(e).

(e) The date on which the Company or applicable Subsidiary Entity shall transfer its interest in such Archstone Residual Real Estate Asset to the electing Member pursuant to any of the provisions of this Section 9.2 shall be a Business Day selected by the electing Member in a notice given to the other Member and AVB Member. The notice shall be delivered not later than five (5) Business Days following the date on which it has been determined pursuant to the provisions of this Section 9.2 that the Company shall transfer its interest in such Archstone Residual Real Estate Asset to such Member, and the date set for the closing in such notice shall not be earlier than the fifth (5th) Business Day following the date of such notice or later than twentieth (20th) Business Day following the date of such notice. Such date is referred to herein

as the "**Asset Transfer Date**." The closing for the transfer of such interest shall take place pursuant to customary escrow arrangements at the office of AVB Member or such other location as may be Approved by the Members. Without being relieved of its obligations under this Section 9.2, a Member may nominate a third party designee to acquire any Archstone Real Estate Asset or interest therein that this Member has rights to acquire pursuant to this Section 9.2. At the closing, the following shall be delivered to the applicable party:

(i) the Company or applicable Subsidiary Entity and the electing Member or its nominated designee shall deliver each to the other a duly executed instrument of assignment, whereby the Company or applicable Subsidiary Entity assigns the interest to the electing Member or its nominated designee without any representations or warranties; in addition, in connection with such transaction, the Members shall agree upon a reasonable arrangement for the allocation of the Assumed Archstone Liabilities and other liabilities that relate to the applicable Archstone Residual Real Estate Asset that the electing Member would assume or succeed to, and the liabilities and recoveries that the Company would retain, and upon such agreement, the Company or applicable Subsidiary Entity and the electing Member shall enter into an assumption agreement in a form and substance that is reasonably acceptable to the Members reflecting the terms of such arrangement;

(ii) the electing Member or its nominated designee shall deliver the applicable price for the Archstone Residual Real Estate Asset that is being acquired to the Company by delivery at the closing of a wire transfer of good funds to an account of the Company designated by AVB Member;

(iii) the Members shall pay any applicable transfer, excise or similar taxes due in connection with the transfer of the interest in accordance with their Proportionate Shares;

(iv) if the Company, any Subsidiary Entity, the other Member, its Affiliates or Parent shall be obligors under any obligations with respect to recourse Indebtedness or Guaranty Obligations that relate to Archstone Residual Real Estate Asset that is being acquired, the electing Member shall have obtained from the obligee thereof, for the benefit of each of such Persons, and shall deliver to each of such Persons on the Asset Transfer Date, releases from such obligations as to matters on and after the date of such transfer (subject to Section 9.2(g) as applicable) and any consents required for such transfer;

(v) upon the Asset Transfer Date, the Company and electing Member or its nominated designee shall execute and deliver all necessary tax forms, affidavits and certificates with respect to the transferor's status as a foreign person and otherwise, and shall provide all necessary information in support thereof; and

(vi) the Company and each Member shall cooperate and take all actions and execute all documents reasonably necessary or appropriate to consummate the transfer of such interest.

If, on or prior to the scheduled Asset Transfer Date, the foregoing matters are not delivered, then the Company shall have no obligation to transfer the applicable Archstone Residual Real Estate Asset to the electing Member or its nominated designee, and the other

Member shall have the right to elect to purchase such Archstone Residual Real Estate Asset for the same price, and on the same terms, by delivering written notice of such election to the other Member during the ten (10) Business Day period commencing on the day after the scheduled Asset Transfer Date, and otherwise on the term set forth in this Section 9.2(e).

(f) In the event that an Auction Process is initiated for any reason pursuant to this Agreement, each Member shall share all relevant data, facts and information concerning the applicable Archstone Residual Real Estate Asset with the other Member, excluding Confidential Materials, with the objective that both Members shall have access to the same information concerning the Archstone Residual Real Estate Asset that is the subject of the Auction Process.

(g) In all cases, the Member that acquires any Archstone Residual Real Estate Asset shall assume the Company's obligations (if any) with respect to the related property mortgage debt (and obtain, as a condition to the consummation of such acquisition, the release of the Company, any Subsidiary Entity and the other Member (and its Affiliates or Parent, if they are obligors under any obligations with respect to recourse Indebtedness or Guaranty Obligations that relate to such asset) from any guaranty or other recourse obligations that it may have undertaken with respect to that asset as to matters on and after the date of such acquisition). With respect to any such guaranty or other recourse obligations for which the Company, Subsidiary Entity or other Member (and its Affiliates or Parent, if they are obligors under any obligations with respect to recourse Indebtedness or Guaranty Obligations that relate to such

asset) has not been so released, the Members shall agree upon a reasonable arrangement for the allocation of such obligations as between the electing Member, on the one hand, and the Company, Subsidiary Entity or other Member (and its Affiliates or Parent, if they are obligors under any obligations with respect to recourse Indebtedness or Guaranty Obligations that relate to such asset), and upon such agreement, the parties to which such obligations have been allocated shall enter into an assumption and indemnification agreement in a form and substance that is reasonably acceptable to the Members reflecting the terms of such arrangement.

(h) In the case of the Germany Portfolio or the Lake Mendota Portfolio, if either Member desires to purchase any such assets from the Company, it may do so only if the Members have agreed upon a valuation of such asset for purposes of the disposition thereof to a Member, and any time periods shall be calculated from the date the Members have agreed upon such valuation.

(i) The Members acknowledge that any surviving rights acquired by the Company pursuant to the Purchase Agreement in the license rights with respect to the customer experience service known as "Tea Leaf" shall be deemed a Miscellaneous Archstone Asset hereunder.

(j) [Reserved]

(k) At the election of the Member acquiring an Archstone Residual Real Estate Asset pursuant to this Section 9.2, and immediately prior to the consummation of such acquisition, the Company shall make a distribution in-kind to the Members of undivided interests, in proportion to their respective Proportionate Shares, in and to the Company's interests in such Archstone Residual Real Estate Asset, and the Member or its designee acquiring such asset shall concurrently purchase the undivided interest of the other Member in the Company's interests in

the applicable Archstone Residual Real Estate Asset for a price equal to the other Member's Proportionate Share of the applicable price for such Archstone Residual Real Estate Asset, provided that proceeding with such acquisition in the fashion described in this Section 9.2(i) would not reasonably be anticipated to have any adverse financial, tax or other consequence to the non-electing Member or the Company.

(l) If either Member has the right to elect to acquire or nominate a third party designee to acquire, pursuant to the provisions of this Section 9.2, the interests of the Company in any of the assets in the Germany Portfolio in which the Company and Parallel JV 1 hold interests, then the electing Member may (but shall not be required to) also acquire or nominate a third party designee to acquire, the interests of Parallel JV 1 relating to such asset, in accordance with the terms and procedures set forth in Section 9.2 of the Parallel JV Agreement for Parallel JV 1.

(m) Time is of the essence of the provisions of this Section 9.2.

Section 9.3 Other Business Activities of the Members.

Neither the Members nor any Affiliates of the Members shall be obligated to present any investment opportunity to the Company or any other Member, even if the opportunity is of a character consistent with the Company's other activities and interests. The Members and the Members' Affiliates may engage in or possess any interest, directly or indirectly, in any other business venture of any nature or description independently or with others, including but not limited to, the ownership, financing, leasing, operation, management, syndication, brokerage, or development of real property competitive with the Archstone Residual Assets. Membership in the Company and the assumption by either Member of any duties hereunder shall be without prejudice to such Member's rights (or the rights of its affiliates) to have or pursue such other interests and activities and to receive and enjoy profits or compensation therefrom, and neither the Company nor the other Member(s) shall have any right by virtue of this Agreement in and to such ventures or the income or profits derived therefrom. The Members acknowledge that they have no objection to the registration by Affiliates of ERP Member of a trademark for the name "Ameriton."

Section 9.4 Indemnification Claims Under Purchase Agreement.

Each Member acknowledges and agrees that any claim for indemnification which the Company may have against the Seller pursuant to the Purchase Agreement shall be asserted in compliance with Section 5.6 of the Buyer's Agreement. If any Member determines that a basis exists for the Company to assert a claim against the Seller, it shall deliver written notice thereof to the other Member specifying in reasonable detail the factual basis of such claim, stating the amount of losses (or if not known, a good faith estimate of the amount of losses) and the method of computation thereof, containing a reference to any and all provisions of the Purchase Agreement with respect to which indemnification could be sought and stating its good faith determination (and specifying in reasonable detail the factual basis for such determination) that such claim is an "Archstone Residual Claim" as such term is defined in the Buyers Agreement. Promptly following the delivery of such notice, the Members shall meet and confer to determine

whether to Approve the making of such claim pursuant to the Purchase Agreement, subject to compliance with the terms of Section 5.6 of the Buyers Agreement.

Section 9.5 Assumed Archstone Liabilities and Archstone Claims.

The ERP Member as the applicable Designated Manager shall have the principal administrative authority to administer, manage and resolve the Assumed Archstone Liabilities and pursue Archstone Claims, subject to the provisions set forth in Schedule E attached hereto and the other terms and provisions of this Agreement. Any third-party out-of-pocket costs and expenses incurred in connection with the administration, management and resolution of the Assumed Archstone Liabilities and pursuit of the Archstone Claims shall be "Expenditures" for purposes of this Agreement, and the amounts, if any, recovered by the Company or any Subsidiary on account of the Assumed Archstone Liabilities and Archstone Claims shall be "Gross Receipts" for purposes of this Agreement.

Section 9.6 Employees; Transition Plan.

(a) The Members acknowledge and agree that the Company and the Archstone Subsidiaries shall be bound by the Transition Plan (as defined in the Buyers Agreement) approved by Equity Residential, ERP and AVB pursuant to Section 6.2(b) of the Buyers Agreement. No amendment, modification, waiver or departure from the requirements of the Transition Plan or Section 6.2(b) of the Buyers Agreement shall be entered into or adopted without the Approval of the Members.

(b) If, pursuant to the Transition Plan, one or more employees are to be retained by any Subsidiary Entity following the date of this Agreement, then the Company shall cause such Subsidiary Entity to comply with all applicable laws with respect to such employees, and all policies with respect to wages, salaries, benefits, severance and all other applicable employment-related matters shall be as Approved by the Members. Any decision to terminate any employee of any Subsidiary Entity following the Transition Period (as defined in the Buyers Agreement) shall require the Approval of the Members.

(c) With respect to any employee who is to be terminated by any Subsidiary Entity subsequent to the date hereof, the Company shall cause such Subsidiary Entity to comply with the requirements of 29 USC §2101 et seq., the Worker Adjustment and Retraining Notification Act, or any state law analogue. Each Member shall be required to contribute its Proportionate Share of any Severance (as defined in the Buyers Agreement) that is due and payable to such employee to the extent that the retained cash of the Company or applicable Subsidiary Entity is insufficient therefor.

Section 9.7 Office Leases.

With respect to any Office Leases that are acquired by the Company or to which the Company succeeds as a result of the acquisition of the Archstone Residual Assets or Archstone Subsidiaries, the Members agree to use their commercially reasonable efforts to cooperate to mitigate the costs associated with such Office Lease. If any Parent shall have elected pursuant to Section 6.3(a) of the Buyers Agreement to assume any Office Lease or to obtain the sublease of premises under an Office Lease prior to the date of this Agreement, but the applicable consents

or other conditions necessary to effectuate such election shall not have been obtained or satisfied prior to the date of this Agreement, then the Members shall be bound by, and shall cause the Company to comply with, the obligations of their respective Parents under the Buyers Agreement, so as to enable such assumption or sublease to be effectuated once the applicable consents or other conditions necessary to effectuate such election have been obtained or satisfied. Notwithstanding anything to the contrary contained in the Buyers Agreement, the Members agree to cooperate in good faith following the date of this Agreement on substantially the same terms as are provided in Section 6.3(a) of the Buyers Agreement should any of the Parents seek to assume any particular Office Lease or sublease any premises leased thereunder on terms consistent with the terms provided in Section 6.3(a) of the Buyers Agreement, notwithstanding that the "Initial Closing" referred to therein has occurred, but only if the Company has not, with respect to any particular Office Lease or premises leased thereunder, entered into an assignment of such Office Lease or sublease of such premises with a Third Party Entity with the Approval of the Members or the Approval of the Management Committee.

Section 9.8 Opportunity in Connection with the Acquisition of Outside Partners' Interests.

(a) Outside Partner Purchase Offer. If a Member or its Affiliate receives a written offer from an Outside Partner or any affiliate thereof to purchase, whether directly or indirectly, the interest of the Outside Partner in an Outside Partnership (such offer is referred to herein as an "**Outside Partner Purchase Offer**" and the direct or indirect interest of the Outside Partner in the Outside Partnership that is offered to the Electing Member pursuant to an Outside Partner Purchase Offer is referred to herein as an "**Outside Partner Offered Interest**") which that Member or its Affiliate desires to accept, that Member (the "**Electing Member**") shall, within three (3) Business Days of its receipt of the Outside Partner Purchase Offer, deliver a true and correct copy of such Outside Partner Purchase Offer to the other Member (the "**Recipient Member**"), together with a notice (the "**Outside Partner Purchase Notice**") that (i) indicates that the Electing Member desires to accept the offer set forth therein, (ii) provides a calculation of the net valuation of the Company's interest in the applicable Outside Partnership that would be implied by such price (net of any indebtedness that will continue following the proposed transfer and as affected by the terms of the applicable Outside Partnership Agreement), in form and substance reasonably satisfactory to the Recipient Member (the value of the Company's interest in such Outside Partnership, as so derived, is referred to herein as the "**Implicit Value of the Company's Outside Partnership Interest**") and (iii) states that the Recipient Member shall have the rights with respect to such Outside Partner Purchase Offer that are provided for in this Section 9.8. The Electing Member shall not enter into a binding written agreement regarding purchase of the Outside Partner's interest unless and until the Electing Member complies with the provisions set forth in this Section 9.8.

(b) Elections of Recipient Member with respect to Outside Partner Purchase Offer. The Recipient Member (or any Affiliate thereof as designated by it) shall have the right to acquire a portion of the Outside Partner Offered Interest that is equivalent to its Proportionate Share thereof (such portion being referred to herein as its respective "**Recipient Member Proportionate Interest**"), for a price equal to its Proportionate Share of the price payable for the Outside Partner Offered Interest set forth in the Outside Partner Purchase Offer and otherwise, with respect to its Proportionate Share thereof, in accordance with the terms of the Outside Partner Purchase Offer, pursuant to a closing which shall be consummated concurrently with the

closing of the acquisition by the Electing Member of the portion of the Outside Partner Offered Interest that is equivalent to its Proportionate Share thereof (such portion being referred to herein as its respective "**Electing Member Proportionate Interest**"). If the Recipient Member desires to acquire the Recipient Member Proportionate Interest, the Recipient Member shall deliver written notice of such election to the Electing Member within five (5) Business Days after its receipt of the Outside Partner Purchase Notice (or, if later, by the date which is three (3) Business Days prior to the date that the Outside Partner Purchase Offer expires by its own terms) (the later of such dates is referred to herein as the "**Outside Partner Purchase Offer Election Date**"). If the Recipient Member fails to notify the Electing Member of its decision with respect to such Outside Partner Purchase Offer by the Outside Partner Purchase Offer Election Date, the Recipient Member shall be deemed to have elected not to acquire the Recipient Member Proportionate Interest, and the Electing Member shall have the right to acquire the entire Outside Partner Offered Interest on the terms set forth in the Outside Partner Purchase Offer, subject to the provisions of Section 9.8(d) and (e) below.

(c) Consequences if Recipient Member elects to participate in the Acquisition of the Outside Partner Offered Interest. If the Recipient Member elects to acquire the Recipient Member Proportionate Interest, then the Electing Member and the Recipient Member shall proceed to consummate the acquisition of their respective Recipient Member Proportionate Interest and Electing Member Proportionate Interest upon the closing as provided for in the Outside Partner Purchase Offer. In conjunction with such closing, and provided that the Recipient Member and Electing Member reach an agreement to do so, the Recipient Member and Electing Member may require the Company to distribute to them undivided interests, in proportion to their respective Proportionate Shares, in and to the interests of the Company in the Outside Partnership, and the Recipient Member and Electing Member may elect to form a new partnership or limited liability company to hold the interests in the Outside Partnership that they are acquiring from the Outside Partner and the Company on terms and conditions that are acceptable to each of the Recipient Member and Electing Member.

(d) Put Rights of Recipient Member if Recipient Member elects not to participate in the Acquisition of the Outside Partner Offered Interest. If the Recipient Member elects or is deemed to have elected not to acquire its Recipient Member Proportionate Interest pursuant to Section 9.8(b), then on or before the tenth (10^{th}) Business Day following the Outside Partner Purchase Offer Election Date (such tenth (10^{th}) Business Day is referred to herein as the "**Recipient Member Put Right Election Date**"), the Recipient Member may elect, by written notice to the Electing Member, to require the Electing Member to purchase the indirect interest of the Recipient Member in the Company's interest in the applicable Outside Partnership for a price equal to the Recipient Member's Proportionate Share of the applicable Implicit Value of the Company's Outside Partnership Interest, at a closing which shall, to the extent feasible, occur concurrently with (but in no event later than ten (10) Business Days following) the acquisition by the Electing Member of the Outside Partner Offered Interest. Such transaction is referred to herein as the "**Recipient Member Put Transaction**." If the Recipient Member makes such election, then the Recipient Member shall be obligated to sell, and the Electing Member shall be obligated to purchase, the applicable Recipient Member Proportionate Interest in accordance with the terms of this Section 9.8(d) and Section 9.8(f). In connection with the closing of the Recipient Member Put Transaction, and immediately prior to the consummation thereof, the Company shall make a distribution in-kind to the Members of undivided interests, in proportion

to their respective Proportionate Shares, in and to the Company's interests in the applicable Outside Partnership, and the Electing Member or its designee shall concurrently purchase the undivided interest of the Recipient Member in the Company's interests in the applicable Outside Partnership for a price equal to the Recipient Member's Proportionate Share of the applicable Implicit Value of the Company's Outside Partnership Interest. Without being relieved of its obligations under this Section 9.8(d), the Electing Member may nominate a third party designee to acquire the interest of the Recipient Member in the Company's interest in an Outside Partnership in connection with any Recipient Member Put Transaction.

(e) Call Rights of Electing Member if the Recipient Member does not exercise its Put Right. If the Recipient Member elects or is deemed to have elected not to acquire its Recipient Member Proportionate Interest pursuant to Section 9.8(b), but does not elect to proceed with the Recipient Member Put Transaction pursuant to Section 9.8(d), then on or before the tenth (10^{th}) Business Day following the Recipient Member Put Right Election Date (such tenth (10^{th}) Business Day is referred to herein as the "**Electing Member Call Right Election Date**"), the Electing Member may elect to require the Recipient Member to sell the indirect interest of the Recipient Member in the Company's interest in the applicable Outside Partnership to the Electing Member or its designee for a price equal to the Recipient Member's Proportionate Share of the applicable Implicit Value of the Company's Outside Partnership Interest, at a closing which shall, to the extent feasible, occur concurrently with (but in no event later than ten (10) Business Days following) the acquisition by the Electing Member of the Outside Partner Offered Interest (or, if later, ten (10) Business Days following the Electing Member Call Right Election Date). Such transaction is referred to herein as the "**Electing Member Call Transaction**." If the Electing Member makes such election, then the Recipient Member shall be obligated to sell, and the Electing Member shall be obligated to purchase, the applicable Recipient Member Proportionate Interest in accordance with the terms of this Section 9.8(d) and Section 9.8(f). In connection with the closing of the Electing Member Call Transaction, and

immediately prior to the consummation thereof, the Company shall make a distribution in-kind to the Members of undivided interests, in proportion to their respective Proportionate Shares, in and to the Company's interests in the applicable Outside Partnership, and the Electing Member or its designee shall concurrently purchase the undivided interest of the Recipient Member in the Company's interests in the applicable Outside Partnership for a price equal to the Recipient Member's Proportionate Share of the applicable Implicit Value of the Company's Outside Partnership Interest. Without being relieved of its obligations under this Section 9.8(e), the Electing Member may nominate a third party designee to acquire the interest of the Recipient Member in the Company's interest in an Outside Partnership in connection with any Electing Member Call Transaction.

(f) Closing Procedures. In connection with any Recipient Member Put Transaction or Electing Member Call Transaction, the closing for the Company's in-kind distribution to the Members of undivided interests in and to the Company's interests in the applicable Outside Partnership and for the transfer of the Recipient Member's interest in and to the Company's interests in the applicable Outside Partnership, pursuant to Section 9.8(d) or (e) shall take place pursuant to customary escrow arrangements at the office of the applicable Designated Manager or such other location as may be Approved by the Members. At the closing, the following shall be delivered to the applicable party:

(i) the Company (or applicable Subsidiary Entity) and the Members shall deliver each to the other a duly executed instrument of assignment and assumption, whereby the Company or applicable Subsidiary Entity assigns to the Members in accordance with their Proportionate Shares undivided interests in and to the Company's interests in the applicable Outside Partnership, without any representations or warranties;

(ii) the Recipient Member assigns the interest so acquired by it to the Electing Member or its nominated designee, without any representations or warranties;

(iii) in connection with such transaction, the Members shall agree upon a reasonable arrangement for the allocation of the Assumed Archstone Liabilities and other liabilities that relate to the applicable Outside Partnership that the Electing Member would assume or succeed to, and the liabilities and recoveries that the Company would retain (and shall, in connection with the consideration of such arrangement, consider the manner in which such liabilities are handled in connection with the Electing Member's acquisition of the interest of the Outside Partner in such Outside Partnership), and upon such agreement, the Company or applicable Subsidiary Entity and the Electing Member shall enter into an assumption agreement in a form and substance that is reasonably acceptable to the Members reflecting the terms of such arrangement;

(iv) the Electing Member or its nominated designee delivers the applicable price to the Recipient Member by delivery at the closing of a wire transfer of good funds to an account designated by the Recipient Member;

(v) the Members shall pay any applicable transfer, excise or similar taxes due in connection with the transfer of the interest in accordance with the terms and provisions governing the payment thereof that are set forth in the Outside Partner Purchase Offer and, if not set forth therein, such taxes shall be paid by the Electing Member or its nominated designee;

(vi) if the Company, any Subsidiary Entity, the Recipient Member, its Affiliates or Parent shall be obligors under any obligations with respect to recourse Indebtedness or Guaranty Obligations that relate to such Outside Partnership, the Electing Member shall have obtained from the obligee thereof, for the benefit of each of such Persons, and shall deliver to each of such Persons on the applicable closing date, releases from such obligations as to matters on and after the date of such transfer and any consents required for such transfer;

(vii) the Electing Member shall assume the Company's obligations (if any) with respect to the related property mortgage debt (and obtain, as a condition to the consummation of such acquisition, the release of the Company, any Subsidiary Entity and the Recipient Member (and its Affiliates or Parent, if they are be obligors under any obligations with respect to recourse Indebtedness or Guaranty Obligations that relate to such Outside Partnership) from any guaranty or other recourse obligations that it may have undertaken with respect to the applicable Outside Partnership as to matters on and after the date of such acquisition) and, with respect to any such guaranty or other recourse obligations for which the Company, Subsidiary Entity or Recipient Member (and its Affiliates or Parent, if they are be obligors under any obligations with respect to recourse Indebtedness or Guaranty Obligations that relate to such Outside Partnership) has not been so released, the Members shall agree upon a reasonable arrangement for the allocation of

such obligations as between the Electing Member, on the one hand, and the Company, Subsidiary Entity or Recipient Member (and its Affiliates or Parent, if they are obligors under any obligations with respect to recourse Indebtedness or Guaranty Obligations that relate to such Outside Partnership) (and shall, in connection with the consideration of such arrangement, consider the manner in which such obligations are handled in connection with the Electing Member's acquisition of the interest of the Outside Partner in such Outside Partnership), and upon such agreement, the parties to which such obligations have been allocated shall enter into an assumption and indemnification agreement in a form and substance that is reasonably acceptable to the Members reflecting the terms of such arrangement;

(viii) upon the closing date, the Company and Recipient Member shall execute and deliver all necessary tax forms, affidavits and certificates with respect to the transferor's status as a foreign person and otherwise, and shall provide all necessary information in support thereof; and

(ix) the Company and each Member shall cooperate and take all actions and execute all documents reasonably necessary or appropriate to consummate the transfer of such interest.

(g) Time of Essence. Time is of the essence of the provisions of this Section 9.8.

(h) Assets in which the Company and Parallel JV 1 both have an Interest. If either Member has the right to elect to acquire or nominate a third party designee to acquire the interests of the other Member in the Company's interest in an Outside Partnership in accordance with the provisions of this Section 9.8, the electing Member may (but shall not be required to) also acquire or nominate a third party designee to acquire the interests of the other Member in Parallel JV 1's interest in such Outside Partnership, in accordance with the terms and procedures set forth in Section 9.8 of the Parallel JV Agreement for Parallel JV 1.

Section 9.9 Archstone Foundation.

The Members have agreed that the Company shall cause the assets of the Archstone Foundation to be donated to one or more tax-exempt charitable organizations Approved by the Management Committee or the Members. Once the Management Committee or Members have Approved the tax-exempt charitable organizations to which such assets should be donated, ERP Member in its capacity as a Designated General Administrative Co-Manager shall be authorized to do or cause to be done any and all such acts or things and to execute and deliver any and all such further documents and papers as it may deem necessary or appropriate to complete such donations.

Section 9.10 Election of AVB Member or ERP Member to Perform Services for AVB Properties or EQR Properties.

With respect to any Subsidiary Entity that provides services to any AVB Properties or EQR Properties (as those terms are defined in the Buyers Agreement) pursuant to any contract or agreement for which the respective party was unable to obtain the necessary consents to assign such contract or agreement to an Affiliate of such party, AVB Member or ERP Member, respectively, may elect to cause such services to be provided by its own Affiliates, whereupon (i)

AVB Member or ERP Member, as applicable, shall cause such Affiliates to provide such services and perform all obligations required to be provided by the applicable Subsidiary Entity under the applicable contract or agreement pertaining thereto, (ii) the Company or applicable Subsidiary Entity shall, in consideration of the provision of such services by such Affiliates of AVB Member or ERP Member, allocate or redirect all fees and other compensation received or to be received by such Subsidiary Entity to the applicable Affiliates of AVB Member or ERP Member that are providing such services, and (iii) the AVB Member or ERP Member, as applicable, shall cause its Affiliates to assume and pay all costs, expenses and liabilities, if any, incurred by such Subsidiary Entity in connection with such contract or agreement from and after such election. The Members hereby acknowledge and agree that the foregoing arrangement is intended to properly allocate income, liability and expense under such contracts and agreements until such time as the necessary consents are obtained to assign such contracts and agreements, and the Members shall cause their respective Affiliates to use any and all commercially reasonable efforts to promptly obtain such consents and assign such contracts and agreements.

ARTICLE X

DISSOLUTION AND LIQUIDATION OF THE COMPANY

Section 10.1 Events Causing Dissolution.

The Company shall be dissolved only upon the occurrence of any of the following events ("**Dissolution Event**"):

(a) The sale, exchange or other disposition or distribution of all or substantially all of the assets and properties of the Company;

(b) The Approval of the Members; or

(c) The final decree of a court of competent jurisdiction that such dissolution is required under applicable law.

The bankruptcy or dissolution of a Member shall not cause the Member to cease to be a member of the Company and, upon the occurrence of such an event, the business of the Company shall continue without dissolution.

Section 10.2 Liquidation and Winding Up.

Upon the occurrence of a Dissolution Event, the Company shall be liquidated and the Management Committee (or other Person designated by the Management Committee or a decree of court) shall wind up the affairs of the Company. In such case, the Management Committee (or such Designated Manager or other Person designated by the Management Committee or a decree of court) shall have the authority, in its sole and absolute discretion, to sell the Company's assets and properties or distribute them in kind. The Management Committee or other Person winding up the affairs of the Company shall promptly proceed to the liquidation of the Company. In proceeding with the winding-up process, it is the Members' objective that the winding-up process for the Company shall be completed within three (3) years following the sale of the

Company's last asset (assuming that the Company and its Subsidiary Entities are not then parties to any outstanding litigation which has not been resolved). If the Approval of the Members is obtained, the Members may elect to accelerate the winding-up process by mutually agreeing to set aside reserves or entering into a cost-sharing agreement with respect to any trailing liabilities of the Company or its Subsidiary Entities. In a liquidation, the assets and property of the Company shall be distributed in the following order of priority:

(a) To the payment of all debts and liabilities of the Company in the order of priority as provided by law (other than outstanding loans from a Member or Management Committee Representative);

(b) To the establishment of any reserves deemed necessary by the Management Committee or the Person winding up the affairs of the Company, for any contingent liabilities or obligations of the Company (including those of the Person serving as the liquidator);

(c) To the repayment of any outstanding loans from a Member or Management Committee Representative to the Company; and

(d) The balance, if any, to the Members in accordance with Section 5.2 of this Agreement.

Upon liquidation of the Company, no Member shall be required to contribute any amount to the Company solely because of a deficit or negative balance in the Capital Account of such Member and any deficit or negative balance shall not be considered an asset of the Company for any purpose.

ARTICLE XI

REPRESENTATIONS AND WARRANTIES

Section 11.1 Representations and Warranties of ERP Member.

ERP Member hereby represents and warrants to AVB Member as follows:

(a) Organization. ERP Member is a limited liability company duly organized, validly existing and in good standing under the laws of the state of Delaware and has all requisite limited liability company power and authority to own, lease and operate its properties and to carry on its business as it is presently being conducted.

(b) Authorization; Validity of Agreements.

(i) ERP Member has the requisite limited liability company power and authority to execute and deliver this Agreement and to perform all of its obligations hereunder. The execution and delivery by ERP Member of this Agreement, and the performance by ERP Member of its obligations hereunder, have been duly authorized by, and no other proceedings, actions or authorizations on the part of ERP Member or any holder of equity interest in ERP Member are necessary to authorize the execution and delivery by ERP Member of this Agreement.

(ii) This Agreement has been duly executed and delivered and constitutes the legal, valid and binding obligation of ERP Member, enforceable against them in accordance with its terms, except that (a) such enforcement may be subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws, now or hereafter in effect, affecting creditors' rights generally, and (b) general equitable principles.

(a) Consents and Approvals; No Violations. The execution and delivery by ERP Member of this Agreement, and the performance by ERP Member of its obligations hereunder, does not and will not (a) violate, contravene or conflict with any provision of any organizational documents of ERP Member; (b) violate, contravene or conflict with any material orders or laws applicable to ERP Member or any of its material properties or assets; or (c) require on the part of ERP Member any filing or registration with, notification to, or authorization,

consent or approval of, any Governmental Authority, except for such filings or registrations with, notifications to, or authorizations, consents or approvals of any Governmental Authority as may be referenced in Section 7.3 of the Purchase Agreement.

Section 11.2 Representations and Warranties of AVB Member.

AVB member hereby represents and warrants to ERP Member as follows:

(a) Organization. AVB Member is a corporation that is duly organized, validly existing and in good standing under the laws of the state of Maryland and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as it is presently being conducted.

(b) Authorization; Validity of Agreements.

(i) AVB Member has the requisite corporate power and authority to execute and deliver this Agreement and to perform all of its obligations hereunder. The execution and delivery by AVB Member of this Agreement, and the performance by AVB Member of its obligations hereunder, have been duly authorized by, and no other proceedings, actions or authorizations on the part of AVB Member or any holder of equity interest in it are necessary to authorize the execution and delivery by AVB Member of this Agreement.

(ii) This Agreement has been duly executed and delivered and constitutes the legal, valid and binding obligation of AVB Member, enforceable against it in accordance with its terms, except that (a) such enforcement may be subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws, now or hereafter in effect, affecting creditors' rights generally, and (b) general equitable principles.

(c) Consents and Approvals; No Violations. The execution and delivery by AVB Member and the performance by AVB Member of its obligations hereunder, does not and will not (a) violate, contravene or conflict with any provision of any organizational documents of AVB Member; (b) violate, contravene or conflict with any material orders or laws applicable to AVB or any of its respective material properties or assets; or (c) require on the part of AVB Member any filing or registration with, notification to, or authorization, consent or approval of, any Governmental Authority, except for such filings or registrations with, notifications to, or

authorizations, consents or approvals of any Governmental Authority as may be referenced in Section 8.3 of the Purchase Agreement.

ARTICLE XII

MISCELLANEOUS

Section 12.1 Complete Agreement.

This Agreement and the Certificate of Formation constitute the complete and exclusive statement of agreement among the Members with respect to the subject matter hereof. This Agreement and the Certificate of Formation replace and supersede all prior agreements by and among the Members or any of them in respect of the Company including, without limitation, the Archstone Residual JV Term Sheet that is attached to the Buyers Agreement (but does not supersede as among the Parents the provisions of the Buyers Agreement that survive the Initial Closing). This Agreement and the Certificate of Formation supersede all prior written and oral statements; and no representation, statement, condition or warranty not contained in this Agreement or the Certificate of Formation shall be binding on the Members or the Company or have any force or effect whatsoever. With respect to the Assumed Archstone Liabilities and the Archstone Claims, the Members hereby incorporate herein by this reference the terms of the Common Interest Agreement (as defined in the Buyers Agreement), and agree to be bound thereby as if each Member was directly a party thereto.

Section 12.2 Governing Law; Venue.

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to the principles of conflicts of law; provided that in the event of any conflict or inconsistency between the provisions of this Agreement and the requirements of the Act, the provisions of this Agreement shall govern to the extent permitted under the Act. Proper venue for any litigation involving this Agreement shall be in any federal or state court located in the State of Delaware. Each Member hereto hereby irrevocably and unconditionally waives, to the extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement brought in any court referred to in this Section 12.2. The Members hereby irrevocably waive, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court. This provision shall survive the termination of this Agreement.

Section 12.3 No Assignment; Binding Effect.

This Agreement may not be transferred or assigned by any party hereto other than in the case of a Member, in full compliance with Article VIII hereof as an integrated part of a permissible Transfer of all of the Membership Interest of the Member. Any purported assignment, sale, Transfer, delegation or other disposition, except as expressly permitted herein, shall be null and void and shall constitute a material breach of this Agreement. Subject to the foregoing restrictions and Article VIII hereof, this Agreement shall be binding upon and inure to the benefit of the Members and their respective successors and assigns.

Section 12.4 Severability.

If any provision of this Agreement is held to be illegal, invalid, or unenforceable under any present or future laws applicable to the Company effective during the Term of this Agreement, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement.

Section 12.5 No Partition.

No Member shall have the right to partition the Company or the Archstone Residual Assets or any part thereof or interest therein, or to file a complaint or institute any proceeding at law or in equity to partition the Company or the Archstone Residual Assets or any part thereof or interest therein. Each Member, for such Member and its successors and assigns, hereby waives any such rights. The Members intend that, during the term of this Agreement, the rights of the Members and their successors in interest, as among themselves, shall be governed solely by the terms of this Agreement and by the Act.

Section 12.6 Multiple Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed a duplicate original and all of which, when taken together, shall constitute one and the same document. Execution and delivery of this Agreement by exchange of facsimile copies bearing the signatures of the parties shall constitute a valid and binding execution and delivery of this Agreement by the parties.

Section 12.7 Additional Documents and Acts.

Each Member agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform all of the terms, provisions, and conditions of this Agreement and the transactions contemplated hereby at any time.

Section 12.8 TRS Compliance.

The Company acknowledges that the AVB and ERP Members may be "taxable REIT subsidiaries," within the meaning of Section 856(l) of the Code. The Company will conduct its operations in a manner such that such Members may continue to qualify as taxable REIT subsidiaries and shall not take any action that would cause such members to fail to qualify as taxable REIT subsidiaries, including without limitation engaging, directly or indirectly, in activities described in Section 856(l)(3) of the Code.

Section 12.9 Amendments.

All amendments and modifications to this Agreement shall be in writing and, to be effective, shall be Approved by the Members.

Section 12.10 No Waiver.

No delay, failure or waiver by any party to exercise any right or remedy under this Agreement, and no partial or single exercise of any such right or remedy, shall operate to limit, preclude, cancel, waive or otherwise affect such right or remedy, nor shall any single or partial exercise of such right or remedy limit, preclude, impair or waive any further exercise of such right or remedy or the exercise of any other right or remedy.

Section 12.11 Time Periods.

Any time period hereunder which expires on, or any date for performance hereunder which occurs on, a day which is not a Business Day, shall be deemed to be postponed to the next Business Day. The first day of any time period hereunder which runs "from" or "after" a given day shall be deemed to occur on the day subsequent to that given day.

Section 12.12 Notices.

Except as otherwise provided in this Agreement regarding notices by electronic mail or other electronic means to Members and Management Committee Representatives and regarding Member proxies, all notices, consents and other communications hereunder shall be in writing (including telecopy or similar writing) and shall be deemed to have been duly given (a) when delivered by hand or by Federal Express or a similar overnight courier to (or if that day is not a Business Day, or if delivered after 5:00 p.m., New York, New York time on a Business Day, on the first following day that is a Business Day), (b) five (5) days after being deposited in any United States Post Office enclosed in a postage prepaid, registered or certified envelope addressed to, or (c) when successfully transmitted by facsimile to, the Member for whom intended, at the address or facsimile number for such Member set forth in Schedule Y attached hereto.

Section 12.13 Dispute Resolution; Mediation.

In the event of any claim, dispute or other matter in controversy between the Members arising under this Agreement, each Member agrees that, prior to commencing any lawsuit relating to such claim, dispute or other matter in controversy, (i) it shall notify the other Member in writing of the claim, dispute or other matter in controversy, including a reasonably detailed explanation of such Member's understanding of the respective positions of each of the Members with respect to the matters in dispute; (ii) the respective chief executive officers of Equity Residential and AVB or their designees shall meet and confer at a mutually convenient time and place within twenty (20) Business Days following the request of either Member concerning such claim, dispute or other matter in controversy (such period is referred to herein as the "**Discussion Period**"); (iii) if the Members are unable during the Discussion Period to reach a final agreement concerning such claim, dispute or other matter in controversy, then, prior to commencing any lawsuit relating to such dispute, the Member that would intend to commence such lawsuit shall deliver a written request to the other Member for non-binding mediation to be administered by the New York, New York office of Judicial Arbitration & Mediation Services, Inc. or its successor ("**JAMS**") or any other office of JAMS agreed to by the Members, in accordance with JAMS's mediation procedures in effect on the date of the Agreement (and if the Members cannot

agree on the selection of a mediator, the Member asserting the claim, dispute or controversy shall file a request in writing for the appointment of a mediator with the New York, New York office of JAMS, with a copy of the request being served on the other Member, and the mediation shall be conducted by the appointed mediator). Mediation shall proceed in advance of the commencement of any lawsuit for a period of 60 days from the date that the applicable Member's request for commencement of the mediation procedure was delivered to the other Member. The parties shall share the mediator's fee and any filing fees equally. Without limiting any other applicable limitation in this Agreement, in no event shall the procedures and limitations set forth in this Section 12.13 limit or condition the right of any Member to commence a lawsuit against any third party or to file an answer or counterclaim or cross-claim (including, without limitation, as against the other Member) in any lawsuit that has been commenced by any third party. The Members agree that the provisions in this Section 12.13 shall apply to any claim, dispute or controversy asserted by any Member, but once the Members have engaged in the Discussion Period and mediation procedures provided for herein with respect to such claim, dispute or controversy, no Member shall be bound to comply with the Discussion Period and mediation procedures provided for herein with respect to any further claim, dispute or controversy that relates to substantially the same acts, omissions or occurrences with respect to which the Discussion Period and mediation procedures provided for herein have already taken place. The Members agree that the discussions during the Discussion Period or in connection with such mediation procedures are intended to be settlement communications, and accordingly (i) none of the discussions during the Discussion Period or in connection with such mediation procedures, nor any proposals (whether written or oral), correspondence, or documents of any kind generated during the period of and in connection with the Discussion Period or in connection with such mediation procedures, shall be raised, disclosed or admissible in any judicial, arbitration or similar proceeding for any purpose nor shall any such discussions, proposals, correspondence or documents be used as a defense or counter-claim in any action; (ii) such discussions, proposals, correspondence or documents are without prejudice to any of the parties' rights, defenses and remedies at law, in equity or hereunder; and (iii) neither the preparation, distribution, response to or failure to respond to any such discussions, proposals, correspondence or documents shall constitute an agreement, or the basis on which any party may claim reliance on any agreement, except to the extent that the Members in connection with the discussions during the Discussion Period or in connection with such mediation procedures enter into a written agreement that is intended to be definitive and binding. The foregoing provisions are intended to be broader than the restrictions on admissibility with respect to settlement discussions contained in any applicable state or federal statute or rule of court, including, without limitation, Rule 408 of the Federal Rules of Evidence. If the Members or Management Committee Representatives reach an impasse over a proposed Major Decision or any other proposed decision requiring the Approval of the Members or the Approval of the Management Committee, at the election of either Member, upon not less than ten (10) Business Days' notice to the other Member, the Discussion Period and non-binding mediation process provided for in this Section 12.13 shall be commenced, to assist the Members in attempting to resolve the impasse, notwithstanding that no claim, dispute or other controversy with respect to which a Member may seek to commence a lawsuit then exists with respect to such matter.

Section 12.14 Specific Performance.

Because of the unique character of the Membership Interests, the Members and the Company shall be irreparably damaged if this Agreement is not specifically enforced. If any dispute arises concerning the Transfer of all or any part of a Member's Membership Interest, an injunction may be issued restraining any purported Transfer pending the determination of such controversy. Such remedy shall, however, be cumulative and not exclusive, and shall be in addition to any other remedy which the Members or the Company may have.

Section 12.15 No Third Party Beneficiary.

This Agreement is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and permitted assigns, and no other Person shall have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise.

Section 12.16 Waiver of Jury Trial.

EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY OR CLAIM WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE CONTEMPLATED TRANSACTIONS. THIS WAIVER MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 12.16) AND EXECUTED BY EACH OF THE PARTIES HERETO). The scope of this waiver is intended to be all-encompassing of any and all disputes that may be filed in any court and that relate to the subject matter herein, including contract claims, tort claims, breach of duty claims and all other common law and statutory claims. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

Section 12.17 Cumulative Remedies.

The rights and remedies of any party as set forth in this Agreement are not exclusive and are in addition to any other rights and remedies now or hereafter provided by law or at equity, subject to the provisions of Section 12.13 hereof.

Section 12.18 Exhibits and Schedules.

All Exhibits and Schedules attached hereto are hereby incorporated by reference into, and made a part of, this Agreement.

Section 12.19 Interpretation.

The titles and section headings set forth in this Agreement are for convenience only and shall not be considered as part of agreement of the parties. When the context requires, the plural shall include the singular and the singular the plural, and any gender shall include all other

genders. No provision of this Agreement shall be interpreted or construed against any party because such party or its counsel was the drafter thereof.

Section 12.20 Survival.

It is the express intention and agreement of the Members that all covenants, agreements, statement, representations, warranties and indemnities made in this Agreement shall survive the execution and delivery of this Agreement and, where appropriate to facilitate the intent of this Agreement, the dissolution, liquidation and winding up of the Company.

Section 12.21 Attorneys' Fees.

If any Member seeks to enforce such Member's rights under this Agreement by legal proceedings or otherwise the non-prevailing party shall be responsible for all costs and expenses in connection therewith, including without limitation, reasonable attorneys' fees and costs and court costs and witness fees. In this Section 12.21, non-prevailing party shall not be meant to refer to a Member who initiates or accepts a settlement offer with regards to such legal proceeding.

Section 12.22 Confidentiality.

The Members hereby incorporate herein by this reference the terms of the Confidentiality Agreement (as defined in the Buyers Agreement), and agree to be bound thereby as if each Member was directly a party thereto. Each Member shall not disclose or furnish to any third party (other than any third party who is bound by confidentiality obligations reasonably expected to prevent further disclosure) the terms and conditions of this Agreement. Notwithstanding the foregoing, each Member may disclose the terms and conditions of this Agreement to the extent such disclosure is reasonably necessary to comply with applicable law (including any securities law or regulation or the rules of a securities exchange) and with judicial process, and to its affiliates, partners, managers, trustees, directors, officers, employees, accountants, attorneys, advisors and other representatives, each of whom shall be informed of the confidential nature of the terms and conditions of this Agreement and directed to treat such information confidentially in accordance with the terms of this Agreement.

* * *

IN WITNESS WHEREOF, the undersigned Members have executed this Agreement as of the date first hereinabove set forth.

AVB MEMBER:

AVB DEVELOPMENT TRANSACTIONS, INC., a Maryland corporation

By: /s/ Edward M. Schulman
Name: Edward M. Schulman
Title: Executive Vice President, General Counsel & Secretary

ERP MEMBER:

EQR-RESIDUAL JV MEMBER, LLC,
a Delaware limited liability company

By: ERP Holding Co., Inc.,
a Delaware corporation,
its Member

By: /s/ Scott J. Fenster
Name: Scott J. Fenster
Title: Senior Vice President

ARCHSTONE RESIDUAL JV, LLC
LIST OF EXHIBITS AND SCHEDULES

EXHIBIT 1

FORM OF FUNDING NOTICE

$

AVB Development Transactions, Inc.
671 N. Glebe Road
Suite 800
Arlington, VA 22203

EQR-Residual JV Member, LLC
Two N. Riverside Plaza
Suite 400
Chicago, Illinois 60606

Re: Funding of Capital to Archstone Residual JV, LLC

Gentlemen:

Reference is hereby made to the Limited Liability Company Agreement of Archstone Residual JV, LLC, dated as of February 27, 2013 (the "**Limited Liability Company Agreement**"). Capitalized terms not otherwise defined have the meanings ascribed to them in the Limited Liability Company Agreement.

Pursuant to Section 3.4 of the Limited Liability Company Agreement, you are advised that the Member has determined that capital is required to fund cash needs of the Company in the aggregate amount of $.

Each Member is hereby requested to contribute, by wire transfer of immediately available funds to the account designated below, funds in the amount of its Proportionate Share (as set forth below) of such required amount on or before , *[insert appropriate time period which shall not be less than as set forth in Article III]*.

[add description of reason for capital]

	Contributions	Percentage Interest
AVB Member	$	40%
ERP Member	$	60%
TOTAL		100%

Such funds shall be wire transferred to the following account on or before

, :

[MEMBER]

By: _____
Name:
Title:

Exhibit 1-2

EXHIBIT 2

FORM OF PARENT GUARANTY

(Attached)

Exhibit 2-1

AvalonBay/
Archstone Residual JV, LLC

GUARANTY

THIS GUARANTY (this "**Guaranty**"), dated as of the 27th day of February, 2013, is made by AVALONBAY COMMUNITIES, INC., a Maryland corporation ("**Guarantor**"), for the benefit of EQR-RESIDUAL JV MEMBER, LLC, a Delaware limited liability company ("**Creditor Member**").

RECITALS

A. Creditor Member and AVB DEVELOPMENT TRANSACTIONS, INC., a Maryland corporation ("**Guarantor-Affiliated Member**"), formed and own the membership interests in Archstone Residual JV, LLC, a Delaware limited liability company (the "**Company**"), pursuant to that certain Limited Liability Company of the Company dated as of even date herewith (as the same may be amended from time to time, the "**Limited Liability Company Agreement**"). All capitalized terms which are used but not expressly defined in this Guaranty shall have the same meaning herein as are given to such terms in the Limited Liability Company Agreement.

B. Guarantor has an indirect or direct financial and/or ownership interest in Guarantor-Affiliated Member.

C. In partial consideration of Guarantor-Affiliated Member's execution of the Limited Liability Company Agreement and as a condition precedent thereto, the Guarantor is required to execute and deliver this Guaranty for the benefit of Creditor Member and its permitted successors and assigns under the Limited Liability Company Agreement (collectively, "**Beneficiary**").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce Creditor Member to enter into the Limited Liability Company Agreement, Guarantor hereby agrees as follows:

1. GUARANTY. Guarantor, as primary obligor and not merely as a surety, hereby absolutely and irrevocably guarantees to Beneficiary the punctual payment and performance when due of the Guaranteed Obligations (as hereinafter defined). As used herein, "**Guaranteed Obligations**" means, collectively, (i) the full and prompt payment of all amounts, capital contributions, sums and charges payable by Guarantor-Affiliated Member under the Limited Liability Company Agreement, including, without limitation, all obligations of Guarantor-Affiliated Member to make Guaranty Equalization Payments and all indemnification obligations of Guarantor-Affiliated Member under the Limited Liability Company Agreement, (ii) the full and punctual performance and observance of all the terms, covenants and conditions provided to be performed, observed and complied with by Guarantor-Affiliated Member under the Limited Liability Company Agreement, or provided to be performed, observed and complied with by Guarantor-Affiliated Member or an affiliate or designee thereof (each, individually and collectively, "**Obligor**") under any assumption agreement or other instrument delivered by it pursuant to the Limited Liability Company Agreement, whether in respect of any Land Option, Archstone Real Estate Asset, Office Lease or otherwise, and (iii) the full and prompt payment of

all damages, costs and expenses which shall at any time be recoverable by Creditor Member from Guarantor-Affiliated Member or any other Obligor by virtue of or under the Limited Liability Company Agreement or under any assumption agreement or other instrument delivered by it pursuant to the Limited Liability Company Agreement, including, without limitation, on account of any representations or warranties made by Guarantor-Affiliated Member thereunder. Guarantor further agrees to pay all Enforcement Costs (as hereinafter defined), in addition to all other amounts due hereunder. Any amounts owed under this Guaranty (that are not accruing interest under the Limited Liability Company Agreement) which are not timely made by Guarantor in accordance with the terms of this Guaranty shall bear interest from the date payable at the rate of fifteen percent (15%) per annum until all such amounts are fully paid. Notwithstanding anything to the contrary herein, (x) Guarantor shall have all of the same rights, remedies and defenses as Guarantor-Affiliated Member, including, without limitation, the right to exercise the dispute resolution procedures under and in accordance with the terms of the Limited Liability Company Agreement, and (y) other than the payment of Enforcement Costs, Guarantor shall have no greater liability than Guarantor-Affiliated Member or other Obligor under the Limited Liability Company Agreement or with respect to any assumption agreement or instrument delivered by it pursuant thereto.

2. NATURE OF GUARANTY. This Guaranty is an absolute, irrevocable, present and continuing guaranty of payment and performance and not of collectability. The obligations of Guarantor hereunder are independent of the obligations of Guarantor-Affiliated Member and any other Obligor and, in the event of any default hereunder, a separate action or actions may be brought and prosecuted against Guarantor whether or not Guarantor-Affiliated Member or any other Obligor is joined therein. Beneficiary shall not be required to prosecute collection, enforcement or other remedies against Guarantor-Affiliated Member or any other Obligor or any other guarantor of the Guaranteed Obligations, or to enforce or resort to any collateral for the repayment of the Guaranteed Obligations or other rights and remedies pertaining thereto, before calling on the Guarantor for payment. If for any reason Guarantor-Affiliated Member or any other Obligor shall fail or be unable to pay, punctually and fully, any of the Guaranteed Obligations, Guarantor shall pay such obligations to Beneficiary in full, immediately upon demand. One or more successive actions may be brought against Guarantor, as often as Beneficiary deems advisable, until all of the Guaranteed Obligations are paid and performed in full. Payment or performance by Guarantor of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge Guarantor's liability for any portion of the Guaranteed Obligations which has not been paid and performed. Without limiting the generality of the foregoing, if Creditor Member is awarded a judgment in any suit brought to enforce Guarantor's covenant to pay or perform a portion of the Guaranteed Obligations, such judgment shall not be deemed to release Guarantor from its covenant to pay and perform the portion of the Guaranteed Obligations that is not the subject of such judgment.

3. ENFORCEMENT COSTS. If: (a) this Guaranty, is placed in the hands of one or more attorneys for collection or is collected through any legal proceeding, (b) one or more attorneys is retained to represent Beneficiary in any bankruptcy, reorganization, receivership or other proceedings affecting creditors' rights and involving a claim under this Guaranty, or (c) one or more attorneys is retained to represent Beneficiary in any other proceedings whatsoever in connection with this Guaranty, then Guarantor shall pay to Beneficiary upon demand all fees, reasonable costs and expenses incurred by Beneficiary in connection therewith,

including, without limitation, reasonable attorney's fees, court costs and filing fees (all of which are referred to herein as the "**Enforcement Costs**"). Beneficiary is only entitled to Enforcement Costs if it is the prevailing party.

4. NO DISCHARGE OR DIMINISHMENT OF GUARANTY. Except as otherwise provided herein and to the extent provided herein, the obligations of Guarantor hereunder are absolute and not subject to termination for any reason other than the satisfaction of the Guaranteed Obligations or expiration of this Guaranty. Guarantor agrees that the liability of the Guarantor hereunder shall not be discharged by, and Guarantor hereby irrevocably consents to: (i) any subsequent change, modification or amendment of the Limited Liability Company Agreement in any of its terms, covenants and conditions; (ii) the renewal or extension of time for the payment or performance of the Guaranteed Obligations; (iii) any transfer, waiver, compromise, settlement, modification, surrender or release of Guarantor-Affiliated Member's or any other Obligor's obligations; (iv) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Limited Liability Company Agreement, at law, in equity or otherwise) with respect to the Guaranteed Obligations; (v) any act or event which might otherwise discharge, reduce, limit or modify Guarantor's obligations under this Guaranty; and (vi) any forbearance, delay or other act or omission of Creditor Member. In addition, the Guaranteed Obligations of the Guarantor hereunder are not subject to counterclaim (other than mandatory or compulsory counterclaims), set-off, abatement, deferment or defense based upon any claim that Guarantor may have against Beneficiary:

(a) unrelated to the transaction giving rise to the Guaranteed Obligations; or

(b) regarding any lack of capacity, lack of authority or any other disability or other defense of Guarantor-Affiliated Member or any other Obligor, including, without limitation, any defense based on or arising out of the lack of validity or enforceability of the Limited Liability Company Agreement or any assumption agreement or other instrument delivered thereunder; or

(c) regarding (i) the release or discharge of Guarantor-Affiliated Member or any other Obligor in any receivership, bankruptcy or other proceedings, (ii) the impairment, limitation, modification or termination of the liabilities of Guarantor-Affiliated Member or any other Obligor to Beneficiary or the estate of Guarantor-Affiliated Member or any other Obligor in bankruptcy, or any remedy for the enforcement of Guarantor-Affiliated Member's or any other Obligor's liability under the Limited Liability Company Agreement or any assumption agreement or other instrument delivered thereunder, resulting from the operation of any present or future provision of Title 11 of the United States Code or other statute or from the decision in any court, (iii) the cessation of the liability of Guarantor-Affiliated Member or any other Obligor from any cause other than payment and performance in full of the Guaranteed Obligations, or (iv) any rejection or disaffirmance of the Guaranteed Obligations, or any part thereof, or any security held therefor, in any proceedings in bankruptcy, insolvency or reorganization.

5. DEFENSES WAIVED. Guarantor irrevocably waives acceptance hereof, presentment, demand, protest, to the fullest extent permitted by applicable law, any notice

(including, without limitation, notices of protest, notices of dishonor, notices of any action or inaction, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, and notices of any extension of credit to Guarantor-Affiliated Member or any other Obligor and any right to consent to any thereof) not provided for herein or in the Limited Liability Company Agreement, as well as any requirement that at any time any action be taken by any person against Guarantor-Affiliated Member, any other Obligor or Guarantor. Guarantor further irrevocably waives: (a) any right to require Creditor Member, as a condition of payment or performance, to (i) proceed against Guarantor-Affiliated Member or any other Obligor or other Person, (ii) proceed against or exhaust any security held from Guarantor-Affiliated Member or any other Obligor or other Person, (iii) proceed against or have resort to any balance on the books of Creditor Member owed to Guarantor-Affiliated Member or any other Obligor or other Person, or (iv) pursue any other remedy in the power of Creditor Member whatsoever; (b) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; and (c) the benefit of any statute of limitations affecting Guarantor's liability hereunder or the enforcement hereof. Until payment of the Guaranteed Obligations by Guarantor-Affiliated Member and any other Obligor, any right of subrogation, contribution, reimbursement or indemnification on the part of Guarantor as against Guarantor-Affiliated Member or any other Obligor shall be in all respects subordinate to all rights and claims of Beneficiary for all other payments or damages which shall be or become due and payable by Guarantor-Affiliated Member or any other Obligor under the provisions of the Limited Liability Company Agreement or any assumption agreement or other instrument delivered thereunder. Beneficiary may compromise or adjust any part of the Guaranteed Obligations, make any other accommodation with Guarantor-Affiliated Member or any other Obligor or exercise any other right or remedy available to it against Guarantor-Affiliated Member or any other Obligor without affecting or impairing in any way the liability of Guarantor under this Guaranty except to the extent the Guaranteed Obligations have been performed.

6. REINSTATEMENT; STAY OF ACCELERATION. If at any time any payment of any portion of the Guaranteed Obligations is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, or reorganization of Guarantor-Affiliated Member or any other Obligor or otherwise, Guarantor's obligations under this Guaranty with respect to that payment shall be reinstated at such time as though the payment had not been made. If acceleration of the time for payment of any of the Guaranteed Obligations is stayed upon the insolvency, bankruptcy or reorganization of Guarantor-Affiliated Member or any other Obligor, all such amounts otherwise subject to acceleration under the terms of any agreement relating to the Guaranteed Obligations shall nonetheless be payable by Guarantor forthwith on demand by the Beneficiary.

7. INFORMATION. Guarantor assumes all responsibility for being and keeping itself informed of Guarantor-Affiliated Member's or any other Obligor's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope and extent of the risks that Guarantor assumes and incurs under this Guaranty, and agrees that Beneficiary does not have any duty to advise Guarantor of any information known to it regarding those circumstances or risks.

8. SURVIVAL. This Guaranty shall remain in full force and effect as to any Guaranteed Obligation for so long as such Guaranteed Obligation survives under the terms and conditions of the Limited Liability Company Agreement.

9. SEVERABILITY. The provisions of this Guaranty are severable, and in any action or proceeding involving any state corporate, partnership or limited liability company law, or any state, federal or foreign bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of Guarantor under this Guaranty would otherwise be held or determined to be avoidable, invalid or unenforceable on account of the amount of Guarantor's liability under this Guaranty, then, notwithstanding any other provision of this Guaranty to the contrary, the amount of such liability shall, without any further action by Guarantor or Beneficiary, be automatically limited and reduced to the highest amount that is valid and enforceable as determined in such action or proceeding. This Section with respect to the maximum liability of Guarantor is intended solely to preserve the rights of Beneficiary, to the maximum extent not subject to avoidance under applicable law, and neither Guarantor nor any other person or entity shall have any right or claim under this Section with respect to such maximum liability, except to the extent necessary so that the obligations of Guarantor hereunder shall not be rendered voidable under applicable law.

10. REPRESENTATIONS BY GUARANTOR. Guarantor represents that: (a) it is duly organized, validly existing and in good standing under the laws where it is organized and has all requisite authority to conduct its business in each jurisdiction in which its business is conducted; (b) the execution and delivery of this Guaranty and the performance of the obligations it imposes (i) are within its powers; (ii) have been duly authorized by all necessary action of its governing body; and (iii) do not violate any law, conflict with the terms of its articles or agreement of incorporation or organization, its by-laws or any agreement by which it is bound or require the consent or approval of any governmental authority or any third party; and (c) this Guaranty is a valid and binding agreement, enforceable according to its terms, except as such enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally.

11. NOTICES. All notices, requests and other communications to any party under this Guaranty must be in writing (including facsimile transmission or similar writing) and must be given to Beneficiary at the address for Beneficiary set forth in the Limited Liability Company Agreement, to Guarantor-Affiliated Member at the address for Guarantor-Affiliated Member set forth in the Limited Liability Company Agreement, and to Guarantor at the address for Guarantor-Affiliated Member set forth in the Limited Liability Company Agreement, or in each case as otherwise specified in a notice by one party to the other in accordance with the Limited Liability Company Agreement. Each notice, request or other communication shall be effective in accordance with the Limited Liability Company Agreement.

12. MISCELLANEOUS. No provision of this Guaranty may be amended, supplemented or modified, or any of its terms and provisions waived, except by a written instrument executed by Beneficiary and Guarantor. No failure on the part of the Beneficiary to exercise, and no delay in exercising, any right under this Guaranty waives that right; nor does any single or partial exercise of any right under this Guaranty preclude any other or further exercise of that or any other right. The remedies provided in this Guaranty are cumulative and

not exclusive of any remedies provided by law. This Guaranty binds Guarantor, and its successors and assigns, and benefits Beneficiary, and its respective successors and assigns. The use of headings does not limit the provisions of this Guaranty.

13. ASSIGNMENT OF GUARANTY. Notwithstanding anything to the contrary contained in this Guaranty, Guarantor shall not assign, transfer or otherwise delegate its obligations under this Guaranty without first obtaining Beneficiary's prior written consent, which shall be granted or withheld in Beneficiary's sole and absolute discretion. No transfer of interests in Guarantor or merger involving Guarantor that is permitted under the Limited Liability Company Agreement shall be deemed to be an assignment that requires Beneficiary's consent hereunder.

14. GOVERNING LAW. THIS GUARANTY IS TO BE CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS (AND NOT THE LAW OF CONFLICTS) OF DELAWARE.

15. CONSENT TO JURISDICTION. GUARANTOR AND BENEFICIARY HEREBY CONSENT AND AGREE TO THE EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR STATE COURT SITTING IN THE STATE OF DELAWARE IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTY AND GUARANTOR IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH COURT AND IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY OBJECTION IT MAY NOW OR LATER HAVE AS TO THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH A COURT OR THAT SUCH A COURT IS AN INCONVENIENT FORUM.

16. WAIVER OF JURY TRIAL. GUARANTOR AND BENEFICIARY ACKNOWLEDGE AND AGREE THAT ANY CONTROVERSY OR CLAIM WHICH MAY ARISE UNDER THIS GUARANTY IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE CONTEMPLATED TRANSACTIONS. THIS WAIVER MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 16) AND EXECUTED BY EACH OF GUARANTOR AND BENEFICIARY). THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER HEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. IN THE EVENT OF LITIGATION, THIS GUARANTY MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first above written.

GUARANTOR:

AVALONBAY COMMUNITIES, INC.,
a Maryland corporation

By: _____
Name: Edward M. Schulman
Title: Executive Vice President, General Counsel & Secretary

[Signature Page — Archstone Residual JV, LLC (AvalonBay)]

ERPOP/
Archstone Residual JV, LLC

GUARANTY

THIS GUARANTY (this "**Guaranty**"), dated as of the 27th day of February, 2013, is made by ERP OPERATING LIMITED PARTNERSHIP, an Illinois limited partnership ("**Guarantor**"), for the benefit of AVB DEVELOPMENT TRANSACTIONS, INC., a Maryland corporation ("**Creditor Member**").

RECITALS

A. Creditor Member and EQR-RESIDUAL JV MEMBER, LLC, a Delaware limited liability company ("**Guarantor-Affiliated Member**"), formed and own the membership interests in Archstone Residual JV, LLC, a Delaware limited liability company (the "**Company**"), pursuant to that certain Limited Liability Company of the Company dated as of even date herewith (as the same may be amended from time to time, the "**Limited Liability Company Agreement**"). All capitalized terms which are used but not expressly defined in this Guaranty shall have the same meaning herein as are given to such terms in the Limited Liability Company Agreement.

B. Guarantor has an indirect or direct financial and/or ownership interest in Guarantor-Affiliated Member.

C. In partial consideration of Guarantor-Affiliated Member's execution of the Limited Liability Company Agreement and as a condition precedent thereto, the Guarantor is required to execute and deliver this Guaranty for the benefit of Creditor Member and its permitted successors and assigns under the Limited Liability Company Agreement (collectively, "**Beneficiary**").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce Creditor Member to enter into the Limited Liability Company Agreement, Guarantor hereby agrees as follows:

1. GUARANTY. Guarantor, as primary obligor and not merely as a surety, hereby absolutely and irrevocably guarantees to Beneficiary the punctual payment and performance when due of the Guaranteed Obligations (as hereinafter defined). As used herein, "**Guaranteed Obligations**" means, collectively, (i) the full and prompt payment of all amounts, capital contributions, sums and charges payable by Guarantor-Affiliated Member under the Limited Liability Company Agreement, including, without limitation, all obligations of Guarantor-Affiliated Member to make Guaranty Equalization Payments and all indemnification obligations of Guarantor-Affiliated Member under the Limited Liability Company Agreement, (ii) the full and punctual performance and observance of all the terms, covenants and conditions provided to be performed, observed and complied with by Guarantor-Affiliated Member under the Limited Liability Company Agreement, or provided to be performed, observed and complied with by Guarantor-Affiliated Member or an affiliate or designee thereof (each, individually and collectively, "**Obligor**") under any assumption agreement or other instrument delivered by it pursuant to the Limited Liability Company Agreement, whether in respect of any Land Option, Archstone Real Estate Asset, Office Lease or otherwise, and (iii) the full and prompt payment of

all damages, costs and expenses which shall at any time be recoverable by Creditor Member from Guarantor-Affiliated Member or any other Obligor by virtue of or under the Limited Liability Company Agreement or under any assumption agreement or other instrument delivered by it pursuant to the Limited Liability Company Agreement, including, without limitation, on account of any representations or warranties made by Guarantor-Affiliated Member thereunder. Guarantor further agrees to pay all Enforcement Costs (as hereinafter defined), in addition to all other amounts due hereunder. Any amounts owed under this Guaranty (that are not accruing interest under the Limited Liability Company Agreement) which are not timely made by Guarantor in accordance with the terms of this Guaranty shall bear interest from the date payable at the rate of fifteen percent (15%) per annum until all such amounts are fully paid. Notwithstanding anything to the contrary herein, (x) Guarantor shall have all of the same rights, remedies and defenses as Guarantor-Affiliated Member, including, without limitation, the right to exercise the dispute resolution procedures under and in accordance with the terms of the Limited Liability Company Agreement, and (y) other than the payment of Enforcement Costs, Guarantor shall have no greater liability than Guarantor-Affiliated Member or other Obligor under the Limited Liability Company Agreement or with respect to any assumption agreement or instrument delivered by it pursuant thereto.

2. NATURE OF GUARANTY. This Guaranty is an absolute, irrevocable, present and continuing guaranty of payment and performance and not of collectability. The obligations of Guarantor hereunder are independent of the obligations of Guarantor-Affiliated Member and any other Obligor and, in the event of any default hereunder, a separate action or actions may be brought and prosecuted against Guarantor whether or not Guarantor-Affiliated Member or any other Obligor is joined therein. Beneficiary shall not be required to prosecute collection, enforcement or other remedies against Guarantor-Affiliated Member or any other Obligor or any other guarantor of the Guaranteed Obligations, or to enforce or resort to any collateral for the repayment of the Guaranteed Obligations or other rights and remedies pertaining thereto, before calling on the Guarantor for payment. If for any reason Guarantor-Affiliated Member or any other Obligor shall fail or be unable to pay, punctually and fully, any of the Guaranteed Obligations, Guarantor shall pay such obligations to Beneficiary in full, immediately upon demand. One or more successive actions may be brought against Guarantor, as often as Beneficiary deems advisable, until all of the Guaranteed Obligations are paid and performed in full. Payment or performance by Guarantor of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge Guarantor's liability for any portion of the Guaranteed Obligations which has not been paid and performed. Without limiting the generality of the foregoing, if Creditor Member is awarded a judgment in any suit brought to enforce Guarantor's covenant to pay or perform a portion of the Guaranteed Obligations, such judgment shall not be deemed to release Guarantor from its covenant to pay and perform the portion of the Guaranteed Obligations that is not the subject of such judgment.

3. ENFORCEMENT COSTS. If: (a) this Guaranty, is placed in the hands of one or more attorneys for collection or is collected through any legal proceeding, (b) one or more attorneys is retained to represent Beneficiary in any bankruptcy, reorganization, receivership or other proceedings affecting creditors' rights and involving a claim under this Guaranty, or (c) one or more attorneys is retained to represent Beneficiary in any other proceedings whatsoever in connection with this Guaranty, then Guarantor shall pay to Beneficiary upon demand all fees, reasonable costs and expenses incurred by Beneficiary in connection therewith,

including, without limitation, reasonable attorney's fees, court costs and filing fees (all of which are referred to herein as the "**Enforcement Costs**"). Beneficiary is only entitled to Enforcement Costs if it is the prevailing party.

4. NO DISCHARGE OR DIMINISHMENT OF GUARANTY. Except as otherwise provided herein and to the extent provided herein, the obligations of Guarantor hereunder are absolute and not subject to termination for any reason other than the satisfaction of the Guaranteed Obligations or expiration of this Guaranty. Guarantor agrees that the liability of the Guarantor hereunder shall not be discharged by, and Guarantor hereby irrevocably consents to: (i) any subsequent change, modification or amendment of the Limited Liability Company Agreement in any of its terms, covenants and conditions; (ii) the renewal or extension of time for the payment or performance of the Guaranteed Obligations; (iii) any transfer, waiver, compromise, settlement, modification, surrender or release of Guarantor-Affiliated Member's or any other Obligor's obligations; (iv) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Limited Liability Company Agreement, at law, in equity or otherwise) with respect to the Guaranteed Obligations; (v) any act or event which might otherwise discharge, reduce, limit or modify Guarantor's obligations under this Guaranty; and (vi) any forbearance, delay or other act or omission of Creditor Member. In addition, the Guaranteed Obligations of the Guarantor hereunder are not subject to counterclaim (other than mandatory or compulsory counterclaims), set-off, abatement, deferment or defense based upon any claim that Guarantor may have against Beneficiary:

(a) unrelated to the transaction giving rise to the Guaranteed Obligations; or

(b) regarding any lack of capacity, lack of authority or any other disability or other defense of Guarantor-Affiliated Member or any other Obligor, including, without limitation, any defense based on or arising out of the lack of validity or enforceability of the Limited Liability Company Agreement or any assumption agreement or other instrument delivered thereunder; or

(c) regarding (i) the release or discharge of Guarantor-Affiliated Member or any other Obligor in any receivership, bankruptcy or other proceedings, (ii) the impairment, limitation, modification or termination of the liabilities of Guarantor-Affiliated Member or any other Obligor to Beneficiary or the estate of Guarantor-Affiliated Member or any other Obligor in bankruptcy, or any remedy for the enforcement of Guarantor-Affiliated Member's or any other Obligor's liability under the Limited Liability Company Agreement or any assumption agreement or other instrument delivered thereunder, resulting from the operation of any present or future provision of Title 11 of the United States Code or other statute or from the decision in any court, (iii) the cessation of the liability of Guarantor-Affiliated Member or any other Obligor from any cause other than payment and performance in full of the Guaranteed Obligations, or (iv) any rejection or disaffirmance of the Guaranteed Obligations, or any part thereof, or any security held therefor, in any proceedings in bankruptcy, insolvency or reorganization.

5. DEFENSES WAIVED. Guarantor irrevocably waives acceptance hereof, presentment, demand, protest, to the fullest extent permitted by applicable law, any notice

(including, without limitation, notices of protest, notices of dishonor, notices of any action or inaction, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, and notices of any extension of credit to Guarantor-Affiliated Member or any other Obligor and any right to consent to any thereof) not provided for herein or in the Limited Liability Company Agreement, as well as any requirement that at any time any action be taken by any person against Guarantor-Affiliated Member, any other Obligor or Guarantor. Guarantor further irrevocably waives: (a) any right to require Creditor Member, as a condition of payment or performance, to (i) proceed against Guarantor-Affiliated Member or any other Obligor or other Person, (ii) proceed against or exhaust any security held from Guarantor-Affiliated Member or any other Obligor or other Person, (iii) proceed against or have resort to any balance on the books of Creditor Member owed to Guarantor-Affiliated Member or any other Obligor or other Person, or (iv) pursue any other remedy in the power of Creditor Member whatsoever; (b) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; and (c) the benefit of any statute of limitations affecting Guarantor's liability hereunder or the enforcement hereof. Until payment of the Guaranteed Obligations by Guarantor-Affiliated Member and any other Obligor, any right of subrogation, contribution, reimbursement or indemnification on the part of Guarantor as against Guarantor-Affiliated Member or any other Obligor shall be in all respects subordinate to all rights and claims of Beneficiary for all other payments or damages which shall be or become due and payable by Guarantor-Affiliated Member or any other Obligor under the provisions of the Limited Liability Company Agreement or any assumption agreement or other instrument delivered thereunder. Beneficiary may compromise or adjust any part of the Guaranteed Obligations, make any other accommodation with Guarantor-Affiliated Member or any other Obligor or exercise any other right or remedy available to it against Guarantor-Affiliated Member or any other Obligor without affecting or impairing in any way the liability of Guarantor under this Guaranty except to the extent the Guaranteed Obligations have been performed.

6. REINSTATEMENT; STAY OF ACCELERATION. If at any time any payment of any portion of the Guaranteed Obligations is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, or reorganization of Guarantor-Affiliated Member or any other Obligor or otherwise, Guarantor's obligations under this Guaranty with respect to that payment shall be reinstated at such time as though the payment had not been made. If acceleration of the time for payment of any of the Guaranteed Obligations is stayed upon the insolvency, bankruptcy or reorganization of Guarantor-Affiliated Member or any other Obligor, all such amounts otherwise subject to acceleration under the terms of any agreement relating to the Guaranteed Obligations shall nonetheless be payable by Guarantor forthwith on demand by the Beneficiary.

7. INFORMATION. Guarantor assumes all responsibility for being and keeping itself informed of Guarantor-Affiliated Member's or any other Obligor's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope and extent of the risks that Guarantor assumes and incurs under this Guaranty, and agrees that Beneficiary does not have any duty to advise Guarantor of any information known to it regarding those circumstances or risks.

8. SURVIVAL. This Guaranty shall remain in full force and effect as to any Guaranteed Obligation for so long as such Guaranteed Obligation survives under the terms and conditions of the Limited Liability Company Agreement.

9. SEVERABILITY. The provisions of this Guaranty are severable, and in any action or proceeding involving any state corporate, partnership or limited liability company law, or any state, federal or foreign bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of Guarantor under this Guaranty would otherwise be held or determined to be avoidable, invalid or unenforceable on account of the amount of Guarantor's liability under this Guaranty, then, notwithstanding any other provision of this Guaranty to the contrary, the amount of such liability shall, without any further action by Guarantor or Beneficiary, be automatically limited and reduced to the highest amount that is valid and enforceable as determined in such action or proceeding. This Section with respect to the maximum liability of Guarantor is intended solely to preserve the rights of Beneficiary, to the maximum extent not subject to avoidance under applicable law, and neither Guarantor nor any other person or entity shall have any right or claim under this Section with respect to such maximum liability, except to the extent necessary so that the obligations of Guarantor hereunder shall not be rendered voidable under applicable law.

10. REPRESENTATIONS BY GUARANTOR. Guarantor represents that: (a) it is duly organized, validly existing and in good standing under the laws where it is organized and has all requisite authority to conduct its business in each jurisdiction in which its business is conducted; (b) the execution and delivery of this Guaranty and the performance of the obligations it imposes (i) are within its powers; (ii) have been duly authorized by all necessary action of its governing body; and (iii) do not violate any law, conflict with the terms of its articles or agreement of incorporation or organization, its by-laws or any agreement by which it is bound or require the consent or approval of any governmental authority or any third party; and (c) this Guaranty is a valid and binding agreement, enforceable according to its terms, except as such enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally.

11. NOTICES. All notices, requests and other communications to any party under this Guaranty must be in writing (including facsimile transmission or similar writing) and must be given to Beneficiary at the address for Beneficiary set forth in the Limited Liability Company Agreement, to Guarantor-Affiliated Member at the address for Guarantor-Affiliated Member set forth in the Limited Liability Company Agreement, and to Guarantor at the address for Guarantor-Affiliated Member set forth in the Limited Liability Company Agreement, or in each case as otherwise specified in a notice by one party to the other in accordance with the Limited Liability Company Agreement. Each notice, request or other communication shall be effective in accordance with the Limited Liability Company Agreement.

12. MISCELLANEOUS. No provision of this Guaranty may be amended, supplemented or modified, or any of its terms and provisions waived, except by a written instrument executed by Beneficiary and Guarantor. No failure on the part of the Beneficiary to exercise, and no delay in exercising, any right under this Guaranty waives that right; nor does any single or partial exercise of any right under this Guaranty preclude any other or further exercise of that or any other right. The remedies provided in this Guaranty are cumulative and

not exclusive of any remedies provided by law. This Guaranty binds Guarantor, and its successors and assigns, and benefits Beneficiary, and its respective successors and assigns. The use of headings does not limit the provisions of this Guaranty.

13. ASSIGNMENT OF GUARANTY. Notwithstanding anything to the contrary contained in this Guaranty, Guarantor shall not assign, transfer or otherwise delegate its obligations under this Guaranty without first obtaining Beneficiary's prior written consent, which shall be granted or withheld in Beneficiary's sole and absolute discretion. No transfer of interests in Guarantor or merger involving Guarantor that is permitted under the Limited Liability Company Agreement shall be deemed to be an assignment that requires Beneficiary's consent hereunder.

14. GOVERNING LAW. THIS GUARANTY IS TO BE CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS (AND NOT THE LAW OF CONFLICTS) OF DELAWARE.

15. CONSENT TO JURISDICTION. GUARANTOR AND BENEFICIARY HEREBY CONSENT AND AGREE TO THE EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR STATE COURT SITTING IN THE STATE OF DELAWARE IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTY AND GUARANTOR IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH COURT AND IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY OBJECTION IT MAY NOW OR LATER HAVE AS TO THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH A COURT OR THAT SUCH A COURT IS AN INCONVENIENT FORUM.

16. WAIVER OF JURY TRIAL. GUARANTOR AND BENEFICIARY ACKNOWLEDGE AND AGREE THAT ANY CONTROVERSY OR CLAIM WHICH MAY ARISE UNDER THIS GUARANTY IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE CONTEMPLATED TRANSACTIONS. THIS WAIVER MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 16) AND EXECUTED BY EACH OF GUARANTOR AND BENEFICIARY). THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT

MATTER HEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. IN THE EVENT OF LITIGATION, THIS GUARANTY MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first above written.

GUARANTOR:

ERP OPERATING LIMITED PARTNERSHIP,
an Illinois limited partnership

By: Equity Residential, a Maryland real estate investment trust
its General Partner

By: _____
Name: _____
Title: _____

[Signature Page — Archstone Residual JV, LLC (ERPOP)]

SCHEDULE A

ORGANIZATION CHART FOR THE COMPANY

(Final organization chart to be attached following the closing,
pursuant to the terms of the limited liability company agreement; inter alia, chart to be revised to reflect disposition of applicable interests in OC/SD and CityCenter DC)

Schedule A-1

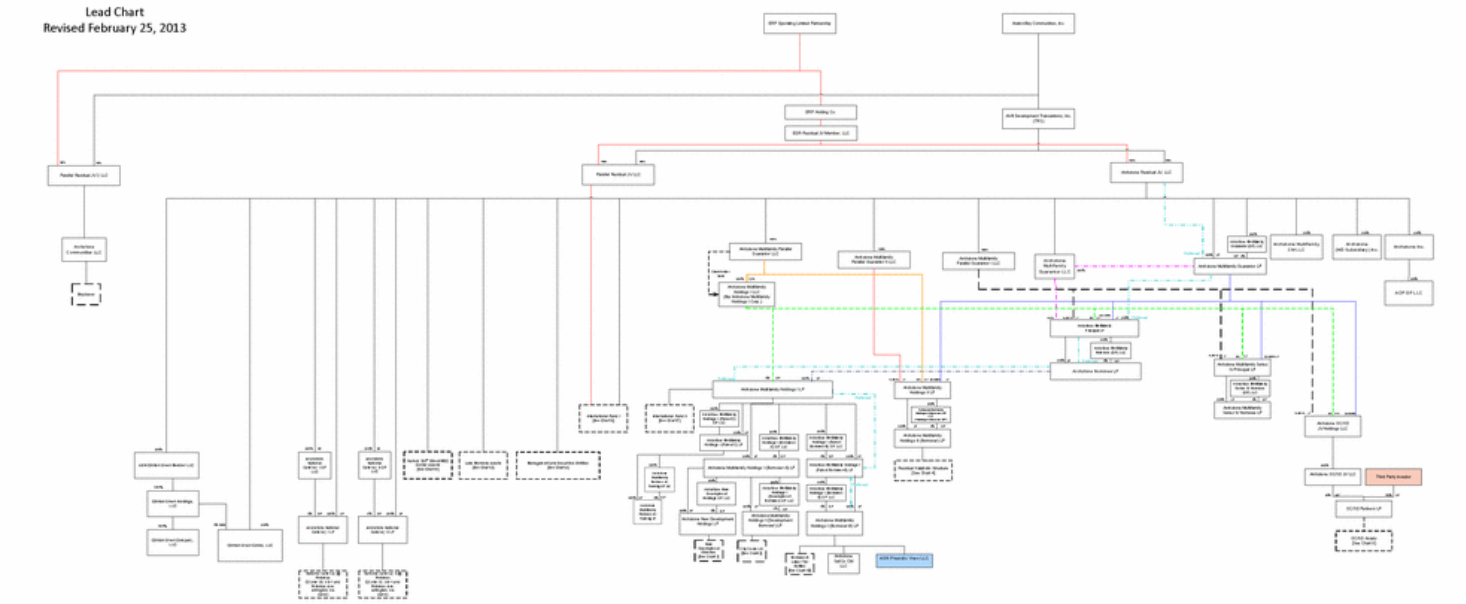


Chart 1 – New Development Structure

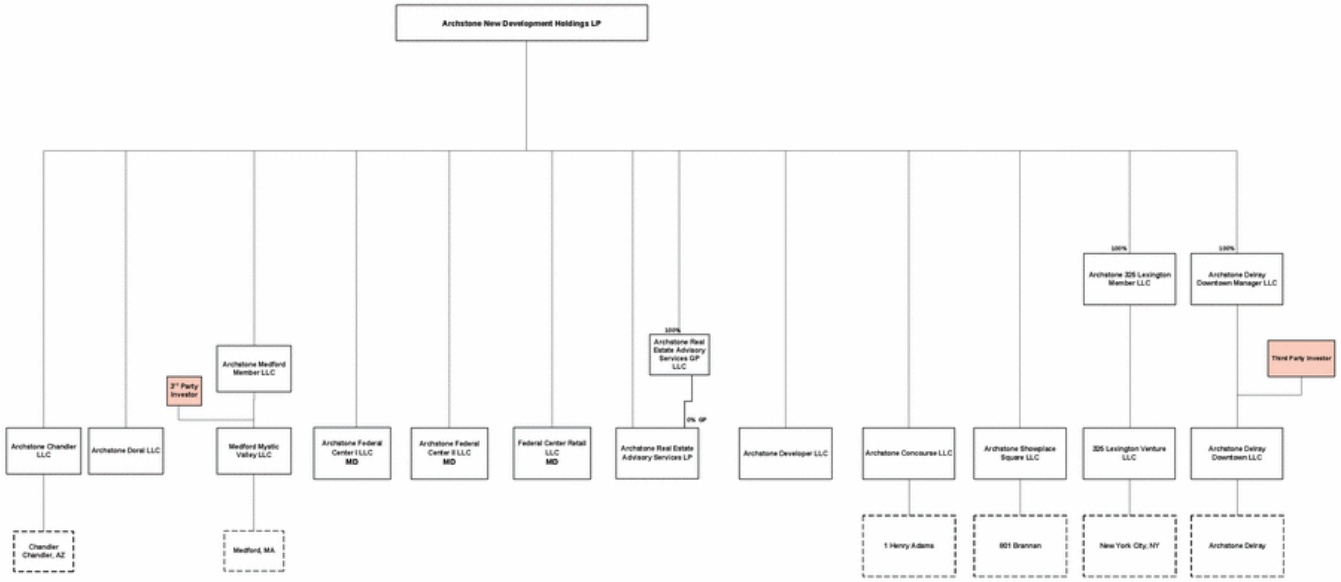


Chart 2 – City Center JV

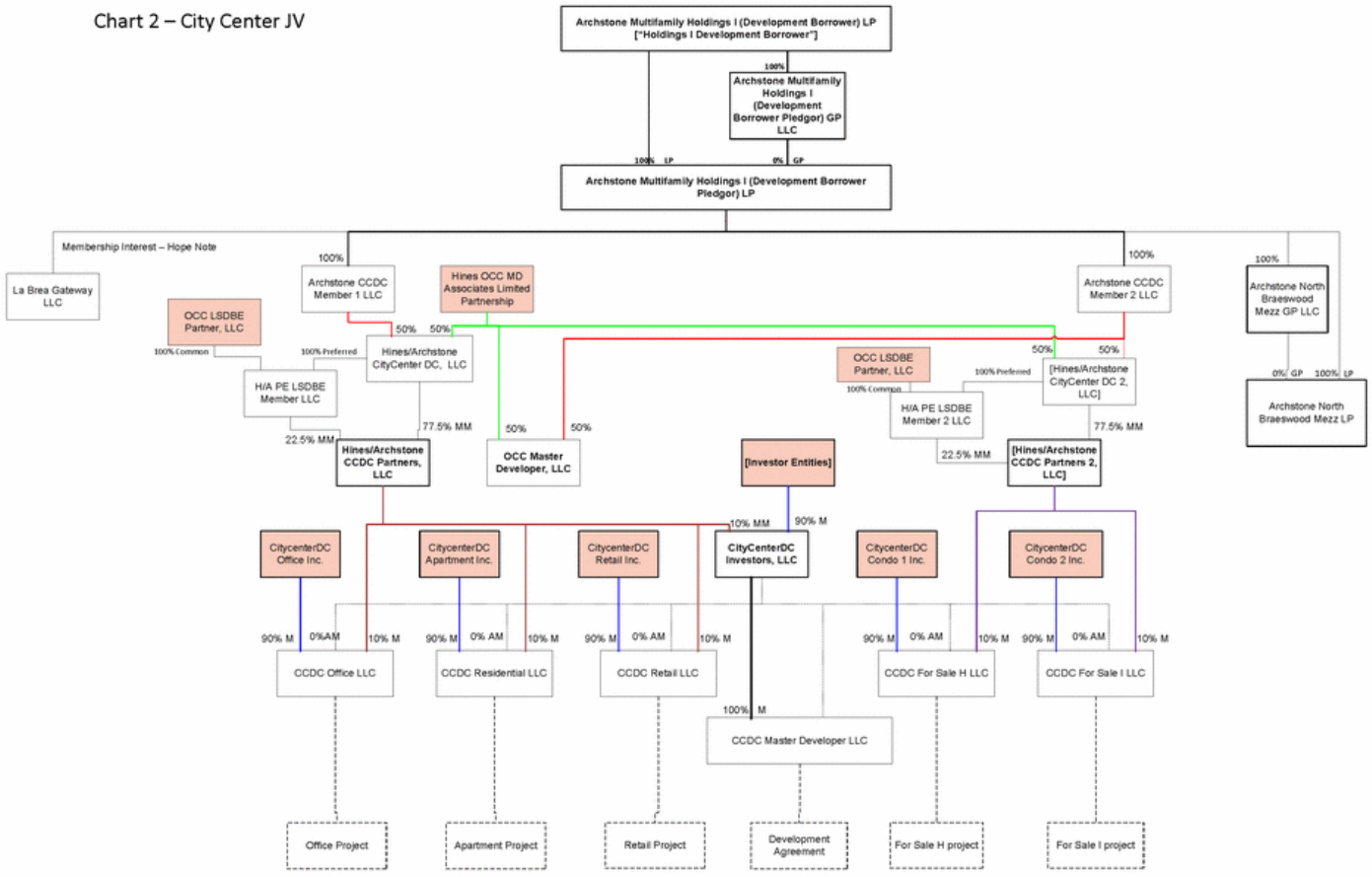


Chart 3 – Lake Mendota Assets

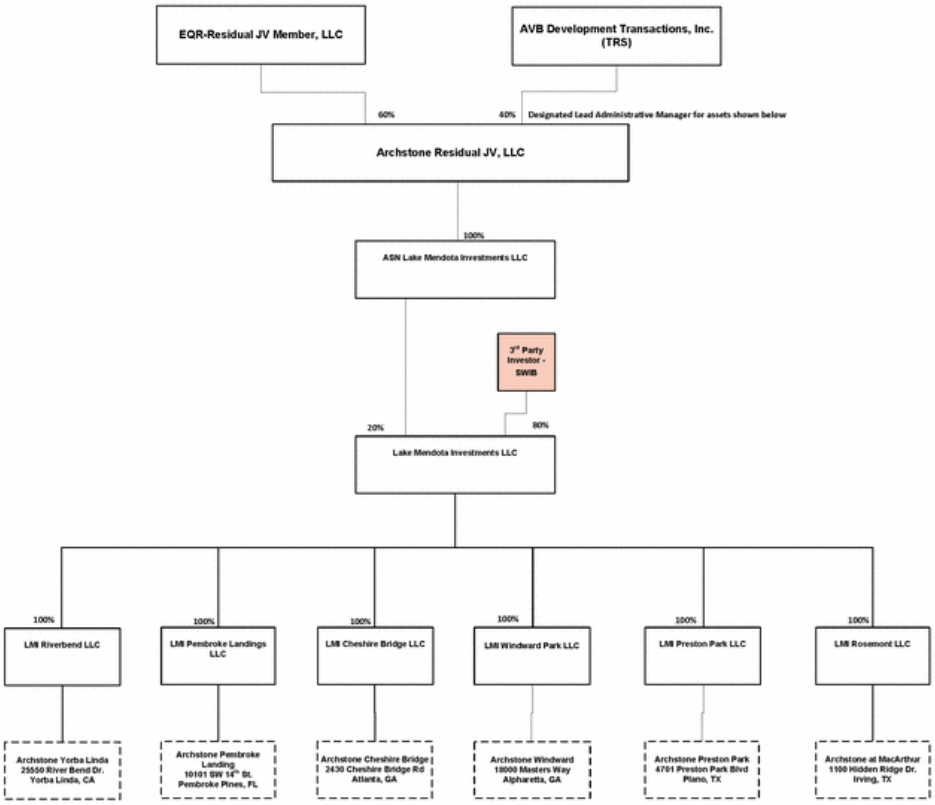


Chart 4 – Residual Katahdin Structure

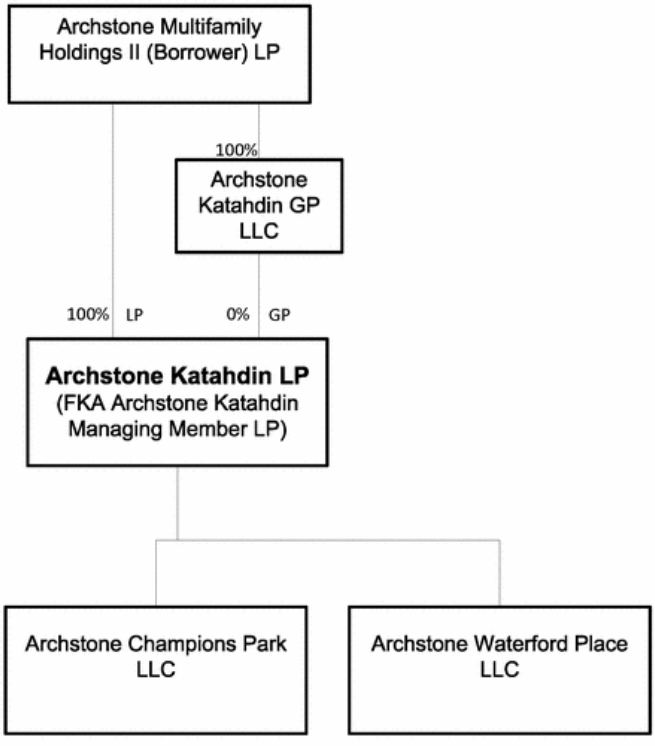


Chart 5 – Management and Securities Entities

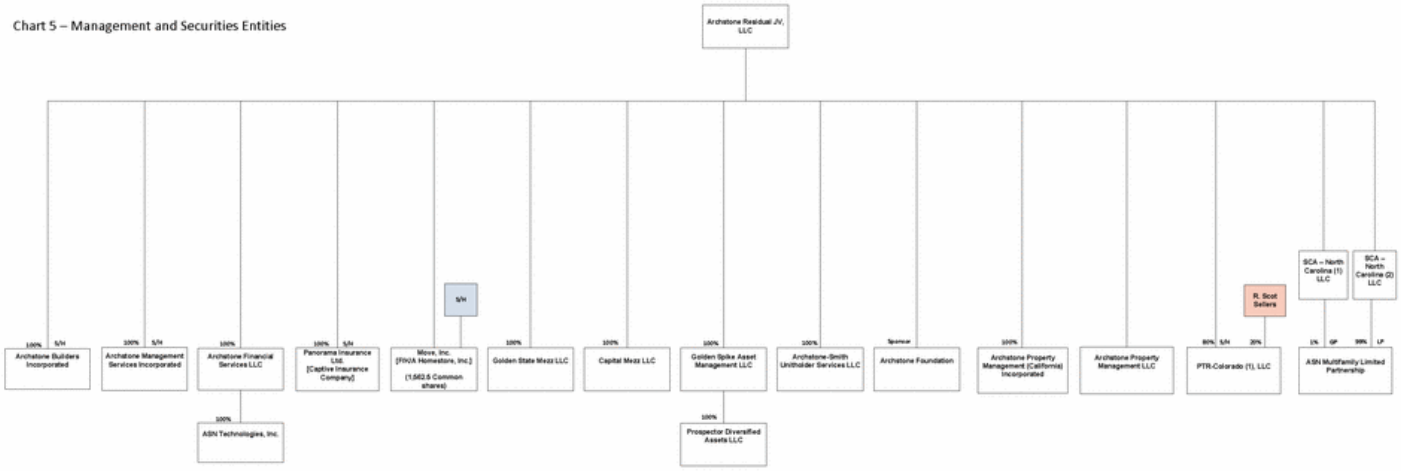


Chart 6 – International Fund I

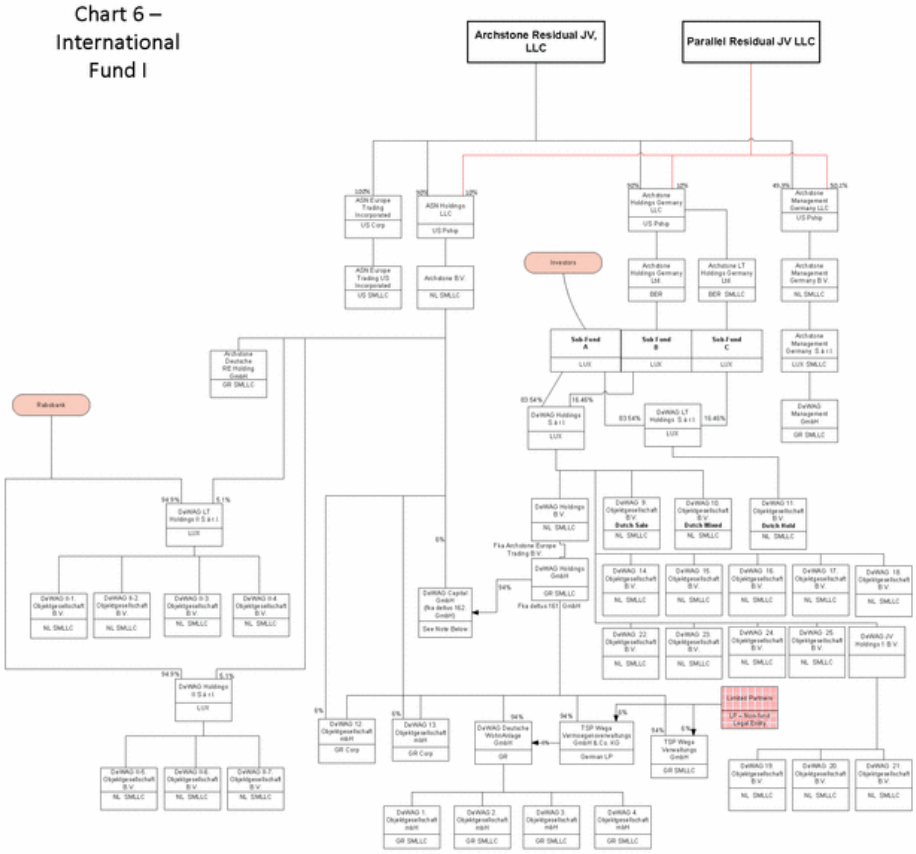


Chart 7 – International
Fund II

Chart 8 – OC/SD Assets

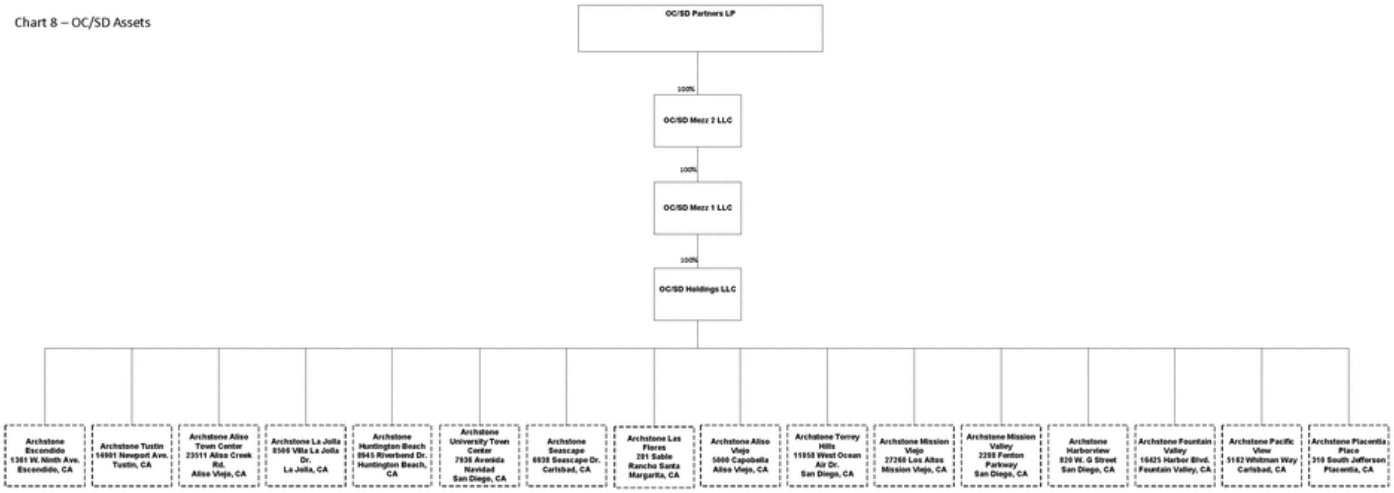
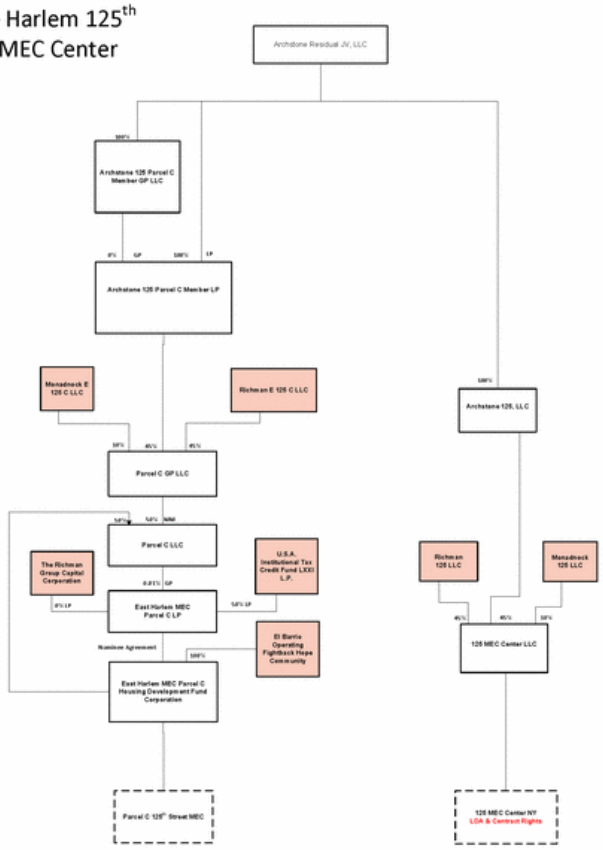
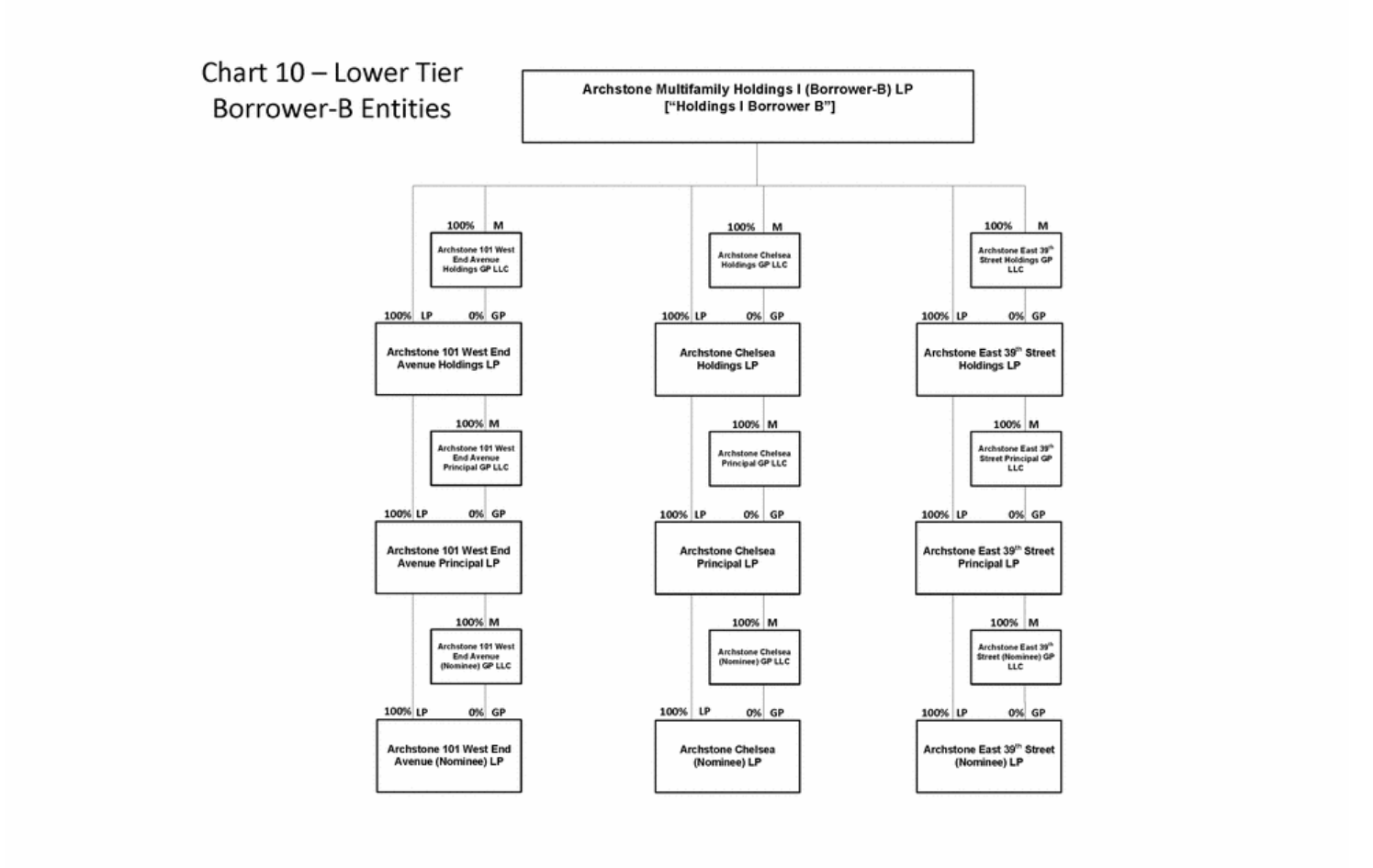


Chart 9 – Harlem 125th Street/MEC Center





SCHEDULE B

[Reserved]

SCHEDULE C

ARCHSTONE RESIDUAL REAL ESTATE ASSET ADJUSTED VALUE

Asset	Value ($ in thousands)	Allocation
East Harlem 125th Street — Parcel C(1)	N/A	N/A
Germany Portfolio	N/A	N/A
Lake Mendota Portfolio	N/A	N/A
National Gateway	32,300	AVB

(1) East Harlem — 125th Street Parcel B West and Parcel C may only be transferred together.

SCHEDULE D

ARCHSTONE SUBSIDIARIES

[This list to be finalized following the closing,
pursuant to the terms of the limited liability agreement.]

List of Subsidiaries of Archstone Residual JV, LLC—this list will be reviewed and finalized following the closing, pursuant to the terms of the limited liability company agreement.

AOP GP LLC
Archstone Inc.
Archstone Katahdin GP LLC
Archstone Katahdin LP
Archstone Multifamily CM LLC
Archstone Multifamily Guarantor (GP) LLC
Archstone Multifamily Guarantor LLC

Archstone Multifamily Guarantor LP
Archstone Multifamily Holdings I (Borrower-A) GP LLC
Archstone Multifamily Holdings I (Borrower-A) LP
Archstone Multifamily Holdings I (Borrower-B) GP LLC
Archstone Multifamily Holdings I (Borrower-B) LP
Archstone Multifamily Holdings I (Development Borrower) GP LLC
Archstone Multifamily Holdings I (Development Borrower) LP
Archstone Multifamily Holdings I (Parent Borrower-B) GP LLC
Archstone Multifamily Holdings I (Parent Borrower-B) LP
Archstone Multifamily Holdings I LLC
Archstone Multifamily Holdings I LP
Archstone Multifamily Holdings II (Borrower) GP LLC
Archstone Multifamily Holdings II (Borrower) LP
Archstone Multifamily Holdings II LP
Archstone Multifamily Nominee (GP) LLC
Archstone Multifamily Parallel Guarantor I LLC
Archstone Multifamily Parallel Guarantor II LLC
Archstone Multifamily Parallel Guarantor LLC
Archstone Multifamily Principal LP
Archstone Multifamily Series IV Nominee (GP) LLC
Archstone Multifamily Series IV Nominee LP
Archstone Multifamily Series IV Principal LP
Archstone Nominee LP
Archstone SellCo CM LLC
Brookhaven Village Apartments LLC
API Brookhaven LLC
API Emeryville Parkside LLC
Archstone Tempe LLC
Archstone Multifamily Holdings I (Development Borrower Pledgor) GP LLC
Archstone Multifamily Holdings I (Development Borrower Pledgor) LP
Archstone National Gateway I GP LLC
Archstone National Gateway I LP
Archstone National Gateway II GP LLC
Archstone National Gateway II LP

Archstone North Braeswood Mezz GP LLC
Archstone North Braeswood Mezz LP
Block C Development Company LLC
Archstone CCDC Member 1 LLC
Archstone CCDC Member 2 LLC
CCDC For Sale H LLC
CCDC For Sale I LLC
CCDC Master Developer LLC
CCDC Office LLC
CCDC Residential Rental LLC
CCDC Retail LLC
CityCenterDC Investors LLC
H/A PE LSDBE Member 2 LLC
H/A PE LSDBE Member LLC
Hines/Archstone CCDC Partners 2 LLC
Hines/Archstone CCDC Partners LLC
Hines/Archstone CityCenter DC 2 LLC
Hines/Archstone CityCenter DC LLC
OCC Master Developer LLC
125 MEC Center LLC
East Harlem MEC Parcel C LP
Parcel C GP LLC
Parcel C LLC
BR Tech Ridge GP, LLC
BR Tech Ridge JV, LLC
BR Tech Ridge LP, LLC
BR Tech Ridge, LP
325 Lexington Venture LLC
Archstone 125 Parcel C Member GP LLC
Archstone 125 Parcel C Member LP
Archstone 125, LLC
Archstone 325 Lexington Member LLC
Archstone New Development Holdings GP LLC
Archstone New Development Holdings LP
Archstone Doral LLC
Archstone Delray Downtown LLC
Archstone Delray Downtown Manager LLC
Archstone Developer LLC
Archstone Federal Center I LLC
Archstone Federal Center II LLC
Archstone Real Estate Advisory Services GP LLC
Archstone Real Estate Advisory Services LP
Federal Center Retail LLC

Archstone Medford Member LLC
Medford Mystic Valley LLC
Archstone Terracina GP LLC
Archstone Terracina LP
Westchester at Clairmont LP
Westchester at Clairmont GP LLC
Archstone Long Beach GP LLC
Archstone Long Beach LP

Archstone 101 West End Avenue Holdings GP LLC
Archstone 101 West End Avenue Holdings LP
Archstone 101 West End Avenue Principal GP LLC
Archstone 101 West End Avenue Principal LP
Archstone 101 West End Avenue (Nominee) GP LLC
Archstone 101 West End Avenue (Nominee) LP
Archstone East 39th Street Land LLC
Archstone East 39th Street Holdings GP LLC
Archstone East 39th Street Holdings LP
Archstone East 39th Street Principal GP LLC
Archstone East 39th Street Principal LP
Archstone East 39th Street (Nominee) GP LLC
Archstone East 39th Street (Nominee) LP
Archstone 180 Montague Holdings GP LLC
Archstone 180 Montague Holdings LP
Archstone 180 Montague Principal GP LLC
Archstone 180 Montague Principal LP
Archstone 180 Montague (Nominee) GP LLC
Archstone 180 Montague (Nominee) LP
Archstone Chelsea Holdings GP LLC
Archstone Chelsea Holdings LP
Archstone Chelsea Principal GP LLC
Archstone Chelsea Principal LP
Archstone Chelsea (Nominee) GP LLC
Archstone Chelsea (Nominee) LP
Lake Mendota Investments LLC
LMI Cheshire Bridge LLC
LMI Pembroke Landings LLC
LMI Preston Park LLC
LMI Riverbend LLC
LMI Rosemont LLC
LMI Windward Park LLC
ASN Lake Mendota Investments LLC
Archstone Champions Park LLC
Archstone Waterford Place LLC
Archstone DC Investments One LP
Archstone DC Investments Two LP
Smith Property Holdings One LP
ASN Clinton Green Member LLC
Clinton Green Holdings LLC
Clinton Green Company LLC
Clinton Green Condo LLC
Archstone Builders Incorporated
Archstone Financial Services LLC
Archstone Foundation
Archstone Management Services Incorporated
Archstone-Smith Unitholder Services LLC
ASN Technologies, Inc.
Capital Mezz LLC
Golden Spike Asset Management LLC
Golden State Mezz, LLC

Panorama Insurance Ltd.
Prospector Diversified Assets LLC
Move, Inc.
Archstone Property Management LLC
ASN Multi-Family Limited Partnership
SCA — North Carolina (1) LLC
SCA — North Carolina (2) LLC
Archstone Property Management (California) Incorporated
Archstone OC/SD JV Holdings LLC
Archstone OC/SD JV LLC
OC/SD Holdings LLC
OC/SD Mezz 1 LLC
OC/SD Mezz 2 LLC

OC/SD Partners LP
Archstone Multifamily Holdings I (Parent C) GP LLC
Archstone Multifamily Holdings I (Parent C) LP
Archstone Multifamily Partners AC Funding GP LLC
Archstone Multifamily Partners AC Funding LP
Archstone Multifamily Partners C Development Investor I LLC
Archstone Multifamily Partners C Development GP LLC
Archstone Multifamily Partners C Development Investor II LLC
Archstone Multifamily Parent C Development JV LP
National Gateway REIT LLC
Archstone National Gateway CM LLC

SCHEDULE E

ASSUMED ARCHSTONE LIABILITIES

This Schedule E is the same as Exhibit A of the Archstone Residual JV Term Sheet, which is attached as Schedule O to the Buyers Agreement. Pursuant to the Term Sheet and the Buyers Agreement, ERPOP and AVB intend to cause their respective wholly-owned subsidiaries (the "**ERP JV Subsidiary**" and "**AVB JV Subsidiary**," respectively) to form Archstone Residual Joint Venture (the "**Joint Venture**").

Capitalized terms used but not defined herein have the meanings set forth in the Buyers Agreement. Certain capitalized terms used herein, as expressly noted herein, have the meanings set forth in the Purchase Agreement.

This Schedule E describes the general terms and conditions applicable to the allocation of certain litigation and other liabilities (and recoveries) that the Buyer Parties and the Joint Venture will assume and succeed to upon the Initial Closing (as defined in the Purchase Agreement). The Buyer Parties acknowledge that there may be additional pre-closing events and occurrences that are not specifically encompassed within this Schedule and which may generate claims, litigation, and other losses (or recoveries) after the Initial Closing. To the extent allocation of liability for (or of rights to recoveries for) such events and occurrences is not dealt with by this Exhibit, the Buyer Parties will endeavor to allocate such liability (and recoveries) in a fair and reasonable manner. Liabilities, claims, suits and recoveries subject to this Schedule include (but are not limited to), and shall be allocated, as follows:

1. As a general rule, the Joint Venture shall assume all third-party claims, litigation, and other liabilities to be assumed by the Buyer Parties pursuant to the Purchase Agreement related to pre-closing events and occurrences, even if asserted post-closing, and all losses, liabilities, damages, costs, expenses and fees associated therewith shall be a "**JV Expense**," meaning they will be borne 60% by the ERP JV Subsidiary and 40% by the AVB JV Subsidiary (i.e., in accordance with their percentage interests in the Joint Venture). As a general rule, first-party losses arising from the pre-closing physical condition of a particular asset shall follow the asset (and, accordingly, shall be assumed and retained by the applicable Buyer Party that drafted such asset), and shall not be assumed by the Joint Venture and not be a JV Expense (except with respect to the assets that are acquired by the Joint Venture). There will be, however, exceptions to these rules, some of which are described below.

2. Expenses (e.g. repair costs, business interruption) incurred by a Buyer Party in connection with a pre-closing property loss at an acquired asset, such as a fire, water infiltration problem or construction defect, shall initially be borne by that Buyer Party, and any post-closing insurance reimbursement or other recovery for those expenses shall flow to that Buyer Party, provided that, in the case of casualties that are typically covered by insurance, after all expenses and insurance reimbursements are settled if there remain uninsured losses (e.g., due to a deductible, an exclusion, etc.) such uninsured losses shall be borne by the Joint Venture. Any post-closing reimbursements or other recoveries that relate to an expense paid pre-closing by Enterprise, and not a Buyer Party, or which are not used to offset repair costs, shall flow to the Joint Venture.

3. Any liabilities incurred and receivables due or recoveries made in connection with the ordinary operation of an asset, such as those relating to real estate taxes, utilities, operating expenses, security deposits, inspection fees, contractor disputes, and compliance with state and local regulation and receivables such as rents shall follow the asset (and, accordingly, shall be assumed and retained by the applicable Buyer Party that drafted such asset), and shall not be assumed or acquired by the Joint Venture and not be a JV Expense (except with respect to the assets that are acquired by the Joint Venture). As an example, if there is a dispute with a contractor on a development site over change orders or a dispute with the local government over building permits, entitlements, etc. related to a specific property, that dispute will follow the property and not be assumed by the Joint Venture (except with respect to the assets that are acquired by the Joint Venture).

4. Liabilities and recoveries related to accessibility claims arising under the federal Fair Housing Act and Americans With Disabilities Act or analogous federal and state statutes will follow the asset (and, accordingly, shall be assumed and retained by the applicable Buyer Party that drafted such asset), and shall not be assumed by the Joint Venture or be a JV Expense (except with respect to the assets that are acquired by the Joint Venture), **provided** however, that any such claim against the Joint Venture or any property or group of properties within it shall at all times be a JV Expense. A claim of this nature against an acquired asset shall be considered a pre-closing claim regardless of when asserted unless is relates to changes that a Buyer Party made to an asset after closing.

5. With respect to the pending Hermida and Heien litigation in Massachusetts involving the Security Deposit Statute (the Mass. G.L. c. 186 Sec. 15B(1)(b) and Mass. G.L. c. 93A (the "**Fee Litigation**"), in which affiliates of Enterprise are defendants, any all losses, liabilities, damages, costs, expenses and fees shall be a JV Expense.

6. All losses, liabilities, damages, costs, expenses and fees relating to the pending Perez and Vagle class action suits in California, involving late fees and security deposits respectively, the Blue Rock litigation pending in New York, and the Garibay wage and hour litigation pending in California, shall be a JV Expense.

7. All losses, liabilities, damages, costs, expenses and fees relating to environmental claims and suits relating to soil or groundwater contamination, asbestos, and lead-based paint, regardless of when the conditions arise or manifest themselves, will follow the asset (and, accordingly, shall be assumed and retained by the applicable Buyer Party that drafted such asset), and shall not be assumed by the Joint Venture and not be a JV Expense (except with respect to the assets that are acquired by the Joint Venture), except that losses, liabilities, damages, costs, expenses and fees relating to environmental claims and suits based on pre-closing acts, occurrences or conditions in which the recovery claimed or awarded to a third party or governmental agency is for money damages, and not for remediation of soils, groundwater or other environmental remediation or for alterations or retrofitting of existing improvements, shall be a JV Expense.

8. Without limiting the allocation to the Joint Venture of most third party claims based on pre-closing events, whether insured or uninsured, as provided in this Schedule, it is noted for clarification that the uninsured portion of all General Liability claims (primarily third-party

property damage and bodily injury claims) based on pre-closing events or occurrences at an acquired asset, whether asserted pre-closing or after, shall be a JV Expense.

9. D & O claims against any of the Buyer Parties that are asserted in securities litigation or shareholder derivative lawsuits shall be the exclusive responsibility of the Buyer Party against whom the claim is made. Should a claim be made against the Joint Venture, all uninsured expenses related to the claim shall be a JV Expense.

10. All losses, liabilities, damages, costs, expenses and fees relating to third-party mold claims and suits, whether for bodily injury or property damage, shall be a JV Expense if and only if the claim or suit had been asserted or was pending at closing or is asserted after the closing but involves claims or suits brought by former residents (and otherwise shall be assumed and retained by the applicable Buyer Party that drafted such asset) or involves an asset acquired by the Joint Venture. Liability for first-party property damage due to mold conditions that existed pre-closing, including conditions that may not manifest themselves until post-closing (e.g. replacement of windows, siding, drywall), shall follow the asset and, accordingly, shall be assumed and retained by the applicable Buyer Party that drafted such asset, and shall not be assumed by the Joint Venture and not be a JV Expense (except with respect to the assets that are acquired by the Joint Venture).

11. All losses, liabilities, damages, costs, expenses and fees relating to any eminent domain or condemnation actions pending as of the closing shall follow the asset and, accordingly, shall be assumed and retained by the applicable Buyer Party that drafted such asset. Without limiting the foregoing, all losses, liabilities, damages, costs, expenses and fees (and all compensation and recoveries) related to the permanent and temporary easements required for the construction of infrastructure for a Second Avenue Subway Project at The Carmargue Apartments shall follow the asset and, accordingly, shall be assumed and retained by the applicable Buyer Party that drafted such asset.

12. All losses, liabilities, damages, costs, expenses and fees incurred and recoveries received in connection with a development project or land parcel acquired by one or the other of the Buyer Parties (e.g., taxes, insurance, construction costs, litigation, fees, and penalties) shall follow the asset and, accordingly, shall be assumed and retained by the applicable Buyer Party that drafted such asset, and shall not be assumed by the Joint Venture and not be a JV Expense (except with respect to the assets that are acquired by the Joint Venture).

13. Other litigation recoveries, by way of claim, counterclaim, fee award or otherwise, shall be allocated in the same manner as the liabilities described above are allocated, **provided**, however that any recoveries in connection with the Archstone Westbury (n/k/a Meadowbrook Crossing) mold litigation, whether from insurers, contractors or others, shall flow to the Joint Venture, and all expenses incurred in connection therewith shall be a JV Expense.

14. [Reserved]

15. The Joint Venture (or applicable subsidiary) shall assume the responsibility to pay obligations under Enterprise's "Development Incentive Plan" except to the extent that the

Buyer Parties agree prior to the Initial Closing to allocate payments under such plan that vest post-Closing to the Buyer Party whose development triggers the vesting.

16. The Joint Venture (or applicable subsidiary) shall acquire its interests in the underlying assets of the Joint Venture subject to applicable debt if any, including, without limitation, the German line of credit.

17. Unless paid by the Buyer Parties in accordance with their respective Proportionate Shares in accordance with the Buyers Agreement, all transfer taxes (and related post-closing legal costs incurred in connection with the pursuit or defense of claims relating to the application to the transactions under the Purchase Agreement of the preemption of local transfer taxes arising under the Bankruptcy Code) shall be a JV Expense (regardless of whether the underlying property or interests to which the transfer taxes or claims relate is to be acquired by the Joint Venture, acquired directly by a Buyer Party or its affiliates, or acquired by Legacy Holdings Joint Venture).

18. All losses, liabilities, damages, costs, expenses and fees incurred in connection with brokerage disputes with respect to assets and interests to be acquired pursuant to the Purchase Agreement (regardless of whether the underlying property or interests are to be acquired by the Joint Venture, acquired directly by one of the Buyer Parties or their affiliates, or acquired by Legacy Holdings JV, as more fully provided in the Buyers Agreement), relating to acts or events prior to the closing, shall be assumed by the Joint Venture and shall be a JV Expense, provided that losses, liabilities, damages, costs, expenses and fees incurred in connection with brokerage disputes involving claims for commissions that are earned in connection with the execution or commencement of, or exercise of extension or other rights under, leases shall be allocated such that the portion of such claims that are attributable to rents payable under the applicable lease prior to the closing shall be a JV Expense, and the portion of such claims that are attributable to rents payable under the applicable lease following the closing shall follow the asset and, accordingly, shall be assumed and retained by the applicable Buyer Party that drafted such asset, and shall not be assumed by the Joint Venture and not be a JV Expense (except with respect to the assets that are acquired by the Joint Venture).

19. Buyer Claims provided for in Section 5.6 of the Buyers Agreement may be asserted (and recoveries on account thereof shall be allocated) as provided in said Section 5.6.

20. The liabilities (and rights) to be assumed and acquired by the Joint Venture (or any applicable subsidiary thereof acquired pursuant to the Purchase Agreement) shall include certain Office Leases (as defined in the Term Sheet, and further addressed in Section 6.3 of the Buyers Agreement), subject to the terms of the Buyers Agreement and the Governance Documents pursuant to which the Buyer Parties will have certain rights to assume, or sublease premises under, leases of office space that are acquired pursuant to the Purchase Agreement.

21. The liabilities to be assumed by the Joint Venture shall also include the liabilities included within "Other Liabilities" on Jupiter's 9/30/2012 balance sheet, except to the extent that any of such liabilities are specifically allocated to one of the Buyer Parties pursuant to any of the other provisions of this Schedule.

22. Costs of enforcement/collection that relate to the recovery or attempted recovery of any particular claim allocated pursuant to this Schedule, and costs of defenses that are incurred in connection with any specific liability allocated pursuant to this Schedule, shall be borne consistently with the allocation of the underlying claim or liability with respect to which such costs have been incurred.

23. The liabilities to be assumed by the Joint Venture shall include any "naked" interest rate swap obligations that are not unwound by the Seller prior to the closing.

24. The liabilities to be assumed by the Joint Venture shall include liabilities with respect to the prevailing wage claims relating to the CityCenter DC project, but if and when either Buyer Party elects to acquire the CityCenter DC project from the Joint Venture, the parties would agree upon a reasonable arrangement for liabilities/recoveries at that time.

25. In situations where a JV Member acquires a property from the Joint Venture following the closing, the parties would agree upon a reasonable arrangement for the allocation of the liabilities and recoveries described in this Schedule related to that property that the JV Member would assume or succeed to, and the liabilities and recoveries that the Joint Venture would retain.

26. The Governance Documents (as defined in the Term Sheet) for the Joint Venture shall include provisions addressing the administration, management and resolution of the liabilities and claims assumed and acquired by the Joint Venture. Pursuant to the Governance Documents, the Joint Venture will develop "Approved Business Plans" (as defined in the Term Sheet) for the management and resolution of litigation matters and liabilities and the pursuit of claims, the costs, liabilities and/or recoveries with respect to which are a JV Expense. If not developed prior to the Initial Closing, the Buyer Parties intend to discuss and agree upon these Approved Business Plans during the 90 day period following the execution of the Buyers Agreement. Pursuant to the Governance Documents ERP JV Subsidiary will be delegated "Administrative Lead Member" (as defined in the Term Sheet) with respect to the implementation of the Approved Business Plans relating thereto, provided that AVB JV Subsidiary shall have approval rights over any material settlements of any such litigation matters, liabilities or claims, and ERP JV Subsidiary shall be entitled to a mutually agreed-upon fee from the Joint Venture to cover its costs in connection with the administration of

such matters. The Buyer Parties intend these provisions of the Governance Documents to incorporate a process for the fair, efficient and cost-effective management, including decision-making, of the claims and litigation subject to this Schedule.

SCHEDULE F

[Reserved]

SCHEDULE G

MEMBERS, CAPITAL CONTRIBUTIONS, AND PROPORTIONATE SHARES
(As of February 27, 2013)

Member Name and Address	Capital Contribution	Proportionate Share
AVB Development Transactions, Inc. 671 N. Glebe Road Suite 800 Arlington, VA 22203	$ 61,042,000	40%
EQR-Residual JV Member, LLC Two N. Riverside Plaza Suite 400 Chicago, Illinois 60606	$ 91,563,000	60%
TOTALS	**$ 152,605,000**	**100%**

SCHEDULE H

[Reserved]

SCHEDULE I

[Reserved]

SCHEDULE J

GERMANY I PORTFOLIO

1. DeWAG 1. Objektgesellschaft mbH
2. DeWAG 2. Objektgesellschaft mbH
3. DeWAG 3. Objektgesellschaft mbH
4. DeWAG 4. Objektgesellschaft mbH
5. DeWAG 9. Objektgesellschaft B.V.
6. DeWAG 10. Objektgesellschaft B.V.
7. DeWAG 11. Objektgesellschaft B.V.
8. DeWAG 14. Objektgesellschaft B.V.
9. DeWAG 15. Objektgesellschaft B.V.
10. DeWAG 16. Objektgesellschaft B.V.
11. DeWAG 17. Objektgesellschaft B.V.
12. DeWAG 18. Objektgesellschaft B.V.
13. DeWAG 19. Objektgesellschaft B.V.
14. DeWAG 20. Objektgesellschaft B.V.
15. DeWAG 21. Objektgesellschaft B.V.

16. DeWAG 22. Objektgesellschaft B.V.
17. DeWAG 23. Objektgesellschaft B.V.
18. DeWAG 24. Objektgesellschaft B.V.
19. DeWAG 25. Objektgesellschaft B.V.
20. DeWAG 11. Objektgesellschaft B.V.
21. DeWAG JV Holdings 1 B.V.
22. Archstone Deutsche RE Holding GmbH
23. DeWAG Objektgesellschaft II-1 B.V.
24. DeWAG Objektgesellschaft II-2 B.V.

SCHEDULE K

HARLEM PARCEL C

The Harlem Parcel C Asset is located in the East Harlem section of the Borough of Manhattan in the City of New York between East 125th Street and East 127th Street, and between Second and Third Avenues.

SCHEDULE L

INITIAL BUSINESS PLANS

(To be attached following the closing, pursuant to
the terms of the limited liability company agreement)

SCHEDULE M

LAKE MENDOTA PORTFOLIO

1. Archstone Yorba Linda
2. Archstone Pembroke Landing
3. Archstone Cheshire Bridge
4. Archstone Windward
5. Archstone Preston Park
6. Archstone at MacArthur

SCHEDULE N

LAND OPTION TAKE-OUT PRICE

AVB Drafted Land Option	Value ($ in thousands)
8th & Harrison	1,664
Harlem – 125th Street Parcel B West(2)	180

EQR Drafted Land Option	Value ($ in thousands)
Huntington Beach at Edinger	769

(2) East Harlem — 125th Street Parcel B West and Parcel C may only be transferred together.

SCHEDULE O

[Reserved]

SCHEDULE P

CERTAIN MISCELLANEOUS ARCHSTONE ASSETS

The following listed herein are receivables called "Hope Notes":

1. Saratoga. Receivable arising from a mezzanine loan made by Capital Mezz LLC to RWN-Saratoga Court Holdings, LLC, and terms of an Amended and Restated Forbearance Agreement dated November 30, 2010.

2. La Brea. Receivable arising from agreements by Archstone Multifamily Holdings I (Development Borrower Pledgor), LP, as successor-in-interest to Ameriton Properties Incorporated, pursuant to the Limited Liability Company Agreement for La Brea Gateway LLC, dated August 19, 2004, as amended by First Amendment thereto, dated June 4, 2009, and Second Amendment thereto, dated January 1, 2010.

SCHEDULE Q

NATIONAL GATEWAY ASSETS

1. National Gateway Phase I — Parcel 5A - located in Arlington, Virginia, and bounded by Jefferson Davis Highway, Crystal Drive and Potomac Avenue.

2. National Gateway Phase II — Parcels 9A and 14 — located in Arlington, Virginia, and bounded by Jefferson Davis Highway, Crystal Drive and Potomac Avenue.

SCHEDULE R

[Reserved]

SCHEDULE S

OFFICE LEASES

1. Lease dated March 12, 2004, executed by and between Archstone-Smith and Regency Plaza International, Inc., for a property located at 2350 Mission College Blvd., Suite 1140, Santa Clara, California.

2. Lease dated September 30, 2006, executed by and between Archstone-Smith Operating Trust and Green 1250 Broadway Owner LLC, for a property located at 1250 Broadway, 12th Floor, New York, New York.

SCHEDULE T

TAXES; ALLOCATIONS; RELATED MATTERS

A. **Target Allocations.**

After application of Section B of this Schedule T, any remaining items of Profits and Losses shall be allocated among the Members and to their Capital Accounts so as to cause the balance of each Member's Economic Capital Account to be as nearly equal to such Member's Target Balance as possible.

B. Regulatory Allocations and other Allocation Rules.

Notwithstanding anything in the Agreement to the contrary, the following special allocations shall be made as follows, and, as appropriate, in the following order:

(1) Items of Company loss and deduction otherwise allocable to an Member hereunder that would cause such Member (hereinafter, a "**Restricted Holder**") to have a deficit balance in his or her or its Adjusted Capital Account, or would increase the deficit balance in his or her or its Adjusted Capital Account, as of the end of the Fiscal Year to which such items relate shall not be allocated to such Restricted Holder.

(2) If there is a net decrease in Company Minimum Gain for any Fiscal Year (except as a result of conversion or refinancing of Company indebtedness, certain capital contributions or revaluation of the Company's property as further outlined in Treasury Regulation Sections 1.704-2(d)(4), (f)(2) or (f)(3)), each Member shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to that Member's share of the net decrease in Company Minimum Gain. The items to be so allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(f). This Section B(2) is intended to comply with the minimum gain chargeback requirement in said Section of the Treasury Regulations and shall be interpreted consistently therewith. Allocations pursuant to this Section B(2) shall be made in proportion to the respective amounts required to be allocated to each Member pursuant hereto.

(3) If there is a net decrease in Minimum Gain Attributable to Member Nonrecourse Debt during any Fiscal Year (other than due to the conversion, refinancing or other change in the debt instrument causing it to become partially or wholly nonrecourse, certain capital contributions, or certain reevaluations of the Company's property as further outlined in Treasury Regulations Section 1.704-2(i)(4)), each Member shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to that Member's share of the net decrease in the Minimum Gain Attributable to Member Nonrecourse Debt. The items to be so allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(i)(4) and (j)(2). This Section B(3) is intended to comply with the minimum gain chargeback requirement with respect to Member Nonrecourse Debt contained in said Section of the Treasury Regulations and shall be interpreted consistently therewith. Allocations pursuant to this Section B(3) shall be made in proportion to the respective amounts required to be allocated to each Member pursuant hereto.

(4) In the event an Member unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5), or (6), and such Member has an Adjusted Capital Account Deficit, items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate the Adjusted Capital Account Deficit as quickly as possible. This Section B(4) is intended to constitute a "qualified income offset" under Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(5) Nonrecourse Deductions for any Fiscal Year or other applicable period shall be allocated to the Members in accordance with their Proportionate Share, but only as permitted by the Treasury Regulations.

(6) Member Nonrecourse Deductions for any Fiscal Year or other applicable period shall be specially allocated to the Member that bears the economic risk of loss for the debt (i.e., the Member Nonrecourse Debt) in respect of which such Member Nonrecourse Deductions are attributable (as determined under Treasury Regulations Section 1.704-2(b)(4) and (i)(1)).

(7) Allocations to Members whose interests vary during a year by reason of transfer, redemption, admission, capital contributions, or otherwise, shall be made as determined by the Management Committee in accordance with permissible methods under Code Section 706.

C. **Tax Allocations.**

(1) Subject to Section C(2), items of income, gain, loss, deduction and credit to be allocated for income tax purposes (collectively, "**Tax Items**") shall be allocated among the Members on the same basis as their respective book items, as provided in Sections A and B.

(2) If any Company property is subject to Code Section 704(c) or is reflected in the Capital Accounts of the Members and on the books of the Company at a value that differs from the adjusted tax basis of such property, then the Tax Items with respect to such property shall, in accordance with the requirements of Treasury Regulations Section 1.704-1(b)(4)(i), be shared among the Members in a manner that takes account of the variation between the adjusted tax basis of the applicable property and its value in the same manner as variations between the adjusted tax basis and fair market value of property contributed to the Company are taken into account in determining the Members' share of Tax Items under Code Section 704(c). The Management Committee is authorized to choose any reasonable method permitted by the Treasury Regulations pursuant to Code Section 704(c), including the "remedial allocation" method, the "curative" method and the "traditional" method.

(3) Pursuant to Treasury Regulations Section 1.752-3, each Member's interest in Company profits, for purposes of determining such Member's shares of excess "nonrecourse liabilities" for such purpose shall be that Member's Proportionate Share.

(4) Any payment of foreign tax that may be creditable against any Member's United States federal income tax liability shall be allocated to the Members in a manner reasonably determined by the Management Committee and in accordance with Treasury Regulation 1.704-1(b)(4)(viii). Other tax credits shall be allocated to the Members in a manner reasonably determined by the Management Committee.

(5) The Members are aware of the income tax consequences of the allocations made by this Agreement and shall report their shares of Profits and Losses and other items of Company, gross income, gain, loss and deduction for income tax purposes consistently with this Agreement.

D. **Tax Classification.**

It is the intent of the Members that the Company shall always be operated in a manner consistent with its treatment as a "partnership" for federal, state and local income and franchise tax purposes. In accordance therewith, (a) no Member shall file any election with any taxing authority to have the Company treated otherwise, and (b) each Member hereby represents, covenants, and warrants that it shall not maintain a position inconsistent with such treatment. The Management Committee shall, except as otherwise required by applicable law, (i) not cause or permit the Company to elect (A) to be excluded from the provisions of Subchapter K of the Code, or (B) to be treated as a corporation or an association taxable as a corporation for any tax purposes; (ii) cause the Company to make any election reasonably determined to be necessary or appropriate in order to ensure the treatment of the Company as a partnership for all tax purposes; (iii) cause the Company to file any required tax returns in a manner consistent with its treatment as a partnership for tax purposes; and (iv) not take any action or cause any officer or agent or representative of the Company to take any action that would be inconsistent with the treatment of the Company as a partnership for such purposes.

E. **[Reserved.]**

F. **Additional Tax Matters.**

(1) The Tax Matters Member shall be the sole signatory to any federal, state, local and foreign tax on behalf of the Company, except to the extent any other Person is required by law to also sign such returns.

(2) The Tax Matters Partner shall take no action in such capacity without the authorization or consent of the other Members, other than (after reasonable notice to the other Member) such action as the Tax Matters Partner may be required to take by applicable law. The Tax Matters Partner shall comply with the responsibilities outlined in Sections 6222 through 6232 of the Code.

(3) The Tax Matters Partner shall not enter into any extension of the period of limitations for making assessments on behalf of the Members without first obtaining the written consent of each Member.

(4) The Tax Matters Partner shall not bind the Company to a settlement agreement without obtaining the written concurrence of the other Members. For purposes of this Section F(4), the term "settlement agreement" shall include a settlement agreement at either an administrative or judicial level. Any Member that enters into a settlement agreement with respect to any Company items (within the meaning of Section 6231(a)(3) of the Code) shall

notify the other Members of such settlement agreement and its terms within ninety (90) calendar days after the date of settlement.

(5) The provisions of this Section F shall survive the termination of the Company or the termination of any Member's interest in the Company and shall remain binding on the Members (with respect to the period of time during which such Person is a Member) for a period of time necessary to resolve with the Internal Revenue Service or the United States Department of the Treasury any and all matters regarding the United States federal income taxation of the Company.

(6) The Tax Matters Partner, in its capacity as the Tax Matters Partner, shall be reimbursed by the Company for any third party out-of-pocket costs and expenses reasonably incurred by it in the performance of its duties as Tax Matters Partner. No Member shall be reimbursed by the Company for any costs and expenses incurred by such Member in pursuing on its own behalf any of its rights to file petitions, seek judicial review, etc. under this Section F or in participating in Company-level administrative or judicial tax proceedings unless the other Member, in its sole discretion, agrees to such reimbursement.

(7) During any Company income tax audit or other income tax controversy with any governmental agency, the Tax Matters Partner shall keep the Members informed of all material facts and developments on a reasonably prompt basis. Prompt notice shall be given to the Members upon receipt of advice that the Internal Revenue Service or other taxing authority intends to examine any income tax return, or records or books of the Company.

(8) The cost of any adjustments to all Members and the cost of any resulting audits or adjustments of Members shall be borne solely by the Members without reimbursement by the Company.

SCHEDULE U

EXISTING GUARANTY OBLIGATIONS OF MEMBERS, PARENTS AND AFFILIATES

(To be attached following the closing, pursuant to the terms of the limited liability company agreement)

SCHEDULE V

INSURANCE PROGRAM

(Unless attached hereto, to be attached following the closing, pursuant to the terms of the limited liability company agreement)

SCHEDULE W

FEES

[To be attached following the closing, pursuant to the terms of the limited liability company agreement]

SCHEDULE X

[Reserved]

SCHEDULE Y

ADDRESSES FOR NOTICES TO THE MEMBERS

If to AVB Member, to:

AvalonBay Communities, Inc.
671 N. Glebe Road, Suite 800
Arlington, VA 22203
Facsimile No.: (703) 329-4830
Attention: Kevin P. O'Shea

with a copy (which shall not constitute notice) to:

AvalonBay Communities, Inc.
671 N. Glebe Road, Suite 800
Arlington, VA 22203
Facsimile No.: (703) 329-4830
Attention: Edward M. Schulman

and to:

Goodwin Procter LLP
Exchange Place
Boston, Massachusetts 02109
Facsimile No.: (617) 523-1231
Attention: Craig C. Todaro

If to EQR Member, to:

Equity Residential
Two N. Riverside Plaza, Suite 400
Chicago, Illinois 60606
Facsimile No.: (312) 526-9252
Attention: Mark Parrell, EVP and Chief Financial Officer

with copies (which shall not constitute notice) to:

Equity Residential
Two N. Riverside Plaza, Suite 400
Chicago, Illinois 60606
Facsimile No.: (312) 526-0680
Attention: Bruce Strohm, EVP and General Counsel

and to:

Hogan Lovells US LLP
555 13th Street, NW
Washington, DC 20004
Facsimile No.: (202) 637-5910
Attention: J. Warren Gorrell, Jr.
Bruce W. Gilchrist

and to:

Morrison & Foerster LLP
2000 Pennsylvania Avenue, NW
Washington, DC 20006
Facsimile No.: (202) 785-7522
Attention: David P. Slotkin

and to:

Morrison & Foerster LLP
555 West Fifth Street
Los Angeles, CA 90013-1024
Facsimile No.: (213) 892-5454
Attention: Thomas R. Fileti

SCHEDULE Z

ALLOCATION OF RESPONSIBILITIES/FUNCTIONS TO DESIGNATED MANAGERS

(Attached)

Archstone Acquisition
AVB/EQR - Transition Issues/Wind-Down List
Updated February 25, 2013

Area/Issue	Items to be considered--as applicable	Follow Properties	Owner	
			EQR	AVB
Risk Management (GL, WC, property)	Manage claims for preclose period and parking lot coverage and claims	X	X	X
Corporate Maintenance	File doing business qualifications where needed; file annual statements with applicable Secretary of State; maintain minute book, member list and organizational documents	N	X	
Legal	Manage litigation claims for preclose period (includes and not limited to property, employment)	N	X	
Office Leases	Includes lease terms or sublets, sale of office furniture, etc.	N	X	
Benefit Plans	401(k) - administration for wind-down, transition and parking lot JV	N		X
	COBRA - administration for wind-down, transition and parking lot JV	N	X	

Federal, State and franchise tax	Manage oversight of 2012 and 2013 stub period tax returns - to be prepared by ASN	N	X	
See more detail below for services	Manage historical audits/litigation/issues	N	X	
	2013 and future tax returns for parking lot JV and tax protection JV	N	X	
Books and Records, JV-Level Reporting	maintain accounting and contractual records; "umbrella" quarterly and annual reporting for parking lot JV	N		X
Germany Operational oversight	Management oversight of ASN European business, including fund team, DeWag, legal, financing and accounting	Y	X	
Manage JV Parking lot accounting	Germany - accounting, reporting, tax returns	N	X	
	SWIB - accounting, reporting, tax returns	Y		X
	Development - National Gateway, Harlem	Y		X
	Transition accounting - payroll and other compensation, cash receipts/disbursements, etc.	N		X
	Other - liabilities (coordination with legal, risk, etc.), consolidation, etc.	N		X
Cash management/oversight See further detail below	Provide oversight over cash receipts post-close (collect and distribute)	Y		X
(lead admin members handle cash management for JVs they handle (i.e. AVB - SWIB)	Provide oversight of disbursements (A/P and wire transfers) post-close	Y		X
	Provide cash forecasts and funding requirements post-close	Y		X
	Maintain/wind-down bank accounts	Y		X
Payroll and HR related items	Employment claims/issues for termed/former employees/ employee verification - pkg lot and disposed only	Y		X
	Filing of 2012 ASN W-2s (to be done by ASN)	N		X
	Filing of 2013 ASN W-2s (to be done by ASN)	N		X
	Escheatment of Payroll	N		X
Real Estate tax claims	Management of appeals/questions/issues regarding disposed and parking lot assets	Y		X

Area/Issue	Items to be considered--as applicable	Follow Properties	Owner	
			EQR	AVB
Accounts payable related items	Sales and use taxes - filing requirements to go with property (to be done by ASN) - pkg lot and disposed (if not done by ASN) only	Y		X
	2013 1099's (to be done by ASN) - pkg lot and disposed (if not done by ASN) only	Y		X
	A/P historical vendor questions - questions will follow the property - pkg lot and disposed only	Y		X
	Manage any vendor rebates	Y		X
	Escheatment of Accounts payable preclose period	Y		X
Collections of resident accounts	Collections of resident accounts (follow the property) pkg lot and disposed only	X		X

More detail on tax services -
***management/oversight of, and assistance as needed with, the completion of tax return compliance obligations by the Archstone personnel for the 2012 tax year and short period ending with our closing in 2013

· negotiation and approval of services and expenses contracted with vendors/consultants
· regular communication and decision-making related to notices and assessments from taxing authorities
· provision of support for audits
· tax related services relative to the tax protection joint venture and Germany
· general consulting relative to transition and integration matters (ie. Software/IT, Data migration, historical files and storage, etc.).

Further detail re Cash Management/Bank Accounts:

THE GENERAL RESIDUAL JV BANK ACCOUNT WILL COME UNDER THE "CASH MANAGEMENT" OVERSIGHT TO BE PROVIDED BY AVB, WITH 2 CHECK SIGNERS FROM EACH OF AVB & EQR. THERE WILL BE SOME ADDITIONAL DETAIL TO BE WORKED OUT ON WIRE AUTHORIZATION PROTOCOL WHERE MUTUAL APPROVAL NECESSARY FOR WIRES OF A CERTAIN SIZE (OTHER THAN REPETITIVE PAYMENTS AFTER APPROVAL OF INITIAL WIRE).

SCHEDULE AA

CERTAIN AUTHORIZED DOCUMENTS

1. Consent to Transfer and Release Agreement for 101 West End
2. Consent to Transfer and Release Agreement for Chelsea
3. Consent to Transfer and Release Agreement for Foundry
4. Consent to Transfer and Release Agreement for Sonoma
5. Trademark Assignment Agreement
6. Documents on attached list if any.

Exhibit 10.4

LIMITED LIABILITY COMPANY AGREEMENT

ARCHSTONE PARALLEL RESIDUAL JV, LLC

by and between

AVB DEVELOPMENT TRANSACTIONS, INC.

and

EQR-RESIDUAL JV MEMBER, LLC

FEBRUARY 27, 2013

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

TABLE OF CONTENTS
(continued)

LIMITED LIABILITY COMPANY AGREEMENT

This Limited Liability Company Agreement (this "**Agreement**") is made and entered into as of February 27, 2013 (the "**Effective Date**") between AVB Development Transactions, Inc., a Maryland corporation ("**AVB Member**"), and EQR-Residual JV Member, LLC, a Delaware limited liability company ("**ERP Member**").

R E C I T A L S

A. WHEREAS, AVB (as such term and any other capitalized term used in this Agreement is defined in Article II), Equity Residential and ERP have entered into the Purchase Agreement with Seller, pursuant to which they have agreed to acquire certain assets of Enterprise from Seller; and

B. WHEREAS, AVB, Equity Residential and ERP have entered into the Buyers Agreement, which sets forth certain understandings among AVB, Equity Residential and ERP concerning the acquisition of the assets of Enterprise pursuant to the Purchase Agreement; and

C. WHEREAS, the Buyers Agreement provides for the formation of a joint venture (referred to therein as "Archstone Residual JV") and attaches a term sheet setting forth the terms applicable to the governance of such joint venture (referred to therein as the "Archstone Residual JV Term Sheet") which are to be set forth in a definitive joint venture agreement (referred to therein as the "Definitive Archstone Residual JV Agreement"); and

D. WHEREAS, AVB Member is a wholly-owned subsidiary of AVB and ERP Member is a wholly-owned subsidiary of ERP; and

E. WHEREAS, exclusively with respect to the Company Assets, AVB Member and ERP Member desire to form the Company and to set forth in this Agreement the definitive terms for the governance of the Company, in furtherance of the provisions of the Buyers Agreement calling for the formation of "Archstone Residual JV" and the execution and delivery of the Definitive Archstone Residual JV Agreement consistent with the Archstone Residual JV Term Sheet.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, AVB Member and ERP Member hereby agree as follows:

ARTICLE I

IN GENERAL

Section 1.1 Name.

The name of the limited liability company is Archstone Parallel Residual JV, LLC (the "**Company**").

Section 1.2 Formation of Limited Liability Company.

The Company was duly formed upon the filing of a certificate of formation of the Company with the Secretary of State of the State of Delaware on February 15, 2013, which certificate sets forth the information required by Section 18-201 of the Delaware Limited Liability Company Act (the "**Certificate of Formation**"). Michelle La Pelle, as an "authorized person" within the meaning of the Act, has executed, delivered and filed the Certificate of Formation of the Company with the Secretary of State of the State of Delaware, such execution, delivery and filing being hereby ratified and approved by the Members. Upon the filing of the Certificate of Formation with the Secretary of State of the State of Delaware, such person's powers as an "authorized person" ceased.

Section 1.3 Agreement; Inconsistencies with Act.

(a) This Agreement constitutes the "limited liability company agreement" of the Company within the meaning of the Act.

(b) This Agreement shall govern the relationship of the Members, except to the extent a provision of this Agreement is expressly prohibited under the Act. If any provision of this Agreement is prohibited under the Act, this Agreement shall be considered amended to the least degree possible in order to make such provision effective under the Act.

Section 1.4 Principal Place of Business.

The principal place of business of the Company shall be c/o Equity Residential, Two North Riverside Plaza, Suite 400, Chicago, Illinois 60606. The Company may locate its place of business at any other place or places as may be Approved by the Members from time to time.

Section 1.5 Registered Office and Registered Agent.

The Company's initial registered office shall be at the office of its registered agent at 1209 Orange Street, Wilmington, Delaware 19801, and the name of its initial registered agent is The Corporation Trust Company. The registered office and registered agent may be changed with the Approval of the Members from time to time by filing the address of the new registered office and/or the name of the new registered agent with the Secretary of State of the State of Delaware pursuant to the Act.

Section 1.6 Term.

The term of existence of the Company (the "**Term**") shall continue until the Company is terminated, dissolved or liquidated in accordance with this Agreement and the Act.

Section 1.7 Permitted Businesses.

(a) The business of the Company shall be: (i) to acquire (in accordance with the Purchase Agreement and the Buyers Agreement), own, manage, operate, improve, develop, sell and otherwise deal with the Company Assets, and any other assets that may, from time to time, be acquired by the Company pursuant to this Agreement, directly or through Subsidiary Entities;

(ii) to incur, assume, pay, perform, discharge, satisfy, settle or otherwise resolve any liabilities that may, from time to time, be incurred by the Company pursuant to this Agreement, directly or through Subsidiary Entities; and (iii) to do all other lawful acts and things as may be necessary, desirable, expedient, convenient for or incidental to the furtherance and accomplishment of the foregoing objectives and purposes and for the protection and benefit of the Company. The Company shall not engage in any other business without the Approval of the Members.

(b) In connection with the Company's business, the Company shall have the power and authority, subject to any Approval of the Members or Approval of the Management Committee required under this Agreement:

(i) to acquire, hold and dispose of any real or personal property;

(ii) to borrow money from banks, other lending institutions, Members, or Affiliates of Members, and in connection therewith, to hypothecate, encumber and grant security interests in the assets of the Company to secure repayment of the borrowed sums;

(iii) to purchase liability and other insurance to protect the Company's property and business and to protect the assets of the Members and Management Committee Representatives;

(iv) to invest any Company funds temporarily (by way of example but not limitation) in demand deposits, money-market mutual funds, short-term governmental obligations, commercial paper or other investments;

(v) to sell or otherwise dispose of any, all or substantially all of the assets of the Company;

(vi) to execute all instruments and documents, including, without limitation, checks; drafts; notes and other negotiable instruments; mortgages or deeds of trust; security agreements; financing statements; documents providing for the acquisition, mortgage or disposition of the Company's property; assignments; bills of sale; leases; contracts; partnership agreements, operating agreements of other limited liability companies; and any other instruments or documents necessary to conduct the business of the Company;

(vii) to employ accountants, legal counsel, managing agents or other experts to perform services for the Company and to compensate them from Company funds;

(viii) to enter into any and all other agreements, with any other Person as may be necessary or appropriate to the conduct of the Company's business; and

(ix) to do and perform all other acts as may be necessary or appropriate to the conduct of the Company's business.

(c) In connection with the formation of the Company and the execution of this Agreement, on or prior to the date hereof, the Company acquired the interests in certain Subsidiary Entities certain of which may be reflected on the organizational chart that is or may hereafter be attached hereto as Schedule A, and the Members hereby authorize ERP Member as

the Designated Member to execute such documents and instruments, deliver such notices, make such filings and take such other acts as it may consider to be necessary to reflect in any official records in accordance with applicable legal requirements the acquisition by the Company of ownership or control over such Subsidiary Entities or otherwise further to effectuate the acquisition by the Company of ownership or control over such Subsidiary Entities.

Section 1.8 Qualification in Other Jurisdictions; Ongoing Organization Maintenance.

ERP Member as the Designated Member is authorized to cause the Company to be qualified or registered as required under applicable laws in any jurisdiction in which the Company transacts business and to execute, deliver and file any certificates and documents necessary to effect such qualification or registration. ERP Member as the applicable Designated Member is authorized to cause the Company to comply with all applicable requirements of the State of Delaware for the filing of annual statements with the Secretary of State of the State of Delaware, and shall be responsible for the maintenance of minute books and the organizational documents of the Company.

Section 1.9 Rules of Construction.

The following rules of construction shall apply to this Agreement:

(a) Unless otherwise specifically and expressly limited in the context, any reference herein to a decision, determination, act, action, exercise of a right, power or privilege, or other procedure by a Member or Management Committee Representative shall mean and refer to the decision, determination, act, action, exercise of a right, power, privilege, or other procedure by the Member or Management Committee Representative in its sole and absolute discretion acting in the best interests of such Member (or, in the

case of a Management Committee Representative, the best interests of the Member which appointed such Management Committee Representative) and not as a fiduciary for the Company or the other Member.

(b) All references in this Agreement to "Dollars" as a unit of currency shall be deemed a reference to United States dollars and United States currency.

(c) Unless explicitly stated to the contrary, the term "includes", "including" and other expressions of inclusion shall be construed in each instance to mean "includes without limitation", "including but not limited to" or other phraseology denoting the non-exclusive nature of the item to which reference is being made.

(d) The Members acknowledge that, as identified pursuant to express statements that appear on the face or cover page of certain schedules attached to this Agreement, certain schedules attached to this Agreement are incomplete or have been left blank. In such cases, the references to such schedule in this Agreement shall be disregarded (except for the provisions which are included in such schedule as attached hereto on the date hereof) unless and until the Management Committee or Members Approve the form of the complete, final form of the schedule that is to be considered so referenced herein.

Section 1.10 Title to Company Assets.

All Company assets, whether real or personal, tangible or intangible, shall be deemed to be owned by the Company as an entity, and no Member, individually, shall have any direct ownership interest in such property.

ARTICLE II

DEFINITIONS

Section 2.1 Defined Terms.

As used in this Agreement, the following terms shall have the following meanings:

"**Accountants**" means the independent certified public accountants Approved by the Members and engaged from time to time by the Company for purposes of reviewing or auditing the Company's financial statements and performing such other services as are required to be performed by the Accountants by this Agreement.

"Act" means the Delaware Limited Liability Company Act, as amended or superseded from time to time.

"Additional Capital Requested Amount" has the meaning set forth in Section 3.3(b).

"Adjusted Asset Value" means, with respect to any asset of the Company, such adjusted basis of such asset for federal income tax purposes, except as follows:

(i) The Adjusted Asset Value of any asset contributed to the Company by a Member shall be the gross fair market value of such asset as determined jointly by the Management Committee and the contributing Member, in their joint and reasonable discretion.

(ii) If the Management Committee reasonably determines that an adjustment is necessary or appropriate to reflect the relative Proportionate Shares of the Members in the Company, the Adjusted Asset Values of all Company assets shall be adjusted to equal their gross fair market value, as determined by the Management Committee, taking Section 7701(g) of the Code into account, as of the following times: (a) a Capital Contribution (other than a *de minimis* capital contribution) to the Company by a new or existing Member; (b) any distribution by the Company to an Member of more than a *de minimis* amount of Company property (other than cash); (c) any distribution by the Company to an Member of more than a *de minimis* amount of cash in connection with the redemption of all or a portion of a Member's Membership Interest in the Company; and (d) at such other times as the Management Committee reasonably determines necessary or advisable in order to comply with Treasury Regulations Sections 1.704-1(b) and 1.704-2.

(iii) The Adjusted Asset Values of Company property shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Section 734(b) or 743(b) of the Code, but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Section 1.704-1(b)(2)(iv)(m) of the Treasury

Regulations; provided, however, that Adjusted Asset Values shall not be adjusted pursuant to this paragraph to the extent that the Management Committee reasonably determines that an adjustment pursuant to paragraph (ii) above is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this paragraph (iii).

(iv) The Adjusted Asset Value of an asset shall be adjusted by the Depreciation taken into account with respect to such asset, for purposes of computing Profits and Losses.

Any determination to be made by the Management Committee pursuant to this definition shall be made with the Approval of the Management Committee.

"Adjusted Capital Account" means, with respect to any Member, such Member's Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments: (i) credit to such Capital Account any amounts which such Member is obligated or treated as obligated to restore with respect to any deficit balance in such Capital Account pursuant to Section 1.704-1(b)(2)(ii)(c) of the Treasury Regulations, or is deemed to be obligated to restore with respect to any deficit balance pursuant to the penultimate sentences of Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Treasury Regulations; and (ii) debit to such Capital Account the items described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) and 1.704-1(b)(2)(ii)(d)(6). The foregoing definition of Adjusted Capital Account is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations and shall be interpreted consistently therewith.

"Affiliate" or **"Affiliated"** means, with respect to any Person, (i) any Person who directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with such Person, or (ii) any Person in which such Person has, directly or indirectly, a twenty five percent (25%) or more ownership or beneficial interests. A Person shall be deemed to control a Person if it owns, directly or indirectly, at least twenty five percent (25%) of the ownership interest in such Person or otherwise has the power to direct the management, operations or business of such Person. Notwithstanding the foregoing, an Affiliate of the Company that is controlled by the Company shall not be deemed to be an Affiliate of any Member for any of the purposes of this Agreement.

"Agreement" means this Limited Liability Company Agreement and any amendments hereto.

"**Approval of the Management Committee**," "**Approval by the Management Committee**" or similar phrases means the unanimous approval of the AVB Representatives and ERP Representatives excluding, with respect to any matter as to which a Capital Defaulting Member has no approval rights pursuant to Section 3.4, the Management Committee Representatives appointed by the Capital Defaulting Member.

"**Approval of the Members**," "**Approval by the Members**" or similar phrases means the unanimous approval of the Members, excluding, with respect to any matter as to which a Capital Defaulting Member has no approval rights pursuant to Section 3.4, such Capital Defaulting Member.

"**Archstone Subsidiaries**" means the subsidiaries acquired, directly or indirectly, by the Company and Residual JV from Enterprise pursuant to the Purchase Agreement and the Buyers Agreement. The Archstone Subsidiaries are or may hereafter be listed on Schedule B.

"**Asset Option Expiration Date**" means the "Asset Option Expiration Date," if any, established for the Germany Portfolio pursuant to the Residual JV Agreement.

"**Authorized Administrative Action**" means any of the administrative actions, decisions or transactions which a Designated Member has the authority to undertake pursuant to this Agreement without the Approval of the Management Committee or Members hereunder.

"AVB" means AvalonBay Communities, Inc., a Maryland corporation, and its successors and permitted assigns.

"**AVB Member**" has the meaning set forth in the introductory paragraph of this Agreement and includes its successors and permitted assigns.

"**AVB Representatives**" has the meaning set forth in Section 4.1(a).

"**Business Day**" means any day excluding a Saturday, Sunday or any other day during which there is no scheduled trading on the New York Stock Exchange.

"**Buyers Agreement**" means that certain Joint Buyers Agreement, dated as of November 26, 2012, among Equity Residential, ERP and AVB.

"Capital Account" means the capital account established on behalf of each Member on the books of the Company. In general, the Capital Account of each Member shall be initially credited with the amount of such Member's initial Capital Contribution to the Company, as set forth on Schedule C. Thereafter, each such Member's Capital Account shall be increased by (a) the amount of money contributed by such Member to the Company, (b) the Adjusted Asset Value of any property contributed by such member to the Company (net of liabilities securing such contributed property that the Company is considered to assume or take subject to under Section 752 of the Code), and (c) allocations to such Member of Profits and other items of book income and gain, and is decreased by (d) the amount of money distributed to the Member by the Company, (e) the Adjusted Asset Value of property distributed by the Company to the Member (net of liabilities securing such distributed property that the Member is considered to assume or take subject to under Section 752 of the Code) and (f) allocations to such Member of Losses and other items of book loss and deduction, and is otherwise adjusted in accordance with the additional rules set forth in Treasury Regulations Section 1.704-1(b)(2)(iv). The Capital Accounts shall also be adjusted (x) as reasonably determined by the Management Committee, to reflect any redemption, forfeiture or transfer of Membership Interests, and (y) in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(m). It is the intent of the Members that the Capital Accounts of all Members be determined and maintained in accordance with the principles of Treasury Regulations Section 1.704-1(b)(2)(iv) at all times throughout the full term of the Company. Accordingly, the Management Committee is authorized to make any other adjustments to the Capital Accounts so that the Capital Accounts and allocations thereto comply with said Section of the Treasury Regulations, provided that such adjustments do not have a material adverse effect on any Member. Any determination to be made by the Management

Committee pursuant to this definition shall be made with the Approval of the Management Committee.

"Capital Contribution" means any contribution to the capital of the Company in cash or other assets or property by a Member in accordance with Article III.

"**Capital Default Amount**" has the meaning set forth in Section 3.4.

"**Capital Default Loan**" has the meaning set forth in Section 3.4(a).

"**Capital Defaulting Member**" has the meaning set forth in Section 3.4.

"**Capital Transaction**" means the sale, financing, refinancing, total or partial destruction, condemnation or other disposition of any Company Asset.

"Certificate of Formation" has the meaning set forth in Section 1.2 of this Agreement.

"**Change in Board Control**" means, with respect to any Person, during any period beginning on or after the date hereof, individuals who at the beginning of such period constituted such Person's board of directors (or equivalent governing body), and any new member of such board whose nomination to or election by such board was approved by a vote of at least a majority of the board members then still in office who either were board members at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute at least a majority of such board.

"Code" means the Internal Revenue Code of 1986 as amended, or corresponding provisions of subsequent superseding federal revenue laws.

"Company" has the meaning set forth in Section 1.1.

"**Company Assets**" means the assets, interests, rights and claims acquired, directly or indirectly, by the Company pursuant to the Purchase Agreement and the Buyers Agreement, representing an interest in the Germany Portfolio.

"Company Minimum Gain" means "partnership minimum gain" set forth in Section 1.704-2(b)(2) of the Treasury Regulations.

"**Contingent Obligation**" means (a) any Guaranty Obligation or (b) any direct or indirect obligation or liability, contingent or otherwise, incurred pursuant to any Rate Contract.

"**Covered Person**" has the meaning set forth in Section 7.1.

"Depreciation" means, with respect to any Company asset for any Fiscal Year or other period, the depreciation, depletion or amortization, as the case may be, allowed or allowable for federal income tax purposes in respect of such asset for such fiscal year or other period; provided, however, that if there is a difference between the Adjusted Asset Value and the adjusted tax basis of such asset, Depreciation means with respect to such asset "book depreciation, depletion or amortization" as determined under Treasury Regulations

Section 1.704-1(b)(2)(iv)(g)(3); provided however that, if any property has a zero adjusted basis for federal income tax purposes, Depreciation may be determined under any reasonable method selected by the Management Committee.

"**Designated Member**" has the meaning set forth in Section 4.2(a).

"**Discussion Period**" has the meaning set forth in Section 12.13.

"**Dissolution Event**" has the meaning set forth in Section 10.1.

"**Distributable Cash**" means, for any period, the excess, if any, of (a) the aggregate Gross Receipts during such period of any kind and description over (b) the sum of the aggregate Expenditures paid during such period, subject to the reserve requirements set forth in Section 4.6.

"**Economic Capital Account**" means, with respect to any Member, such Member's Capital Account as of the date of determination, after crediting to such Capital Account any amounts that the Member is deemed obligated to restore under Treasury Regulations Section 1.704-2.

"**Enterprise**" means Archstone Enterprise LP, a Delaware limited partnership.

"**Entity**" means any general partnership, limited partnership, corporation, limited liability company, limited liability partnership, joint venture, trust, business trust, cooperative or association or other comparable business entity.

"**Equity Residential**" means Equity Residential, a Maryland real estate investment trust, and its successors and permitted assigns.

"**ERP**" means ERP Operating Limited Partnership, an Illinois limited partnership, and its successors and permitted assigns.

"**ERP Member**" has the meaning set forth in the introductory paragraph of this Agreement and includes its successors and permitted assigns.

"**ERP Representatives**" has the meaning set forth in Section 4.1(a).

"**Expenditures**" means, for any period, the sum of all cash expenditures or reserves during such period (determined on a consolidated basis for the Company and all Subsidiary Entities) including, without limitation: (i) all cash expenditures for operating expenses, (ii) principal, interest, fees, debt service payments and other payments on account of any indebtedness, (iii) expenditures for capital improvements and other expenses of a capital nature with respect to any Company Asset, (iv) additions to reserves pursuant to Section 4.6, (v) any and all expenditures related to any acquisition, development, sale, disposition, financing or refinancing of any Company Asset or other capital asset, (vi) any other expenses incurred in connection with the Company's business, and (vii) any organizational expenses incurred by or on behalf of the Company (but not any costs or expenses incurred by ERP Member or AVB Member in connection with the formation of the Company and its Subsidiary Entities as

applicable, including the costs and expenses incurred in connection with the negotiation, execution and delivery of this Agreement, which costs and expenses shall be the sole responsibility of ERP Member and AVB Member, respectively). In no event shall any deduction be made for non-cash expenses such as depreciation or amortization.

"**Extraordinary Transaction**" has the meaning set forth in Section 8.4.

"Fiscal Year" means the Company's fiscal year. The Company's fiscal year shall be its taxable year. The Company's taxable year shall be the calendar year, unless otherwise required by the Code or Treasury Regulations, or other applicable law in the case of the Company's taxable year(s) for foreign, state or local tax purposes, as reasonably determined by the Management Committee.

"Funding Notice" has the meaning set forth in Section 3.3(b).

"**Germany Portfolio**" means the Germany I Portfolio, any other German multi-family assets that are owned by entities acquired, directly or indirectly, from Enterprise pursuant to the Purchase Agreement and the Buyers Agreement, and the Germany II Entities. The Members intend to wind up and dissolve the Germany II Entities.

"**Germany I Portfolio**" means the interests acquired, directly or indirectly, by the Company from Enterprise pursuant to the Purchase Agreement and the Buyers Agreement in and to ASN Holdings LLC (a 10% interest), Archstone Holdings Germany LLC (a 10% interest) and Archstone Management Germany LLC (a 50.1% interest), the principal assets of which (directly or indirectly) are interests in U.S. and foreign subsidiaries that own apartment projects located in Germany that are more particularly described in Schedule D attached hereto.

"**Germany II Entities**" means the interests acquired, directly or indirectly, from Enterprise pursuant to the Purchase Agreement and the Buyers Agreement in and to Archstone Holdings Germany II LLC, Archstone Management Germany II LLC and their direct or indirect subsidiaries.

"**Governmental Authority**" means any governmental or political subdivision, whether federal, state, local or foreign, or any agency or instrumentality of any such government or political subdivision, or any federal, state, local or foreign court, authority, tribunal, department, bureau or commission, in each case having jurisdiction over the matter.

"**Gross Receipts**" means, for any period, any and all cash receipts (including, without limitation, gross proceeds resulting from a Capital Transaction) during such period (determined on a consolidated basis for the Company and all Subsidiary Entities), including, without limitation, Capital Contributions and amounts released from (or paid from) reserves.

"**Guaranty Equalization Payment**" has the meaning set forth in Section 3.6(b).

"**Guaranty Obligation**" means, as applied to any Person, any direct or indirect liability of that Person with respect to, or the pledge or encumbrance by that Person of any of its property as collateral for, any Indebtedness, lease, dividend, letter of credit or other obligation (the "primary obligation") of another Person (the "primary obligor"), including any obligation of that

Person, whether or not contingent, (a) to purchase, repurchase or otherwise acquire such primary obligations or any property constituting direct or indirect security therefor, or (b) to advance or provide funds (i) for the payment or discharge of any such primary obligation, or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency or any balance sheet item, level of income or financial condition of the primary obligor, or (c) to purchase securities, other properties or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, (d) on account of any letter of credit issued to any creditor or obligee of the primary obligor or (e) otherwise to assure or hold harmless the holder of any such primary obligation against loss in respect thereof.

"**Hypothetical Liquidation**" shall mean a hypothetical liquidation of the Company in accordance with the terms of this Agreement that includes (i) a sale of all of the assets of the Company for cash at prices equal to their Adjusted Asset Values and (ii) the cash contribution by the Members of the aggregate maximum amounts, if any, that the Members would be required to contribute to the Company under this Agreement as and to the extent such amounts would be needed to pay all partnership recourse liabilities.

"**Indebtedness**" of any Person means without duplication, (a) all indebtedness for borrowed money, (b) all obligations issued, undertaken or assumed as the deferred purchase price of property or services, (c) all reimbursement obligations with respect to surety bonds, letters of credit, bankers' acceptances and similar instruments (in each case, to the extent non-contingent), (d) all obligations evidenced by notes, bonds, debentures or similar instruments, (e) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to properties acquired by the Person (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such properties), and (f) all obligations under capital leases, (g) all indebtedness referred to in clauses (a) through (f) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any lien upon or in any property (including accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness.

"Indemnified Losses" has the meaning set forth in Section 7.1 of this Agreement.

"**JAMS**" has the meaning set forth in Section 12.13.

"**Major Decision**" means (i) any decision which requires the unanimous consent of the members of the Subsidiary Entities in which the Company directly holds an interest or (ii) any decision that would create any material liability, obligation, cost or expense for the Company, or that would involve any other material transaction involving the Company or the Company Assets. Authorized Administrative Actions in accordance with this Agreement shall not be deemed to be "Major Decisions."

"**Management Committee**" has the meaning set forth in Section 4.1(a).

"**Management Committee Representative**" has the meaning set forth in Section 4.1(a).

"Member" or **"Members"** means AVB Member, ERP Member or any successors or Substitute Members thereto.

"Member Nonrecourse Debt" means "partner nonrecourse debt" as set forth in Treasury Regulations Section 1.704-2(b)(4).

"Member Nonrecourse Deductions" means "partner nonrecourse deductions" as set forth in Treasury Regulations Section 1.704-2(i)(2).

"Membership Interest" means the entire ownership interest of a Member in the Company at any particular time, including all economic rights and voting rights of the Member in the Company, the right of such Member to any and all benefits to which a Member may be entitled as provided in this Agreement and under law, and the obligations of such Member to comply with all of the terms and provisions set forth in this Agreement and under applicable law.

"Minimum Gain Attributable to Member Nonrecourse Debt" means "partner nonrecourse debt minimum gain" as determined in accordance with Treasury Regulations Section 1.704-2(i)(2).

"Nonrecourse Deductions" has the meaning set forth in Treasury Regulations Sections 1.704-2(b)(1) and (c).

"Nonrecourse Liabilities" has the meaning set forth in Treasury Regulations Section 1.704-2(b)(3).

"**Outside Partner**" means, with respect to any Outside Partnership, any Third Party Entity that is a partner or member in such Outside Partnership.

"**Outside Partnership**" means (a) any partnership, limited liability company or fund between (i) the Company or any Subsidiary Entity and (ii) one or more Third Party Entities, and (b) any subsidiaries of any Outside Partnerships.

"**Outside Partnership Agreement**" means the partnership agreement, limited liability company agreement or fund documentation governing an Outside Partnership.

"**Over-Guarantying Member**" has the meaning set forth in Section 3.6(b).

"**Parent**" means (a) in relation to ERP Member, ERP, and (b) in relation to AVB Member, AVB.

"**Parent Guaranty**" means (a) that certain Guaranty, of even date herewith, executed and delivered by ERP in favor of AVB Member (but not any other person), pursuant to which ERP has guaranteed the obligations of ERP Member to fund its Capital Contributions to the Company and to pay and perform its other obligations under this Agreement, and (b) that certain Guaranty, of even date herewith, executed and delivered by AVB in favor of ERP Member (but not any other person), pursuant to which AVB has guaranteed the obligations of AVB Member to fund its Capital Contributions to the Company and to pay and perform its other obligations under this

Agreement. The form of each such Parent Guaranty is substantially in the form of Exhibit 2 attached hereto.

"**Person**" means any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so permits.

"Profits" and **"Losses"** means, for each Fiscal Year or other period, the Company's items of taxable income or loss for such year or other period, determined in accordance with Section 703(a) of the Code (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in taxable income or loss), with the following adjustments: (i) any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses shall be added to such taxable income or loss; (ii) any expenditures of the Company described in Section 705(a)(2)(B) of the Code or treated as Section 705(a)(2)(B) of the Code expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i) shall be subtracted from such taxable income or loss; (iii) gain or loss resulting from any disposition of a property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Adjusted Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Adjusted Asset Value; (iv) in lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, the Company shall compute such deductions based on the Depreciation of a property; (v) if the Adjusted Asset Value of an asset is adjusted pursuant to the definition of Adjusted Asset Value (except with respect to Depreciation), then the amount of such adjustment shall be treated as an item of gain or loss and included in the computation of Profits and Losses; and (vi) items of Company gross income, gains, deductions and losses allocated pursuant to Sections B(1) through (and including) B(7) of Schedule E shall not be included in the computation of Profits and Losses.

"**Proportionate Share**" means, unless and until there has been a transfer of an interest in the Company or an admission of a new Member, with respect to AVB Member, 40%, and with respect to ERP Member, 60%.

"**Purchase Agreement**" means that certain Asset Purchase Agreement, dated as of November 26, 2012, among Equity Residential, ERP, AVB, Lehman Brothers Holdings, Inc., a Delaware corporation, and Enterprise.

"**Rate Contract**" means interest rate and currency swap agreement, cap, floor and collar agreement, interest rate insurance, currency spot and forward contract and other agreement or arrangement designed to provide protection against fluctuations in interest or currency exchange rates.

"**REIT**" means a "real estate investment trust" as defined in Section 856 of the Code.

"**Residual JV**" means Archstone Residual JV, LLC, a Delaware limited liability company.

"**Residual JV Agreement**" means that certain Limited Liability Company Agreement for Residual JV, dated of even date herewith, entered into between EQR Member and AVB Member.

"**Responsible Member**" has the meaning set forth in Section 3.6(c).

"Restricted Holder" has the meaning set forth in Section B(1) of Schedule E.

"**Seller**" means Enterprise and Lehman Brothers Holdings, Inc., collectively.

"**Subsidiary Entity**" means any Entity that is directly or indirectly wholly-owned and controlled by the Company or by the Company and Residual JV.

"Substitute Member" means a Person that acquires a Membership Interest and that has been admitted as a Member pursuant to Article VIII of this Agreement.

"**Successor Parent**" has the meaning set forth in Section 8.4.

"**Target Balance**" means, with respect to any Member as of the close of any period for which allocations are made under Schedule E, the net amount such Member would receive (or be required to contribute) in a Hypothetical Liquidation of the Company as of the close of such period, expressed as a negative number if the Member is required to contribute a net amount to the Company in connection with a Hypothetical Liquidation and expressed as a positive number if the Member would receive a net distribution in connection with a Hypothetical Liquidation.

"Tax Items" has the meaning set forth in Section C(1) of Schedule E.

"Tax Matters Member" means the "tax matters partner" as defined in Section 6231(a)(7) of the Code.

"Term" has the meaning set forth in Section 1.6 of this Agreement.

"**Third Party Entity**" means any Entity that is not an Affiliate of the Company.

"Transfer" means sell, assign, transfer, mortgage, pledge, hypothecate, encumber, exchange or otherwise dispose of, whether or not for value, and whether voluntarily, by operation of law or otherwise.

"Treasury Regulations" means the temporary and final regulations issued by the U.S. Treasury Department under the Code, as amended or superseded from time to time.

"**Under-Guarantying Member**" has the meaning set forth in Section 3.6(b).

ARTICLE III

MEMBERS; MEMBERSHIP INTERESTS; CAPITAL CONTRIBUTIONS; GUARANTEES

Section 3.1 One Class of Members.

All Members of the Company shall be of one class.

Section 3.2 Members of the Company.

Effective upon the adoption and execution of this Agreement, AVB Member and ERP Member are the sole Members of the Company. The respective addresses and Proportionate Shares in the Company of AVB Member and ERP Member are set forth in Schedule C. Additional Members may not be admitted to the Company except in accordance with Section 8.7 hereof.

Section 3.3 Capital Contributions and Capital Accounts

(a) Initial Capital Contributions. Each Member has contributed or agrees to contribute to the Company the amount of capital having the value set forth opposite such Member's name on Schedule C in exchange for its Membership Interest which capital shall be contributed in such form as may be required to enable the Company to acquire the Company Assets pursuant to the Purchase Agreement and the Buyers Agreement.

(b) Additional Capital Contributions. If (i) the Members Approve the funding of additional capital to fund any cash needs of the Company or (ii) any amounts are due to any Designated Member for any fees or expense reimbursements due to it hereunder or fund to any Covered Person any amounts due on account of any of the Company's indemnification obligations or obligations to advance expenses as provided for in Section 7.1 or 7.2, then either Member shall issue a notice (a "**Funding Notice**") substantially in the form attached hereto as Exhibit 1 setting forth the amount of capital being requested (the "**Additional Capital Requested Amount**"). Within ten (10) Business Days following the date of receipt of a Funding Notice, each Member shall pay to the Company as a Capital Contribution such Member's Proportionate Share of the Additional Capital Requested Amount. Any funds advanced by the Members to the Company pursuant to this Section constitute additional Capital Contributions to the Company.

(c) Limitations. No Member shall have any liability for the repayment of the Capital Contribution of any other Member and, subject to Section 3.6, each Member shall look only to the assets of the Company for return of its Capital Contributions.

(d) No Right to Return of Contribution; No Interest on Capital. Except as provided in this Agreement, no Member shall have the right to withdraw or receive any return of, or interest on, any Capital Contribution or on any balance in such Member's Capital Account. If the Company is required to return any Capital Contribution to a Member, the Member shall not have the right to receive any property other than cash.

(e) Capital Accounts. The Company shall establish and maintain an individual Capital Account for each Member.

Section 3.4 Failure to Contribute Capital.

If any Member fails to make a Capital Contribution required under Section 3.3(b) by the date such Capital Contribution is due and such failure continues for ten (10) Business Days after written notice from the Member which has not failed to make its Capital Contribution (any such failing Member shall be a "**Capital Defaulting Member**" and the amount of the failed Capital Contribution shall be the "**Capital Default Amount**"), then the non-Capital Defaulting Member shall have any one and only one of the following remedies:

(a) to advance to the Company on behalf of, and as a loan to, the Capital Defaulting Member, an amount equal to the Capital Default Amount (each such loan, a "**Capital Default Loan**"). The Capital Account of the Capital Defaulting Member shall be credited with the amount of such Capital Default Loan, which shall be deemed to be a Capital Contribution made by the Capital Defaulting Member, and such amount shall constitute a debt owed by the Capital Defaulting Member to the non-Capital Defaulting Member. Any Capital Default Loan shall bear interest at a rate equal to 15% per annum and shall be payable from any distributions due the Capital Defaulting Member hereunder, but shall in all events be payable in full by the ninetieth (90^{th}) day following the date such Capital Default Loan was made. Interest on a Capital Default Loan to the extent unpaid shall accrue and compound monthly. A Capital Default Loan shall be prepayable at any time or from time to time without penalty. While any Capital Default Loan is outstanding, notwithstanding anything in this Agreement to the contrary, all distributions to the Capital Defaulting Member hereunder shall be applied first to payment of any interest due under any Capital Default Loan and then to principal until all amounts due thereunder are paid in full. All payments made in repayment of any Capital Default Loan shall be applied first toward payment of unpaid accrued interest and then (if any remains) toward payment of principal. If a Capital Default Loan is not paid on or prior to the date such Capital Default Loan becomes due, the non-Capital Defaulting Member may pursue all available rights and remedies against the Capital Defaulting Member and, pursuant to the applicable Parent Guaranty, its Parent;

(b) to revoke the Funding Notice for both Members, whereupon any Capital Contributions paid by the non-Capital Defaulting Member pursuant to such Funding Notice shall be returned, in which event the Members may reconsider the needs of the Company for additional Capital Contributions, and any Member may thereafter issue any Funding Notice as permitted hereunder following such reconsideration; or

(c) to contribute its required Capital Contribution and pursue its rights under the Parent Guaranty delivered by the Parent of the Capital Defaulting Member with respect to such Capital Default Amount.

Unless the non-Capital Defaulting Member shall have elected to revoke the Funding Notice for both Members pursuant to Section 3.4(b), then, until either the Capital Default Loan made by the non-Capital Defaulting Member shall have been repaid in full or the amounts due with respect to such Capital Contribution have been funded by the Capital Defaulting Member or its Parent pursuant to the Parent Guaranty, the Capital Defaulting Member shall have no voting

or approval rights. Such voting and approval rights shall be restored in the event that the Capital Defaulting Member (or its Parent, pursuant to its Parent Guaranty) repays the Capital Default Loan in accordance with the terms of this Agreement, but the Capital Defaulting Member shall be bound by all decisions that were made without its or their approval while the Capital Default Loan was outstanding. Notwithstanding the foregoing, under no circumstances shall the non-Capital Defaulting Member have any authority, without the written consent of the Capital Defaulting Member, to cause the Company to incur on behalf of the Company any indebtedness which includes any recourse obligations of any Member, to engage in any transaction with any Affiliate of the non-Capital Defaulting Member, or to amend this Agreement, nor shall the Capital Defaulting Member forfeit any of its rights to receive distributions, to receive reports or obtain information as a result of the making of any Capital Default Loan.

Section 3.5 Parent Guaranties Delivered to the Members.

Concurrently with the execution and delivery of this Agreement, AVB has delivered its Parent Guaranty to ERP Member, and ERP has delivered its Parent Guaranty to AVB Member. No creditor or third party shall have rights to enforce any obligations under any Parent Guaranty.

Section 3.6 Parent Guaranties delivered to Third Parties.

(a) Allocation of Guaranty Liability. Subject to Section 3.6(c) below, liability under any Guaranty Obligation that is delivered by any of the Members or their Parents with respect to any Indebtedness or Contingent Obligation of the Company, any Subsidiary Entity or any Outside Partnership shall, as between the Members and their Parents, be apportioned in proportion to the Members' Proportionate Shares, and any payments made under any such Guaranty Obligation (other than payments made by a Responsible Member) shall be deemed additional Capital Contributions to the Company.

(b) Guaranty Equalization Payments. Subject to Section 3.6(c), if at any time a Member or its Affiliate or Parent shall have made a payment under or otherwise satisfied any Guaranty Obligation with respect to any Indebtedness or Contingent Obligation of the Company, any Subsidiary Entity or any Outside Partnership, and on or prior to such time, the other Member or its Affiliate or Parent shall not have made a payment under or otherwise satisfied an equivalent Guaranty Obligation with respect to the same Indebtedness or Contingent Obligation of the Company, any Subsidiary Entity or any Outside Partnership in an amount that is in proportion to its Proportionate Share of the aggregate cumulative amounts by which both Members and their Affiliates and Parents have made payments under or otherwise satisfied such Guaranty Obligations, then the Member (the "**Under-Guarantying Member**") that has (together with its Affiliates and Parent) paid amounts or otherwise satisfied amounts on account of such aggregate Guaranty Obligations that are less than its Proportionate Share of the aggregate cumulative amounts paid or satisfied by both Members and their Affiliates and Parents under such aggregate Guaranty Obligations shall, immediately upon demand by the other Member (the "**Over-Guarantying Member**"), pay or cause to be paid to the Over-Guarantying Member (on behalf of itself and as applicable its Affiliates and Parent) such sums (each, a "**Guaranty Equalization Payment**") as may be sufficient to cause the sum of the amounts by which such aggregate Guaranty Obligations have been paid or satisfied by the Over-Guarantying Member and its Affiliate and Parent, minus the amount of the Guaranty Equalization Payment so paid to

the Over-Guarantying Member, to equal the Over-Guarantying Member's Proportionate Share of the aggregate cumulative amounts by which such aggregate Guaranty Obligations have been paid or satisfied by both Members and their Affiliates and Parents. The obligation of the Under-Guarantying Member and its Parent to make such Guaranty Equalization Payment shall be absolute, irrevocable and unconditional under any and all circumstances whatsoever and irrespective of any set-off, counterclaim or defense to payment which the Under-Guarantying Member or its Affiliate or Parent may have or claim to have against the obligee of the Guaranty Obligations. If the Under-Guarantying Member does not pay the Guaranty Equalization Payment or cause it to be paid to the Over-Guarantying Member (on behalf of itself and as applicable its Affiliates and Parent) immediately upon demand therefor, then the unpaid amount of such Guaranty Equalization Payment shall bear interest at the rate applicable to Capital Default Loans until paid in full (which interest shall be immediately due and payable), and, without limiting any other available rights or remedies of the Over-Guarantying Member against the Under-Guarantying Member or its Parent (including any rights or remedies under such Parent's Parent Guaranty), any distributions or payments thereafter otherwise payable by the Company to the Under-Guarantying Member shall be withheld from such Member and instead paid to the Over-Guarantying Member until such time as the full amount of the Guaranty Equalization Payment (plus all accrued but unpaid interest thereon) has been paid to the Over-Guarantying Member. The Under-Guarantying Member shall be deemed a Capital Defaulting Member for purposes of this Agreement and shall lose voting rights as more particularly set forth in Section 3.4 until the Under-Guarantying Member has paid, or caused to be paid, the Guaranty Equalization Payment.

(c) Carveout Exposure. Notwithstanding the provisions of Sections 3.6(a) or (b) to the contrary, if any amount is paid or payable under any Indebtedness or Contingent Obligation of the Company, any Subsidiary Entity or any Outside Partnership, or under any Guaranty Obligation of any Member or its Parent with respect to any Indebtedness or Contingent Obligation of the Company, any Subsidiary Entity or any Outside Partnership, as a result of any act or omission on the part of one of the Members or their Affiliates which is not an Authorized Administrative Action or not reasonably within the scope of decisions, actions or transactions that were Approved by the Members or Approved by the Management Committee, then the Member whose act or omission (or whose Affiliate's act or omission) solely resulted in the obligation to make such payment (such Member, the "**Responsible Member**") shall have exclusive responsibility, as between the Members, for satisfying the payment obligations arising under such Indebtedness, Contingent Obligation or Guaranty Obligation as a result of such act or omission of the Responsible Member or its Affiliate; the Responsible Member shall have no rights to require the other Member or its Parent to make any Guaranty Equalization Payment on account of any such payment obligations; and the Responsible Member shall indemnify, defend, protect and hold harmless the Company, the other Member and its Parent from any losses, damages, liabilities, costs and expenses, including prepayment premiums, default rate interest, legal fees and disbursements, arising from any such act or omission under any such Indebtedness, Contingent Obligation or Guaranty Obligation, except, in each case, to the extent that the amount so paid or payable under such Indebtedness, Contingent Obligation or Guaranty Obligation is applied to reduce the principal balance due upon such Indebtedness or the principal balance due upon Indebtedness that is guaranteed or supported by such Contingent Obligation or Guaranty Obligation**.**

(d) [Reserved]

(e) If any Member or Parent shall recover from any Outside Partnership or Outside Partner any sums in reimbursement of or contribution for any amounts paid by the Company, any Subsidiary Entity, any Member or Parent on account of any Guaranty Obligation with respect to any Indebtedness or Contingent Obligation of such Outside Partnership, the applicable Member shall cause the amounts so recovered (net of the costs of collection) to be paid to the Members or their Parents in proportion to the aggregate amounts theretofore paid by the Members and their Parents on account of any such Guaranty Obligations to which such rights of reimbursement or contribution as against such Outside Partnership or Outside Partner apply.

Section 3.7 Members as Creditors**.**

With the Approval of the Members and subject to any other applicable terms in this Agreement, any Member may lend money to and transact other business with the Company as a creditor and, subject to applicable law, any Member has the same rights and obligations with respect thereto as a person who is not a Member.

Section 3.8 No Right of Withdrawal or Resignation.

No Member shall have the right to withdraw or resign from the Company except with the Approval of the Members, and then only upon such terms and conditions as may be specifically agreed upon between the Members. Notwithstanding any other provision of this Agreement, unless otherwise Approved by the Members, the withdrawing or resigning Member shall not be entitled to any return or repayment of its Capital Contribution or other distribution or transfer in the event of withdrawal or resignation. The foregoing provisions are exclusive and no Member shall be entitled to claim any distribution or transfer upon withdrawal or resignation under Section 18-604 of the Act or otherwise.

Section 3.9 Limited Liability.

Except as expressly set forth in this Agreement or required by law, no Member shall (a) be personally liable for any Indebtedness, Contingent Obligation or other liability or obligation of the Company, whether that Indebtedness, Contingent Obligation or liability or obligation arises in contract, tort, or otherwise, solely by reason of being a Member of the Company, or (b) have any obligation to restore any deficit or negative balance in the Capital Account of such Member.

Section 3.10 No Third Party Rights.

Any obligations or rights of the Company or the Members to make or require any Capital Contribution under this Article III shall not result in the grant of any rights or confer any benefits upon any Person who is not a Member.

ARTICLE IV

MANAGEMENT AND CONTROL OF THE COMPANY ASSETS AND THE BUSINESS

Section 4.1 Management Committee

(a) Composition. The Company shall have a Management Committee (the "**Management Committee**") which shall be composed of four (4) individuals (each, a "**Management Committee Representative**"). Two (2) Management Committee Representatives shall be Persons appointed by AVB Member (the "**AVB Representatives**") and two Management Committee Representatives shall be Persons appointed by ERP Member (the "**ERP Representatives**"). As of the date hereof, the initial AVB Representatives are Sean Breslin and Matthew Birenbaum, and the initial ERP Representatives are Alan George and Mark Parrell.

(b) Vacancies; Removal. Each Management Committee Representative shall hold office at the discretion of the Member appointing such Management Committee Representative. Any AVB Representative may be removed and replaced, with or without cause and for any reason at any time, by (and only by) AVB Member. Any ERP Representative may be removed and replaced, with or without cause and for any reason at any time, by (and only by) ERP Manager. A Management Committee Representative may also resign of its own volition at any time, by written notice to the Members. In the event of any vacancy in the office of a Management Committee Representative, such vacancy shall be filled, by written notice to the Members, by an individual designated by (i) AVB Member if such vacancy relates to an AVB Representative, and (ii) ERP Member if such vacancy relates to an ERP Representative.

(c) Meetings.

(i) Meetings of the Management Committee shall be held once per fiscal quarter of the Company on such dates and at such places and times as may be Approved by the Members. The agenda items for each quarterly meeting shall include a review of the Company's business and activities.

(ii) With the Approval of the Members, Management Committee meetings may be held more frequently than quarterly.

(iii) Management Committee Representatives may vote in person or by proxy; such proxy may be granted in writing, by electronic transmission (as defined in the Act), or as otherwise permitted by applicable law.

(iv) At the election of either Member, Management Committee meetings may be held by telephone conference or other communications equipment by means of which all participating Management Committee Representatives can simultaneously hear each other during the meeting.

(v) Any action required or permitted to be taken by the Management Committee may be taken without a meeting, if a consent to such action is delivered in writing or via electronic transmission (as defined in the Act) by the requisite number of the Management

Committee Representatives. Such written consent or a record of such electronic transmission shall be filed with the records of the Management Committee.

(d) Attendance at Management Committee Meetings. Subject to Section 3.4, no action may be taken at a meeting of the Management Committee unless at least one Management Committee Representative appointed by each Member is present in person or as otherwise permitted in Section 4.1(c). Notwithstanding the foregoing, during any period when a Member shall be a Capital Defaulting Member, action may be taken at a meeting of the Management Committee without regard to the attendance at such meeting of the Management Committee Representatives appointed by such Capital Defaulting Member, but only with respect to matters as to which its Management Committee Representatives have no voting rights as more fully provided in Section 3.4, and only if at least five (5) Business Days' notice of the meeting shall have been provided to the Capital Defaulting Member and an opportunity to be present at such meeting (in person or via telephone) shall have been provided to such Capital Defaulting Member.

(e) Voting Rights; Required Votes. Except as provided below, and subject to Section 3.4, each Management Committee Representative shall be entitled to cast one vote with respect to any matter requiring Approval of the Management Committee. Any action, decision or transaction considered by the Management Committee at a meeting thereof must be Approved by the Management Committee in order to be authorized. Notwithstanding anything to the contrary contained herein, if only one of the Management Committee Representatives appointed by a Member is present in person, via other means permitted pursuant to Section 4.1(c) or by proxy at a meeting of the Management Committee, the votes cast by such Management Committee Representative shall count as two (2) votes and shall be deemed to consist of the entire voting power of both Management Committee Representatives appointed by such Member.

(f) Approval by Members in Lieu of the Management Committee. At any time, the Members may consider and Approve or disapprove any action, decision or transaction that this Agreement contemplates will be considered, Approved or disapproved by the Management Committee. In the event of any conflict or inconsistency between any action, decision or transaction that has been Approved by the Members and any action, decision or transaction that has been Approved by the Management Committee, the action, decision or transaction Approved by the Members shall govern and control, and shall not be overridden or superseded by an action, decision or transaction Approved by the Management Committee unless such action, decision or transaction is also Approved by the Members.

(g) Delegation to Subcommittees, Etc. Either the Management Committee or the Members may Approve from time to time the delegation of authority with respect to the administration or management of certain decisions or functions to subcommittees, working groups or individuals, whose authority shall be limited to the decisions or functions so delegated to them. Consistent with the limited authority so delegated to them, such subcommittees, working groups or individuals shall be considered to be Designated Members for the purposes of this Agreement. Any such subcommittee, working group or individual, if appointed by Approval of the Management Committee, shall be subject to all limits upon the authority of the Management Committee provided for in this Agreement, including, without limitation, the limits set forth in Section 4.1(f).

Section 4.2 Designated Members and Agents; Officers; Transition Team.

(a) As expressly provided in this Agreement, or at any time and from time to time hereafter with the Approval of the Members or the Approval of the Management Committee, Members or other Persons may be designated as managers or authorized signatories or agents of the Company with respect to the performance of specific administrative duties, actions, functions or tasks, with respect to the execution of documents or consummation of transactions that have been Approved by the Management Committee or the Members, and the scope of the authority of each such designated manager, signatory or agent, and applicable period of time within which such authority may be exercised, shall (if not expressly stated in this Agreement) be as provided for in the applicable Approval of the Members or Approval of the Management Committee. Any Member so designated is referred to herein as a "**Designated Member,**" and shall have the specific authority expressly described herein or in the applicable Approval of the Members or Approval of the Management Committee. Any non-Member so designated shall have only the authority expressly described in the applicable Approval of the Members or Approval of the Management Committee.

(b) The applicable Designated Member shall have the sole authority on behalf of the Company with respect to the administrative functions and responsibilities that are or hereafter shall be allocated to it on Schedule G hereto or otherwise in this Agreement, together with the authority, rights and powers to do any and all acts and things necessary, proper, appropriate, advisable, incidental or convenient in connection with such functions and responsibilities, but all subject to the limitations, restrictions, conditions and requirements set forth in this Agreement. In such capacity, a Designated Member may execute for and on behalf of the Company any and all documents and instruments which may be necessary to carry on the business of the Company, to the extent within the scope of administrative functions and responsibilities that are or hereafter shall be allocated to it.

(c) [Reserved]

(d) [Reserved]

(e) [Reserved]

(f) Each Person appointed as a Designated Member shall serve at the discretion of the Members, and such Person may be removed upon the Approval of the Members (if such Person was appointed with the Approval of the Members of the Approval of the Management Committee) or removed upon the Approval of the Management Committee (if such Person was appointed with the Approval of the Management Committee).

(g) Without limiting any Designated Member's express obligations under this Agreement, the Members hereby agree that no Designated Member in its capacity as such shall have any fiduciary duty to the Company or the Members, any such requirement of fiduciary duty being forever and unconditionally waived by the Members to the extent permitted by the Act. Notwithstanding anything to the contrary in this Agreement, in addition to the express limitations set forth in this Agreement with respect to the duties and obligations of the Designated Member, no Designated Member shall be in default of its duties and obligations under this Agreement in

the event that (i) such Designated Member is unable to cause the Company or a Member to take any action because the action to be taken constitutes a Major Decision and such Major Decision is not then Approved, or (ii) such Designated Member is unable to cause the Company or a Member to take any action due to a lack of available Company funds.

(h) The Members acknowledge that certain officers have been appointed prior to the date hereof with respect to certain Subsidiary Entities and Outside Partnerships, and from time to time hereafter, with the Approval of the Management Committee or the Members, officers of the Subsidiary Entities and Outside Partnerships may be appointed, removed or replaced. Notwithstanding the foregoing, any officer of a Subsidiary Entity and Outside Partnerships who is an employee of a Member (or its Parent or any Affiliate thereof) shall hold office at the discretion of such Member, and may be removed and replaced, with or without cause and for any reason at any time, by (and only by) such Member. In the event of any vacancy in any office of any Subsidiary Entity, such vacancy shall be filled by an individual designated by (i) AVB Member if such vacancy relates to an office that was previously filled by an employee of AVB Member (or its Parent or any Affiliate thereof), and (ii) ERP Member if such vacancy relates to an office that was previously filled by an employee of ERP Member (or its Parent or any Affiliate thereof).

Section 4.3 Major Decisions.

Notwithstanding any other provision of this Agreement to the contrary, no Member or Designated Member shall take or cause any Major Decision, whether by or on behalf of the Company directly, or by or on behalf of any of the Subsidiary Entities and Outside Partnerships, without first obtaining the Approval of the Management Committee (or, pursuant to Section 4.1(f), the Approval of the Members) or take any other action which contravenes the conditions or limitations that expressly apply to any Approval by the Members or Approval by the Management Committee pursuant to the terms of this Agreement.

Section 4.4 [Reserved]

Section 4.5 [Reserved]

Section 4.6 Reserves — General.

The Company shall maintain such reserves as are Approved by the Members or Approved by the Management Committee.

Section 4.7 Contracts With Members.

No Member shall cause or permit the Company or any Subsidiary Entity or Outside Partnership to engage or pay any compensation to a Member or any Affiliate of a Member for the provision of services to the Company or any Subsidiary Entity or Outside Partnership.

Section 4.8 Limited Liability of Management Committee Representatives and Designated Members.

Except as expressly set forth in this Agreement or as required by law, no Management Committee Representative or Designated Member shall be personally liable for any debt, obligation or liability of the Company whether that liability or obligation arises in contract, tort or otherwise, solely by reason of being a Management Committee Representative or Designated Member of the Company.

Section 4.9 Standard of Care of Management Committee Representatives and Designated Members.

Each Management Committee Representative and Designated Member shall perform the respective duties as Management Committee Representative and Designated Member in good faith, and in the ordinary course of business, consistent with the terms of this Agreement, subject, in the case of Management Committee Representatives, to the terms of Section 1.9, and subject, in the case of both Management Committee Representatives and Designated Members, to the terms of Section 7.4. Management Committee Representatives and Designated Members do not, in any manner, guarantee the return of the Members' Capital Contributions or a profit for the Members from the operations of the Company. Management Committee Representatives or Designated Members shall not be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of fraud, gross negligence, willful misconduct, a willful, knowing or intentional breach of this Agreement, or the result of any act or omission performed or omitted by it not in good faith.

Section 4.10 Transactions between the Company and an Interested Management Committee Representative or Designated Member.

Notwithstanding that it may constitute a conflict of interest, a Management Committee Representative or Designated Member that is not a Member or Affiliate of a Member may directly or indirectly engage in any transaction (including without limitation the purchase, sale, lease, or exchange of any property, or the lending of funds, or the rendering of any service, or the establishment of any salary, other compensation, or other terms of employment) with the Company; provided however that in each case (a) such transaction is not expressly prohibited by this Agreement, (b) the terms and conditions of such transaction on an overall basis are fair and reasonable to the Company, and (c) the transaction has been Approved by the Members after disclosure of all material facts relating to the conflict or potential conflict.

Section 4.11 Bank Accounts.

Subject to cash management protocols to be Approved by the Management Committee, the Designated Member may from time to time open bank accounts in the name of the Company (which shall be segregated from, and not commingled with the funds of any Person other than a Subsidiary Entity) in accordance with the terms of Schedule G attached hereto.

Section 4.12 Reimbursement of Expenses; Compensation.

(a) In connection with their respective services hereunder, the Management Committee Representatives and Designated Members shall be entitled to reimbursement from the Company of all third-party out-of-pocket expenses of the Company reasonably incurred and paid by such Management Committee Representative or Designated Member on behalf of the Company.

(b) In connection with their respective services as a Designated Member, ERP Member and AVB Member shall be entitled to receive fees from the Company, as an Expenditure of the Company, in the amounts, for the term, and payable at the times set forth on Schedule H as and when Approved by the Management Committee; provided, however, that, if not provided for on Schedule H or otherwise Approved by the Management Committee, then such fees shall be on a quarterly basis, in advance. On a quarterly basis, the Members shall review in good faith the appropriateness of the compensation arrangements under this Agreement (including, if applicable, any fees provided for on Schedule H) in light of the magnitude of work and services that are being provided by the applicable Designated Members in consideration thereof, and the allocation of administrative responsibilities and functions as between the Members, and shall, if mutually agreed to, make appropriate adjustments thereto. Each Member acknowledges and agrees that, unless both Members are satisfied with the compensation arrangements that are provided for pursuant to this Agreement, either Member shall have the right, in connection with the quarterly review provided for in this Section 4.12(b), to require the allocation of administrative responsibilities and functions as between the Members to be revisited, in order to obtain an allocation of the work and services required to be performed in connection with such administrative responsibilities and functions as between the Members in a manner that is consistent with their respective Proportionate Shares.

(c) [Reserved]

(d) Except as specifically provided in this Section 4.12 or in Schedule G attached hereto or as Approved by the Members, Members, Management Committee Representatives and Designated Members shall not otherwise be entitled to compensation.

Section 4.13 Reliance by Third Parties.

Any Person dealing with the Company or any Subsidiary Entity may rely upon a certificate signed by any Member or the Designated Member as to:

(i) the identity of the Members or Designated Members;

(ii) the existence or non-existence of any fact or facts that constitute a condition precedent to acts by the Company or any Subsidiary Entity or that are in any other manner germane to the affairs of the Company or any Subsidiary Entity;

(iii) the Persons or Designated Members that are authorized to execute and deliver any instrument or document of, or on behalf of, the Company or any Subsidiary Entity; or

(iv) any act or failure to act by the Company or any Subsidiary Entity, or any other matter whatsoever, involving the Company or any Subsidiary Entity.

Section 4.14 Authorization of the Transactions under the Purchase Agreement and Related Transactions.

The Members have determined that it is in the best interests of the Company to acquire the interests in the Company Assets and Subsidiary Entities, all in accordance with the Purchase Agreement and the Buyers Agreement, and to consummate the closing under the Purchase Agreement and all transactions related thereto. The Members have approved the form, terms and provisions of the bills of sale, assignments and other transfer and other instruments by which such acquisition and other transactions are to occur, as well as the other documents identified on Schedule F. The execution and delivery by any Member as a Member or Designated Member on behalf of the Company (whether in its individual capacity or in its capacity, after giving effect to the Initial Closing (as defined in the Buyers Agreement, as the member or manager of any Subsidiary Entity) of any such bills of sale, assignments, other transfer instruments and other documents identified on Schedule F shall constitute the binding act of the Company (and as applicable, such Subsidiary Entity) in all respects, and all such bills of sale, assignments, other transfer and other instruments, and other documents identified on Schedule F, are hereby approved, adopted and confirmed in all respects. Any Member in its capacity as a Member or Designated Member is also hereby authorized on behalf of the Company (whether in its individual capacity or in its capacity, after giving effect to the Initial Closing, as the member or manager of any Subsidiary Entity) to do or cause to be done any and all such acts or things and to execute and deliver any and all such further documents and papers as it may deem necessary or appropriate to carry out the full intent and purpose of the authorizations in this Section 4.14 in connection with the consummation of the transactions under the Purchase Agreement by which the Company will acquire the interests in the Company Assets and Subsidiary Entities and all transactions related thereto, and, to the extent that any Member in its capacity as a Member or Designated Member has already done any actions or things to effectuate the consummation of such transactions or any other purposes of the authorizations in this Section 4.14, the doing of such actions is hereby ratified, approved, confirmed and adopted in all respects. Any such documents executed or actions taken by a Member of the purported capacity of a "Manager" or "Designated General Administrative Co-Manager" of the Company shall be deemed for all purposes to have been executed or taken by it in its capacity as a Designated Member, shall constitute the binding act of the Company (and as applicable, such Subsidiary Entity) in all respects, and are hereby approved, adopted and confirmed in all respects.

ARTICLE V

TAXES, ALLOCATIONS AND DISTRIBUTIONS

Section 5.1 Allocations and Tax Provisions.

Notwithstanding any contrary provision of this Agreement, rules governing allocations of income, gains, losses and deductions, certain tax matters and related items are set forth in Schedule E attached hereto and made a part hereof.

Section 5.2 Distributions.

Subject to Section 3.4, distributions of Distributable Cash or other assets of the Company if any, may be made to the Members and in such amounts as may be Approved by the Management Committee from time to time not less frequently than quarterly (and, in the case of proceeds of sale, promptly following the remittance of the proceeds of sale to the Company), to the Members *pro rata* in accordance with their respective Proportionate Shares.

Section 5.3 Withholding.

(a) General. Each Member shall, to the fullest extent permitted by applicable law, indemnify and hold harmless the Company and each Covered Person who is or who is deemed to be the responsible withholding agent for U.S. federal, state or local or non-U.S. income tax purposes against all claims, liabilities and expenses of whatever nature relating to the Company's or such Covered Person's obligation to withhold and to pay over, or otherwise pay, any withholding or other taxes payable by the Company with respect to such Member or as a result of such Member's participation in the Company.

(b) Authority to Withhold; Treatment of Withheld Tax. Notwithstanding any other provision of this Agreement, each Member hereby authorizes the Company to withhold and to pay over, or otherwise pay, any withholding or other taxes payable or required to be deducted by the Company or any of its Affiliates (pursuant to the Code or any provision of U.S. federal, state or local or non-U.S. tax law) with respect to such Member or as a result of such Member's participation in the Company (including as a result of a distribution in kind to such Member). If and to the extent that the Company shall be required to withhold or pay any such withholding or other taxes, such Member shall be deemed for all purposes of this Agreement to have received from the Company as of the time that such withholding or other tax is withheld or paid, whichever is earlier, a distribution of Distributable Cash in the amount thereof, pursuant to the Section 5.2, to the extent that such Member would have received a cash distribution, pursuant to Section 5.2, but for such withholding. To the extent that such withholding or payment exceeds the cash distribution that such Member would have received but for such withholding, ERP Member shall notify such Member as to the amount of such excess and such Member shall make a prompt payment to the Company of such amount by wire transfer, which payment shall not constitute a Capital Contribution and, consequently, shall not increase the Capital Account of such Member.

(c) Withholding Tax Rate. Any withholdings referred to in this Section 5.3 shall be made at the maximum applicable statutory rate under the applicable tax law unless ERP Member shall have received an opinion of counsel, or other evidence, reasonably satisfactory to ERP Member to the effect that a lower rate is applicable or that no withholding or payment is required.

(d) Withholding from Distributions to the Company. In the event that the Company or any Subsidiary Entity receives a distribution or payment from or in respect of which tax has been withheld, the Company shall be deemed to have received cash in an amount equal to the amount of such withheld tax, and amounts withheld shall be deemed to be Distributable Cash that has been paid to the Member to whom such withholding is attributable. To the extent that

such payment exceeds the cash distribution that such Member would have received but for such withholding, ERP Member shall notify such Member as to the amount of such excess and such Member shall make a prompt payment to the Company of such amount by wire transfer, which payment shall not constitute a Capital Contribution and, consequently, shall not increase the Capital Account of such Member.

ARTICLE VI

ACCOUNTING, RECORDS AND REPORTING

Section 6.1 Accounting and Records.

The books and records of the Company shall be kept, and its financial position and the results of its operations recorded, in accordance with generally accepted accounting principles. The books and records of the Company shall reflect all Company transactions and shall be appropriate and adequate for the Company's business in accordance with the Act. Except as specifically provided herein, all books and records of the Company shall be maintained for the Company by AVB Member.

Section 6.2 Access to Accounting and Other Records.

The following provisions of this Section 6.2 shall supersede and act in lieu of the provisions of Section 18-305 of the Act:

(a) Upon request of any Member, the other Member shall promptly deliver or cause to be delivered to the requesting Member, at the expense of the Company, a copy of the following records, to the extent that such other Member is responsible hereunder for the maintenance of such records (i) a current list of the full name and last known address of each Member and the Capital Contributions and Proportionate Share held of record by each Member; (ii) a current list of the Management Committee Representatives and Designated Members; and (iii) the Company's federal, state and local income tax returns and reports, if any, for each of its taxable years.

(b) Each Member also has the right to inspect and copy during normal business hours any of the Company's books and records required to be maintained by the other Member , including (i) the Certificate of Formation of the Company, any amendments to the Certificate of Formation, and executed copies of any powers of attorney granted for the purpose of executing the Certificate of Formation; (ii) this Agreement and any amendments to this Agreement; (iii) financial statements of the Company; and (iv) the written minutes of any meeting of the Management Committee or the Members and any written consents of the Management Committee or the Members for actions taken without a meeting.

(c) Management Committee Representatives and Designated Members shall also have the right to inspect any and all books and records of the Company required to be maintained hereunder by any Member for purposes reasonably related to their duties as Management Committee Representatives or Designated Members.

(d) Each Member shall also have the right to inspect any and all books and records maintained by the other Member in connection with in connection with any administrative function or responsibility for which that other Member has been designated as a Designated Member.

Section 6.3 Costs of Audits, Books, Records; Bank Account Information.

(a) The costs and expenses incurred by the Company or a Designated Member in establishing and maintaining the books and records of the Company, as well as the annual audit of the books and records of the Company and the Subsidiary Entities, and the costs and expenses incurred in preparing and furnishing any and all such reports and information shall be borne by the Company.

(b) With respect to the bank account or accounts maintained by a Member as the Designated Manager in the name of the Company, that Member shall:

(i) promptly following the receipt of any bank account statement, send a copy of such bank account statement to the other Member;

(ii) to the extent permitted and reasonably practicable, arrange to have the applicable bank send such bank account statements directly to the other Member; and

promptly following request, provide to the other Member information regarding deposits or withdrawals from any such bank accounts or any other information related to such bank accounts as reasonably requested by the other Member.

Section 6.4 Tax Returns.

ERP Member shall cause to be prepared by the Accountants all tax returns required of the Company and each Subsidiary Entity. Not later than August 1 of each year ERP Member shall distribute or cause to be distributed to the Members drafts of the proposed tax returns to be filed on behalf of the Company or any Subsidiary Entity. Following the distribution of such draft tax returns, but prior to ten (10) Business Days prior to the due date for the filing thereof (or such alternative date as may be Approved by the Management Committee), any of the Members may provide comments and input to ERP Member, and ERP Member shall consult with the Accountants concerning the comments and input so provided, as to the advisability of incorporating such comments and input into the tax returns to be so filed. Following the preparation of revised tax returns reflecting such input and comments (to the extent deemed appropriate by the Accountants), ERP Member shall timely file or cause to be timely filed all such tax returns required to be filed by the Company as reasonably determined by the Members. All decisions regarding or affecting the reporting or characterization for tax purposes of any material items of Company income, gain, loss or deduction shall require the Approval of the Members (which approval shall not be unreasonably withheld).

Section 6.5 Tax Matters Partner.

ERP Member is designated the Tax Matters Member of the Company as provided in Section 6231(a)(7) of the Code and corresponding provisions of applicable state law. This designation is effective only for the purpose of activities performed pursuant to the Code, corresponding provisions of applicable state law and under this Agreement. ERP Member shall inform the Members of all tax audits and other tax proceedings, promptly update the Members of all material developments with respect thereto and provide copies of all correspondence with and submissions to the tax authorities. ERP Member shall not make any material decision or take any material action as the Tax Matters Member that could adversely affect a Member or its Parent or Affiliate without the prior consent of such Member. ERP Member , as the Tax Matters Member, shall permit the Members at the Company's expense to participate in any tax audit or other proceeding which could affect the taxes of the Company or income or loss allocable to or taxes payable by any Member with respect to its interest in the Company. ERP Member shall also perform its obligations with respect to tax matters under Schedule E.

ARTICLE VII

INDEMNIFICATION, INSURANCE AND EXCULPATION

Section 7.1 Indemnification.

(a) To the fullest extent permitted by law, the Company shall indemnify, hold harmless and defend ERP Member, AVB Member, each Parent, each Affiliate of any Member, each Management Committee Representative, each Designated Member, each Member's, Affiliate's, Parent's agents, officers, partners, members, employees, representatives, directors or shareholders (including, without limitation, any members of the Transition Team) and each Subsidiary Entity's officers, agents and employees (each, a "**Covered Person**") from and against any and all losses, claims, damages, liabilities, whether joint or several, expenses (including legal fees and expenses), judgments, fines and other amounts paid in settlement (collectively, "**Indemnified Losses**"), incurred or suffered by such Covered Person, as a party or otherwise, in connection with any threatened, pending or completed claim, demand, action, suit or proceeding, whether civil, criminal, administrative or investigative, and whether formal or informal, arising out of or in connection with the business or the operation of the Company or any Subsidiary Entity, unless the Indemnified Losses were the result of fraud, gross negligence, willful misconduct or a willful, knowing or intentional breach of this Agreement by such Covered Person, or the result of any act or omission performed or omitted by such Covered Person not in good faith (in which case the Company shall have no indemnification obligation with respect to such Indemnified Losses) or the Indemnified Losses arise pursuant to a Guaranty Obligation (in which case the Company shall have no indemnification obligation with respect to such Indemnified Losses but the provisions of Section 3.6 shall apply).

(b) No Covered Person shall be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of fraud, gross negligence, willful misconduct or a willful, knowing or intentional breach of this Agreement by such Covered Person, or the result of any act or omission performed or omitted by such Covered Person not in good faith.

(c) To the fullest extent permitted by law, unless it is determined that a Covered Person is not entitled to be indemnified therefor pursuant to this Section 7.1, expenses incurred by such Covered Person in defending any claim, demand, action, suit or proceeding subject to this Section shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking by or on behalf of the Covered Person to repay such amount.

(d) The indemnification provided by this Section 7.1 shall be in addition to any other rights to which any Covered Person may be entitled under this Agreement, any other agreement, as a matter of law or otherwise, and shall inure to the benefit of the heirs, legal representatives, successors, assigns and administrators of the Covered Person.

Section 7.2 Procedures; Survival.

(a) If a Covered Person wishes to make a claim under Section 7.1, the Covered Person should notify the Company in writing within ten (10) days after receiving written notice of the commencement of any action that may result in a right to be indemnified under Section 7.1; provided however that the failure to notify the Company shall not relieve the Company of any liability for indemnification pursuant to Section 7.1 (except to the extent that the failure to give notice will have been materially prejudicial to the Company).

(b) A Covered Person shall have the right to employ separate legal counsel in any action pursuant to Section 7.1 and to participate in the defense of the action. The fees and expenses of such legal counsel shall be at the expense of the Covered Person unless (i) the Members or Management Committee have Approved the Company's payment of such fees and expenses, (ii) the Company has failed to assume the defense of the action without reservation and employ counsel within a reasonable period of time after being given the notice required above, or (iii) the named parties to any such action (including any impleaded parties) include both the Covered Person and the Company and the Covered Person has been advised by its legal counsel that representation of the Covered Person and the Company by the same counsel would be inappropriate under applicable standards of professional conduct because of actual or potential differing interests between them. It is understood, however, that the Company shall, in connection with any one such action or separate but substantially similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances, be liable for the reasonable fees and expenses of only one separate firm of attorneys at any time for all such Covered Persons having actual or potential differing interests with the Company.

(c) The Company shall not be liable for any settlement of any action against any Covered Person for which the Company is required to indemnify such Covered Person hereunder which is agreed to without the Approval of the Members or Management Committee.

(d) The indemnification obligations set forth in this Article VII hereof shall survive the termination of this Agreement.

Section 7.3 Insurance.

The Company shall maintain, for the benefit of the Company, its Subsidiary Entities, the Members, the Management Committee Representatives and the Designated Members, and at the

expense of the Company, policies of insurance as Approved by the Management Committee or Approved by the Members.

Section 7.4 Rights to Rely on Legal Counsel, Accountants.

No Covered Person shall be liable, responsible or accountable in damages or otherwise to the Company or any Member for any performance or omission to perform any acts in reliance on the advice of accountants or legal counsel for the Company.

ARTICLE VIII

TRANSFER OF MEMBERSHIP INTERESTS; ADMISSION OF ADDITIONAL MEMBERS

Section 8.1 Transfer or Assignment of Membership or Manager Interests.

No Member shall be entitled to assign, convey, sell, encumber or in any manner alienate or otherwise Transfer all or part of such Member's Membership Interest *except* in strict compliance with each and all of the other Sections of this Article VIII. No Designated Member shall be entitled to assign, convey, sell, encumber or in any manner alienate or otherwise Transfer all of part of such Designated Member's rights, interests, duties or obligations under this Agreement, in its capacity as a Designated Member, without the Approval of the Members, except, in the case of a Designated Member which is also a Member, to a successor to which the entire Membership Interest of such Designated Member has been Transferred in full compliance with this Agreement.

Section 8.2 Conditions to Transfer by Member.

Except as provided in Section 8.3 or Section 8.4, no Member may Transfer all or part of such Member's Membership Interest, nor shall the direct or indirect interests in any Member be transferred to any Person if, as a result thereof, that Member would no longer be directly or indirectly wholly-owned by ERP or Equity Residential (in the case of a Transfer of the interests in ERP Member) or AVB (in the case of a Transfer of the interests in AVB Member), unless such Transfer has been approved in writing by the other Member in its sole and absolute discretion.

Section 8.3 Permitted Transfers.

A Member shall be permitted to Transfer all or any part of its Membership Interest without further consent hereunder to an Affiliate of that Member which is directly or indirectly wholly-owned by ERP or Equity Residential (in the case of a Transfer by ERP Member) or by AVB (in the case of a Transfer by AVB Member), so long as, in connection with such Transfer that Member's Parent provides to the other Member a ratification and reaffirmation of its Parent Guaranty and such Transfer would not be a violation of or an event of default under, or give rise to a right to accelerate any indebtedness described in, any note, mortgage, loan agreement or similar instrument or document to which the Company or any Subsidiary Entity or Outside Partnership is a party unless such violation or event of default shall be waived by the parties thereto.

Section 8.4 Transfer of Interests in Equity Residential, ERP or AVB.

Notwithstanding anything to the contrary contained in this Agreement, (a) neither Transfers of interests in ERP, nor the issuance or redemption of interests in ERP, nor Transfers of common or preferred shares or other equity interests in Equity Residential, nor issuance or redemption of common or preferred shares or other equity interests in Equity Residential (other than those occurring in connection with an Extraordinary Transaction), shall constitute a "Transfer" of the interest of ERP Member under this Agreement, or constitute a default, breach or withdrawal by ERP Member or any other violation of this Agreement by ERP Member; (b) neither Transfers of shares of stock in AVB, nor issuance or redemption of shares of stock in AVB (other than those occurring in connection with an Extraordinary Transaction), shall constitute a "Transfer" of the interest of AVB Member under this Agreement, or constitute a default, breach or withdrawal by AVB Member or any other violation of this Agreement by AVB Member; and (c) notwithstanding clauses (a) and (b) above, neither any merger or other consolidation of Equity Residential, ERP or AVB with any other Person, nor any transfer of all or substantially all of the common equity of Equity Residential, ERP or AVB (including by way of tender offer), nor any sale of all or substantially all of the assets of Equity Residential, ERP or AVB, nor any transfer, issuance or redemption of common or preferred shares or other equity interests in ERP or Equity Residential or AVB, as applicable, in connection with such a merger or consolidation of Equity Residential, ERP or AVB, as applicable (each, an "**Extraordinary Transaction**"), shall constitute a "Transfer" of the interest of ERP Member or AVB Member, as applicable, under this Agreement, or constitute a default, breach or withdrawal by ERP Member or AVB Member, as applicable, or any other violation of this Agreement by ERP Member or AVB Member, as applicable, so long as, in the case of any such Extraordinary Transaction, the surviving Entity or buyer (the "**Successor Parent**"), as applicable, in any such transaction provides notice of such transaction to the other Member within five (5) Business Days thereafter and certifies that as of the date of consummation of, and after giving effect to, such transaction, it is either (i) a publicly traded company which continues to qualify as a REIT and has total equity as determined in accordance with U.S. generally accepted accounting principles of not less than $1.5 billion, or (ii) it has total equity as determined in accordance with U.S. generally accepted accounting principles of not less than $2 billion. If the Successor Parent delivers a notice and certificate in accordance with clause (ii) of the immediately preceding sentence, then, within ninety (90) days following the end of each fiscal year of the Successor Parent thereafter, the Successor Parent shall deliver a certificate to the other Member that certifies that, at the end of such fiscal year, it had total equity as determined in accordance with U.S. generally accepted accounting principles of not less than $2 billion. For the avoidance of doubt, a Change in Board Control of Equity Residential or AVB shall not constitute a "Transfer" of the interest of ERP Member or AVB Member, as applicable, under this Agreement, or constitute a default, breach or withdrawal by ERP Member or AVB Member, as applicable, or any other violation of this Agreement by ERP Member or AVB Member, as applicable.

Section 8.5 Unauthorized Transfers Void.

Any Transfer or purported Transfer in violation of the provisions of this Article VIII shall be null and void *ab initio* and shall constitute a material breach of this Agreement. In the event of any Transfer or purported Transfer of all or any part of a Member's Membership Interest in violation of this Agreement, without limiting any other rights or remedies of the Company or the

other Members, the assignee or purported assignee shall have no right to participate in the management of the business and affairs of the Company or to become a Member, or to receive any distributions of any kind or to receive any part of the share of profits or other compensation by way of income and the return of contributions, or any allocation of income, gain, loss, deduction, credit or other items to the owner of such Membership Interest in the Company would otherwise be entitled.

Section 8.6 Admission of Substitute Member; Liabilities.

(a) An assignee of all or any part of Membership Interest shall be admitted as a Substitute Member only if (i) the Transfer of such Membership Interest complies in all respects with this Article VIII and (ii) the prospective Substitute Member delivers a signed instrument pursuant to which the assignee agrees to all of the terms and conditions of, and to be bound by, this Agreement, and to assume all of the obligations of the transferring Member and to be subject to all the restrictions and obligations to which the transferring Member is subject under the terms of this Agreement. The admission of a Substitute Member shall not release the transferring Member from any liability to the Company or to the other Members in respect of its Membership Interest that may have existed prior to such admission.

(b) The ERP Member shall reflect the admission of such Substitute Member in the records of the Company as soon as possible after satisfaction of the conditions set forth in this Agreement. Schedule C of this Agreement shall be deemed to be amended to reflect the admission of the Substitute Member upon such admission; and each of Members then of record hereby consents to such amendment to the extent required by law or this Agreement.

Section 8.7 Admission of Additional Members.

Unless the Approval of the Members has been obtained, and then, only in accordance with the terms and conditions Approved by the Members, the Company shall not admit any additional Members.

ARTICLE IX

SPECIAL RIGHTS AND OBLIGATIONS OF MEMBERS AND THE COMPANY

Section 9.1 [Reserved]

Section 9.2 Archstone Real Estate Assets.

If either Member has the right to elect to acquire or nominate a third party designee to acquire, pursuant to the provisions of Section 9.2 of the Residual JV Agreement, the interests of Residual JV in any of the assets in the Germany Portfolio in which the Company and Residual JV hold interests, then the electing Member may (but shall not be required to) also acquire or nominate a third party designee to acquire, the interests of the Company relating to such asset, in accordance with the same terms and procedures set forth in Section 9.2 of the Residual JV Agreement (as if all capitalized terms used therein had the meanings for such terms that are set forth in this Agreement).

Section 9.3 Other Business Activities of the Members.

Neither the Members nor any Affiliates of the Members shall be obligated to present any investment opportunity to the Company or any other Member, even if the opportunity is of a character consistent with the Company's other activities and interests. The Members and the Members' Affiliates may engage in or possess any interest, directly or indirectly, in any other business venture of any nature or description independently or with others, including but not limited to, the ownership, financing, leasing, operation, management, syndication, brokerage, or development of real property competitive with the Company Assets. Membership in the Company and the assumption by either Member of any duties hereunder shall be without prejudice to such Member's rights (or the rights of its affiliates) to have or pursue such other interests and activities and to receive and enjoy profits or compensation therefrom, and neither the Company nor the other Member(s) shall have any right by virtue of this Agreement in and to such ventures or the income or profits derived therefrom.

Section 9.4 Indemnification Claims Under Purchase Agreement.

Each Member acknowledges and agrees that any claim for indemnification which the Company may have against the Seller pursuant to the Purchase Agreement shall be asserted in compliance with Section 5.6 of the Buyer's Agreement. If any Member determines that a basis exists for the Company to assert a claim against the Seller, it shall deliver written notice thereof to the other Member specifying in reasonable detail the factual basis of such claim, stating the amount of losses (or if not known, a good faith estimate of the amount of losses) and the method of computation thereof, containing a reference to any and all provisions of the Purchase Agreement with respect to which indemnification could be sought and stating its good faith determination (and specifying in reasonable detail the factual basis for such determination) that such claim is an "Archstone Residual Claim" as such term is defined in the Buyers Agreement. Promptly following the delivery of such notice, the Members shall meet and confer to determine whether to Approve the making of such claim pursuant to the Purchase Agreement, subject to compliance with the terms of Section 5.6 of the Buyers Agreement.

Section 9.5 [Reserved]

Section 9.6 Employees; Transition Plan.

(a) The Members acknowledge and agree that the Company and the Archstone Subsidiaries shall be bound by the Transition Plan (as defined in the Buyers Agreement) approved by Equity Residential, ERP and AVB pursuant to Section 6.2(b) of the Buyers Agreement. No amendment, modification, waiver or departure from the requirements of the Transition Plan or Section 6.2(b) of the Buyers Agreement shall be entered into or adopted without the Approval of the Members.

(b) If, pursuant to the Transition Plan, one or more employees are to be retained by any Subsidiary Entity following the date of this Agreement, then the Company shall cause such Subsidiary Entity to comply with all applicable laws with respect to such employees, and all policies with respect to wages, salaries, benefits, severance and all other applicable employment-related matters shall be as Approved by the Members. Any decision to terminate any employee

of any Subsidiary Entity following the Transition Period (as defined in the Buyers Agreement) shall require the Approval of the Members.

(c) With respect to any employee who is to be terminated by any Subsidiary Entity subsequent to the date hereof, the Company shall cause such Subsidiary Entity to comply with the requirements of applicable law. Each Member shall be required to contribute its Proportionate Share of the Company's share of any Severance (as defined in the Buyers Agreement) that is due and payable to such employee to the extent that the retained cash of the Company or applicable Subsidiary Entity is insufficient therefor.

Section 9.7 [Reserved]

Section 9.8 Opportunity in Connection with the Acquisition of Outside Partners' Interests.

The Members agree that the provisions of Section 9.8 of the Residual JV Agreement are hereby incorporated herein by this reference as if (a) each reference to a "Member" therein (and in any defined terms used therein) were deemed to refer to a Member in its capacity as a Member hereunder, (b) each reference to the "Company" therein (and in any defined terms used therein) were deemed to refer to the Company. If either Member has the right to elect to acquire or nominate a third party designee to acquire, the interests of the other Member in Residual JV's interest in an Outside Partnership in accordance with the provisions of Section 9.8 of the Residual JV Agreement, the electing Member may (but shall not be required to) also acquire or nominate a third party designee to acquire, the interests of the other Member in the Company's interest in such Outside Partnership, in accordance with the same terms and procedures set forth in Section 9.8 of the Residual JV Agreement (as if all capitalized terms used therein had the meanings for such terms that are set forth in this Agreement).

ARTICLE X

DISSOLUTION AND LIQUIDATION OF THE COMPANY

Section 10.1 Events Causing Dissolution.

The Company shall be dissolved only upon the occurrence of any of the following events ("**Dissolution Event**"):

(a) The sale, exchange or other disposition or distribution of all or substantially all of the assets and properties of the Company;

(b) The Approval of the Members; or

(c) The final decree of a court of competent jurisdiction that such dissolution is required under applicable law.

The bankruptcy or dissolution of a Member shall not cause the Member to cease to be a member of the Company and, upon the occurrence of such an event, the business of the Company shall continue without dissolution.

Section 10.2 Liquidation and Winding Up.

Upon the occurrence of a Dissolution Event, the Company shall be liquidated and the Management Committee (or other Person designated by the Management Committee or a decree of court) shall wind up the affairs of the Company. In such case, the Management Committee (or such Designated Member or other Person designated by the Management Committee or a decree of court) shall have the authority, in its sole and absolute discretion, to sell the Company's assets and properties or distribute them in kind. The Management Committee or other Person winding up the affairs of the Company shall promptly proceed to the liquidation of the Company. In proceeding with the winding-up process, it is the Members' objective that the winding-up process for the Company shall be completed within three (3) years following the sale of the Company's last asset (assuming that the Company and its Subsidiary Entities are not then parties to any outstanding litigation which has not been resolved). If the Approval of the Members is obtained, the Members may elect to accelerate the winding-up process by mutually agreeing to set aside reserves or entering into a cost-sharing agreement with respect to any trailing liabilities of the Company or its Subsidiary Entities. In a liquidation, the assets and property of the Company shall be distributed in the following order of priority:

(a) To the payment of all debts and liabilities of the Company in the order of priority as provided by law (other than outstanding loans from a Member or Management Committee Representative);

(b) To the establishment of any reserves deemed necessary by the Management Committee or the Person winding up the affairs of the Company, for any contingent liabilities or obligations of the Company (including those of the Person serving as the liquidator);

(c) To the repayment of any outstanding loans from a Member or Management Committee Representative to the Company; and

(d) The balance, if any, to the Members in accordance with Section 5.2 of this Agreement.

Upon liquidation of the Company, no Member shall be required to contribute any amount to the Company solely because of a deficit or negative balance in the Capital Account of such Member and any deficit or negative balance shall not be considered an asset of the Company for any purpose.

ARTICLE XI

REPRESENTATIONS AND WARRANTIES

Section 11.1 Representations and Warranties of ERP Member.

ERP Member hereby represents and warrants to AVB Member as follows:

(a) Organization. ERP Member is a limited liability company duly organized, validly existing and in good standing under the laws of the state of Delaware and has all requisite limited

liability company power and authority to own, lease and operate its properties and to carry on its business as it is presently being conducted.

(b) Authorization; Validity of Agreements.

(i) ERP Member has the requisite limited liability company power and authority to execute and deliver this Agreement and to perform all of its obligations hereunder. The execution and delivery by ERP Member of this Agreement, and the performance by ERP Member of its obligations hereunder, have been duly authorized by, and no other proceedings, actions or authorizations on the part of ERP Member or any holder of equity interest in ERP Member are necessary to authorize the execution and delivery by ERP Member of this Agreement.

(ii) This Agreement has been duly executed and delivered and constitutes the legal, valid and binding obligation of ERP Member, enforceable against them in accordance with its terms, except that (a) such enforcement may be subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws, now or hereafter in effect, affecting creditors' rights generally, and (b) general equitable principles.

(a) Consents and Approvals; No Violations. The execution and delivery by ERP Member of this Agreement, and the performance by ERP Member of its obligations hereunder, does not and will not (a) violate, contravene or conflict with any provision of any organizational documents of ERP Member; (b) violate, contravene or conflict with any material orders or laws applicable to ERP Member or any of its material properties or assets; or (c) require on the part of ERP Member any filing or registration with, notification to, or authorization, consent or approval of, any Governmental Authority, except for such filings or registrations with, notifications to, or authorizations, consents or approvals of any Governmental Authority as may be referenced in Section 7.3 of the Purchase Agreement.

Section 11.2 Representations and Warranties of AVB Member.

AVB Member hereby represents and warrants to ERP Member as follows:

(a) Organization. AVB Member is a corporation that is duly organized, validly existing and in good standing under the laws of the state of Maryland and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as it is presently being conducted.

(b) Authorization; Validity of Agreements.

(i) AVB Member has the requisite corporate power and authority to execute and deliver this Agreement and to perform all of its obligations hereunder. The execution and delivery by AVB Member of this Agreement, and the performance by AVB Member of its obligations hereunder, have been duly authorized by, and no other

proceedings, actions or authorizations on the part of AVB Member or any holder of equity interest in it are necessary to authorize the execution and delivery by AVB Member of this Agreement.

(ii) This Agreement has been duly executed and delivered and constitutes the legal, valid and binding obligation of AVB Member, enforceable against it in accordance with its terms, except that (a) such enforcement may be subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws, now or hereafter in effect, affecting creditors' rights generally, and (b) general equitable principles.

(c) Consents and Approvals; No Violations. The execution and delivery by AVB Member and the performance by AVB Member of its obligations hereunder, does not and will not (a) violate, contravene or conflict with any provision of any organizational documents of AVB Member; (b) violate, contravene or conflict with any material orders or laws applicable to AVB or any of its respective material properties or assets; or (c) require on the part of AVB Member any filing or registration with, notification to, or authorization, consent or approval of, any Governmental Authority, except for such filings or registrations with, notifications to, or authorizations, consents or approvals of any Governmental Authority as may be referenced in Section 8.3 of the Purchase Agreement.

ARTICLE XII

MISCELLANEOUS

Section 12.1 Complete Agreement.

This Agreement and the Certificate of Formation constitute the complete and exclusive statement of agreement among the Members with respect to the subject matter hereof. This Agreement and the Certificate of Formation replace and supersede all prior agreements by and among the Members or any of them in respect of the Company including, without limitation, the Archstone Residual JV Term Sheet that is attached to the Buyers Agreement (but does not supersede as among the Parents the provisions of the Buyers Agreement that survive the Initial Closing). This Agreement and the Certificate of Formation supersede all prior written and oral statements; and no representation, statement, condition or warranty not contained in this Agreement or the Certificate of Formation shall be binding on the Members or the Company or have any force or effect whatsoever.

Section 12.2 Governing Law; Venue.

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to the principles of conflicts of law; provided that in the event of any conflict or inconsistency between the provisions of this Agreement and the requirements of the Act, the provisions of this Agreement shall govern to the extent permitted under the Act. Proper venue for any litigation involving this Agreement shall be in any federal or state court located in the State of Delaware. Each Member hereto hereby irrevocably and unconditionally waives, to the extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement brought in any court referred to in this Section 12.2. The Members hereby irrevocably waive, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court. This provision shall survive the termination of this Agreement.

Section 12.3 No Assignment; Binding Effect.

This Agreement may not be transferred or assigned by any party hereto other than in the case of a Member, in full compliance with Article VIII hereof as an integrated part of a permissible Transfer of all of the Membership Interest of the Member. Any purported assignment, sale, Transfer, delegation or other disposition, except as expressly permitted herein, shall be null and void and shall constitute a material breach of this Agreement. Subject to the foregoing restrictions and Article VIII hereof, this Agreement shall be binding upon and inure to the benefit of the Members and their respective successors and assigns.

Section 12.4 Severability.

If any provision of this Agreement is held to be illegal, invalid, or unenforceable under any present or future laws applicable to the Company effective during the Term of this Agreement, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement.

Section 12.5 No Partition.

No Member shall have the right to partition the Company or the Company Assets or any part thereof or interest therein, or to file a complaint or institute any proceeding at law or in equity to partition the Company or the Company Assets or any part thereof or interest therein. Each Member, for such Member and its successors and assigns, hereby waives any such rights. The Members intend that, during the term of this Agreement, the rights of the Members and their successors in interest, as among themselves, shall be governed solely by the terms of this Agreement and by the Act.

Section 12.6 Multiple Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed a duplicate original and all of which, when taken together, shall constitute one and the same document. Execution and delivery of this Agreement by exchange of facsimile copies bearing the signatures of the parties shall constitute a valid and binding execution and delivery of this Agreement by the parties.

Section 12.7 Additional Documents and Acts.

Each Member agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform all of the terms, provisions, and conditions of this Agreement and the transactions contemplated hereby at any time.

Section 12.8 TRS Compliance.

The Company acknowledges that the AVB and ERP Members may be "taxable REIT subsidiaries," within the meaning of Section 856(l) of the Code. The Company will conduct its operations in a manner such that such Members may continue to qualify as taxable REIT subsidiaries and shall not take any action that would cause such members to fail to qualify as taxable REIT subsidiaries, including without limitation engaging, directly or indirectly, in activities described in Section 856(l)(3) of the Code.

Section 12.9 Amendments.

All amendments and modifications to this Agreement shall be in writing and, to be effective, shall be Approved by the Members.

Section 12.10 No Waiver.

No delay, failure or waiver by any party to exercise any right or remedy under this Agreement, and no partial or single exercise of any such right or remedy, shall operate to limit, preclude, cancel, waive or otherwise affect such right or remedy, nor shall any single or partial exercise of such right or remedy limit, preclude, impair or waive any further exercise of such right or remedy or the exercise of any other right or remedy.

Section 12.11 Time Periods.

Any time period hereunder which expires on, or any date for performance hereunder which occurs on, a day which is not a Business Day, shall be deemed to be postponed to the next Business Day. The first day of any time period hereunder which runs "from" or "after" a given day shall be deemed to occur on the day subsequent to that given day.

Section 12.12 Notices.

Except as otherwise provided in this Agreement regarding notices by electronic mail or other electronic means to Members and Management Committee Representatives and regarding Member proxies, all notices, consents and other communications hereunder shall be given in accordance with Section 12.12 of the Residual JV Agreement.

Section 12.13 Dispute Resolution; Mediation.

In the event of any claim, dispute or other matter in controversy between the Members arising under this Agreement, each Member agrees that, prior to commencing any lawsuit relating to such claim, dispute or other matter in controversy, (i) it shall notify the other Member in writing of the claim, dispute or other matter in controversy, including a reasonably detailed explanation of such Member's understanding of the respective positions of each of the Members with respect to the matters in dispute; (ii) the respective chief executive officers of Equity Residential and AVB or their designees shall meet and confer at a mutually convenient time and place within twenty (20) Business Days following the request of either Member concerning such claim, dispute or other matter in controversy (such period is referred to herein as the "**Discussion Period**"); (iii) if the Members are unable during the Discussion Period to reach a final agreement

concerning such claim, dispute or other matter in controversy, then, prior to commencing any lawsuit relating to such dispute, the Member that would intend to commence such lawsuit shall deliver a written request to the other Member for non-binding mediation to be administered by the New York, New York office of Judicial Arbitration & Mediation Services, Inc. or its successor ("**JAMS**") or any other office of JAMS agreed to by the Members, in accordance with JAMS's mediation procedures in effect on the date of the Agreement (and if the Members cannot agree on the selection of a mediator, the Member asserting the claim, dispute or controversy shall file a request in writing for the appointment of a mediator with the New York, New York office of JAMS, with a copy of the request being served on the other Member, and the mediation shall be conducted by the appointed mediator). Mediation shall proceed in advance of the commencement of any lawsuit for a period of 60 days from the date that the applicable Member's request for commencement of the mediation procedure was delivered to the other Member. The parties shall share the mediator's fee and any filing fees equally. Without limiting any other applicable limitation in this Agreement, in no event shall the procedures and limitations set forth in this Section 12.13 limit or condition the right of any Member to commence a lawsuit against any third party or to file an answer or counterclaim or cross-claim (including, without limitation, as against the other Member) in any lawsuit that has been commenced by any third party. The Members agree that the provisions in this Section 12.13 shall apply to any claim, dispute or controversy asserted by any Member, but once the Members have engaged in the Discussion Period and mediation procedures provided for herein with respect to such claim, dispute or controversy, no Member shall be bound to comply with the Discussion Period and mediation procedures provided for herein with respect to any further claim, dispute or controversy that relates to substantially the same acts, omissions or occurrences with respect to which the Discussion Period and mediation procedures provided for herein have already taken place. The Members agree that the discussions during the Discussion Period or in connection with such mediation procedures are intended to be settlement communications, and accordingly (i) none of the discussions during the Discussion Period or in connection with such mediation procedures, nor any proposals (whether written or oral), correspondence, or documents of any kind generated during the period of and in connection with the Discussion Period or in connection with such mediation procedures, shall be raised, disclosed or admissible in any judicial, arbitration or similar proceeding for any purpose nor shall any such discussions, proposals, correspondence or documents be used as a defense or counter-claim in any action; (ii) such discussions, proposals, correspondence or documents are without prejudice to any of the parties' rights, defenses and remedies at law, in equity or hereunder; and (iii) neither the preparation, distribution, response to or failure to respond to any such discussions, proposals, correspondence or documents shall constitute an agreement, or the basis on which any party may claim reliance on any agreement, except to the extent that the Members in connection with the discussions during the Discussion Period or in connection with such mediation procedures enter into a written agreement that is intended to be definitive and binding. The foregoing provisions are intended to be broader than the restrictions on admissibility with respect to settlement discussions contained in any applicable state or federal statute or rule of court, including, without limitation, Rule 408 of the Federal Rules of Evidence. If the Members or Management Committee Representatives reach an impasse over a proposed Major Decision or any other proposed decision requiring the Approval of the Members or the Approval of the Management Committee, at the election of either Member, upon not less than ten (10) Business Days' notice to the other Member, the Discussion Period and non-binding mediation process provided for in

this Section 12.13 shall be commenced, to assist the Members in attempting to resolve the impasse, notwithstanding that no claim, dispute or other controversy with respect to which a Member may seek to commence a lawsuit then exists with respect to such matter.

Section 12.14 Specific Performance.

Because of the unique character of the Membership Interests, the Members and the Company shall be irreparably damaged if this Agreement is not specifically enforced. If any dispute arises concerning the Transfer of all or any part of a Member's Membership Interest, an injunction may be issued restraining any purported Transfer

pending the determination of such controversy. Such remedy shall, however, be cumulative and not exclusive, and shall be in addition to any other remedy which the Members or the Company may have.

Section 12.15 No Third Party Beneficiary.

This Agreement is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and permitted assigns, and no other Person shall have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise.

Section 12.16 Waiver of Jury Trial.

EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY OR CLAIM WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE CONTEMPLATED TRANSACTIONS. THIS WAIVER MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 12.16) AND EXECUTED BY EACH OF THE PARTIES HERETO). The scope of this waiver is intended to be all-encompassing of any and all disputes that may be filed in any court and that relate to the subject matter herein, including contract claims, tort claims, breach of duty claims and all other common law and statutory claims. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

Section 12.17 Cumulative Remedies.

The rights and remedies of any party as set forth in this Agreement are not exclusive and are in addition to any other rights and remedies now or hereafter provided by law or at equity, subject to the provisions of Section 12.13 hereof.

Section 12.18 Exhibits and Schedules.

All Exhibits and Schedules attached hereto are hereby incorporated by reference into, and made a part of, this Agreement.

Section 12.19 Interpretation.

The titles and section headings set forth in this Agreement are for convenience only and shall not be considered as part of agreement of the parties. When the context requires, the plural shall include the singular and the singular the plural, and any gender shall include all other genders. No provision of this Agreement shall be interpreted or construed against any party because such party or its counsel was the drafter thereof.

Section 12.20 Survival.

It is the express intention and agreement of the Members that all covenants, agreements, statement, representations, warranties and indemnities made in this Agreement shall survive the execution and delivery of this Agreement and, where appropriate to facilitate the intent of this Agreement, the dissolution, liquidation and winding up of the Company.

Section 12.21 Attorneys' Fees.

If any Member seeks to enforce such Member's rights under this Agreement by legal proceedings or otherwise the non-prevailing party shall be responsible for all costs and expenses in connection therewith, including without limitation, reasonable attorneys' fees and costs and court costs and witness fees. In this Section 12.21, non-prevailing party shall not be meant to refer to a Member who initiates or accepts a settlement offer with regards to such legal proceeding.

Section 12.22 Confidentiality.

The Members hereby incorporate herein by this reference the terms of the Confidentiality Agreement (as defined in the Buyers Agreement), and agree to be bound thereby as if each Member was directly a party thereto. Each Member shall not disclose or furnish to any third party (other than any third party who is bound by confidentiality obligations reasonably expected to prevent further disclosure) the terms and conditions of this Agreement. Notwithstanding the foregoing, each Member may disclose the terms and conditions of this Agreement to the extent such disclosure is reasonably necessary to comply with applicable law (including any securities law or regulation or the rules of a securities exchange) and with judicial process, and to its affiliates, partners, managers, trustees, directors, officers, employees, accountants, attorneys, advisors and other representatives, each of whom shall be informed of the confidential nature of the terms and conditions of this Agreement and directed to treat such information confidentially in accordance with the terms of this Agreement.

* * *

IN WITNESS WHEREOF, the undersigned Members have executed this Agreement as of the date first hereinabove set forth.

AVB MEMBER:

AVB DEVELOPMENT TRANSACTIONS, INC., a Maryland corporation

By: /s/ Edward M. Schulman
Name: Edward M. Schulman
Title: Executive Vice President, General Counsel & Secretary

ERP MEMBER:

EQR-RESIDUAL JV MEMBER, LLC,
a Delaware limited liability company

By: ERP Holding Co., Inc.,
a Delaware corporation,
its Member

By: /s/ Scott J. Fenster
Name: Scott J. Fenster
Title: Senior Vice President

ARCHSTONE PARALLEL RESIDUAL JV, LLC
LIST OF EXHIBITS AND SCHEDULES

EXHIBIT 1

Form of Funding Notice

$

AVB Development Transactions, Inc.
671 N. Glebe Road
Suite 800
Arlington, VA 22203

EQR-Residual JV Member, LLC
Two N. Riverside Plaza
Suite 400
Chicago, Illinois 60606

Re: Funding of Capital to Archstone Parallel Residual JV, LLC

Gentlemen:

Reference is hereby made to the Limited Liability Company Agreement of Archstone Parallel Residual JV, LLC, dated as of February 27, 2013 (the "**Limited Liability Company Agreement**"). Capitalized terms not otherwise defined have the meanings ascribed to them in the Limited Liability Company Agreement.

Pursuant to Section 3.4 of the Limited Liability Company Agreement, you are advised that the Member has determined that capital is required to fund cash needs of the Company in the aggregate amount of $.

Each Member is hereby requested to contribute, by wire transfer of immediately available funds to the account designated below, funds in the amount of its Proportionate Share (as set forth below) of such required amount on or before , *[insert appropriate time period which shall not be less than as set forth in Article III]*.

[add description of reason for capital]

	Contributions	Percentage Interest
AVB Member	$	40%
ERP Member	$	60%
TOTAL		100%

Such funds shall be wire transferred to the following account on or before

, :

[MEMBER]

By: _____

Name:
Title:

EXHIBIT 2

Form of Parent Guaranty
(Attached)

AvalonBay/
Archstone Parallel Residual JV, LLC

GUARANTY

THIS GUARANTY (this "**Guaranty**"), dated as of the 27th day of February, 2013, is made by AVALONBAY COMMUNITIES, INC., a Maryland corporation ("**Guarantor**"), for the benefit of EQR-RESIDUAL JV MEMBER, LLC, a Delaware limited liability company ("**Creditor Member**").

RECITALS

A. Creditor Member and AVB DEVELOPMENT TRANSACTIONS, INC., a Maryland corporation ("**Guarantor-Affiliated Member**"), formed and own the membership interests in Archstone Parallel Residual JV, LLC, a Delaware limited liability company (the "**Company**"), pursuant to that certain Limited Liability Company of the Company dated as of even date herewith (as the same may be amended from time to time, the "**Limited Liability Company Agreement**"). All capitalized terms which are used but not expressly defined in this Guaranty shall have the same meaning herein as are given to such terms in the Limited Liability Company Agreement.

B. Guarantor has an indirect or direct financial and/or ownership interest in Guarantor-Affiliated Member.

C. In partial consideration of Guarantor-Affiliated Member's execution of the Limited Liability Company Agreement and as a condition precedent thereto, the Guarantor is required to execute and deliver this Guaranty for the benefit of Creditor Member and its permitted successors and assigns under the Limited Liability Company Agreement (collectively, "**Beneficiary**").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce Creditor Member to enter into the Limited Liability Company Agreement, Guarantor hereby agrees as follows:

1. GUARANTY. Guarantor, as primary obligor and not merely as a surety, hereby absolutely and irrevocably guarantees to Beneficiary the punctual payment and performance when due of the Guaranteed Obligations (as hereinafter defined). As used herein, "**Guaranteed Obligations**" means, collectively, (i) the full and prompt payment of all amounts, capital contributions, sums and charges payable by Guarantor-Affiliated Member under the Limited Liability Company Agreement, including, without limitation, all obligations of Guarantor-Affiliated Member to make Guaranty Equalization Payments and all indemnification obligations of Guarantor-Affiliated Member under the Limited Liability Company Agreement, (ii) the full and punctual performance and observance of all the terms, covenants and conditions provided to be performed, observed and complied with by Guarantor-Affiliated Member under the Limited Liability Company Agreement, or provided to be performed, observed and complied with by Guarantor-Affiliated Member or an affiliate or designee thereof (each, individually and collectively, "**Obligor**") under any assumption agreement or other instrument delivered by it pursuant to the Limited Liability Company Agreement, and (iii) the full and prompt payment of all damages, costs and expenses which shall at any time be recoverable by Creditor Member

from Guarantor-Affiliated Member or any other Obligor by virtue of or under the Limited Liability Company Agreement or under any assumption agreement or other instrument delivered by it pursuant to the Limited Liability Company Agreement, including, without limitation, on account of any representations or warranties made by Guarantor-Affiliated Member thereunder. Guarantor further agrees to pay all Enforcement Costs (as hereinafter defined), in addition to all other amounts due hereunder. Any amounts owed under this Guaranty (that are not accruing interest under the Limited Liability Company Agreement) which are not timely made by Guarantor in accordance with the terms of this Guaranty shall bear interest from the date payable at the rate of fifteen percent (15%) per annum until all such amounts are fully paid. Notwithstanding anything to the contrary herein, (x) Guarantor shall have all of the same rights, remedies and defenses as Guarantor-Affiliated Member, including, without limitation, the right to exercise the dispute resolution procedures under and in accordance with the terms of the Limited Liability Company Agreement, and (y) other than the payment of Enforcement Costs, Guarantor shall have no greater liability than Guarantor-Affiliated Member or other Obligor under the Limited Liability Company Agreement or with respect to any assumption agreement or instrument delivered by it pursuant thereto.

2. NATURE OF GUARANTY. This Guaranty is an absolute, irrevocable, present and continuing guaranty of payment and performance and not of collectability. The obligations of Guarantor hereunder are independent of the obligations of Guarantor-Affiliated Member and any other Obligor and, in the event of any default hereunder, a separate action or actions may be brought and prosecuted against Guarantor whether or not Guarantor-Affiliated Member or any other Obligor is joined therein. Beneficiary shall not be required to prosecute collection, enforcement or other remedies against Guarantor-Affiliated Member or any other Obligor or any other guarantor of the Guaranteed Obligations, or to enforce or resort to any collateral for the repayment of the Guaranteed Obligations or other rights and remedies pertaining thereto, before calling on the Guarantor for payment. If for any reason Guarantor-Affiliated Member or any other Obligor shall fail or be unable to pay, punctually and fully, any of the Guaranteed Obligations, Guarantor shall pay such obligations to Beneficiary in full, immediately upon demand. One or more successive actions may be brought against Guarantor, as often as Beneficiary deems advisable, until all of the Guaranteed Obligations are paid and performed in full. Payment or performance by Guarantor of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge Guarantor's liability for any portion of the Guaranteed Obligations which has not been paid and performed. Without limiting the generality of the foregoing, if Creditor Member is awarded a judgment in any suit brought to enforce Guarantor's covenant to pay or perform a

portion of the Guaranteed Obligations, such judgment shall not be deemed to release Guarantor from its covenant to pay and perform the portion of the Guaranteed Obligations that is not the subject of such judgment.

3. ENFORCEMENT COSTS. If: (a) this Guaranty, is placed in the hands of one or more attorneys for collection or is collected through any legal proceeding, (b) one or more attorneys is retained to represent Beneficiary in any bankruptcy, reorganization, receivership or other proceedings affecting creditors' rights and involving a claim under this Guaranty, or (c) one or more attorneys is retained to represent Beneficiary in any other proceedings whatsoever in connection with this Guaranty, then Guarantor shall pay to Beneficiary upon demand all fees, reasonable costs and expenses incurred by Beneficiary in connection therewith, including, without limitation, reasonable attorney's fees, court costs and filing fees (all of which

are referred to herein as the "**Enforcement Costs**"). Beneficiary is only entitled to Enforcement Costs if it is the prevailing party.

4. NO DISCHARGE OR DIMINISHMENT OF GUARANTY. Except as otherwise provided herein and to the extent provided herein, the obligations of Guarantor hereunder are absolute and not subject to termination for any reason other than the satisfaction of the Guaranteed Obligations or expiration of this Guaranty. Guarantor agrees that the liability of the Guarantor hereunder shall not be discharged by, and Guarantor hereby irrevocably consents to: (i) any subsequent change, modification or amendment of the Limited Liability Company Agreement in any of its terms, covenants and conditions; (ii) the renewal or extension of time for the payment or performance of the Guaranteed Obligations; (iii) any transfer, waiver, compromise, settlement, modification, surrender or release of Guarantor-Affiliated Member's or any other Obligor's obligations; (iv) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Limited Liability Company Agreement, at law, in equity or otherwise) with respect to the Guaranteed Obligations; (v) any act or event which might otherwise discharge, reduce, limit or modify Guarantor's obligations under this Guaranty; and (vi) any forbearance, delay or other act or omission of Creditor Member. In addition, the Guaranteed Obligations of the Guarantor hereunder are not subject to counterclaim (other than mandatory or compulsory counterclaims), set-off, abatement, deferment or defense based upon any claim that Guarantor may have against Beneficiary:

(a) unrelated to the transaction giving rise to the Guaranteed Obligations; or

(b) regarding any lack of capacity, lack of authority or any other disability or other defense of Guarantor-Affiliated Member or any other Obligor, including, without limitation, any defense based on or arising out of the lack of validity or enforceability of the Limited Liability Company Agreement or any assumption agreement or other instrument delivered thereunder; or

(c) regarding (i) the release or discharge of Guarantor-Affiliated Member or any other Obligor in any receivership, bankruptcy or other proceedings, (ii) the impairment, limitation, modification or termination of the liabilities of Guarantor-Affiliated Member or any other Obligor to Beneficiary or the estate of Guarantor-Affiliated Member or any other Obligor in bankruptcy, or any remedy for the enforcement of Guarantor-Affiliated Member's or any other Obligor's liability under the Limited Liability Company Agreement or any assumption agreement or other instrument delivered thereunder, resulting from the operation of any present or future provision of Title 11 of the United States Code or other statute or from the decision in any court, (iii) the cessation of the liability of Guarantor-Affiliated Member or any other Obligor from any cause other than payment and performance in full of the Guaranteed Obligations, or (iv) any rejection or disaffirmance of the Guaranteed Obligations, or any part thereof, or any security held therefor, in any proceedings in bankruptcy, insolvency or reorganization.

5. DEFENSES WAIVED. Guarantor irrevocably waives acceptance hereof, presentment, demand, protest, to the fullest extent permitted by applicable law, any notice (including, without limitation, notices of protest, notices of dishonor, notices of any action or

inaction, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, and notices of any extension of credit to Guarantor-Affiliated Member or any other Obligor and any right to consent to any thereof) not provided for herein or in the Limited Liability Company Agreement, as well as any requirement that at any time any action be taken by any person against Guarantor-Affiliated Member, any other Obligor or Guarantor. Guarantor further irrevocably waives: (a) any right to require Creditor Member, as a condition of payment or performance, to (i) proceed against Guarantor-Affiliated Member or any other Obligor or other Person, (ii) proceed against or exhaust any security held from Guarantor-Affiliated Member or any other Obligor or other Person, (iii) proceed against or have resort to any balance on the books of Creditor Member owed to Guarantor-Affiliated Member or any other Obligor or other Person, or (iv) pursue any other remedy in the power of Creditor Member whatsoever; (b) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; and (c) the benefit of any statute of limitations affecting Guarantor's liability hereunder or the enforcement hereof. Until payment of the Guaranteed Obligations by Guarantor-Affiliated Member and any other Obligor, any right of subrogation, contribution, reimbursement or indemnification on the part of Guarantor as against Guarantor-Affiliated Member or any other Obligor shall be in all respects subordinate to all rights and claims of Beneficiary for all other payments or damages which shall be or become due and payable by Guarantor-Affiliated Member or any other Obligor under the provisions of the Limited Liability Company Agreement or any assumption agreement or other instrument delivered thereunder. Beneficiary may compromise or adjust any part of the Guaranteed Obligations, make any other accommodation with Guarantor-Affiliated Member or any other Obligor or exercise any other right or remedy available to it against Guarantor-Affiliated Member or any other Obligor without affecting or impairing in any way the liability of Guarantor under this Guaranty except to the extent the Guaranteed Obligations have been performed.

6. REINSTATEMENT; STAY OF ACCELERATION. If at any time any payment of any portion of the Guaranteed Obligations is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, or reorganization of Guarantor-Affiliated Member or any other Obligor or otherwise, Guarantor's obligations under this Guaranty with respect to that payment shall be reinstated at such time as though the payment had not been made. If acceleration of the time for payment of any of the Guaranteed Obligations is stayed upon the insolvency, bankruptcy or reorganization of Guarantor-Affiliated Member or any other Obligor, all such amounts otherwise subject to acceleration under the terms of any agreement relating to the Guaranteed Obligations shall nonetheless be payable by Guarantor forthwith on demand by the Beneficiary.

7. INFORMATION. Guarantor assumes all responsibility for being and keeping itself informed of Guarantor-Affiliated Member's or any other Obligor's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope and extent of the risks that Guarantor assumes and incurs under this Guaranty, and agrees that Beneficiary does not have any duty to advise Guarantor of any information known to it regarding those circumstances or risks.

8. SURVIVAL. This Guaranty shall remain in full force and effect as to any Guaranteed Obligation for so long as such Guaranteed Obligation survives under the terms and conditions of the Limited Liability Company Agreement.

9. SEVERABILITY. The provisions of this Guaranty are severable, and in any action or proceeding involving any state corporate, partnership or limited liability company law, or any state, federal or foreign bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of Guarantor under this Guaranty would otherwise be held or determined to be avoidable, invalid or unenforceable on account of the amount of Guarantor's liability under this Guaranty, then, notwithstanding any other provision of this Guaranty to the contrary, the amount of such liability shall, without any further action by Guarantor or Beneficiary, be automatically limited and reduced to the highest amount that is valid and enforceable as determined in such action or proceeding. This Section with respect to the maximum liability of Guarantor is intended solely to preserve the rights of Beneficiary, to the maximum extent not subject to avoidance under applicable law, and neither Guarantor nor any other person or entity shall have any right or claim under this Section with respect to such maximum liability, except to the extent necessary so that the obligations of Guarantor hereunder shall not be rendered voidable under applicable law.

10. REPRESENTATIONS BY GUARANTOR. Guarantor represents that: (a) it is duly organized, validly existing and in good standing under the laws where it is organized and has all requisite authority to conduct its business in each jurisdiction in which its business is conducted; (b) the execution and delivery of this Guaranty and the performance of the obligations it imposes (i) are within its powers; (ii) have been duly authorized by all necessary action of its governing body; and (iii) do not violate any law, conflict with the terms of its articles or agreement of incorporation or organization, its by-laws or any agreement by which it is bound or require the consent or approval of any governmental authority or any third party; and (c) this Guaranty is a valid and binding agreement, enforceable according to its terms, except as such enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally.

11. NOTICES. All notices, requests and other communications to any party under this Guaranty must be in writing (including facsimile transmission or similar writing) and must be given to Beneficiary at the address for Beneficiary set forth in the Limited Liability Company Agreement, to Guarantor-Affiliated Member at the address for Guarantor-Affiliated Member set forth in the Limited Liability Company Agreement, and to Guarantor at the address for Guarantor-Affiliated Member set forth in the Limited Liability Company Agreement, or in each case as otherwise specified in a notice by one party to the other in accordance with the Limited Liability Company Agreement. Each notice, request or other communication shall be effective in accordance with the Limited Liability Company Agreement.

12. MISCELLANEOUS. No provision of this Guaranty may be amended, supplemented or modified, or any of its terms and provisions waived, except by a written instrument executed by Beneficiary and Guarantor. No failure on the part of the Beneficiary to exercise, and no delay in exercising, any right under this Guaranty waives that right; nor does any single or partial exercise of any right under this Guaranty preclude any other or further exercise of that or any other right. The remedies provided in this Guaranty are cumulative and

not exclusive of any remedies provided by law. This Guaranty binds Guarantor, and its successors and assigns, and benefits Beneficiary, and its respective successors and assigns. The use of headings does not limit the provisions of this Guaranty.

13. ASSIGNMENT OF GUARANTY. Notwithstanding anything to the contrary contained in this Guaranty, Guarantor shall not assign, transfer or otherwise delegate its obligations under this Guaranty without first obtaining Beneficiary's prior written consent, which shall be granted or withheld in Beneficiary's sole and absolute discretion. No transfer of interests in Guarantor or merger involving Guarantor that is permitted under the Limited Liability Company Agreement shall be deemed to be an assignment that requires Beneficiary's consent hereunder.

14. GOVERNING LAW. THIS GUARANTY IS TO BE CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS (AND NOT THE LAW OF CONFLICTS) OF DELAWARE.

15. CONSENT TO JURISDICTION. GUARANTOR AND BENEFICIARY HEREBY CONSENT AND AGREE TO THE EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR STATE COURT SITTING IN THE STATE OF DELAWARE IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTY AND GUARANTOR IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH COURT AND IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY OBJECTION IT MAY NOW OR LATER HAVE AS TO THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH A COURT OR THAT SUCH A COURT IS AN INCONVENIENT FORUM.

16. WAIVER OF JURY TRIAL. GUARANTOR AND BENEFICIARY ACKNOWLEDGE AND AGREE THAT ANY CONTROVERSY OR CLAIM WHICH MAY ARISE UNDER THIS GUARANTY IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE CONTEMPLATED TRANSACTIONS. THIS WAIVER MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 16) AND EXECUTED BY EACH OF GUARANTOR AND BENEFICIARY). THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER HEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. IN THE EVENT OF LITIGATION, THIS GUARANTY MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first above written.

GUARANTOR:

AVALONBAY COMMUNITIES, INC.,
a Maryland corporation

By: _____
Name: Edward M. Schulman
Title: Executive Vice President, General Counsel & Secretary

GUARANTY

THIS GUARANTY (this "**Guaranty**"), dated as of the 27th day of February, 2013, is made by ERP OPERATING LIMITED PARTNERSHIP, an Illinois limited partnership ("**Guarantor**"), for the benefit of AVB DEVELOPMENT TRANSACTIONS, INC., a Maryland corporation ("**Creditor Member**").

RECITALS

A. Creditor Member and EQR-RESIDUAL JV MEMBER, LLC, a Delaware limited liability company ("**Guarantor-Affiliated Member**"), formed and own the membership interests in Archstone Parallel Residual JV, LLC, a Delaware limited liability company (the "**Company**"), pursuant to that certain Limited Liability Company of the Company dated as of even date herewith (as the same may be amended from time to time, the "**Limited Liability Company Agreement**"). All capitalized terms which are used but not expressly defined in this Guaranty shall have the same meaning herein as are given to such terms in the Limited Liability Company Agreement.

B. Guarantor has an indirect or direct financial and/or ownership interest in Guarantor-Affiliated Member.

C. In partial consideration of Guarantor-Affiliated Member's execution of the Limited Liability Company Agreement and as a condition precedent thereto, the Guarantor is required to execute and deliver this Guaranty for the benefit of Creditor Member and its permitted successors and assigns under the Limited Liability Company Agreement (collectively, "**Beneficiary**").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce Creditor Member to enter into the Limited Liability Company Agreement, Guarantor hereby agrees as follows:

1. GUARANTY. Guarantor, as primary obligor and not merely as a surety, hereby absolutely and irrevocably guarantees to Beneficiary the punctual payment and performance when due of the Guaranteed Obligations (as hereinafter defined). As used herein, "**Guaranteed Obligations**" means, collectively, (i) the full and prompt payment of all amounts, capital contributions, sums and charges payable by Guarantor-Affiliated Member under the Limited Liability Company Agreement, including, without limitation, all obligations of Guarantor-Affiliated Member to make Guaranty Equalization Payments and all indemnification obligations of Guarantor-Affiliated Member under the Limited Liability Company Agreement, (ii) the full and punctual performance and observance of all the terms, covenants and conditions provided to be performed, observed and complied with by Guarantor-Affiliated Member under the Limited Liability Company Agreement, or provided to be performed, observed and complied with by Guarantor-Affiliated Member or an affiliate or designee thereof (each, individually and collectively, "**Obligor**") under any assumption agreement or other instrument delivered by it pursuant to the Limited Liability Company Agreement, and (iii) the full and prompt payment of all damages, costs and expenses which shall at any time be recoverable by Creditor Member

from Guarantor-Affiliated Member or any other Obligor by virtue of or under the Limited Liability Company Agreement or under any assumption agreement or other instrument delivered by it pursuant to the Limited Liability Company Agreement, including, without limitation, on account of any representations or warranties made by Guarantor-Affiliated Member thereunder. Guarantor further agrees to pay all Enforcement Costs (as hereinafter defined), in addition to all other amounts due hereunder. Any amounts owed under this Guaranty (that are not accruing interest under the Limited Liability Company Agreement) which are not timely made by Guarantor in accordance with the terms of this Guaranty shall bear interest from the date payable at the rate of fifteen percent (15%) per annum until all such amounts are fully paid. Notwithstanding anything to the contrary herein, (x) Guarantor shall have all of the same rights, remedies and defenses as Guarantor-Affiliated Member, including, without limitation, the right to exercise the dispute resolution procedures under and in accordance with the terms of the Limited Liability Company Agreement, and (y) other than the payment of Enforcement Costs, Guarantor shall have no greater liability than Guarantor-Affiliated Member or other Obligor under the Limited Liability Company Agreement or with respect to any assumption agreement or instrument delivered by it pursuant thereto.

2. NATURE OF GUARANTY. This Guaranty is an absolute, irrevocable, present and continuing guaranty of payment and performance and not of collectability. The obligations of Guarantor hereunder are independent of the obligations of Guarantor-Affiliated Member and any other Obligor and, in the event of any default hereunder, a separate action or actions may be brought and prosecuted against Guarantor whether or not Guarantor-Affiliated Member or any other Obligor is joined therein. Beneficiary shall not be required to prosecute collection, enforcement or other remedies against Guarantor-Affiliated Member or any other Obligor or any other guarantor of the Guaranteed Obligations, or to enforce or resort to any collateral for the repayment of the Guaranteed Obligations or other rights and remedies pertaining thereto, before calling on the Guarantor for payment. If for any reason Guarantor-Affiliated Member or any other Obligor shall fail or be unable to pay, punctually and fully, any of the Guaranteed Obligations, Guarantor shall pay such obligations to Beneficiary in full, immediately upon demand. One or more successive actions may be brought against Guarantor, as often as Beneficiary deems advisable, until all of the Guaranteed Obligations are paid and performed in full. Payment or performance by Guarantor of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge Guarantor's liability for any portion of the Guaranteed Obligations which has not been paid and performed. Without limiting the generality of the foregoing, if Creditor Member is awarded a judgment in any suit brought to enforce Guarantor's covenant to pay or perform a portion of the Guaranteed Obligations, such judgment shall not be deemed to release Guarantor from its covenant to pay and perform the portion of the Guaranteed Obligations that is not the subject of such judgment.

3. ENFORCEMENT COSTS. If: (a) this Guaranty, is placed in the hands of one or more attorneys for collection or is collected through any legal proceeding, (b) one or more attorneys is retained to represent Beneficiary in any bankruptcy, reorganization, receivership or other proceedings affecting creditors' rights and involving a claim under this Guaranty, or (c) one or more attorneys is retained to represent Beneficiary in any other proceedings whatsoever in connection with this Guaranty, then Guarantor shall pay to Beneficiary upon demand all fees, reasonable costs and expenses incurred by Beneficiary in connection therewith, including, without limitation, reasonable attorney's fees, court costs and filing fees (all of which

are referred to herein as the "**Enforcement Costs**"). Beneficiary is only entitled to Enforcement Costs if it is the prevailing party.

4. NO DISCHARGE OR DIMINISHMENT OF GUARANTY. Except as otherwise provided herein and to the extent provided herein, the obligations of Guarantor hereunder are absolute and not subject to termination for any reason other than the satisfaction of the Guaranteed Obligations or expiration of this Guaranty.

Guarantor agrees that the liability of the Guarantor hereunder shall not be discharged by, and Guarantor hereby irrevocably consents to: (i) any subsequent change, modification or amendment of the Limited Liability Company Agreement in any of its terms, covenants and conditions; (ii) the renewal or extension of time for the payment or performance of the Guaranteed Obligations; (iii) any transfer, waiver, compromise, settlement, modification, surrender or release of Guarantor-Affiliated Member's or any other Obligor's obligations; (iv) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Limited Liability Company Agreement, at law, in equity or otherwise) with respect to the Guaranteed Obligations; (v) any act or event which might otherwise discharge, reduce, limit or modify Guarantor's obligations under this Guaranty; and (vi) any forbearance, delay or other act or omission of Creditor Member. In addition, the Guaranteed Obligations of the Guarantor hereunder are not subject to counterclaim (other than mandatory or compulsory counterclaims), set-off, abatement, deferment or defense based upon any claim that Guarantor may have against Beneficiary:

(a) unrelated to the transaction giving rise to the Guaranteed Obligations; or

(b) regarding any lack of capacity, lack of authority or any other disability or other defense of Guarantor-Affiliated Member or any other Obligor, including, without limitation, any defense based on or arising out of the lack of validity or enforceability of the Limited Liability Company Agreement or any assumption agreement or other instrument delivered thereunder; or

(c) regarding (i) the release or discharge of Guarantor-Affiliated Member or any other Obligor in any receivership, bankruptcy or other proceedings, (ii) the impairment, limitation, modification or termination of the liabilities of Guarantor-Affiliated Member or any other Obligor to Beneficiary or the estate of Guarantor-Affiliated Member or any other Obligor in bankruptcy, or any remedy for the enforcement of Guarantor-Affiliated Member's or any other Obligor's liability under the Limited Liability Company Agreement or any assumption agreement or other instrument delivered thereunder, resulting from the operation of any present or future provision of Title 11 of the United States Code or other statute or from the decision in any court, (iii) the cessation of the liability of Guarantor-Affiliated Member or any other Obligor from any cause other than payment and performance in full of the Guaranteed Obligations, or (iv) any rejection or disaffirmance of the Guaranteed Obligations, or any part thereof, or any security held therefor, in any proceedings in bankruptcy, insolvency or reorganization.

5. DEFENSES WAIVED. Guarantor irrevocably waives acceptance hereof, presentment, demand, protest, to the fullest extent permitted by applicable law, any notice (including, without limitation, notices of protest, notices of dishonor, notices of any action or

inaction, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, and notices of any extension of credit to Guarantor-Affiliated Member or any other Obligor and any right to consent to any thereof) not provided for herein or in the Limited Liability Company Agreement, as well as any requirement that at any time any action be taken by any person against Guarantor-Affiliated Member, any other Obligor or Guarantor. Guarantor further irrevocably waives: (a) any right to require Creditor Member, as a condition of payment or performance, to (i) proceed against Guarantor-Affiliated Member or any other Obligor or other Person, (ii) proceed against or exhaust any security held from Guarantor-Affiliated Member or any other Obligor or other Person, (iii) proceed against or have resort to any balance on the books of Creditor Member owed to Guarantor-Affiliated Member or any other Obligor or other Person, or (iv) pursue any other remedy in the power of Creditor Member whatsoever; (b) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; and (c) the benefit of any statute of limitations affecting Guarantor's liability hereunder or the enforcement hereof. Until payment of the Guaranteed Obligations by Guarantor-Affiliated Member and any other Obligor, any right of subrogation, contribution, reimbursement or indemnification on the part of Guarantor as against Guarantor-Affiliated Member or any other Obligor shall be in all respects subordinate to all rights and claims of Beneficiary for all other payments or damages which shall be or become due and payable by Guarantor-Affiliated Member or any other Obligor under the provisions of the Limited Liability Company Agreement or any assumption agreement or other instrument delivered thereunder. Beneficiary may compromise or adjust any part of the Guaranteed Obligations, make any other accommodation with Guarantor-Affiliated Member or any other Obligor or exercise any other right or remedy available to it against Guarantor-Affiliated Member or any other Obligor without affecting or impairing in any way the liability of Guarantor under this Guaranty except to the extent the Guaranteed Obligations have been performed.

6. REINSTATEMENT; STAY OF ACCELERATION. If at any time any payment of any portion of the Guaranteed Obligations is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, or reorganization of Guarantor-Affiliated Member or any other Obligor or otherwise, Guarantor's obligations under this Guaranty with respect to that payment shall be reinstated at such time as though the payment had not been made. If acceleration of the time for payment of any of the Guaranteed Obligations is stayed upon the insolvency, bankruptcy or reorganization of Guarantor-Affiliated Member or any other Obligor, all such amounts otherwise subject to acceleration under the terms of any agreement relating to the Guaranteed Obligations shall nonetheless be payable by Guarantor forthwith on demand by the Beneficiary.

7. INFORMATION. Guarantor assumes all responsibility for being and keeping itself informed of Guarantor-Affiliated Member's or any other Obligor's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope and extent of the risks that Guarantor assumes and incurs under this Guaranty, and agrees that Beneficiary does not have any duty to advise Guarantor of any information known to it regarding those circumstances or risks.

8. SURVIVAL. This Guaranty shall remain in full force and effect as to any Guaranteed Obligation for so long as such Guaranteed Obligation survives under the terms and conditions of the Limited Liability Company Agreement.

9. SEVERABILITY. The provisions of this Guaranty are severable, and in any action or proceeding involving any state corporate, partnership or limited liability company law, or any state, federal or foreign bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of Guarantor under this Guaranty would otherwise be held or determined to be avoidable, invalid or unenforceable on account of the amount of Guarantor's liability under this Guaranty, then, notwithstanding any other provision of this Guaranty to the contrary, the amount of such liability shall, without any further action by Guarantor or Beneficiary, be automatically limited and reduced to the highest amount that is valid and enforceable as determined in such action or proceeding. This Section with respect to the maximum liability of Guarantor is intended solely to preserve the rights of Beneficiary, to the maximum extent not subject to avoidance under applicable law, and neither Guarantor nor any other person or entity shall have any right or claim under this Section with respect to such maximum liability, except to the extent necessary so that the obligations of Guarantor hereunder shall not be rendered voidable under applicable law.

10. REPRESENTATIONS BY GUARANTOR. Guarantor represents that: (a) it is duly organized, validly existing and in good standing under the laws where it is organized and has all requisite authority to conduct its business in each jurisdiction in which its business is conducted; (b) the execution and delivery of this Guaranty and the performance of the obligations it imposes (i) are within its powers; (ii) have been duly authorized by all necessary action of its governing body; and (iii) do not violate any law, conflict with the terms of its articles or agreement of incorporation or organization, its by-laws or any agreement by which it is bound or require the consent or approval of any governmental authority or any third party; and (c) this Guaranty is a valid and binding agreement, enforceable according to its terms, except as such enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally.

11. NOTICES. All notices, requests and other communications to any party under this Guaranty must be in writing (including facsimile transmission or similar writing) and must be given to Beneficiary at the address for Beneficiary set forth in the Limited Liability Company Agreement, to Guarantor-Affiliated Member at the address for Guarantor-Affiliated Member set forth in the Limited Liability Company Agreement, and to Guarantor at the address for Guarantor-Affiliated Member set forth in the Limited Liability Company Agreement, or in each case as otherwise specified in a notice by one party to the other in accordance with the Limited Liability Company Agreement. Each notice, request or other communication shall be effective in accordance with the Limited Liability Company Agreement.

12. MISCELLANEOUS. No provision of this Guaranty may be amended, supplemented or modified, or any of its terms and provisions waived, except by a written instrument executed by Beneficiary and Guarantor. No failure on the part of the Beneficiary to exercise, and no delay in exercising, any right under this Guaranty waives that right; nor does any single or partial exercise of any right under this Guaranty preclude any other or further exercise of that or any other right. The remedies provided in this Guaranty are cumulative and

not exclusive of any remedies provided by law. This Guaranty binds Guarantor, and its successors and assigns, and benefits Beneficiary, and its respective successors and assigns. The use of headings does not limit the provisions of this Guaranty.

13. ASSIGNMENT OF GUARANTY. Notwithstanding anything to the contrary contained in this Guaranty, Guarantor shall not assign, transfer or otherwise delegate its obligations under this Guaranty without first obtaining Beneficiary's prior written consent, which shall be granted or withheld in Beneficiary's sole and absolute discretion. No transfer of interests in Guarantor or merger involving Guarantor that is permitted under the Limited Liability Company Agreement shall be deemed to be an assignment that requires Beneficiary's consent hereunder.

14. GOVERNING LAW. THIS GUARANTY IS TO BE CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS (AND NOT THE LAW OF CONFLICTS) OF DELAWARE.

15. CONSENT TO JURISDICTION. GUARANTOR AND BENEFICIARY HEREBY CONSENT AND AGREE TO THE EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR STATE COURT SITTING IN THE STATE OF DELAWARE IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTY AND GUARANTOR IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH COURT AND IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY OBJECTION IT MAY NOW OR LATER HAVE AS TO THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH A COURT OR THAT SUCH A COURT IS AN INCONVENIENT FORUM.

16. WAIVER OF JURY TRIAL. GUARANTOR AND BENEFICIARY ACKNOWLEDGE AND AGREE THAT ANY CONTROVERSY OR CLAIM WHICH MAY ARISE UNDER THIS GUARANTY IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE CONTEMPLATED TRANSACTIONS. THIS WAIVER MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 16) AND EXECUTED BY EACH OF GUARANTOR AND BENEFICIARY). THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER HEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. IN THE EVENT OF LITIGATION, THIS GUARANTY MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first above written.

GUARANTOR:

ERP OPERATING LIMITED PARTNERSHIP,
an Illinois limited partnership

By: Equity Residential, a Maryland real estate investment trust
its General Partner

By: _____
Name: _____
Title: _____

[Signature Page — Archstone Parallel Residual JV, LLC (ERPOP)]

SCHEDULE A

ORGANIZATION CHART FOR THE COMPANY

(Final organization chart to be attached following the closing,
pursuant to the terms of the limited liability company agreement)

SCHEDULE B

ARCHSTONE SUBSIDIARIES

1. ASN Holdings LLC

2. Archstone Holdings Germany LLC

3. Archstone Management Germany LLC

SCHEDULE C

MEMBERS, CAPITAL CONTRIBUTIONS, AND PROPORTIONATE SHARES
(As of February 27, 2013)

Member Name and Address	Capital Contribution	Proportionate Share
AVB Development Transactions, Inc. 671 N. Glebe Road Suite 800 Arlington, VA 22203	$ 4,280,000	40%
EQR-Residual JV Member, LLC Two N. Riverside Plaza Suite 400 Chicago, Illinois 60606	$ 6,420,000	60%
TOTALS	**$ 10,700,000**	**100%**

SCHEDULE D

GERMANY I PORTFOLIO

1. DeWAG 1. Objektgesellschaft mbH
2. DeWAG 2. Objektgesellschaft mbH
3. DeWAG 3. Objektgesellschaft mbH
4. DeWAG 4. Objektgesellschaft mbH
5. DeWAG 9. Objektgesellschaft B.V.
6. DeWAG 10. Objektgesellschaft B.V.
7. DeWAG 11. Objektgesellschaft B.V.
8. DeWAG 14. Objektgesellschaft B.V.
9. DeWAG 15. Objektgesellschaft B.V.
10. DeWAG 16. Objektgesellschaft B.V.
11. DeWAG 17. Objektgesellschaft B.V.
12. DeWAG 18. Objektgesellschaft B.V.
13. DeWAG 19. Objektgesellschaft B.V.
14. DeWAG 20. Objektgesellschaft B.V.
15. DeWAG 21. Objektgesellschaft B.V.
16. DeWAG 22. Objektgesellschaft B.V.
17. DeWAG 23. Objektgesellschaft B.V.
18. DeWAG 24. Objektgesellschaft B.V.
19. DeWAG 25. Objektgesellschaft B.V.
20. DeWAG 11. Objektgesellschaft B.V.
21. DeWAG JV Holdings 1 B.V.

22. Archstone Deutsche RE Holding GmbH

23. DeWAG Objektgesellschaft II-1 B.V.

24. DeWAG Objektgesellschaft II-2 B.V.

SCHEDULE E

TAXES; ALLOCATIONS; RELATED MATTERS

A. **Target Allocations.**

After application of Section B of this Schedule E, any remaining items of Profits and Losses shall be allocated among the Members and to their Capital Accounts so as to cause the balance of each Member's Economic Capital Account to be as nearly equal to such Member's Target Balance as possible.

B. Regulatory Allocations and other Allocation Rules.

Notwithstanding anything in the Agreement to the contrary, the following special allocations shall be made as follows, and, as appropriate, in the following order:

(1) Items of Company loss and deduction otherwise allocable to an Member hereunder that would cause such Member (hereinafter, a "**Restricted Holder**") to have a deficit balance in his or her or its Adjusted Capital Account, or would increase the deficit balance in his or her or its Adjusted Capital Account, as of the end of the Fiscal Year to which such items relate shall not be allocated to such Restricted Holder.

(2) If there is a net decrease in Company Minimum Gain for any Fiscal Year (except as a result of conversion or refinancing of Company indebtedness, certain capital contributions or revaluation of the Company's property as further outlined in Treasury Regulation Sections 1.704-2(d)(4), (f)(2) or (f)(3)), each Member shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to that Member's share of the net decrease in Company Minimum Gain. The items to be so allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(f). This Section B(2) is intended to comply with the minimum gain chargeback requirement in said Section of the Treasury Regulations and shall be interpreted consistently therewith. Allocations pursuant to this Section B(2) shall be made in proportion to the respective amounts required to be allocated to each Member pursuant hereto.

(3) If there is a net decrease in Minimum Gain Attributable to Member Nonrecourse Debt during any Fiscal Year (other than due to the conversion, refinancing or other change in the debt instrument causing it to become partially or wholly nonrecourse, certain capital contributions, or certain reevaluations of the Company's property as further outlined in Treasury Regulations Section 1.704-2(i)(4)), each Member shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to that Member's share of the net decrease in the Minimum Gain Attributable to Member Nonrecourse Debt. The items to be so allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(i)(4) and (j)(2). This Section B(3) is intended to comply with the minimum gain chargeback requirement with respect to Member Nonrecourse Debt contained in said Section of the Treasury Regulations and shall be interpreted consistently therewith. Allocations pursuant to this Section B(3) shall be made in proportion to the respective amounts required to be allocated to each Member pursuant hereto.

(4) In the event an Member unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5), or (6), and such Member has an Adjusted Capital Account Deficit, items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate the Adjusted Capital Account Deficit as quickly as possible. This Section B(4) is intended to constitute a "qualified income offset" under Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(5) Nonrecourse Deductions for any Fiscal Year or other applicable period shall be allocated to the Members in accordance with their Proportionate Share, but only as permitted by the Treasury Regulations.

(6) Member Nonrecourse Deductions for any Fiscal Year or other applicable period shall be specially allocated to the Member that bears the economic risk of loss for the debt (i.e., the Member Nonrecourse Debt) in respect of which such Member Nonrecourse Deductions are attributable (as determined under Treasury Regulations Section 1.704-2(b)(4) and (i)(1)).

(7) Allocations to Members whose interests vary during a year by reason of transfer, redemption, admission, capital contributions, or otherwise, shall be made as determined by the Management Committee in accordance with permissible methods under Section 706 of the Code.

C. **Tax Allocations.**

(1) Subject to Section C(2), items of income, gain, loss, deduction and credit to be allocated for income tax purposes (collectively, "**Tax Items**") shall be allocated among the Members on the same basis as their respective book items, as provided in Sections A and B.

(2) If any Company property is subject to Section 704(c) of the Code or is reflected in the Capital Accounts of the Members and on the books of the Company at a value that differs from the adjusted tax basis of such property, then the Tax Items with respect to such property shall, in accordance with the requirements of Treasury Regulations Section 1.704-1(b)(4)(i), be shared among the Members in a manner that takes account of the variation between the adjusted tax basis of the applicable property and its value in the same manner as variations between the adjusted tax basis and fair market value of property contributed to the Company are taken into account in determining the Members' share of Tax Items under Section 704(c) of the Code. The Management Committee is authorized to choose any reasonable method permitted by the Treasury Regulations pursuant to Section 704(c) of the Code, including the "remedial allocation" method, the "curative" method and the "traditional" method.

(3) Pursuant to Treasury Regulations Section 1.752-3, each Member's interest in Company profits, for purposes of determining such Member's shares of excess "nonrecourse liabilities" for such purpose shall be that Member's Proportionate Share.

(4) Any payment of foreign tax that may be creditable against any Member's United States federal income tax liability shall be allocated to the Members in a manner reasonably determined by the Management Committee and in accordance with Treasury Regulation 1.704-1(b)(4)(viii). Other tax credits shall be allocated to the

Members in a manner reasonably determined by the Management Committee.

(5) The Members are aware of the income tax consequences of the allocations made by this Agreement and shall report their shares of Profits and Losses and other items of Company, gross income, gain, loss and deduction for income tax purposes consistently with this Agreement.

D. **Tax Classification.**

It is the intent of the Members that the Company shall always be operated in a manner consistent with its treatment as a "partnership" for federal, state and local income and franchise tax purposes. In accordance therewith, (a) no Member shall file any election with any taxing authority to have the Company treated otherwise, and (b) each Member hereby represents, covenants, and warrants that it shall not maintain a position inconsistent with such treatment. The Management Committee shall, except as otherwise required by applicable law, (i) not cause or permit the Company to elect (A) to be excluded from the provisions of Subchapter K of the Code, or (B) to be treated as a corporation or an association taxable as a corporation for any tax purposes; (ii) cause the Company to make any election reasonably determined to be necessary or appropriate in order to ensure the treatment of the Company as a partnership for all tax purposes; (iii) cause the Company to file any required tax returns in a manner consistent with its treatment as a partnership for tax purposes; and (iv) not take any action or cause any officer or agent or representative of the Company to take any action that would be inconsistent with the treatment of the Company as a partnership for such purposes.

E. **[Reserved.]**

F. **Additional Tax Matters.**

(1) The Tax Matters Member shall be the sole signatory to any federal, state, local and foreign tax on behalf of the Company, except to the extent any other Person is required by law to also sign such returns.

(2) The Tax Matters Partner shall take no action in such capacity without the authorization or consent of the other Members, other than (after reasonable notice to the other Member) such action as the Tax Matters Partner may be required to take by applicable law. The Tax Matters Partner shall comply with the responsibilities outlined in Sections 6222 through 6232 of the Code.

(3) The Tax Matters Partner shall not enter into any extension of the period of limitations for making assessments on behalf of the Members without first obtaining the written consent of each Member.

(4) The Tax Matters Partner shall not bind the Company to a settlement agreement without obtaining the written concurrence of the other Members. For purposes of this Section F(4), the term "settlement agreement" shall include a settlement agreement at either an administrative or judicial level. Any Member that enters into a settlement agreement with respect to any Company items (within the meaning of Section 6231(a)(3) of the Code) shall notify the other Members of such settlement agreement and its terms within ninety (90) calendar days after the date of settlement.

(5) The provisions of this Section F shall survive the termination of the Company or the termination of any Member's interest in the Company and shall remain binding on the Members (with respect to the period of time during which such Person is a Member) for a period of time necessary to resolve with the Internal Revenue Service or the United States Department of the Treasury any and all matters regarding the United States federal income taxation of the Company.

(6) The Tax Matters Partner, in its capacity as the Tax Matters Partner, shall be reimbursed by the Company for any third party out-of-pocket costs and expenses reasonably incurred by it in the performance of its duties as Tax Matters Partner. No Member shall be reimbursed by the Company for any costs and expenses incurred by such Member in pursuing on its own behalf any of its rights to file petitions, seek judicial review, etc. under this Section F or in participating in Company-level administrative or judicial tax proceedings unless the other Member, in its sole discretion, agrees to such reimbursement.

(7) During any Company income tax audit or other income tax controversy with any governmental agency, the Tax Matters Partner shall keep the Members informed of all material facts and developments on a reasonably prompt basis. Prompt notice shall be given to the Members upon receipt of advice that the Internal Revenue Service or other taxing authority intends to examine any income tax return, or records or books of the Company.

(8) The cost of any adjustments to all Members and the cost of any resulting audits or adjustments of Members shall be borne solely by the Members without reimbursement by the Company.

SCHEDULE F

AUTHORIZED DOCUMENTS

1. Documents on attached list if any.

SCHEDULE G

ALLOCATION OF RESPONSIBILITIES/ FUNCTIONS TO DESIGNATED MEMBERS

(Attached)

Archstone Acquisition
AVB/EQR - Transition Issues/Wind-Down List
Updated February 25, 2013

Area/Issue	Items to be considered—as applicable	Follow Properties	Owner	
			EQR	AVB
Risk Management (GL, WC, property)	Manage claims for preclose period and parking lot coverage and claims	X	X	X
Corporate Maintenance	File doing business qualifications where needed; file annual statements with applicable Secretary of State; maintain minute book, member list and organizational documents	N	X	
Legal	Manage litigation claims for preclose period (includes and not limited to property, employment)	N	X	
Office Leases	Includes lease terms or sublets, sale of office furniture, etc.	N	X	
Benefit Plans	401(k) - administration for wind-down, transition and parking lot JV	N		X
	COBRA - administration for wind-down, transition and parking lot JV	N	X	
Federal, State and franchise tax	Manage oversight of 2012 and 2013 stub period tax returns - to be prepared by ASN	N	X	
See more detail below for services	Manage historical audits/litigation/issues	N	X	
	2013 and future tax returns for parking lot JV and tax protection JV	N	X	
Books and Records, JV-Level Reporting	maintain accounting and contractual records; “umbrella” quarterly and annual reporting for parking lot JV	N		X
Germany Operational oversight	Management oversight of ASN European business, including fund team, DeWag, legal, financing and accounting	Y	X	
Manage JV Parking lot accounting	Germany - accounting, reporting, tax returns	N	X	
	SWIB - accounting, reporting, tax returns	Y		X
	Development - National Gateway, Harlem	Y		X
	Transition accounting - payroll and other compensation, cash receipts/disbursements, etc.	N		X
	Other - liabilities (coordination with legal, risk, etc.), consolidation, etc.	N		X
Cash management/oversight See further detail below	Provide oversight over cash receipts post-close (collect and distribute)	Y		X
(lead admin members handle cash management for JVs they handle (i.e. AVB - SWIB)	Provide oversight of disbursements (A/P and wire transfers) post-close	Y		X
	Provide cash forecasts and funding requirements post-close	Y		X
	Maintain/wind-down bank accounts	Y		X
Payroll and HR related items	Employment claims/issues for termed/former employees/ employee verification - pkg lot and disposed only	Y		X
	Filing of 2012 ASN W-2s (to be done by ASN)	N		X
	Filing of 2013 ASN W-2s (to be done by ASN)	N		X
	Escheatment of Payroll	N		X
Real Estate tax claims	Management of appeals/questions/issues regarding disposed and parking lot assets	Y		X

Area/Issue	Items to be considered—as applicable	Follow Properties	Owner	
			EQR	AVB
Accounts payable related items	Sales and use taxes - filing requirements to go with property (to be done by ASN) - pkg lot and disposed (if not done by ASN) only	Y		X
	2013 1099's (to be done by ASN) - pkg lot and disposed (if not done by ASN) only	Y		X
	A/P historical vendor questions - questions will follow the property - pkg lot and disposed only	Y		X
	Manage any vendor rebates	Y		X
	Escheatment of Accounts payable preclose period	Y		X
Collections of resident accounts	Collections of resident accounts (follow the property) pkg lot and disposed only	X		X

More detail on tax services -
***management/oversight of, and assistance as needed with, the completion of tax return compliance obligations by the Archstone personnel for the 2012 tax year and short period ending with our closing in 2013

· negotiation and approval of services and expenses contracted with vendors/consultants
· regular communication and decision-making related to notices and assessments from taxing authorities
· provision of support for audits
· tax related services relative to the tax protection joint venture and Germany
· general consulting relative to transition and integration matters (ie. Software/IT, Data migration, historical files and storage, etc.).

Further detail re Cash Management/Bank Accounts:

THE GENERAL RESIDUAL JV BANK ACCOUNT WILL COME UNDER THE "CASH MANAGEMENT" OVERSIGHT TO BE PROVIDED BY AVB, WITH 2 CHECK SIGNERS FROM EACH OF AVB & EQR. THERE WILL BE SOME ADDITIONAL DETAIL TO BE WORKED OUT ON WIRE AUTHORIZATION PROTOCOL WHERE MUTUAL APPROVAL NECESSARY FOR WIRES OF A CERTAIN SIZE (OTHER THAN REPETITIVE PAYMENTS AFTER APPROVAL OF INITIAL WIRE).

SCHEDULE H

FEES

(To be attached following the closing, pursuant to
the terms of the limited liability company agreement)

Schedule H-1

Exhibit 10.5

LIMITED LIABILITY COMPANY AGREEMENT

ARCHSTONE PARALLEL RESIDUAL JV 2, LLC

by and between

AVB RESIDUAL PARALLEL II, LLC

and

EQR-PARALLEL RESIDUAL JV 2 MEMBER, LLC

FEBRUARY 27, 2013

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

TABLE OF CONTENTS
(continued)

TABLE OF CONTENTS
(continued)

LIMITED LIABILITY COMPANY AGREEMENT

This Limited Liability Company Agreement (this "**Agreement**") is made and entered into as of February 27, 2013 (the "**Effective Date**") between AVB Residual Parallel II, LLC, a Delaware limited liability company("**AVB Member**"), and EQR-Parallel Residual JV 2 Member, LLC, a Delaware limited liability company ("**ERP Member**").

R E C I T A L S

A. WHEREAS, AVB (as such term and any other capitalized term used in this Agreement is defined in Article II), Equity Residential and ERP have entered into the Purchase Agreement with Seller, pursuant to which they have agreed to acquire certain assets of Enterprise from Seller; and

B. WHEREAS, AVB, Equity Residential and ERP have entered into the Buyers Agreement, which sets forth certain understandings among AVB, Equity Residential and ERP concerning the acquisition of the assets of Enterprise pursuant to the Purchase Agreement; and

C. WHEREAS, the Buyers Agreement provides for the formation of a joint venture (referred to therein as "Archstone Residual JV") and attaches a term sheet setting forth the terms applicable to the governance of such joint venture (referred to therein as the "Archstone Residual JV Term Sheet") which are to be set forth in a definitive joint venture agreement (referred to therein as the "Definitive Archstone Residual JV Agreement"); and

D. WHEREAS, AVB Member is a wholly-owned subsidiary of AVB and ERP Member is a wholly-owned subsidiary of ERP; and

E. WHEREAS, exclusively with respect to the Company Assets, AVB Member and ERP Member desire to form the Company and to set forth in this Agreement the definitive terms for the governance of the Company, in furtherance of the provisions of the Buyers Agreement calling for the formation of Archstone Residual JV and the execution and delivery of the Definitive Archstone Residual JV Agreement consistent with the Archstone Residual JV Term Sheet.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, AVB Member and ERP Member hereby agree as follows:

ARTICLE I

IN GENERAL

Section 1.1 Name.

The name of the limited liability company is Archstone Parallel Residual JV 2, LLC (the "**Company**").

Section 1.2 Formation of Limited Liability Company.

The Company was duly formed upon the filing of a certificate of formation of the Company with the Secretary of State of the State of Delaware on February 15, 2013, which certificate sets forth the information required by Section 18-201 of the Delaware Limited Liability Company Act (the "**Certificate of Formation**"). Michelle La Pelle, as an "authorized person" within the meaning of the Act, has executed, delivered and filed the Certificate of Formation of the Company with the Secretary of State of the State of Delaware, such execution, delivery and filing being hereby ratified and approved by the Members. Upon the filing of the Certificate of Formation with the Secretary of State of the State of Delaware, such person's powers as an "authorized person" ceased.

Section 1.3 Agreement; Inconsistencies with Act.

(a) This Agreement constitutes the "limited liability company agreement" of the Company within the meaning of the Act.

(b) This Agreement shall govern the relationship of the Members, except to the extent a provision of this Agreement is expressly prohibited under the Act. If any provision of this Agreement is prohibited under the Act, this Agreement shall be considered amended to the least degree possible in order to make such provision effective under the Act.

Section 1.4 Principal Place of Business.

The principal place of business of the Company shall be c/o Equity Residential, Two North Riverside Plaza, Suite 400, Chicago, Illinois 60606. The Company may locate its place of business at any other place or places as may be Approved by the Members from time to time.

Section 1.5 Registered Office and Registered Agent.

The Company's initial registered office shall be at the office of its registered agent at 1209 Orange Street, Wilmington, Delaware 19801, and the name of its initial registered agent is The Corporation Trust Company. The registered office and registered agent may be changed with the Approval of the Members from time to time by filing the address of the new registered office and/or the name of the new registered agent with the Secretary of State of the State of Delaware pursuant to the Act.

Section 1.6 Term.

The term of existence of the Company (the "**Term**") shall continue until the Company is terminated, dissolved or liquidated in accordance with this Agreement and the Act.

Section 1.7 Permitted Businesses.

(a) The business of the Company shall be: (i) to acquire (in accordance with the Purchase Agreement and the Buyers Agreement), own, manage, operate, improve, develop, sell and otherwise deal with the Company Assets, and any other assets that may, from time to time, be acquired by the Company pursuant to this Agreement, directly or through Subsidiary Entities;

(ii) to incur, assume, pay, perform, discharge, satisfy, settle or otherwise resolve any liabilities that may, from time to time, be incurred by the Company pursuant to this Agreement, directly or through Subsidiary Entities; and (iii) to do all other lawful acts and things as may be necessary, desirable, expedient, convenient for or incidental to the furtherance and accomplishment of the foregoing objectives and purposes and for the protection and benefit of the Company. The Company shall not engage in any other business without the Approval of the Members.

(b) In connection with the Company's business, the Company shall have the power and authority, subject to any Approval of the Members or Approval of the Management Committee required under this Agreement:

(i) to acquire, hold and dispose of any real or personal property;

(ii) to borrow money from banks, other lending institutions, Members, or Affiliates of Members, and in connection therewith, to hypothecate, encumber and grant security interests in the assets of the Company to secure repayment of the borrowed sums;

(iii) to purchase liability and other insurance to protect the Company's property and business and to protect the assets of the Members and Management Committee Representatives;

(iv) to invest any Company funds temporarily (by way of example but not limitation) in demand deposits, money-market mutual funds, short-term governmental obligations, commercial paper or other investments;

(v) to sell or otherwise dispose of any, all or substantially all of the assets of the Company;

(vi) to execute all instruments and documents, including, without limitation, checks; drafts; notes and other negotiable instruments; mortgages or deeds of trust; security agreements; financing statements; documents providing for the acquisition, mortgage or disposition of the Company's property; assignments; bills of sale; leases; contracts; partnership agreements, operating agreements of other limited liability companies; and any other instruments or documents necessary to conduct the business of the Company;

(vii) to employ accountants, legal counsel, managing agents or other experts to perform services for the Company and to compensate them from Company funds;

(viii) to enter into any and all other agreements, with any other Person as may be necessary or appropriate to the conduct of the Company's business; and

(ix) to do and perform all other acts as may be necessary or appropriate to the conduct of the Company's business.

(c) In connection with the formation of the Company and the execution of this Agreement, on or prior to the date hereof, the Company acquired the interests in certain Subsidiary Entities certain of which may be reflected on the organizational chart that is or may hereafter be attached hereto as Schedule A, and the Members hereby authorize ERP Member as

the Designated Manager to execute such documents and instruments, deliver such notices, make such filings and take such other acts as it may consider to be necessary to reflect in any official records in accordance with applicable legal requirements the acquisition by the Company of ownership or control over such Subsidiary Entities or otherwise further to effectuate the acquisition by the Company of ownership or control over such Subsidiary Entities.

Section 1.8 Qualification in Other Jurisdictions; Ongoing Organizational Maintenance.

ERP Member as the Designated Manager is authorized to cause the Company to be qualified or registered as required under applicable laws in any jurisdiction in which the Company transacts business and to execute, deliver and file any certificates and documents necessary to effect such qualification or registration. ERP Member as the applicable Designated Manager is authorized to cause the Company to comply with all applicable requirements of the State of Delaware for the filing of annual statements with the Secretary of State of the State of Delaware, and shall be responsible for the maintenance of minute books and the organizational documents of the Company.

Section 1.9 Rules of Construction.

The following rules of construction shall apply to this Agreement:

(a) Unless otherwise specifically and expressly limited in the context, any reference herein to a decision, determination, act, action, exercise of a right, power or privilege, or other procedure by a Member, Transition Team member or Management Committee Representative shall mean and refer to the decision, determination, act, action, exercise of a right, power, privilege, or other procedure by the Member, Transition Team member or Management Committee Representative in its sole and absolute discretion acting in the best interests of such Member (or, in the case of a Management Committee Representative or Transition Team member, the best interests of the Member which appointed such Management Committee Representative or Transition Team member) and not as a fiduciary for the Company or the other Member.

(b) All references in this Agreement to "Dollars" as a unit of currency shall be deemed a reference to United States dollars and United States currency.

(c) Unless explicitly stated to the contrary, the term "includes", "including" and other expressions of inclusion shall be construed in each instance to mean "includes without limitation", "including but not limited to" or other phraseology denoting the non-exclusive nature of the item to which reference is being made.

(d) The Members acknowledge that, as identified pursuant to express statements that appear on the face or cover page of certain schedules attached to this Agreement, certain schedules attached to this Agreement are incomplete or have been left blank. In such cases, the references to such schedule in this Agreement shall be disregarded (except for the provisions which are included in such schedule as attached hereto on the date hereof) unless and until the Management Committee or Members Approve the form of the complete, final form of the schedule that is to be considered so referenced herein.

Section 1.10 Title to Company Assets.

All Company assets, whether real or personal, tangible or intangible, shall be deemed to be owned by the Company as an entity, and no Member, individually, shall have any direct ownership interest in such property.

ARTICLE II

DEFINITIONS

Section 2.1 Defined Terms.

As used in this Agreement, the following terms shall have the following meanings:

"**Accountants**" means the independent certified public accountants Approved by the Members and engaged from time to time by the Company for purposes of reviewing or auditing the Company's financial statements and performing such other services as are required to be performed by the Accountants by this Agreement.

"Act" means the Delaware Limited Liability Company Act, as amended or superseded from time to time.

"**Additional Capital Requested Amount**" has the meaning set forth in Section 3.3(b).

"Adjusted Asset Value" means, with respect to any asset of the Company, such adjusted basis of such asset for federal income tax purposes, except as follows:

(i) The Adjusted Asset Value of any asset contributed to the Company by a Member shall be the gross fair market value of such asset as determined jointly by the Management Committee and the contributing Member, in their joint and reasonable discretion.

(ii) If the Management Committee reasonably determines that an adjustment is necessary or appropriate to reflect the relative Proportionate Shares of the Members in the Company, the Adjusted Asset Values of all Company assets shall be adjusted to equal their gross fair market value, as determined by the Management Committee, taking Section 7701(g) of the Code into account, as of the following times: (a) a Capital Contribution (other than a *de minimis* capital contribution) to the Company by a new or existing Member; (b) any distribution by the Company to an Member of more than a *de minimis* amount of Company property (other than cash); (c) any distribution by the Company to an Member of more than a *de minimis* amount of cash in connection with the redemption of all or a portion of a Member's Membership Interest in the Company; and (d) at such other times as the Management Committee reasonably determines necessary or advisable in order to comply with Treasury Regulations Sections 1.704-1(b) and 1.704-2.

(iii) The Adjusted Asset Values of Company property shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Section 734(b) or 743(b) of the Code, but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulations Section 1.704-

1(b)(2)(iv)(m); provided, however, that Adjusted Asset Values shall not be adjusted pursuant to this paragraph to the extent that the Management Committee reasonably determines that an adjustment pursuant to paragraph (ii) above is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this paragraph (iii).

(iv) The Adjusted Asset Value of an asset shall be adjusted by the Depreciation taken into account with respect to such asset, for purposes of computing Profits and Losses.

Any determination to be made by the Management Committee pursuant to this definition shall be made with the Approval of the Management Committee.

"Adjusted Capital Account" means, with respect to any Member, such Member's Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments: (i) credit to such Capital Account any amounts which such Member is obligated or treated as obligated to restore with respect to any deficit balance in such Capital Account pursuant to Treasury Regulations Section 1.704-1(b)(2)(ii)(c), or is deemed to be obligated to restore with respect to any deficit balance pursuant to the penultimate sentences of Treasury Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and (ii) debit to such Capital Account the items described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) and 1.704-1(b)(2)(ii)(d)(6). The foregoing definition of Adjusted Capital Account is intended to comply with the provisions of Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

"Affiliate" or **"Affiliated"** means, with respect to any Person, (i) any Person who directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with such Person, or (ii) any Person in which such Person has, directly or indirectly, a twenty five percent (25%) or more ownership or beneficial interests. A Person shall be deemed to control a Person if it owns, directly or indirectly, at least twenty five percent (25%) of the ownership interest in such Person or otherwise has the power to direct the management, operations or business of such Person. Notwithstanding the foregoing, an Affiliate of the Company that is controlled by the Company shall not be deemed to be an Affiliate of any Member for any of the purposes of this Agreement.

"Agreement" means this Limited Liability Company Agreement and any amendments hereto.

"**Annual Budget**" means, for the Company, an annual operating and, if applicable, capital budget.

"**Approval of the Management Committee**," "**Approval by the Management Committee**" or similar phrases means the unanimous approval of the AVB Representatives and ERP Representatives excluding, with respect to any matter as to which a Capital Defaulting Member has no approval rights pursuant to Section 3.4, the Management Committee Representatives appointed by the Capital Defaulting Member.

"**Approval of the Members**," "**Approval by the Members**" or similar phrases means the unanimous approval of the Members, excluding, with respect to any matter as to which a

Capital Defaulting Member has no approval rights pursuant to Section 3.4, such Capital Defaulting Member.

"**Approved Business Plan**," means each Initial Business Plan for the Company and each amendment or revision thereto or update thereof which is Approved by the Members or Approved by the Management Committee. The Approved Business Plan is anticipated to set forth the mutually-agreed-upon plan for the ownership, operation, management and disposition of the Company Assets through the anticipated holding period therefor.

"**Archstone Subsidiaries**" means the subsidiaries acquired, directly or indirectly, by the Company from Enterprise pursuant to the Purchase Agreement and the Buyers Agreement. The Archstone Subsidiaries are listed on Schedule B.

"**Authorized Unilateral Decision**" means any action, decision or transaction which a Member has the authority to undertake pursuant to this Agreement without the Approval of the Management Committee or Members hereunder.

"**AVB**" means AvalonBay Communities, Inc., a Maryland corporation, and its successors and permitted assigns.

"**AVB Member**" has the meaning set forth in the introductory paragraph of this Agreement and includes its successors and permitted assigns.

"**AVB Representatives**" has the meaning set forth in Section 4.1(a).

"**Business Day**" means any day excluding a Saturday, Sunday or any other day during which there is no scheduled trading on the New York Stock Exchange.

"**Buyers Agreement**" means that certain Joint Buyers Agreement, dated as of November 26, 2012, among Equity Residential, ERP and AVB.

"Capital Account" means the capital account established on behalf of each Member on the books of the Company. In general, the Capital Account of each Member shall be initially credited with the amount of such Member's initial Capital Contribution to the Company, as set forth on Schedule C. Thereafter, each such Member's Capital Account shall be increased by (a) the amount of money contributed by such Member to the Company, (b) the Adjusted Asset Value of any property contributed by such member to the Company (net of liabilities securing such contributed property that the Company is considered to assume or take subject to under Section 752 of the Code), and (c) allocations to such Member of Profits and other items of book income and gain, and is decreased by (d) the amount of money distributed to the Member by the Company, (e) the Adjusted Asset Value of property distributed by the Company to the Member (net of liabilities securing such distributed property that the Member is considered to assume or take subject to under Section 752 of the Code) and (f) allocations to such Member of Losses and other items of book loss and deduction, and is otherwise adjusted in accordance with the additional rules set forth in Treasury Regulations Section 1.704-1(b)(2)(iv). The Capital Accounts shall also be adjusted (x) as reasonably determined by the Management Committee, to reflect any redemption, forfeiture or transfer of Membership Interests, and (y) in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(m). It is the intent of the Members that the

Capital Accounts of all Members be determined and maintained in accordance with the principles of Treasury Regulations Section 1.704-1(b)(2)(iv) at all times throughout the full term of the Company. Accordingly, the Management Committee is authorized to make any other adjustments to the Capital Accounts so that the Capital Accounts and allocations thereto comply with said Section of the Treasury Regulations, provided that such adjustments do not have a material adverse effect on any Member. Any determination to be made by the Management Committee pursuant to this definition shall be made with the Approval of the Management Committee.

"Capital Contribution" means any contribution to the capital of the Company in cash or other assets or property by a Member in accordance with Article III.

"**Capital Default Amount**" has the meaning set forth in Section 3.4.

"**Capital Default Loan**" has the meaning set forth in Section 3.4(a).

"**Capital Defaulting Member**" has the meaning set forth in Section 3.4.

"**Capital Transaction**" means the sale, financing, refinancing, total or partial destruction, condemnation or other disposition of any Archstone Residual Asset or any other substantial asset of the Company or any Subsidiary Entity.

"Certificate of Formation" has the meaning set forth in Section 1.2 of this Agreement.

"**Change in Board Control**" means, with respect to any Person, during any period beginning on or after the date hereof, individuals who at the beginning of such period constituted such Person's board of directors (or equivalent governing body), and any new member of such board whose nomination to or election by such board was approved by a vote of at least a majority of the board members then still in office who either were board members at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute at least a majority of such board.

"Code" means the Internal Revenue Code of 1986 as amended, or corresponding provisions of subsequent superseding federal revenue laws.

"Company" has the meaning set forth in Section 1.1.

"**Company Assets**" means the interests in the Archstone Subsidiaries, acquired, directly or indirectly, by the Company pursuant to the Purchase Agreement and the Buyers Agreement.

"Company Minimum Gain" means "partnership minimum gain" set forth in Treasury Regulations Section 1.704-2(b)(2).

"**Contingent Obligation**" means (a) any Guaranty Obligation or (b) any direct or indirect obligation or liability, contingent or otherwise, incurred pursuant to any Rate Contract.

"**Contracting Member**" means, in relation to any contract that is entered into between the Company or any Subsidiary Entity and a Member or that Member's Affiliates, the Member that is or whose Affiliate is the party to that contract.

"**Covered Person**" has the meaning set forth in Section 7.1.

"Depreciation" means, with respect to any Company asset for any Fiscal Year or other period, the depreciation, depletion or amortization, as the case may be, allowed or allowable for federal income tax purposes in respect of such asset for such fiscal year or other period; provided, however, that if there is a difference between the Adjusted Asset Value and the adjusted tax basis of such asset, Depreciation means with respect to such asset "book depreciation, depletion or amortization" as determined under Treasury Regulations Section 1.704-1(b)(2)(iv)(g)(3); provided however that, if any property has a zero adjusted basis for federal income tax purposes, Depreciation may be determined under any reasonable method selected by the Management Committee.

"**Designated Manager**" has the meaning set forth in Section 4.2(a).

"**Discussion Period**" has the meaning set forth in Section 12.13.

"**Dissolution Event**" has the meaning set forth in Section 10.1.

"**Distributable Cash**" means, for any period, the excess, if any, of (a) the aggregate Gross Receipts during such period of any kind and description over (b) the sum of the aggregate Expenditures paid during such period, subject to the reserve requirements set forth in Section 4.6.

"**Economic Capital Account**" means, with respect to any Member, such Member's Capital Account as of the date of determination, after crediting to such Capital Account any amounts that the Member is deemed obligated to restore under Treasury Regulations Section 1.704-2.

"**Emergency Costs**" means costs and expenses which are (or are to be) incurred in the reasonable belief that such expenditures are required to (i) correct a condition that if not corrected would endanger imminently the preservation or safety of an Archstone Residual Asset, (ii) avoid the imminent suspension of any necessary service in or to such Archstone Residual Asset, or (iii) prevent the Company, any Subsidiary Entity, any of the Members or Parents or any of their respective agents, officers, employees or representatives from being subjected imminently to criminal or substantial civil penalties in connection with an Archstone Residual Asset.

"**Enterprise**" means Archstone Enterprise LP, a Delaware limited partnership.

"**Entity**" means any general partnership, limited partnership, corporation, limited liability company, limited liability partnership, joint venture, trust, business trust, cooperative or association or other comparable business entity.

"**Equity Residential**" means Equity Residential, a Maryland real estate investment trust, and its successors and permitted assigns.

"**ERP**" means ERP Operating Limited Partnership, an Illinois limited partnership, and its successors and permitted assigns.

"**ERP Member**" has the meaning set forth in the introductory paragraph of this Agreement and includes its successors and permitted assigns.

"**ERP Representatives**" has the meaning set forth in Section 4.1(a).

"**Expenditures**" means, for any period, the sum of all cash expenditures or reserves during such period (determined on a consolidated basis for the Company and all Subsidiary Entities) including, without limitation: (i) all cash expenditures for operating expenses, (ii) principal, interest, fees, debt service payments and other payments on account of any indebtedness, (iii) expenditures for capital improvements and other expenses of a capital nature with respect to any Archstone Residual Asset, (iv) additions to reserves pursuant to Section 4.6, (v) any and all expenditures related to any acquisition, development, sale, disposition, financing or refinancing of any Archstone Residual Asset or other capital asset, (vi) any other expenses incurred in connection with the Company's business, and (vii) any organizational expenses incurred by or on behalf of the Company (but not any costs or expenses incurred by ERP Member or AVB Member in connection with the formation of the Company and its Subsidiary Entities as applicable, including the costs and expenses incurred in connection with the negotiation, execution and delivery of this Agreement, which costs and expenses shall be the sole responsibility of ERP Member and AVB Member, respectively). In no event shall any deduction be made for non-cash expenses such as depreciation or amortization.

"**Extraordinary Transaction**" has the meaning set forth in Section 8.4.

"Fiscal Year" means the Company's fiscal year. The Company's fiscal year shall be its taxable year. The Company's taxable year shall be the calendar year, unless otherwise required by the Code or Treasury Regulations, or other applicable law in the case of the Company's taxable year(s) for foreign, state or local tax purposes, as reasonably determined by the Management Committee.

"**Funding Notice**" has the meaning set forth in Section 3.3(b).

"**Governmental Authority**" means any governmental or political subdivision, whether federal, state, local or foreign, or any agency or instrumentality of any such government or political subdivision, or any federal, state, local or foreign court, authority, tribunal, department, bureau or commission, in each case having jurisdiction over the matter.

"**Gross Receipts**" means, for any period, any and all cash receipts (including, without limitation, gross proceeds resulting from a Capital Transaction) during such period (determined on a consolidated basis for the Company and all Subsidiary Entities), including, without limitation, Capital Contributions and amounts released from (or paid from) reserves.

"**Guaranty Equalization Payment**" has the meaning set forth in Section 3.6(b).

"**Guaranty Obligation**" means, as applied to any Person, any direct or indirect liability of that Person with respect to, or the pledge or encumbrance by that Person of any of its property as collateral for, any Indebtedness, lease, dividend, letter of credit or other obligation (the "primary obligation") of another Person (the "primary obligor"), including any obligation of that Person, whether or not contingent, (a) to purchase, repurchase or otherwise acquire such primary obligations or any Property constituting direct or indirect security therefor, or (b) to advance or provide funds (i) for the payment or discharge of any such primary obligation, or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency or any balance sheet item, level of income or financial condition of the primary obligor, or (c) to purchase securities, other properties or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, (d) on account of any letter of credit issued to any creditor or obligee of the primary obligor or (e) otherwise to assure or hold harmless the holder of any such primary obligation against loss in respect thereof.

"**Hypothetical Liquidation**" shall mean a hypothetical liquidation of the Company in accordance with the terms of this Agreement that includes (i) a sale of all of the assets of the Company for cash at prices equal to their Adjusted Asset Values and (ii) the cash contribution by the Members of the aggregate maximum amounts, if any, that the Members would be required to contribute to the Company under this Agreement as and to the extent such amounts would be needed to pay all partnership recourse liabilities.

"**Indebtedness**" of any Person means without duplication, (a) all indebtedness for borrowed money, (b) all obligations issued, undertaken or assumed as the deferred purchase price of property or services, (c) all reimbursement obligations with respect to surety bonds, letters of credit, bankers' acceptances and similar instruments (in each case, to the extent non-contingent), (d) all obligations evidenced by notes, bonds, debentures or similar instruments, (e) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to properties acquired by the Person (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such properties), and (f) all obligations under capital leases, (g) all indebtedness referred to in clauses (a) through (f) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any lien upon or in any property (including accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness.

"Indemnified Losses" has the meaning set forth in Section 7.1 of this Agreement.

"**Initial Business Plan**" means the business plan for the Company that is described on Schedule D (or, if Schedule D does not contain a reference to a business plan for the Company, the first business plan for the Company that is developed and Approved by the Management Committee subsequent to the date hereof pursuant to Section 4.3(a)). The Initial Business Plan shall include an Annual Budget for the remainder of the 2013 calendar year. The Members have targeted the completion of the Initial Business Plan for the quarterly meeting anticipated to occur in June, 2013.

"**JAMS**" has the meaning set forth in Section 12.13.

"**Major Decision**" has the meaning set forth in Section 4.3.

"**Management Committee**" has the meaning set forth in Section 4.1(a).

"**Management Committee Representative**" has the meaning set forth in Section 4.1(a).

"Member" or **"Members"** means AVB Member, ERP Member or any successors or Substitute Members thereto.

"Member Nonrecourse Debt" means "partner nonrecourse debt" as set forth in Treasury Regulations Section 1.704-2(b)(4).

"Member Nonrecourse Deductions" means "partner nonrecourse deductions" as set forth in Treasury Regulations Section 1.704-2(i)(2).

"Membership Interest" means the entire ownership interest of a Member in the Company at any particular time, including all economic rights and voting rights of the Member in the Company, the right of such Member to any and all benefits to which a Member may be entitled as provided in this Agreement and under law, and the obligations of such Member to comply with all of the terms and provisions set forth in this Agreement and under applicable law.

"Minimum Gain Attributable to Member Nonrecourse Debt" means "partner nonrecourse debt minimum gain" as determined in accordance with Treasury Regulations Section 1.704-2(i)(2).

"**Non-Contracting Member**" means, in any relation to any contract that is entered into between the Company or any Subsidiary Entity and a Member or that Member's Affiliates, the Member that is not the Contracting Member.

"**Non-Discretionary Funding Requirements**" means funds needed to meet any or all of the following obligations of the Company or any Subsidiary Entity, except to the extent that an Approved Business Plan expressly provides for the non-payment of any of the following amounts:

(i) [Reserved];

(ii) [Reserved];

(iii) insurance premiums and utility payments;

(iv) any expenditure required by any present or future law, ordinance, order, rule, regulation or requirement of any Governmental Authority except to the extent that the Management Committee or Members have Approved the failure to perform such alteration, repair or replacement, or have Approved action to contest the application of such law, ordinance, rule, regulation or requirement or have Approved action to appeal such order; and

(v) any amount required to be paid pursuant to any final non-appealable order, judgment, or decree of any Governmental Authority having jurisdiction over any Archstone Residual Asset.

"Nonrecourse Deductions" has the meaning set forth in Treasury Regulations Sections 1.704-2(b)(1) and (c).

"Nonrecourse Liabilities" has the meaning set forth in Treasury Regulations Section 1.704-2(b)(3).

"**Office Leases**" means the interests acquired, directly or indirectly, by the Company from Enterprise pursuant to the Purchase Agreement and the Buyers Agreement (or to which the Company has succeeded through the acquisition of interests in entities acquired by the Company from Enterprise pursuant to the Purchase Agreement and the Buyers Agreement) in and to the office leases more particularly described in Schedule L attached hereto.

"**Over-Guarantying Member**" has the meaning set forth in Section 3.6(b).

"**Parent**" means, in relation to ERP Member, ERP.

"**Parent Guaranty**" means (a) that certain Guaranty, of even date herewith, executed and delivered by ERP in favor of AVB Member (but not any other person), pursuant to which ERP has guaranteed the obligations of ERP Member to fund its Capital Contributions to the Company and to pay and perform its other obligations under this Agreement and (b) that certain Guaranty, of even date herewith, executed and delivered by AVB in favor of ERP Member (but not any other person), pursuant to which AVB has guaranteed the obligations of AVB Member to fund its Capital Contributions to the Company and to pay and perform its other obligations under this Agreement. The form of such Parent Guaranty is substantially in the form of Exhibit 2 attached hereto.

"**Person**" means any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so permits.

"Profits" and **"Losses"** means, for each Fiscal Year or other period, the Company's items of taxable income or loss for such year or other period, determined in accordance with Section 703(a) of the Code (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in taxable income or loss), with the following adjustments: (i) any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses shall be added to such taxable income or loss; (ii) any expenditures of the Company described in Section 705(a)(2)(B) of the Code or treated as Section 705(a)(2)(B) of the Code expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i) shall be subtracted from such taxable income or loss; (iii) gain or loss resulting from any disposition of a property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Adjusted Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Adjusted Asset Value; (iv) in lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, the Company shall compute such deductions based on the

Depreciation of a property; (v) if the Adjusted Asset Value of an asset is adjusted pursuant to the definition of Adjusted Asset Value (except with respect to Depreciation), then the amount of such adjustment shall be treated as an item of gain or loss and included in the computation of Profits and Losses; and (vi) items of Company gross income, gains, deductions and losses allocated pursuant to Sections B(1) through (and including) B(7) of Schedule E shall not be included in the computation of Profits and Losses.

"**Proportionate Share**" means, unless and until there has been a transfer of an interest in the Company or an admission of a new Member, with respect to AVB Member, 40%, and with respect to ERP Member, 60%.

"**Purchase Agreement**" means that certain Asset Purchase Agreement, dated as of November 26, 2012, among Equity Residential, ERP, AVB, Lehman Brothers Holdings, Inc., a Delaware corporation, and Enterprise.

"**Rate Contract**" means interest rate and currency swap agreement, cap, floor and collar agreement, interest rate insurance, currency spot and forward contract and other agreement or arrangement designed to provide protection against fluctuations in interest or currency exchange rates.

"**REIT**" means a "real estate investment trust" as defined in Section 856 of the Code.

"**Responsible Member**" has the meaning set forth in Section 3.6(c).

"Restricted Holder" has the meaning set forth in Section B(1) of Schedule E.

"**Seller**" means Enterprise and Lehman Brothers Holdings, Inc., collectively.

"**Subsidiary Entity**" means any Entity that is directly or indirectly wholly-owned and controlled by the Company.

"Substitute Member" means a Person that acquires a Membership Interest and that has been admitted as a Member pursuant to Article VIII of this Agreement.

"**Successor Parent**" has the meaning set forth in Section 8.4.

"**Target Balance**" means, with respect to any Member as of the close of any period for which allocations are made under Schedule E, the net amount such Member would receive (or be required to contribute) in a Hypothetical Liquidation of the Company as of the close of such period, expressed as a negative number if the Member is required to contribute a net amount to the Company in connection with a Hypothetical Liquidation and expressed as a positive number if the Member would receive a net distribution in connection with a Hypothetical Liquidation.

"Tax Items" has the meaning set forth in Section C(1) of Schedule E.

"Tax Matters Member" means the "tax matters partner" as defined in Section 6231(a)(7) of the Code.

"Term" has the meaning set forth in Section 1.6 of this Agreement.

"**Third Party Entity**" means any Entity that is not an Affiliate of the Company.

"Transfer" means sell, assign, transfer, mortgage, pledge, hypothecate, encumber, exchange or otherwise dispose of, whether or not for value, and whether voluntarily, by operation of law or otherwise.

"**Transition Team**" means the working group of representatives appointed by ERP Member and AVB Member to assist with the administration of routine decisions related to the Company, as more fully described in Section 4.2(j).

"Treasury Regulations" means the temporary and final regulations issued by the U.S. Treasury Department under the Code, as amended or superseded from time to time.

"**Under-Guarantying Member**" has the meaning set forth in Section 3.6(b).

ARTICLE III

MEMBERS; MEMBERSHIP INTERESTS; CAPITAL CONTRIBUTIONS; GUARANTEES

Section 3.1 One Class of Members.

All Members of the Company shall be of one class.

Section 3.2 Members of the Company.

Effective upon the adoption and execution of this Agreement, AVB Member and ERP Member are the sole Members of the Company. The respective addresses and Proportionate Shares in the Company of AVB Member and ERP Member are set forth in Schedule C. Additional Members may not be admitted to the Company except in accordance with Section 8.7 hereof.

Section 3.3 Capital Contributions and Capital Accounts

(a) Initial Capital Contributions. Each Member has contributed or agrees to contribute to the Company the amount of capital having the value set forth opposite such Member's name on Schedule C in exchange for its Membership Interest which capital shall be contributed in such form as may be required to enable the Company to acquire the Company Assets pursuant to the Purchase Agreement and the Buyers Agreement.

(b) Additional Capital Contributions. If a Designated Manager determines (after taking into account any existing cash reserves of the Company) that capital is needed to (i) restore operating reserves to a level as contemplated in the applicable Approved Business Plan or Annual Budget, (ii) fund any cash needs of the Company as contemplated in any applicable Approved Business Plan or as would not exceed the amounts that may be expended in accordance with Section 4.3(i), or arise pursuant to Authorized Unilateral Decisions, (iii) fund

Emergency Costs, (iv) fund Non-Discretionary Funding Requirements, or (v) fund to any Designated Manager any fees or expense reimbursements due to it hereunder or fund to any Covered Person any amounts due on account of any of the Company's indemnification obligations or obligations to advance expenses as provided for in Section 7.1 or 7.2, such Designated Manager shall issue a notice (a "**Funding Notice**") substantially in the form attached hereto as Exhibit 1 setting forth the amount of capital being requested (the "**Additional Capital Requested Amount**"). Within ten (10) Business Days following the date of receipt of a Funding Notice, each Member shall pay to the Company as a Capital Contribution such Member's Proportionate Share of the Additional Capital Requested Amount. Any funds advanced by the Members to the Company pursuant to this Section constitute additional Capital Contributions to the Company.

(c) Limitations. No Member shall have any liability for the repayment of the Capital Contribution of any other Member and, subject to Section 3.6, each Member shall look only to the assets of the Company for return of its Capital Contributions.

(d) No Right to Return of Contribution; No Interest on Capital. Except as provided in this Agreement, no Member shall have the right to withdraw or receive any return of, or interest on, any Capital Contribution or on any balance in such Member's Capital Account. If the Company is required to return any Capital Contribution to a Member, the Member shall not have the right to receive any property other than cash.

(e) Capital Accounts. The Company shall establish and maintain an individual Capital Account for each Member.

Section 3.4 Failure to Contribute Capital.

If any Member fails to make a Capital Contribution required under Section 3.3(b) by the date such Capital Contribution is due and such failure continues for ten (10) Business Days after written notice from the Member which has not failed to make its Capital Contribution (any such failing Member shall be a "**Capital Defaulting Member**" and the amount of the failed Capital Contribution shall be the "**Capital Default Amount**"), then the non-Capital Defaulting Member shall have any one and only one of the following remedies:

(a) to advance to the Company (or, at its election, cause any of its Affiliates to advance to the Company) on behalf of, and as a loan to, the Capital Defaulting Member, an amount equal to the Capital Default Amount (each such loan, a "**Capital Default Loan**"). The Capital Account of the Capital Defaulting Member shall be credited with the amount of such Capital Default Loan, which shall be deemed to be a Capital Contribution made by the Capital Defaulting Member, and such amount shall constitute a debt owed by the Capital Defaulting Member to the non-Capital Defaulting Member (or its applicable Affiliate that has funded the Capital Default Loan). Any Capital Default Loan shall bear interest at a rate equal to 15% per annum and shall be payable from any distributions due the Capital Defaulting Member hereunder, but shall in all events be payable in full by the ninetieth (90^{th}) day following the date such Capital Default Loan was made. Interest on a Capital Default Loan to the extent unpaid shall accrue and compound monthly. A Capital Default Loan shall be prepayable at any time or from time to time without penalty. While any Capital Default Loan is outstanding,

notwithstanding anything in this Agreement to the contrary, all distributions to the Capital Defaulting Member hereunder shall be applied first to payment of any interest due under any Capital Default Loan and then to principal until all amounts due thereunder are paid in full. All payments made in repayment of any Capital Default Loan shall be applied first toward payment of unpaid accrued interest and then (if any remains) toward payment of principal. If a Capital Default Loan is not paid on or prior to the date such Capital Default Loan becomes due, the non-Capital Defaulting Member (or its applicable Affiliate that has funded the Capital Default Loan) may pursue all available rights and remedies against the Capital Defaulting Member and, pursuant to the applicable Parent Guaranty, its Parent (and if the non-Capital Defaulting Member's Affiliate has funded the Capital Default Loan, it shall be entitled to all of the rights of a non-Capital Defaulting Member under this Section 3.4, including all rights to enforce the Parent Guaranty as if it were the "Creditor Member" thereunder);

(b) to revoke the Funding Notice for both Members, whereupon any Capital Contributions paid by the non-Capital Defaulting Member pursuant to such Funding Notice shall be returned, in which event the Members may reconsider the needs of the Company for additional Capital Contributions, and any Member may thereafter issue any Funding Notice as permitted hereunder following such reconsideration; or

(c) to contribute its required Capital Contribution and pursue its rights under the Parent Guaranty delivered by the Parent of the Capital Defaulting Member with respect to such Capital Default Amount.

Unless the non-Capital Defaulting Member shall have elected to revoke the Funding Notice for both Members pursuant to Section 3.4(b), then, until either the Capital Default Loan made by the non-Capital Defaulting Member shall have been repaid in full or the amounts due with respect to such Capital Contribution have been funded by the Capital Defaulting Member or its Parent pursuant to the Parent Guaranty, the Capital Defaulting Member and the Management Committee Representatives appointed by it shall have no voting or approval rights hereunder. Such voting and approval rights shall be restored in the event that the Capital Defaulting Member (or its Parent, pursuant to its Parent Guaranty) repays the Capital Default Loan in accordance with the terms of this Agreement, but the Capital Defaulting Member and the Management Committee Representatives appointed by it shall be bound by all decisions that were made without its or their approval while the Capital Default Loan was outstanding. Notwithstanding the foregoing, under no circumstances shall the non-Capital Defaulting Member or the Management Committee Representatives appointed by it have any authority, without the written consent of the Capital Defaulting Member or, as applicable, the Management Committee Representatives appointed by it, to cause the Company to incur on behalf of the Company any indebtedness which includes any recourse obligations of any Member, to engage in any transaction with any Affiliate of the non-Capital Defaulting Member, or to amend this Agreement, nor shall the Capital Defaulting Member forfeit any of its rights to receive distributions, to receive reports or obtain information as a result of the making of any Capital Default Loan.

Section 3.5 Parent Guaranty Delivered to the AVB Member.

Concurrently with the execution and delivery of this Agreement, AVB has delivered its Parent Guaranty to ERP Member, and ERP has delivered its Parent Guaranty to AVB Member. No creditor or third party shall have rights to enforce any obligations under such Parent Guaranty.

Section 3.6 Parent Guaranties delivered to Third Parties.

(a) Allocation of Guaranty Liability. Subject to Section 3.6(c) below, liability under any Guaranty Obligation that is delivered by any of the Members or their Parents with respect to any Indebtedness or Contingent Obligation of the Company or any Subsidiary Entity shall, as between the Members and their Parents, be apportioned in proportion to the Members' Proportionate Shares, and any payments made under any such Guaranty Obligation (other than payments made by a Responsible Member) shall be deemed additional Capital Contributions to the Company.

(b) Guaranty Equalization Payments. Subject to Section 3.6(c), if at any time a Member or its Affiliate or Parent shall have made a payment under or otherwise satisfied any Guaranty Obligation with respect to any Indebtedness or Contingent Obligation of the Company or any Subsidiary Entity, and on or prior to such time, the other Member or its Affiliate or Parent shall not have made a payment under or otherwise satisfied an equivalent Guaranty Obligation with respect to the same Indebtedness or Contingent Obligation of the Company or any Subsidiary Entity in an amount that is in proportion to its Proportionate Share of the aggregate cumulative amounts by which both Members and their Affiliates and Parents have made payments under or otherwise satisfied such Guaranty Obligations, then the Member (the "**Under-Guarantying Member**") that has (together with its Affiliates and Parent) paid amounts or otherwise satisfied amounts on account of such aggregate Guaranty Obligations that are less than its Proportionate Share of the aggregate cumulative amounts paid or satisfied by both Members and their Affiliates and Parents under such aggregate Guaranty Obligations shall, immediately upon demand by the other Member (the "**Over-Guarantying Member**"), pay or cause to be paid to the Over-Guarantying Member (on behalf of itself and as applicable its Affiliates and Parent) such sums (each, a "**Guaranty Equalization Payment**") as may be sufficient to cause the sum of the amounts by which such aggregate Guaranty Obligations have been paid or satisfied by the Over-Guarantying Member and its Affiliate and Parent, minus the amount of the Guaranty Equalization Payment so paid to the Over-Guarantying Member, to equal the Over-Guarantying Member's Proportionate Share of the aggregate cumulative amounts by which such aggregate Guaranty Obligations have been paid or satisfied by both Members and their Affiliates and Parents. The obligation of the Under-Guarantying Member and its Parent to make such Guaranty Equalization Payment shall be absolute, irrevocable and unconditional under any and all circumstances whatsoever and irrespective of any set-off, counterclaim or defense to payment which the Under-Guarantying Member or its Affiliate or Parent may have or claim to have against the obligee of the Guaranty Obligations. If the Under-Guarantying Member does not pay the Guaranty Equalization Payment or cause it to be paid to the Over-Guarantying Member (on behalf of itself and as applicable its Affiliates and Parent) immediately upon demand therefor, then the unpaid amount of such Guaranty Equalization Payment shall bear interest at the rate applicable to Capital Default Loans until paid in full (which interest shall

be immediately due and payable), and, without limiting any other available rights or remedies of the Over-Guarantying Member against the Under-Guarantying Member or its Parent (including any rights or remedies under such Parent's Parent Guaranty), any distributions or payments thereafter otherwise payable by the Company to the Under-Guarantying Member shall be withheld from such Member and instead paid to the Over-Guarantying Member until such time as the full amount of the Guaranty Equalization Payment (plus all accrued but unpaid interest thereon) has been paid to the Over-Guarantying Member. The Under-Guarantying Member shall be deemed a Capital Defaulting Member for purposes of this Agreement and shall lose voting rights as more particularly set forth in Section 3.4 until the Under-Guarantying Member has paid, or caused to be paid, the Guaranty Equalization Payment.

(c) Carveout Exposure. Notwithstanding the provisions of Sections 3.6(a) or (b) to the contrary, if any amount is paid or payable under any Indebtedness or Contingent Obligation of the Company or any Subsidiary Entity, or under any Guaranty Obligation of any Member or its Parent with respect to any Indebtedness or Contingent Obligation of the Company or any Subsidiary Entity, as a result of any act or omission on the part of one of the Members or their Affiliates which is not an Authorized Unilateral Decision or not reasonably within the scope of decisions, actions or transactions that were Approved by the Members or Approved by the Management Committee, then the Member whose act or omission (or whose Affiliate's act or omission) solely resulted in the obligation to make such payment (such Member, the "**Responsible Member**") shall have exclusive responsibility, as between the Members, for satisfying the payment obligations arising under such Indebtedness, Contingent Obligation or Guaranty Obligation as a result of such act or omission of the Responsible Member or its Affiliate; the Responsible Member shall have no rights to require the other Member or

its Parent to make any Guaranty Equalization Payment on account of any such payment obligations; and the Responsible Member shall indemnify, defend, protect and hold harmless the Company, the other Member and its Parent from any losses, damages, liabilities, costs and expenses, including prepayment premiums, default rate interest, legal fees and disbursements, arising from any such act or omission under any such Indebtedness, Contingent Obligation or Guaranty Obligation, except, in each case, to the extent that the amount so paid or payable under such Indebtedness, Contingent Obligation or Guaranty Obligation is applied to reduce the principal balance due upon such Indebtedness or the principal balance due upon Indebtedness that is guaranteed or supported by such Contingent Obligation or Guaranty Obligation**.**

(d) Schedule F which is or may be attached hereto identifies the Guaranty Obligations of the Members, their Parents and Affiliates as of the date of this Agreement and may include certain additional provisions applicable thereto.

(e) [Reserved]

Section 3.7 Members as Creditors**.**

With the Approval of the Members and subject to any other applicable terms in this Agreement, any Member may lend money to and transact other business with the Company as a creditor and, subject to applicable law, any Member has the same rights and obligations with respect thereto as a person who is not a Member.

Section 3.8 No Right of Withdrawal or Resignation**.**

No Member shall have the right to withdraw or resign from the Company except with the Approval of the Members, and then only upon such terms and conditions as may be specifically agreed upon between the Members. Notwithstanding any other provision of this Agreement, unless otherwise Approved by the Members, the withdrawing or resigning Member shall not be entitled to any return or repayment of its Capital Contribution or other distribution or transfer in the event of withdrawal or resignation. The foregoing provisions are exclusive and no Member shall be entitled to claim any distribution or transfer upon withdrawal or resignation under Section 18-604 of the Act or otherwise.

Section 3.9 Limited Liability**.**

Except as expressly set forth in this Agreement or required by law, no Member shall (a) be personally liable for any Indebtedness, Contingent Obligation or other liability or obligation of the Company, whether that Indebtedness, Contingent Obligation or liability or obligation arises in contract, tort, or otherwise, solely by reason of being a Member of the Company, or (b) have any obligation to restore any deficit or negative balance in the Capital Account of such Member.

Section 3.10 No Third Party Rights.

Any obligations or rights of the Company or the Members to make or require any Capital Contribution under this Article III shall not result in the grant of any rights or confer any benefits upon any Person who is not a Member.

ARTICLE IV

MANAGEMENT AND CONTROL OF THE COMPANY ASSETS AND THE BUSINESS

Section 4.1 Management Committee

(a) Composition. The Company shall have a Management Committee (the "**Management Committee**") which shall be composed of four (4) individuals (each, a "**Management Committee Representative**"). Two (2) Management Committee Representatives shall be Persons appointed by AVB Member (the "**AVB Representatives**") and two Management Committee Representatives shall be Persons appointed by ERP Member (the "**ERP Representatives**"). As of the date hereof, the initial AVB Representatives are Leo Horey and Matthew Birenbaum, and the initial ERP Representatives are Alan George and Mark Parrell.

(b) Vacancies; Removal. Each Management Committee Representative shall hold office at the discretion of the Member appointing such Management Committee Representative. Any AVB Representative may be removed and replaced, with or without cause and for any reason at any time, by (and only by) AVB Member. Any ERP Representative may be removed and replaced, with or without cause and for any reason at any time, by (and only by) ERP Manager. A Management Committee Representative may also resign of its own volition at any time, by written notice to the Members. In the event of any vacancy in the office of a Management Committee Representative, such vacancy shall be filled, by written notice to the

Members, by an individual designated by (i) AVB Member if such vacancy relates to an AVB Representative, and (ii) ERP Member if such vacancy relates to an ERP Representative.

(c) Meetings.

(i) Meetings of the Management Committee shall be held once per fiscal quarter of the Company on such dates and at such places and times as may be Approved by the Members. The agenda items for each quarterly meeting shall include a review of the Company's business and the progress in implementing the Approved Business Plan and the other activities of the Company.

(ii) With the Approval of the Members, Management Committee meetings may be held more frequently than quarterly.

(iii) Management Committee Representatives may vote in person or by proxy; such proxy may be granted in writing, by electronic transmission (as defined in the Act), or as otherwise permitted by applicable law.

(iv) At the election of either Member, Management Committee meetings may be held by telephone conference or other communications equipment by means of which all participating Management Committee Representatives can simultaneously hear each other during the meeting.

(v) Any action required or permitted to be taken by the Management Committee may be taken without a meeting, if a consent to such action is delivered in writing or via electronic transmission (as defined in the Act) by the requisite number of the Management Committee Representatives. Such written consent or a record of

such electronic transmission shall be filed with the records of the Management Committee.

(d) Attendance at Management Committee Meetings. Subject to Section 3.4, no action may be taken at a meeting of the Management Committee unless at least one Management Committee Representative appointed by each Member is present in person or as otherwise permitted in Section 4.1(c). Notwithstanding the foregoing, during any period when a Member shall be a Capital Defaulting Member, action may be taken at a meeting of the Management Committee without regard to the attendance at such meeting of the Management Committee Representatives appointed by such Capital Defaulting Member, but only with respect to matters as to which its Management Committee Representatives have no voting rights as more fully provided in Section 3.4, and only if at least five (5) Business Days' notice of the meeting shall have been provided to the Capital Defaulting Member and an opportunity to be present at such meeting (in person or via telephone) shall have been provided to such Capital Defaulting Member.

(e) Voting Rights; Required Votes. Except as provided below, and subject to Section 3.4, each Management Committee Representative shall be entitled to cast one vote with respect to any matter requiring Approval of the Management Committee. Any action, decision or transaction considered by the Management Committee at a meeting thereof must be Approved by the Management Committee in order to be authorized; provided that any action to be considered by the Management Committee involving any contract or agreement between the Company and a

Contracting Member shall not be effective or authorized unless it is unanimously approved by the Management Committee Representatives appointed by the Non-Contracting Member (which approval shall constitute "Approval by the Management Committee" for all purposes hereof) and the Management Committee Representatives appointed by the Contracting Member shall have no right to vote or approve of any such action. Notwithstanding anything to the contrary contained herein, if only one of the Management Committee Representatives appointed by a Member is present in person, via other means permitted pursuant to Section 4.1(c) or by proxy at a meeting of the Management Committee, the votes cast by such Management Committee Representative shall count as two (2) votes and shall be deemed to consist of the entire voting power of both Management Committee Representatives appointed by such Member.

(f) Approval by Members in Lieu of the Management Committee. At any time, the Members may consider and Approve or disapprove any action, decision or transaction that this Agreement contemplates will be considered, Approved or disapproved by the Management Committee. In the event of any conflict or inconsistency between any action, decision or transaction that has been Approved by the Members and any action, decision or transaction that has been Approved by the Management Committee, the action, decision or transaction Approved by the Members shall govern and control, and shall not be overridden or superseded by an action, decision or transaction Approved by the Management Committee unless such action, decision or transaction is also Approved by the Members.

(g) Delegation to Subcommittees, Etc. Either the Management Committee or the Members may Approve from time to time the delegation of authority with respect to the administration or management of certain decisions or functions to subcommittees, working groups or individuals, whose authority shall be limited to the decisions or functions so delegated to them. Consistent with the limited authority so delegated to them, such subcommittees, working groups or individuals shall be considered to be Designated Managers for the purposes of this Agreement. Any such subcommittee, working group or individual, if appointed by Approval of the Management Committee, shall be subject to all limits upon the authority of the Management Committee provided for in this Agreement, including, without limitation, the limits set forth in Section 4.1(f). As of the date hereof, the Members have delegated to the Transition Team the authority to administer routine decisions related to the Company, as more fully described in Section 4.2(j).

Section 4.2 Designated Managers; Officers; Transition Team.

(a) As expressly provided in this Agreement, or at any time and from time to time hereafter with the Approval of the Members or the Approval of the Management Committee, Members or other Persons may be designated as managers or authorized signatories or agents of the Company with respect to the performance of specific duties, actions, functions or tasks, with respect to the execution of documents or consummation of transactions, or otherwise with respect to specific assets or obligations of the Company, and the scope of the authority of each such designated manager, signatory or agent, and applicable period of time within which such authority may be exercised, shall (if not expressly stated in this Agreement) be as provided for in the applicable Approval of the Members or Approval of the Management Committee. Each such designated manager, signatory or agent is referred to herein as a "**Designated Manager**" and is intended to be a "manager" as defined in the Act having the specific authority expressly

described herein or in the applicable Approval of the Members or Approval of the Management Committee.

(b) The Designated Managers shall include, throughout the Term, general administrative managers. In accordance with the allocation of responsibilities for the administrative management of the Company that is or hereafter shall be provided for in Schedule J attached hereto or as otherwise specifically allocated pursuant to this Agreement, the applicable Designated Manager as designated in Schedule J attached hereto or otherwise in this Agreement shall have the sole authority on behalf of the Company with respect to the administrative functions and responsibilities that are allocated to it on Schedule J attached hereto or otherwise in this Agreement, together with the authority, rights and powers to do any and all acts and things necessary, proper, appropriate, advisable, incidental or convenient in connection with such functions and responsibilities, but all subject to the limitations, restrictions, conditions and requirements set forth in this Agreement.

(c) [Reserved]

(d) [Reserved]

(e) [Reserved]

(f) Unless a Designated Manager is hereafter designated with the Approval of the Members or the Approval of the Management Committee to implement any Approved Business Plan or other action on behalf of the Company other than as described in Schedule J attached hereto, the Management Committee shall retain the administrative responsibilities with respect to the development of proposals for and proposed revisions to business plans, the implementation and monitoring of the applicable Approved Business Plan therefor, and the other actions of the Company.

(g) Each Person appointed as a Designated Manager shall serve at the discretion of the Members, and such Person may be removed upon the Approval of the Members (if such Person was appointed with the Approval of the Members or the Approval of the Management Committee) or removed upon the Approval of the Management Committee (if such Person was appointed with the Approval of the Management Committee).

(h) Without limiting any Designated Manager's express obligations under this Agreement, the Members hereby agree that no Designated Manager shall have any fiduciary duty to the Company or the Members, any such requirement of fiduciary duty being forever and unconditionally waived by the Members to the extent permitted by the Act. Notwithstanding anything to the contrary in this Agreement, in addition to the express limitations set forth in this Agreement with respect to the duties and obligations of the Designated Manager, no Designated Manager shall be in default of its duties and obligations under this Agreement in the event that (i) such Designated Manager is unable to cause the Company or a Member to take any action because the action to be taken constitutes a Major Decision and such Major Decision is not then Approved, or (ii) such Designated Manager is unable to cause the Company or a Member to take any action due to a lack of available Company funds.

(i) The Members acknowledge that certain officers have been appointed prior to the date hereof with respect to certain Subsidiary Entities, and from time to time hereafter, with the Approval of the Management Committee or the Members, officers of the Subsidiary Entities may be appointed, removed or replaced. Notwithstanding the foregoing, any officer of a Subsidiary Entity who is an employee of a Member (or its Parent or any Affiliate thereof) shall hold office at the discretion of such Member, and may be removed and replaced, with or without cause and for any reason at any time, by (and only by) such Member. In the event of any vacancy in any office of any Subsidiary Entity, such vacancy shall be filled by an individual designated by (i) AVB Member if such vacancy relates to an office that was previously filled by an employee of AVB Member (or its Parent or any Affiliate thereof), and (ii) ERP Member if such vacancy relates to an office that was previously filled by an employee of ERP Member (or its Parent or any Affiliate thereof).

(j) Pursuant to Section 4.1(g), the Members have delegated to the Transition Team the authority to administer routine decisions related to the Company, as more fully described in this Section 4.2(j). The initial members of the Transition Team include representatives who have been appointed by ERP Member and representatives who have been appointed by AVB Member, and decisions may be made by the Transition Team only with the agreement of at least one member who has been appointed by ERP Member and one member who has been appointed by AVB Member, and without any objection to the proposed decision from any member of the Transition Team. Vacancies on the Transition Team shall be filled by the Member whose appointee has resigned or been removed. At any time, at the election of any Member, effective upon written notice to the other Member, the authority of the Transition Team to administer certain classes or categories of decisions shall be suspended, and the authority to administer such classes or categories of decisions shall revert to the Management Committee. If the Transition Team is unable to agree upon a proposed decision, then that decision shall be referred to the Management Committee for Approval in accordance with this Agreement.

Section 4.3 Major Decisions**.**

Notwithstanding any other provision of this Agreement to the contrary, no Member, Transition Team member or Designated Manager shall take or cause any of the following actions, make any of the following decisions or enter into any of the following transactions (each a "**Major Decision**"), whether by or on behalf of the Company directly, or by or on behalf of any of the Subsidiary Entities, without first obtaining the Approval of the Management Committee (or, pursuant to Section 4.1(f), the Approval of the Members) (it being understood that such Approval may be obtained through the approvals that are granted in an Approved Business Plan or Annual Budget and that the Members' or the Management Committee's approval of any such Approved Business Plan or Annual Budget shall be deemed to include the approval of all matters identified therein and of the implementation thereof by the applicable Designated Managers in good faith and in the ordinary course of business) or take any other action which contravenes the conditions or limitations that expressly apply to any Approval by the Members or Approval by the Management Committee pursuant to the terms of this Agreement:

(a) Approval of or Modification to Business Plans. Approval of any Initial Business Plan or any modification of, departure from or suspension of any Approved Business Plan outside the ordinary course of business.

(b) Acquisition of Interests in Real Property. Invest in, purchase or otherwise acquire (whether by merger, consolidation or acquisition of equity interests or assets, or any other business combination, and whether directly or indirectly) any real property or direct or indirect interest therein.

(c) Acquire or Form New Subsidiary Entities. Purchase or otherwise acquire (whether by merger, consolidation or acquisition of equity interests or assets, or any other business combination) or form any Subsidiary Entity.

(d) Amend Organizational Documents. Amend or otherwise change any material provision of any organizational document of any Subsidiary Entity.

(e) Enter into New Partnership. Enter into or establish any partnership, joint venture or similar arrangement (including, without limitation, funds or other investment vehicles) with a Third Party Entity.

(f) Changes to Governing Boards of Subsidiary Entities. Voluntarily permit any changes to any board, management committee or similar governing board of any Subsidiary Entity.

(g) Sales and Dispositions. Cause any sale, transfer, assignment, conveyance, exchange or other disposition of any Archstone Residual Asset, except in accordance with the Approved Business Plan for an Archstone Residual Asset (it being understood that, in developing the Approved Business Plans, the Members intend to consider whether such plans should prescribe maximum thresholds for any seller indemnities and maximum periods for survival of post-closing seller liabilities for purchase and sale agreements that could be entered into without the Approval of the Management Committee) and for a price that is (i) not less than 95% of the target price designated in the Approved Business Plan if such target price is expressed as a single value and not as a range of values) and (ii) not less than the lowest value designated in the Approved Business Plan (if the target price is expressed as a range of values.

(h) Restrictive Agreements. Enter into, amend or modify any agreement that would restrict the sale, transfer, assignment, conveyance, exchange or other disposition of any of the Company Assets.

(i) Annual Budget. Approval of an Annual Budget, or modify an Annual Budget or expend (or commit to expend) sums in excess of the amounts budgeted in an Annual Budget, if such modifications or expenditures on an aggregate cumulative basis for any year would exceed 110% of the total budgeted amount in the original Annual Budget for such year (unless such modification or expenditure or arises from Emergency Costs or Non-Discretionary Funding Requirements, or arises from costs incurred in connection with marketing activities for the disposition of assets in accordance with Section 4.3(g), or in connection with the defense, pursuit, satisfaction of judgments with respect to, or settlement of claims consistent with Section 4.3(q), or in connection with the review, pursuit or settlement of insurance claims or condemnation proceedings consistent with Section 4.3(u)).

(j) Additional Capital Contributions. Issue a Funding Notice other than in accordance with Section 3.3(b).

(k) Indebtedness; Contingent Obligations. Cause the Company or any Subsidiary Entity to incur, assume, prepay, purchase, amend, extend, renew, refinance, recast, compromise or otherwise deal with any Indebtedness or incur, assume, amend, extend, renew, refinance, recast, compromise or otherwise deal with any Contingent Obligations (other than receivables and payables incurred and equipment leases entered into in the ordinary course of business (i) in accordance with an applicable Approved Business Plan (as adjusted pursuant to Section 4.3(i)) or (ii) in accordance with an Authorized Unilateral Decision).

(l) Additional Advances/Drawdowns on Credit Facilities. Obtain advances or drawdowns on construction or development loans or any other credit facility, in each case, other than advances and drawdowns on construction or development loans or credit facilities that are in existence on the date hereof provided that such advances or drawdowns are in accordance with the terms of such loans or credit facilities and are pursuant to the applicable Approved Business Plan.

(m) Liens. Mortgage, pledge, hypothecate or subject to any type of lien (other than inchoate liens for contractors and subcontractors, real estate taxes and utility charges established by applicable law) any of the assets of the Company or any Subsidiary Entity, or amend, extend or renew any of the agreements entered into in connection with the foregoing.

(n) Accountants. Engage, remove or appoint any accountants for the Company or any Subsidiary Entity (other than the Accountants).

(o) Change Accounting Principles or Policies. Except as required by changes in law or changes in generally accepted accounting principles, change any financial accounting principles or policies in any material respect.

(p) Repatriate Funds. Repatriate funds held in overseas accounts.

(q) Legal Proceedings. (i) Commence any legal or arbitration proceeding on behalf of the Company or any Subsidiary Entity (except for routine collection matters, tenant disputes or matters that arise from disputes the resolution of which is within the settlement authority of the applicable Designated Manager under this Section 4.3(q)); (ii) confess a judgment against the Company or any Subsidiary Entity; (iii) settle on behalf of the Company or any Subsidiary Entity any claim that has been asserted in any legal or arbitration proceeding or that has been threatened (regardless of whether any such proceeding has been commenced) except with respect to any liabilities arising from acts or occurrences after the Effective Date related to any subject matter for which a Member has been designated the Designated Manager, in accordance with a settlement agreement approved by such Designated Manager in which the claimant's claims against any Parent, the Company or applicable Subsidiary Entity (as applicable) on account of the matters so asserted or threatened are fully released and the amount paid or payable in connection with the settlement of any claim or claims asserted or threatened by any single claimant with respect to the subject matter of such proceeding or threat does not exceed the sum of $250,000; or (iv) except in connection with the management and administration of the Company Assets within the authority of the applicable Designated Manager, engage legal counsel for the Company or any Subsidiary Entity. Each Designated Manager that enters into a settlement agreement on behalf of the Company as provided herein shall provide prompt notice

of such settlement to the other Member, and shall provide prompt notification to the other Member from time to time of material developments and material anticipated costs and expenses in connection with any material legal or arbitration proceeding for any Archstone Residual Asset for which it has been designated the Designated Manager.

(r) Transactions with Members, Affiliates. Enter into, consummate, amend, modify or terminate any transaction or arrangement between the Company or any Subsidiary Entity and any Member or any Affiliate of any Member.

(s) Bankruptcy. Cause any of the following to occur with respect to the Company or any Subsidiary Entity: (i) making an assignment for the benefit of creditors; (ii) filing a voluntary petition in bankruptcy; (iii) filing a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation; (iv) filing an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of this nature; (v) filing a petition seeking, consenting to or acquiescing in the appointment of a trustee, receiver or liquidator, whether for itself or for all or any substantial part of its properties; or (vi) taking any action in furtherance of the foregoing.

(t) Lending Company Funds. Lend funds belonging to the Company or any Subsidiary Entity, or extend credit on behalf of the Company or any Subsidiary Entity, to any Person other than to a Subsidiary Entity in connection with the implementation of the funding of capital which has been Approved by the Members or Approved by the Management Committee but only if the funding of such capital in the form of a loan, rather than as an equity contribution (unless Approved by the Members or Approved by the Management Committee) would not reasonably be anticipated to have any material adverse impact upon any Member; and if such funds are so lent or credit is so extended, extend, renew, recast, compromise or otherwise deal with such lent funds or extension of credit.

(u) [Reserved]

(v) Reorganization. Cause the formation of any Subsidiary Entity or any Affiliate of the Company, or merge the Company or any Subsidiary Entity into any other Person, or convert the form of such Entity into a different form of Entity or otherwise enter into any similar entity reorganization.

(w) Dissolution of the Company; In-Kind Distributions. Except in accordance with Section 10.1, cause the dissolution and winding-up of the Company or any Subsidiary Entity, except for the dissolution and liquidation of a Subsidiary Entity following the approved sale of all of the assets owned by such Subsidiary Entity, or make any in-kind distribution of the assets of the Company or any Subsidiary Entity.

(x) Insurance. Determine, modify or waive the requirements of the Company's insurance program, including insurers, coverage and policy amounts, as set forth in or to be set forth in Schedule I attached hereto.

(y) Material Liabilities. Take any action that is not contemplated in the Approved Business Plan and is not an Authorized Unilateral Decision that would reasonably be anticipated

to create a material liability, obligation, cost or expense for the Company or any Subsidiary Entity other than on account of Emergency Costs or Non-Discretionary Funding Requirements.

(z) Employees. Except for routine decisions as approved by the Transition Team: hire or terminate (except in accordance with the Transition Plan referenced in Section 9.6) any employee of the Company or any Subsidiary Entity; increase the compensation or benefits payable to any employee of the Company or any Subsidiary Entity; grant any (or any increase in) employment, retention, bonus, severance, change of control or termination pay awards or equity-based cash awards (including cash bonuses or dividend equivalent rights); or establish, adopt, enter into or amend any collective bargaining (or similar), bonus, profit-sharing, thrift, compensation, stock option, restricted stock, stock unit, dividend equivalent, pension, retirement, deferred compensation, employment, loan, retention, consulting, indemnification, termination, severance or other similar plan, agreement, trust, fund, policy or arrangement with any director, officer, employee or independent contractor.

(aa) Tax Elections. Make, rescind or revoke any material tax election (whether or not such election is filed with a tax return) or change a material method of tax accounting, amend any material tax return, agree to waive or extend any period of adjustment, assessment or collection of material taxes, or settle or compromise any material federal, state, local or foreign income tax liability, audit, claim or assessment, or enter into any material closing agreement related to taxes, or surrender any right to claim any material tax refund unless in each case such action is required by applicable law.

(bb) Prohibited Tax Shelter Transactions. Use any assets of the Company or any Subsidiary Entity in a "prohibited tax shelter transaction" within the meaning of Section 4965(e)(1) of the Code.

(cc) Reserves. Except for reserves that are expressly provided for in the Approved Business Plan or the Annual Budget or that are consistent with Section 4.6, establish reserves for future working capital or other capital needs or for any other purpose of the Company or any Subsidiary Entity.

(dd) Designation of any Designated Manager. Except for the appointment of members of the Transition Team in accordance with Section 4.2(j), appoint or remove any Person as a Designated Manager or, subject to Section 4.2(i), appoint or remove any Person as a member, manager or officer of any Subsidiary Entity.

It is understood and agreed that any Member or Designated Manager may initiate a request to the Management Committee for consideration of a proposed Major Decision.

Section 4.4 Budgets and Business Plans.

(a) On or before October 15th of each year during the term hereof, the applicable Designated Manager shall prepare and submit to the Members for Approval of the Members a proposed update to the Initial Business Plan and a proposed annual budget for the next calendar year.

(b) At the first quarterly Management Committee meeting following the completion of each Fiscal Year, the agenda items shall include a review of the then-current Approved Business Plan and the proposed updates and proposed annual budget submitted by the applicable Designated Manager to determine whether the proposed updates or other adjustments thereto should be Approved, and to approve of proposed Annual Budget for the ensuing year. However, unless the Approval of the Management Committee is obtained for proposed adjustments to the previously-approved Approved Business Plan (or the previously-approved Annual Budget), the previously-approved Approved Business Plan (including, where applicable, any capital budgets, to the extent that such previously-approved capital budgets and the Approved Business Plan contemplated the continuation of capital expenditures for particular projects in future periods inclusive of the period in question) shall remain in full force and effect (except with respect to the elements of the Approved Business Plan that consist of the portion of the previously-approved Annual Budget that involves an operating budget, as provided below). If the Management Committee does not approve of an Annual Budget that includes an operating budget for any Archstone Residual Asset for any year, then, until an operating budget for such asset for such year is Approved by the Management Committee, the operating budget included in the prior year's Annual Budget shall be utilized with adjustments thereto to reflect (i) any increases in particular line items that have been Approved by the Management Committee, (ii) as to other items, adjustments to reflect increases in the cost of living and increases in the cost of non-discretionary items (such as debt service payments, property taxes, insurance premiums (for coverages required pursuant to the applicable Approved Business Plan), utility charges or costs required to be incurred pursuant to the requirements of contracts), and (iii) increases resulting from emergencies or force majeure events.

(c) The Members acknowledge that one of the purposes of the Company is to realize upon and dispose of the Company Assets and, accordingly, the Approved Business Plan for the Company Assets shall include the anticipated timelines for the holding of such Company Assets and the agreed-upon floor prices (and other applicable minimum terms) at which the Company would be authorized to dispose of its interest in the applicable assets. The applicable Designated Manager shall have the principal responsibility for coordinating the implementation of the aspects of the Approved Business Plan relating to the initiation and pursuit of the marketing of the applicable Company Assets for which it has been appointed the Designated Manager, and for keeping the Members informed of the status of such marketing efforts. Transfers of the Company Assets by the Company (or any Subsidiary Entity) shall be authorized subject to Section 4.3(g).

Section 4.5 Implementation of Approved Business Plan by the Designated Managers.

Each of the Designated Managers shall, subject to the availability of Company revenues and Capital Contributions, implement the then applicable Approved Business Plan for the respective Company Assets in good faith and in the ordinary course of business, and, subject to Section 4.3 and the other terms of this Agreement, shall have the sole authority to manage the Company's business in accordance therewith and to incur all expenses reasonably necessary in connection therewith. In performing their duties under this Section 4.5, the Designated Managers shall have the sole power and authority, acting alone, and in the name and on behalf of the Company, to execute for and on behalf of the Company (both on behalf of itself and on behalf of any Subsidiary Entity) any and all documents and instruments which may be necessary

to carry on the business of the Company or the Subsidiary Entities, except to the extent that the prior Approval of the Members or Approval of the Management Committee is required pursuant to any provision of this Agreement (including Section 4.3).

Section 4.6 Reserves — General.

The Company shall maintain and shall cause the Subsidiary Entities to maintain, such reserves as are Approved by the Members or Approved by the Management Committee or set forth in the Approved Business Plan. The Members intend the Approved Business Plan to provide for the retention of sufficient amounts of cash on hand in the accounts of the Company and the Subsidiary Entities to pay reasonably anticipated costs and expenses for the applicable Company Assets covered by such Approved Business Plan.

Section 4.7 Contracts With Contracting Members; Management Agreements.

(a) Except as expressly set forth in an Approved Business Plan or otherwise Approved by the Members or Approved by the Management Committee, neither any Member nor any Designated Manager shall cause or permit the Company or any Subsidiary Entity to engage or pay any compensation to a Member or any Affiliate of a

Member for the provision of services to the Company or any Subsidiary Entity.

(b) [Reserved]

(c) Notwithstanding any provision herein to the contrary, in its sole discretion, the Non-Contracting Member, acting on behalf of the Company or any Subsidiary Entity, may terminate (or otherwise exercise the rights and remedies of the Company or a Subsidiary Entity under) any other agreements with any Contracting Member or any Affiliate of the Contracting Member pursuant to the terms of any such agreement (after it complies with the requirements set forth in the immediately following paragraph), provided that the Non-Contracting Member may not so act on behalf of the Company or any Subsidiary Entity to terminate any such agreement pursuant to any "without cause" termination right. No decision under any such agreement that would constitute a "Major Decision" under this Agreement may be made on behalf of the Company or any Subsidiary Entity without the Approval of the Members or Approval of the Management Committee.

(d) Notwithstanding the provisions of Section 4.7(c), if the Non-Contracting Member reasonably believes that the Contracting Member or any Affiliate of the Contracting Member is not fulfilling its obligations under any agreement, the Non-Contracting Member shall, before exercising any termination right or other right or remedy thereunder, (i) obtain any and all necessary consents and approvals, and (ii) provide the Contracting Member (or Affiliate) with written notice thereof, which shall have 30 days from its receipt of the notice to remedy the situation to the Non-Contracting Member's reasonable satisfaction; provided, that if such situation is reasonably susceptible of cure, but a period longer than 30 days is reasonably required to complete the cure, then such Contracting Member (or Affiliate) shall have an additional period to remedy the situation so long as such Contracting Member (or Affiliate) promptly commences to remedy the situation and diligently prosecutes the same to completion, but such additional period shall not exceed an additional 60 days. If the Non-Contracting

Member is not reasonably satisfied that the situation has been remedied within such period, the Non-Contracting Member shall have the right to terminate the applicable agreement pursuant to the terms thereof, and replace such Contracting Member (or Affiliate) with an Entity selected by the Contracting Member from a list provided by the Non-Contracting Member provided that the list includes the names of at least three (3) Persons unaffiliated with the Non-Contracting Member, all of whom have at least ten (10) years' experience in performing the services that were provided under the applicable terminated agreement.

Section 4.8 Limited Liability of Management Committee Representatives, Transition Team Members and Designated Managers.

Except as expressly set forth in this Agreement or as required by law, no Management Committee Representative, Transition Team member or Designated Manager shall be personally liable for any debt, obligation or liability of the Company whether that liability or obligation arises in contract, tort or otherwise, solely by reason of being a Management Committee Representative, Transition Team member or Designated Manager of the Company.

Section 4.9 Standard of Care of Management Committee Representatives, Transition Team Members and Designated Managers.

Each Management Committee Representative, Transition Team member and Designated Manager shall perform the respective duties as Management Committee Representative, Transition Team member and Designated Manager in good faith, and in the ordinary course of business, consistent with the terms of this Agreement, subject, in the case of Management Committee Representatives, to the terms of Section 1.9, and subject, in the case of Management Committee Representatives, Transition Team members and Designated Managers, to the terms of Section 7.4. Management Committee Representatives, and Designated Managers do not, in any manner, guarantee the return of the Members' Capital Contributions or a profit for the Members from the operations of the Company. Management Committee Representatives, Designated Managers and Transition Team members shall not be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of fraud, gross negligence, willful misconduct, a willful, knowing or intentional breach of this Agreement, or the result of any act or omission performed or omitted by it not in good faith.

Section 4.10 Transactions between the Company and an Interested Management Committee Representative or Designated Manager.

Notwithstanding that it may constitute a conflict of interest, a Management Committee Representative or Designated Manager that is not a Member or Affiliate of a Member may directly or indirectly engage in any transaction (including without limitation the purchase, sale, lease, or exchange of any property, or the lending of funds, or the rendering of any service, or the establishment of any salary, other compensation, or other terms of employment) with the Company; provided however that in each case (a) such transaction is not expressly prohibited by this Agreement, (b) the terms and conditions of such transaction on an overall basis are fair and reasonable to the Company, and (c) the transaction has been Approved by the Members after disclosure of all material facts relating to the conflict or potential conflict.

Section 4.11 Bank Accounts.

Subject to cash management protocols to be Approved by the Management Committee (or Transition Team) (which protocols shall include, without limit, protocols with respect to the signing of checks and the authorization of wire transfers), the applicable Designated Manager as set forth in Schedule J attached hereto may from time to time open bank accounts in the name of the Company (which shall be segregated from, and not commingled with the funds of any Person other than a Subsidiary Entity) in accordance with the terms of Schedule J attached hereto.

Section 4.12 Reimbursement of Expenses.

(a) In connection with their respective services hereunder, the Management Committee Representatives and Designated Managers shall be entitled to reimbursement from the Company of all third-party out-of-pocket expenses of the Company reasonably incurred and paid by such Management Committee Representative or Designated Manager on behalf of the Company.

(b) In connection with their respective services as a Designated Manager, ERP Member and AVB Member shall be entitled to receive fees from the Company, as an Expenditure of the Company, in the amounts, for the term, and payable at the times set forth on Schedule K as and when Approved by the Management Committee; provided, however, that, if not provided for on Schedule K or otherwise Approved by the Management Committee, then such fees shall be paid on a quarterly basis, in advance. On a quarterly basis, the Members shall review in good faith the appropriateness of the compensation arrangements under this Agreement (including, if applicable, any fees provided for on Schedule K) in light of the magnitude of work and services that are being provided by the applicable Designated Managers in consideration thereof, and the allocation of administrative responsibilities and functions as between the Members, and shall, if mutually agreed to, make appropriate adjustments thereto. Each Member acknowledges and agrees that, unless both Members are satisfied with the compensation arrangements that are provided for pursuant to this Agreement, either Member shall have the right, in connection with the quarterly review provided for in this Section 4.12(b), to require the allocation of administrative responsibilities and functions as between

the Members to be revisited, in order to obtain an allocation of the work and services required to be performed in connection with such administrative responsibilities and functions as between the Members in a manner that is consistent with their respective Proportionate Shares.

Section 4.13 Reliance by Third Parties.

Any Person dealing with the Company or any Subsidiary Entity may rely upon a certificate signed by any Member or Designated Manager as to:

(i) the identity of the Members or Designated Managers;

(ii) the existence or non-existence of any fact or facts that constitute a condition precedent to acts by the Company or any Subsidiary Entity or that are in any other manner germane to the affairs of the Company or any Subsidiary Entity;

(iii) the Persons or Designated Managers that are authorized to execute and deliver any instrument or document of, or on behalf of, the Company or any Subsidiary Entity; or

(iv) any act or failure to act by the Company or any Subsidiary Entity, or any other matter whatsoever, involving the Company or any Subsidiary Entity.

Section 4.14 Authorization of the Transactions under the Purchase Agreement and Related Transactions.

The Members have determined that it is in the best interests of the Company to acquire the interests in the Company Assets and Subsidiary Entities, all in accordance with the Purchase Agreement and the Buyers Agreement, and to consummate the closing under the Purchase Agreement and all transactions related thereto. The Members have approved the form, terms and provisions of the bills of sale, assignments and other transfer and other instruments by which such acquisition and other transactions are to occur, as well as the other documents identified on Schedule H. The execution and delivery by the ERP Member or AVB Member as a Member or Designated Manager on behalf of the Company (whether in its individual capacity or in its capacity, after giving effect to the Initial Closing (as defined in the Buyer's Agreement), as the member or manager of any Subsidiary Entity) of any such bills of sale, assignments, other transfer instruments and other documents identified on Schedule H shall constitute the binding act of the Company (and as applicable, such Subsidiary Entity) in all respects, and all such bills of sale, assignments, other transfer and other instruments, and other documents identified on Schedule H, are hereby approved, adopted and confirmed in all respects. The ERP Member and the AVB Member each in its capacity as a Member or Designated Manager is also hereby authorized on behalf of the Company (whether in its individual capacity or in its capacity, after giving effect to the Initial Closing, as the member or manager of any Subsidiary Entity) to do or cause to be done any and all such acts or things and to execute and deliver any and all such further documents and papers as it may deem necessary or appropriate to carry out the full intent and purpose of the authorizations in this Section 4.14 connection with the consummation of the transactions under the Purchase Agreement by which the Company will acquire the interests in the Company Assets and Subsidiary Entities and all transactions related thereto, and, to the extent that ERP Member or AVB Member in its capacity as a Member or Designated Manager has already done any actions or things to effectuate the consummation of such transactions or any other purposes of the authorizations in this Section 4.14, the doing of such actions is hereby ratified, approved, confirmed and adopted in all respects. Any such documents executed or actions taken by a Member of the purported capacity of a "Designated General Administrative Manager" of the Company shall be deemed for all purposes to have been executed or taken by it in its capacity as a Designated Manager, shall constitute the binding act of the Company (and as applicable, such Subsidiary Entity) in all respects, and are hereby approved, adopted and confirmed in all respects.

ARTICLE V

TAXES, ALLOCATIONS AND DISTRIBUTIONS

Section 5.1 Allocations and Tax Provisions.

Notwithstanding any contrary provision of this Agreement, rules governing allocations of income, gains, losses and deductions, certain tax matters and related items are set forth in Schedule E attached hereto and made a part hereof.

Section 5.2 Distributions.

Subject to Section 3.4, distributions of Distributable Cash or other assets of the Company if any, may be made to the Members and in such amounts as may be Approved by the Management Committee from time to time not less frequently than quarterly (and, in the case of proceeds of sale, promptly following the remittance of the proceeds of sale to the Company), to the Members *pro rata* in accordance with their respective Proportionate Shares.

Section 5.3 Withholding.

(a) General. Each Member shall, to the fullest extent permitted by applicable law, indemnify and hold harmless the Company and each Covered Person who is or who is deemed to be the responsible withholding agent for U.S. federal, state or local or non-U.S. income tax purposes against all claims, liabilities and expenses of whatever nature relating to the Company's or such Covered Person's obligation to withhold and to pay over, or otherwise pay, any withholding or other taxes payable by the Company with respect to such Member or as a result of such Member's participation in the Company.

(b) Authority to Withhold; Treatment of Withheld Tax. Notwithstanding any other provision of this Agreement, each Member hereby authorizes the Company to withhold and to pay over, or otherwise pay, any withholding or other taxes payable or required to be deducted by the Company or any of its Affiliates (pursuant to the Code or any provision of U.S. federal, state or local or non-U.S. tax law) with respect to such Member or as a result of such Member's participation in the Company (including as a result of a distribution in kind to such Member). If and to the extent that the Company shall be required to withhold or pay any such withholding or other taxes, such Member shall be deemed for all purposes of this Agreement to have received from the Company as of the time that such withholding or other tax is withheld or paid, whichever is earlier, a distribution of Distributable Cash in the amount thereof, pursuant to the Section 5.2, to the extent that such Member would have received a cash distribution, pursuant to Section 5.2, but for such withholding. To the extent that such withholding or payment exceeds the cash distribution that such Member would have received but for such withholding, ERP Member shall notify such Member as to the amount of such excess and such Member shall make a prompt payment to the Company of such amount by wire transfer, which payment shall not constitute a Capital Contribution and, consequently, shall not increase the Capital Account of such Member.

(c) Withholding Tax Rate. Any withholdings referred to in this Section 5.3 shall be made at the maximum applicable statutory rate under the applicable tax law unless ERP Member

shall have received an opinion of counsel, or other evidence, reasonably satisfactory to ERP Member to the effect that a lower rate is applicable or that no withholding or payment is required.

(d) Withholding from Distributions to the Company. In the event that the Company or any Subsidiary Entity receives a distribution or payment from or in respect of which tax has been withheld, the Company shall be deemed to have received cash in an amount equal to the amount of such withheld tax, and amounts withheld shall be deemed to be Distributable Cash that has been paid to the Member to whom such withholding is attributable. To the extent that such payment exceeds the cash distribution that such Member would have received but for such withholding, ERP Member shall notify such Member as to the amount of such excess and such Member shall make a prompt payment to the Company of such amount by wire transfer, which payment shall not constitute a Capital Contribution and, consequently, shall not increase the Capital Account of such Member.

ARTICLE VI

ACCOUNTING, RECORDS AND REPORTING

Section 6.1 Accounting and Records.

The books and records of the Company shall be kept, and its financial position and the results of its operations recorded, in accordance with generally accepted accounting principles. The books and records of the Company shall reflect all Company transactions and shall be appropriate and adequate for the Company's business in accordance with the Act. Except as specifically provided herein, all books and records of the Company shall be maintained for the Company by AVB Member.

Section 6.2 Access to Accounting and Other Records.

The following provisions of this Section 6.2 shall supersede and act in lieu of the provisions of Section 18-305 of the Act:

(a) Upon request of any Member, the other Member shall promptly deliver or cause to be delivered to the requesting Member, at the expense of the Company, a copy of the following records, to the extent that such other Member is responsible hereunder for the maintenance of such records: (i) a current list of the full name and last known address of each Member and the Capital Contributions and Proportionate Share held of record by each Member; (ii) a current list of the Management Committee Representatives and Designated Managers; and (iii) the Company's federal, state and local income tax returns and reports, if any, for each of its taxable years.

(b) Each Member also has the right to inspect and copy during normal business hours any of the Company's books and records required to be maintained by the other Member, including (i) the Certificate of Formation of the Company, any amendments to the Certificate of Formation, and executed copies of any powers of attorney granted for the purpose of executing the Certificate of Formation; (ii) this Agreement and any amendments to this Agreement; (iii) financial statements of the Company; and (iv) the written minutes of any meeting of the

Management Committee or the Members and any written consents of the Management Committee or the Members for actions taken without a meeting.

(c) Management Committee Representatives and Designated Managers shall also have the right to inspect any and all books and records of the Company required to be maintained hereunder by the Members for purposes reasonably related to their duties as Management Committee Representatives or Designated Managers.

(d) Each Member shall also have the right to inspect any and all books and records maintained by the other Member in connection with any administrative function or responsibility for which that other Member has been designated as a Designated Manager.

Section 6.3 Required Reports.

The applicable Designated Manager as is or hereafter shall be designated on Schedule J attached hereto shall furnish to each Member the following reports prepared for and at the expense of the Company. The AVB Member shall be the Designated Manager for the preparation and distribution of Company-level reports:

(a) Annual Financial Reports. Within the time period designated on Schedule J attached hereto (or, if not designated thereon, as Approved by the Management Committee), the applicable Designated Manager as is or hereafter shall be designated on Schedule J attached hereto shall arrange for, and furnish to the Members, annual audited financial statements for such (full or partial) calendar year accurately reflecting the financial condition of the Company and each Subsidiary Entity, all prepared by the Accountants in accordance with generally accepted accounting principles consistently applied. The audit shall be performed by the Accountants.

(b) Quarterly Reports; Other Information. The applicable Designated Manager as is or hereafter shall be designated on Schedule J attached hereto shall, within the time period designated on Schedule J attached hereto (or, if not designated thereon, as Approved by the Management Committee), cause to be prepared and furnished to the Members unaudited balance sheets and profit and loss statements and unaudited cash flow statements accurately reflecting the operating results of the Company and each Subsidiary Entity, a comparison to the Annual Budget, and containing a narrative executive summary. The applicable Designated Manager as is or hereafter shall be designated on Schedule J attached hereto shall provide to the Members, promptly upon receipt, copies of any and all monthly reports delivered to the Company or any Subsidiary Entity pursuant to any Management Agreement. Each Member is entitled to receive all information reasonably requested to permit such Member to complete deferred tax/FAS 109 calculations on a quarterly basis.

(c) Bank Accounts. With respect to the bank account or accounts maintained by a Member as the Designated Manager in the name of the Company, that Member shall:

(i) promptly following the receipt of any bank account statement, send a copy of such bank account statement to the other Member;

(ii) to the extent permitted and reasonably practicable, arrange to have the applicable bank send such bank account statements directly to the other Member; and

promptly following request, provide to the other Member information regarding deposits or withdrawals from any such bank accounts or any other information related to such bank accounts as reasonably requested by the other Member.

(d) The costs and expenses incurred by the Company or a Designated Manager in establishing and maintaining the books and records of the Company, as well as the annual audit of the books and records of the Company and the Subsidiary Entities, and the costs and expenses incurred in preparing and furnishing any and all such reports and information shall be borne by the Company.

Section 6.4 Tax Returns.

ERP Member shall cause to be prepared by the Accountants all tax returns required of the Company and each Subsidiary Entity. Not later than August 1 of each year ERP Member shall distribute or cause to be distributed to the Members drafts of the proposed tax returns to be filed on behalf of the Company or any Subsidiary Entity. Following the distribution of such draft tax returns, but prior to ten (10) Business Days prior to the due date for the filing thereof (or such alternative date as may be Approved by the Management Committee), any of the Members may provide comments and input to such Designated Manager, and such Member and the Designated Manager shall consult with the Accountants concerning the comments and input so provided, as to the advisability of incorporating such comments and input into the tax returns to be so filed. Following the preparation of revised tax returns reflecting such input and comments (to the extent deemed appropriate by the Accountants), such Designated Manager shall timely file or cause to be timely filed all such tax returns required to be filed by the Company as reasonably determined by the Members. All decisions regarding or affecting the reporting or characterization for tax purposes of any material items of Company income, gain, loss or deduction shall require the Approval of the Members (which approval shall not be unreasonably withheld).

Section 6.5 Tax Matters Partner.

ERP Member is designated the Tax Matters Member of the Company as provided in Section 6231(a)(7) of the Code and corresponding provisions of applicable state law. This designation is effective only for the purpose of activities performed pursuant to the Code, corresponding provisions of applicable state law and under this Agreement. ERP Member shall inform the Members of all tax audits and other tax proceedings, promptly update the Members of all material developments with respect thereto and provide copies of all correspondence with and submissions to the tax authorities. ERP Member shall not make any material decision or take any material action as the Tax Matters Member that could adversely affect a Member or its Parent or Affiliate without the prior consent of such Member. ERP Member, as the Tax Matters Member, shall permit the Members at the Company's expense to participate in any tax audit or other proceeding which could affect the taxes of the Company or income or loss allocable to or

taxes payable by any Member with respect to its interest in the Company. ERP Member shall also perform its obligations with respect to tax matters under Schedule E.

ARTICLE VII

INDEMNIFICATION, INSURANCE AND EXCULPATION

Section 7.1 Indemnification.

(a) To the fullest extent permitted by law, the Company shall indemnify, hold harmless and defend ERP Member, AVB Member, each Parent, each Affiliate of any Member, each Management Committee Representative, each Designated Manager, each Member's, Affiliate's, Parent's agents, officers, partners, members, employees, representatives, directors or shareholders (including, without limitation, any members of the Transition Team) and each Subsidiary Entity's officers, agents and employees (each, a "**Covered Person**") from and against any and all losses, claims, damages, liabilities, whether joint or several, expenses (including legal fees and expenses), judgments, fines and other amounts paid in settlement (collectively, "**Indemnified Losses**"), incurred or suffered by such Covered Person, as a party or otherwise, in connection with any threatened, pending or completed claim, demand, action, suit or proceeding, whether civil, criminal, administrative or investigative, and whether formal or informal, arising out of or in connection with the business or the operation of the Company or any Subsidiary Entity, unless the Indemnified Losses were the result of fraud, gross negligence, willful misconduct or a willful, knowing or intentional breach of this Agreement by such Covered Person, or the result of any act or omission performed or omitted by such Covered Person not in good faith (in which case the Company shall have no indemnification obligation with respect to such Indemnified Losses) or the Indemnified Losses arise pursuant to a Guaranty Obligation (in which case the Company shall have no indemnification obligation with respect to such Indemnified Losses but the provisions of Section 3.6 shall apply).

(b) No Covered Person shall be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of fraud, gross negligence, willful misconduct or a willful, knowing or intentional breach of this Agreement by such Covered Person, or the result of any act or omission performed or omitted by such Covered Person not in good faith.

(c) To the fullest extent permitted by law, unless it is determined that a Covered Person is not entitled to be indemnified therefor pursuant to this Section 7.1, expenses incurred by such Covered Person in defending any claim, demand, action, suit or proceeding subject to this Section shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking by or on behalf of the Covered Person to repay such amount.

(d) The indemnification provided by this Section 7.1 shall be in addition to any other rights to which any Covered Person may be entitled under this Agreement, any other agreement, as a matter of law or otherwise, and shall inure to the benefit of the heirs, legal representatives, successors, assigns and administrators of the Covered Person.

Section 7.2 Procedures; Survival.

(a) If a Covered Person wishes to make a claim under Section 7.1, the Covered Person should notify the Company in writing within ten (10) days after receiving written notice of the commencement of any action that may result in a right to be indemnified under Section 7.1; provided however that the failure to notify the Company shall not relieve the Company of any liability for indemnification pursuant to Section 7.1 (except to the extent that the failure to give notice will have been materially prejudicial to the Company).

(b) A Covered Person shall have the right to employ separate legal counsel in any action pursuant to Section 7.1 and to participate in the defense of the action. The fees and expenses of such legal counsel shall be at the expense of the Covered Person unless (i) the Members or Management Committee have Approved the Company's payment of such fees and expenses, (ii) the Company has failed to assume the defense of the action without reservation and employ counsel within a reasonable period of time after being given the notice required above, or (iii) the named parties to any such action (including any impleaded parties) include both the Covered Person and the Company and the Covered Person has been advised by its legal counsel that representation of the Covered Person and the Company by the same counsel would be inappropriate under applicable standards of professional conduct because of actual or potential differing interests between them. It is understood, however, that the Company shall, in connection with any one such action or separate but substantially similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances, be liable for the reasonable fees and expenses of only one separate firm of attorneys at any time for all such Covered Persons having actual or potential differing interests with the Company.

(c) The Company shall not be liable for any settlement of any action against any Covered Person for which the Company is required to indemnify such Covered Person hereunder which is agreed to without the Approval of the Members or Management Committee.

(d) The indemnification obligations set forth in this Article VII hereof shall survive the termination of this Agreement.

Section 7.3 Insurance.

The Company shall maintain, for the benefit of the Company, its Subsidiary Entities, the Members, the Management Committee Representatives and the Designated Managers, and at the expense of the Company, policies of insurance in compliance with Schedule I attached hereto.

Section 7.4 Rights to Rely on Legal Counsel, Accountants.

No Covered Person shall be liable, responsible or accountable in damages or otherwise to the Company or any Member for any performance or omission to perform any acts in reliance on the advice of accountants or legal counsel for the Company.

ARTICLE VIII

TRANSFER OF MEMBERSHIP INTERESTS; ADMISSION OF ADDITIONAL MEMBERS

Section 8.1 Transfer or Assignment of Membership or Manager Interests.

No Member shall be entitled to assign, convey, sell, encumber or in any manner alienate or otherwise Transfer all or part of such Member's Membership Interest *except* in strict compliance with each and all of the other Sections of this Article VIII. No Designated Manager shall be entitled to assign, convey, sell, encumber or in any manner alienate or otherwise Transfer all of part of such Designated Manager's rights, interests, duties or obligations under this Agreement, in its capacity as a Designated Manager, without the Approval of the Members, except, in the case of a Designated Manager which is also a Member, to a successor to which the entire Membership Interest of such Designated Manager has been Transferred in full compliance with this Agreement.

Section 8.2 Conditions to Transfer by Member.

Except as provided in Section 8.3 or Section 8.4, no Member may Transfer all or part of such Member's Membership Interest, nor shall the direct or indirect interests in any Member be transferred to any Person if, as a result thereof, that Member would no longer be directly or indirectly wholly-owned by ERP or Equity Residential (in the case of a Transfer of the interests in ERP Member) or AVB (in the case of a Transfer of the interests in AVB Member), unless such Transfer has been approved in writing by the other Member in its sole and absolute discretion.

Section 8.3 Permitted Transfers.

A Member shall be permitted to Transfer all or any part of its Membership Interest without further consent hereunder to an Affiliate of that Member which is directly or indirectly wholly-owned by ERP or Equity Residential (in the case of a Transfer by ERP Member) or by AVB (in the case of a Transfer by AVB Member), so long as, in connection with such Transfer that Member's Parent provides to the other Member a ratification and reaffirmation of its Parent Guaranty and such Transfer would not be a violation of or an event of default under, or give rise to a right to accelerate any indebtedness described in, any note, mortgage, loan agreement or similar instrument or document to which the Company or any Subsidiary Entity is a party unless such violation or event of default shall be waived by the parties thereto.

Section 8.4 Transfer of Interests in Equity Residential, ERP or AVB.

Notwithstanding anything to the contrary contained in this Agreement, (a) neither Transfers of interests in ERP, nor the issuance or redemption of interests in ERP, nor Transfers of common or preferred shares or other equity interests in Equity Residential, nor issuance or redemption of common or preferred shares or other equity interests in Equity Residential (other than those occurring in connection with an Extraordinary Transaction), shall constitute a "Transfer" of the interest of ERP Member under this Agreement, or constitute a default, breach or withdrawal by ERP Member or any other violation of this Agreement by ERP Member; (b)

neither Transfers of shares of stock in AVB, nor issuance or redemption of shares of stock in AVB (other than those occurring in connection with an Extraordinary Transaction), shall constitute a "Transfer" of the interest of AVB Member under this Agreement, or constitute a default, breach or withdrawal by AVB Member or any other violation of this Agreement by AVB Member; and (c) notwithstanding clauses (a) and (b) above, neither any merger or other consolidation of Equity Residential, ERP or AVB with any other Person, nor any transfer of all or substantially all of the common equity of Equity Residential, ERP or AVB (including by way of tender offer), nor any sale of all or substantially all of the assets of Equity Residential, ERP or AVB, nor any transfer, issuance or redemption of common or preferred shares or other equity interests in ERP or Equity Residential or AVB, as applicable, in connection with such a merger or consolidation of Equity Residential, ERP or AVB, as applicable (each, an "**Extraordinary Transaction**"), shall constitute a "Transfer" of the interest of ERP Member or AVB Member, as applicable, under this Agreement, or constitute a default, breach or withdrawal by ERP Member or AVB Member, as applicable, or any other violation of this Agreement by ERP Member or AVB Member, as applicable, so long as, in the case of any such Extraordinary Transaction, the surviving Entity or buyer (the "**Successor Parent**"), as applicable, in any such transaction provides notice of such transaction to the other Member within five (5) Business Days thereafter and certifies that as of the date of consummation of, and after giving effect to, such transaction, it is either (i) a publicly traded company which continues to qualify as a REIT and has total equity as determined in accordance with U.S. generally accepted accounting principles of not less than $1.5 billion, or (ii) it has total equity as determined in accordance with U.S. generally accepted accounting principles of not less than $2 billion. If the Successor Parent delivers a notice and

certificate in accordance with clause (ii) of the immediately preceding sentence, then, within ninety (90) days following the end of each fiscal year of the Successor Parent thereafter, the Successor Parent shall deliver a certificate to the other Member that certifies that, at the end of such fiscal year, it had total equity as determined in accordance with U.S. generally accepted accounting principles of not less than $2 billion. For the avoidance of doubt, a Change in Board Control of Equity Residential or AVB shall not constitute a "Transfer" of the interest of ERP Member or AVB Member, as applicable, under this Agreement, or constitute a default, breach or withdrawal by ERP Member or AVB Member, as applicable, or any other violation of this Agreement by ERP Member or AVB Member, as applicable.

Section 8.5 Unauthorized Transfers Void.

Any Transfer or purported Transfer in violation of the provisions of this Article VIII shall be null and void *ab initio* and shall constitute a material breach of this Agreement. In the event of any Transfer or purported Transfer of all or any part of a Member's Membership Interest in violation of this Agreement, without limiting any other rights or remedies of the Company or the other Members, the assignee or purported assignee shall have no right to participate in the management of the business and affairs of the Company or to become a Member, or to receive any distributions of any kind or to receive any part of the share of profits or other compensation by way of income and the return of contributions, or any allocation of income, gain, loss, deduction, credit or other items to the owner of such Membership Interest in the Company would otherwise be entitled.

Section 8.6 Admission of Substitute Member; Liabilities.

(a) An assignee of all or any part of Membership Interest shall be admitted as a Substitute Member only if (i) the Transfer of such Membership Interest complies in all respects with this Article VIII and (ii) the prospective Substitute Member delivers a signed instrument pursuant to which the assignee agrees to all of the terms and conditions of, and to be bound by, this Agreement, and to assume all of the obligations of the transferring Member and to be subject to all the restrictions and obligations to which the transferring Member is subject under the terms of this Agreement. The admission of a Substitute Member shall not release the transferring Member from any liability to the Company or to the other Members in respect of its Membership Interest that may have existed prior to such admission.

(b) ERP Member shall reflect the admission of such Substitute Member in the records of the Company as soon as possible after satisfaction of the conditions set forth in this Agreement. Schedule C of this Agreement shall be deemed to be amended to reflect the admission of the Substitute Member upon such admission; and each of Members then of record hereby consents to such amendment to the extent required by law or this Agreement.

Section 8.7 Admission of Additional Members.

Unless the Approval of the Members has been obtained, and then, only in accordance with the terms and conditions Approved by the Members, the Company shall not admit any additional Members.

ARTICLE IX

SPECIAL RIGHTS AND OBLIGATIONS OF MEMBERS AND THE COMPANY

Section 9.1 [Reserved]

Section 9.2 [Reserved]

Section 9.3 Other Business Activities of the Members.

Neither the Members nor any Affiliates of the Members shall be obligated to present any investment opportunity to the Company or any other Member, even if the opportunity is of a character consistent with the Company's other activities and interests. The Members and the Members' Affiliates may engage in or possess any interest, directly or indirectly, in any other business venture of any nature or description independently or with others, including but not limited to, the ownership, financing, leasing, operation, management, syndication, brokerage, or development of real property competitive with the Company Assets. Membership in the Company and the assumption by either Member of any duties hereunder shall be without prejudice to such Member's rights (or the rights of its affiliates) to have or pursue such other interests and activities and to receive and enjoy profits or compensation therefrom, and neither the Company nor the other Member(s) shall have any right by virtue of this Agreement in and to such ventures or the income or profits derived therefrom.

Section 9.4 Indemnification Claims Under Purchase Agreement.

Each Member acknowledges and agrees that any claim for indemnification which the Company may have against the Seller pursuant to the Purchase Agreement shall be asserted in compliance with Section 5.6 of the Buyer's Agreement. If any Member determines that a basis exists for the Company to assert a claim against the Seller, it shall deliver written notice thereof to the other Member specifying in reasonable detail the factual basis of such claim, stating the amount of losses (or if not known, a good faith estimate of the amount of losses) and the method of computation thereof, containing a reference to any and all provisions of the Purchase Agreement with respect to which indemnification could be sought and stating its good faith determination (and specifying in reasonable detail the factual basis for such determination) that such claim is an "Archstone Residual Claim" as such term is defined in the Buyers Agreement. Promptly following the delivery of such notice, the Members shall meet and confer to determine whether to Approve the making of such claim pursuant to the Purchase Agreement, subject to compliance with the terms of Section 5.6 of the Buyers Agreement.

Section 9.5 [Reserved]

Section 9.6 Employees; Transition Plan.

(a) The Members acknowledge and agree that the Company and the Archstone Subsidiaries shall be bound by the Transition Plan (as defined in the Buyers Agreement) approved by Equity Residential, ERP and AVB pursuant to Section 6.2(b) of the Buyers Agreement. No amendment, modification, waiver or departure from the requirements of the Transition Plan or Section 6.2(b) of the Buyers Agreement shall be entered into or adopted without the Approval of the Members.

(b) If, pursuant to the Transition Plan, one or more employees are to be retained by any Subsidiary Entity following the date of this Agreement, then the Company shall cause such Subsidiary Entity to comply with all applicable laws with respect to such employees, and all policies with respect to wages, salaries, benefits,

severance and all other applicable employment-related matters shall be as Approved by the Members. Any decision to terminate any employee of any Subsidiary Entity following the Transition Period (as defined in the Buyers Agreement) shall require the Approval of the Members.

(c) With respect to any employee who is to be terminated by any Subsidiary Entity subsequent to the date hereof, the Company shall cause such Subsidiary Entity to comply with the requirements of 29 USC §2101 et seq., the Worker Adjustment and Retraining Notification Act, or any state law analogue. Each Member shall be required to contribute its Proportionate Share of any Severance (as defined in the Buyers Agreement) that is due and payable to such employee to the extent that the retained cash of the Company or applicable Subsidiary Entity is insufficient therefor.

Section 9.7 Office Leases.

With respect to any Office Leases that are acquired by the Company or to which the Company succeeds as a result of the acquisition of the Company Assets, the Members agree to use their commercially reasonable efforts to cooperate to mitigate the costs associated with such

Office Lease. If any Parent shall have elected pursuant to Section 6.3(a) of the Buyers Agreement to assume any Office Lease or to obtain the sublease of premises under an Office Lease prior to the date of this Agreement, but the applicable consents or other conditions necessary to effectuate such election shall not have been obtained or satisfied prior to the date of this Agreement, then the Members shall be bound by, and shall cause the Company to comply with, the obligations of their respective Parents under the Buyers Agreement, so as to enable such assumption or sublease to be effectuated once the applicable consents or other conditions necessary to effectuate such election have been obtained or satisfied. Notwithstanding anything to the contrary contained in the Buyers Agreement, the Members agree to cooperate in good faith following the date of this Agreement on substantially the same terms as are provided in Section 6.3(a) of the Buyers Agreement should any of the Parents seek to assume any particular Office Lease or sublease any premises leased thereunder on terms consistent with the terms provided in Section 6.3(a) of the Buyers Agreement, notwithstanding that the "Initial Closing" referred to therein has occurred, but only if the Company has not, with respect to any particular Office Lease or premises leased thereunder, entered into an assignment of such Office Lease or sublease of such premises with a Third Party Entity with the Approval of the Members or the Approval of the Management Committee. The Members acknowledge that AVB has elected to assume the lease of premises on Research Boulevard in Austin, Texas subject to receiving applicable landlord consent, and shall cause the Company to cause its applicable Subsidiary Entity to assign such lease to AVB upon AVB's assumption of the obligations thereunder, promptly following the receipt of the applicable landlord consent.

ARTICLE X

DISSOLUTION AND LIQUIDATION OF THE COMPANY

Section 10.1 Events Causing Dissolution.

The Company shall be dissolved only upon the occurrence of any of the following events ("**Dissolution Event**"):

(a) The sale, exchange or other disposition or distribution of all or substantially all of the assets and properties of the Company;

(b) The Approval of the Members; or

(c) The final decree of a court of competent jurisdiction that such dissolution is required under applicable law.

The bankruptcy or dissolution of a Member shall not cause the Member to cease to be a member of the Company and, upon the occurrence of such an event, the business of the Company shall continue without dissolution.

Section 10.2 Liquidation and Winding Up.

Upon the occurrence of a Dissolution Event, the Company shall be liquidated and the Management Committee (or other Person designated by the Management Committee or a decree

of court) shall wind up the affairs of the Company. In such case, the Management Committee (or such Designated Manager or other Person designated by the Management Committee or a decree of court) shall have the authority, in its sole and absolute discretion, to sell the Company's assets and properties or distribute them in kind. The Management Committee or other Person winding up the affairs of the Company shall promptly proceed to the liquidation of the Company. In proceeding with the winding-up process, it is the Members' objective that the winding-up process for the Company shall be completed within three (3) years following the sale of the Company's last asset (assuming that the Company and its Subsidiary Entities are not then parties to any outstanding litigation which has not been resolved). If the Approval of the Members is obtained, the Members may elect to accelerate the winding-up process by mutually agreeing to set aside reserves or entering into a cost-sharing agreement with respect to any trailing liabilities of the Company or its Subsidiary Entities. In a liquidation, the assets and property of the Company shall be distributed in the following order of priority:

(a) To the payment of all debts and liabilities of the Company in the order of priority as provided by law (other than outstanding loans from a Member or Management Committee Representative);

(b) To the establishment of any reserves deemed necessary by the Management Committee or the Person winding up the affairs of the Company, for any contingent liabilities or obligations of the Company (including those of the Person serving as the liquidator);

(c) To the repayment of any outstanding loans from a Member or Management Committee Representative to the Company; and

(d) The balance, if any, to the Members in accordance with Section 5.2 of this Agreement.

Upon liquidation of the Company, no Member shall be required to contribute any amount to the Company solely because of a deficit or negative balance in the Capital Account of such Member and any deficit or negative balance shall not be considered an asset of the Company for any purpose.

ARTICLE XI

REPRESENTATIONS AND WARRANTIES

Section 11.1 Representations and Warranties of ERP Member.

ERP Member hereby represents and warrants to AVB Member as follows:

(a) Organization. ERP Member is a limited liability company duly organized, validly existing and in good standing under the laws of the state of Delaware and has all requisite limited liability company power and authority to own, lease and operate its properties and to carry on its business as it is presently being conducted.

(b) Authorization; Validity of Agreements.

(i) ERP Member has the requisite limited liability company power and authority to execute and deliver this Agreement and to perform all of its obligations hereunder. The execution and delivery by ERP Member of this Agreement, and the performance by ERP Member of its obligations hereunder, have been duly authorized by, and no other proceedings, actions or authorizations on the part of ERP Member or any holder of equity interest in ERP Member are necessary to authorize the execution and delivery by ERP Member of this Agreement.

(ii) This Agreement has been duly executed and delivered and constitutes the legal, valid and binding obligation of ERP Member, enforceable against them in accordance with its terms, except that (a) such enforcement may be subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws, now or hereafter in effect, affecting creditors' rights generally, and (b) general equitable principles.

(a) Consents and Approvals; No Violations. The execution and delivery by ERP Member of this Agreement, and the performance by ERP Member of its obligations hereunder, does not and will not (a) violate, contravene or conflict with any provision of any organizational documents of ERP Member; (b) violate, contravene or conflict with any material orders or laws applicable to ERP Member or any of its material properties or assets; or (c) require on the part of ERP Member any filing or registration with, notification to, or authorization, consent or approval of, any Governmental Authority, except for such filings or registrations with, notifications to, or authorizations, consents or approvals of any Governmental Authority as may be referenced in Section 7.3 of the Purchase Agreement.

Section 11.2 Representations and Warranties of AVB Member.

AVB Member hereby represents and warrants to ERP Member as follows:

(a) Organization. AVB Member is a limited liability company that is duly organized, validly existing and in good standing under the laws of the state of Delaware and has all requisite limited liability company power and authority to own, lease and operate its properties and to carry on its business as it is presently being conducted.

(b) Authorization; Validity of Agreements.

(i) AVB Member has the requisite limited liability company power and authority to execute and deliver this Agreement and to perform all of its obligations hereunder. The execution and delivery by AVB Member of this Agreement, and the performance by AVB Member of its obligations hereunder, have been duly authorized by, and no other proceedings, actions or authorizations on the part of AVB Member or any holder of equity interest in it are necessary to authorize the execution and delivery by AVB Member of this Agreement.

(ii) This Agreement has been duly executed and delivered and constitutes the legal, valid and binding obligation of AVB Member, enforceable against it in accordance with its terms, except that (a) such enforcement may be subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws, now or hereafter in effect, affecting creditors' rights generally, and (b) general equitable principles.

(c) Consents and Approvals; No Violations. The execution and delivery by AVB Member and the performance by AVB Member of its obligations hereunder, does not and will not (a) violate, contravene or conflict with any provision of any organizational documents of AVB Member; (b) violate, contravene or conflict with any material orders or laws applicable to AVB or any of its respective material properties or assets; or (c) require on the part of AVB Member any filing or registration with, notification to, or authorization, consent or approval of, any Governmental Authority, except for such filings or registrations with, notifications to, or authorizations, consents or approvals of any Governmental Authority as may be referenced in Section 8.3 of the Purchase Agreement.

ARTICLE XII

MISCELLANEOUS

Section 12.1 Complete Agreement.

This Agreement and the Certificate of Formation constitute the complete and exclusive statement of agreement among the Members with respect to the subject matter hereof. This Agreement and the Certificate of Formation replace and supersede all prior agreements by and among the Members or any of them in respect of the Company including, without limitation, the Archstone Residual JV Term Sheet that is attached to the Buyers Agreement (but does not supersede as among the Parents the provisions of the Buyers Agreement that survive the Initial Closing). This Agreement and the Certificate of Formation supersede all prior written and oral statements; and no representation, statement, condition or warranty not contained in this Agreement or the Certificate of Formation shall be binding on the Members or the Company or have any force or effect whatsoever.

Section 12.2 Governing Law; Venue.

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to the principles of conflicts of law; provided that in the event of any conflict or inconsistency between the provisions of this Agreement and the requirements of the Act, the provisions of this Agreement shall govern to the extent permitted under the Act. Proper venue for any litigation involving this Agreement shall be in any federal or state court located in the State of Delaware. Each Member hereto hereby irrevocably and unconditionally waives, to the extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement brought in any court referred to in this Section 12.2. The Members hereby irrevocably waive, to the fullest extent

permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court. This provision shall survive the termination of this Agreement.

Section 12.3 No Assignment; Binding Effect.

This Agreement may not be transferred or assigned by any party hereto other than in the case of a Member, in full compliance with Article VIII hereof as an integrated part of a permissible Transfer of all of the Membership Interest of the Member. Any purported

assignment, sale, Transfer, delegation or other disposition, except as expressly permitted herein, shall be null and void and shall constitute a material breach of this Agreement. Subject to the foregoing restrictions and Article VIII hereof, this Agreement shall be binding upon and inure to the benefit of the Members and their respective successors and assigns.

Section 12.4 Severability.

If any provision of this Agreement is held to be illegal, invalid, or unenforceable under any present or future laws applicable to the Company effective during the Term of this Agreement, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement.

Section 12.5 No Partition.

No Member shall have the right to partition the Company or the Company Assets or any part thereof or interest therein, or to file a complaint or institute any proceeding at law or in equity to partition the Company or the Company Assets or any part thereof or interest therein. Each Member, for such Member and its successors and assigns, hereby waives any such rights. The Members intend that, during the term of this Agreement, the rights of the Members and their successors in interest, as among themselves, shall be governed solely by the terms of this Agreement and by the Act.

Section 12.6 Multiple Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed a duplicate original and all of which, when taken together, shall constitute one and the same document. Execution and delivery of this Agreement by exchange of facsimile copies bearing the signatures of the parties shall constitute a valid and binding execution and delivery of this Agreement by the parties.

Section 12.7 Additional Documents and Acts.

Each Member agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform all of the terms, provisions, and conditions of this Agreement and the transactions contemplated hereby at any time.

Section 12.8 REIT Compliance.

Each Member acknowledges that it has been advised that Equity Residential (in the case of ERP Member) and AVB (in the case of AVB Member) are REITs. Each Member agrees that the other Member shall be entitled to exercise any vote, consent, election or other right under this Agreement with a view to maintaining the status of such Parents as REITs. In furtherance of the foregoing, absent a Major Decision to the contrary, substantially all of the Company's income producing assets, if any, shall consist of "real estate assets, cash and cash items (including

receivables), and Government securities" within the meaning of § 856(c)(4)(A) of the Code and generate only gross income of the Company that satisfies the requirements of § 856(c)(3) of the Code or § 856(c)(2)(B) of the Code. The Company's activities and assets otherwise shall be limited to the ownership of Archstone Communities LLC.

Section 12.9 Amendments.

All amendments and modifications to this Agreement shall be in writing and, to be effective, shall be Approved by the Members.

Section 12.10 No Waiver.

No delay, failure or waiver by any party to exercise any right or remedy under this Agreement, and no partial or single exercise of any such right or remedy, shall operate to limit, preclude, cancel, waive or otherwise affect such right or remedy, nor shall any single or partial exercise of such right or remedy limit, preclude, impair or waive any further exercise of such right or remedy or the exercise of any other right or remedy.

Section 12.11 Time Periods.

Any time period hereunder which expires on, or any date for performance hereunder which occurs on, a day which is not a Business Day, shall be deemed to be postponed to the next Business Day. The first day of any time period hereunder which runs "from" or "after" a given day shall be deemed to occur on the day subsequent to that given day.

Section 12.12 Notices.

Except as otherwise provided in this Agreement regarding notices by electronic mail or other electronic means to Members and Management Committee Representatives and regarding Member proxies, all notices, consents and other communications hereunder shall be in writing (including telecopy or similar writing) and shall be deemed to have been duly given (a) when delivered by hand or by Federal Express or a similar overnight courier to (or if that day is not a Business Day, or if delivered after 5:00 p.m., New York, New York time on a Business Day, on the first following day that is a Business Day), (b) five (5) days after being deposited in any United States Post Office enclosed in a postage prepaid, registered or certified envelope addressed to, or (c) when successfully transmitted by facsimile to, the Member for whom intended, at the address or facsimile number for such Member set forth in Schedule G attached hereto.

Section 12.13 Dispute Resolution; Mediation.

In the event of any claim, dispute or other matter in controversy between the Members arising under this Agreement, each Member agrees that, prior to commencing any lawsuit relating to such claim, dispute or other matter in controversy, (i) it shall notify the other Member in writing of the claim, dispute or other matter in controversy, including a reasonably detailed explanation of such Member's understanding of the respective positions of each of the Members with respect to the matters in dispute; (ii) the respective chief executive officers of Equity Residential and AVB or their designees shall meet and confer at a mutually convenient time and

place within twenty (20) Business Days following the request of either Member concerning such claim, dispute or other matter in controversy (such period is referred to herein as the "**Discussion Period**"); (iii) if the Members are unable during the Discussion Period to reach a final agreement concerning such claim, dispute or other matter in controversy, then, prior to commencing any lawsuit relating to such dispute, the Member that would intend to commence such lawsuit shall deliver a written request to the other Member for non-binding mediation to be administered by the New York, New York office of Judicial Arbitration & Mediation Services, Inc. or its successor ("**JAMS**") or any other office of JAMS agreed to by the Members, in accordance with JAMS's mediation procedures in effect on the date of the Agreement (and if the Members cannot agree on the selection of a mediator, the Member asserting the claim, dispute or controversy shall file a request in writing for the appointment of a mediator with the New York, New York office of JAMS, with a copy of the request being served on the other Member, and the mediation shall be conducted by the appointed mediator). Mediation shall proceed in advance of the commencement of any lawsuit for a period of 60 days from the date that the applicable Member's request for commencement of the mediation procedure was delivered to the other Member. The parties shall share the mediator's fee and any filing fees equally. Without limiting any other applicable limitation in this Agreement, in no event shall the procedures and limitations set forth in this Section 12.13 limit or condition the right of any Member to commence a lawsuit against any third party or to file an answer or counterclaim or cross-claim (including, without limitation, as against the other Member) in any lawsuit that has been commenced by any third party. The Members agree that the provisions in this Section 12.13 shall apply to any claim, dispute or controversy asserted by any Member, but once the Members have engaged in the Discussion Period and mediation procedures provided for herein with respect to such claim, dispute or controversy, no Member shall be bound to comply with the Discussion Period and mediation procedures provided for herein with respect to any further claim, dispute or controversy that relates to substantially the same acts, omissions or occurrences with respect to which the Discussion Period and mediation procedures provided for herein have already taken place. The Members agree that the discussions during the Discussion Period or in connection with such mediation procedures are intended to be settlement communications, and accordingly (i) none of the discussions during the Discussion Period or in connection with such mediation procedures, nor any proposals (whether written or oral), correspondence, or documents of any kind generated during the period of and in connection with the Discussion Period or in connection with such mediation procedures, shall be raised, disclosed or admissible in any judicial, arbitration or similar proceeding for any purpose nor shall any such discussions, proposals, correspondence or documents be used as a defense or counter-claim in any action; (ii) such discussions, proposals, correspondence or documents are without prejudice to any of the parties' rights, defenses and remedies at law, in equity or hereunder; and (iii) neither the preparation, distribution, response to or failure to respond to any such discussions, proposals, correspondence or documents shall constitute an agreement, or the basis on which any party may claim reliance on any agreement, except to the extent that the Members in connection with the discussions during the Discussion Period or in connection with such mediation procedures enter into a written agreement that is intended to be definitive and binding. The foregoing provisions are intended to be broader than the restrictions on admissibility with respect to settlement discussions contained in any applicable state or federal statute or rule of court, including, without limitation, Rule 408 of the Federal Rules of Evidence. If the Members or Management Committee Representatives reach an impasse over a proposed Major Decision or any other

proposed decision requiring the Approval of the Members or the Approval of the Management Committee, at the election of either Member, upon not less than ten (10) Business Days' notice to the other Member, the Discussion Period and non-binding mediation process provided for in this Section 12.13 shall be commenced, to assist the Members in attempting to resolve the impasse, notwithstanding that no claim, dispute or other controversy with respect to which a Member may seek to commence a lawsuit then exists with respect to such matter.

Section 12.14 Specific Performance.

Because of the unique character of the Membership Interests, the Members and the Company shall be irreparably damaged if this Agreement is not specifically enforced. If any dispute arises concerning the Transfer of all or any part of a Member's Membership Interest, an injunction may be issued restraining any purported Transfer pending the determination of such controversy. Such remedy shall, however, be cumulative and not exclusive, and shall be in addition to any other remedy which the Members or the Company may have.

Section 12.15 No Third Party Beneficiary.

This Agreement is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and permitted assigns, and no other Person shall have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise.

Section 12.16 Waiver of Jury Trial.

EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY OR CLAIM WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE CONTEMPLATED TRANSACTIONS. THIS WAIVER MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 12.16) AND EXECUTED BY EACH OF THE PARTIES HERETO). The scope of this waiver is intended to be all-encompassing of any and all disputes that may be filed in any court and that relate to the subject matter herein, including contract claims, tort claims, breach of duty claims and all other common law and statutory claims. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

Section 12.17 Cumulative Remedies.

The rights and remedies of any party as set forth in this Agreement are not exclusive and are in addition to any other rights and remedies now or hereafter provided by law or at equity, subject to the provisions of Section 12.13 hereof.

Section 12.18 Exhibits and Schedules.

All Exhibits and Schedules attached hereto are hereby incorporated by reference into, and made a part of, this Agreement.

Section 12.19 Interpretation.

The titles and section headings set forth in this Agreement are for convenience only and shall not be considered as part of agreement of the parties. When the context requires, the plural shall include the singular and the singular the plural, and any gender shall include all other genders. No provision of this Agreement shall be interpreted or construed against any party because such party or its counsel was the drafter thereof.

Section 12.20 Survival.

It is the express intention and agreement of the Members that all covenants, agreements, statement, representations, warranties and indemnities made in this Agreement shall survive the execution and delivery of this Agreement and, where appropriate to facilitate the intent of this Agreement, the dissolution, liquidation and winding up of the Company.

Section 12.21 Attorneys' Fees.

If any Member seeks to enforce such Member's rights under this Agreement by legal proceedings or otherwise the non-prevailing party shall be responsible for all costs and expenses in connection therewith, including without limitation, reasonable attorneys' fees and costs and court costs and witness fees. In this Section 12.21, non-prevailing party shall not be meant to refer to a Member who initiates or accepts a settlement offer with regards to such legal proceeding.

Section 12.22 Confidentiality.

The Members hereby incorporate herein by this reference the terms of the Confidentiality Agreement (as defined in the Buyers Agreement), and agree to be bound thereby as if each Member was directly a party thereto. Each Member shall not disclose or furnish to any third party (other than any third party who is bound by confidentiality obligations reasonably expected to prevent further disclosure) the terms and conditions of this Agreement. Notwithstanding the foregoing, each Member may disclose the terms and conditions of this Agreement to the extent such disclosure is reasonably necessary to comply with applicable law (including any securities law or regulation or the rules of a securities exchange) and with judicial process, and to its affiliates, partners, managers, trustees, directors, officers, employees, accountants, attorneys, advisors and other representatives, each of whom shall be informed of the confidential nature of the terms and conditions of this Agreement and directed to treat such information confidentially in accordance with the terms of this Agreement.

* * *

IN WITNESS WHEREOF, the undersigned Members have executed this Agreement as of the date first hereinabove set forth.

AVB MEMBER:

AVB RESIDUAL PARALLEL II, LLC, a Delaware limited liability company

By: AvalonBay Communities, Inc.,
a Maryland corporation,
its Sole Member

By: /s/ Edward M. Schulman
Name: Edward M. Schulman
Title: Executive Vice President, General Counsel & Secretary

ERP MEMBER:

EQR-PARALLEL RESIDUAL JV 2 MEMBER, LLC, a Delaware limited liability company

By: ERP Operating Limited Partnership,
an Illinois limited partnership,
its Member

By: Equity Residential,
its general partner

By: /s/ Scott J. Fenster
Name: Scott J. Fenster
Title: Senior Vice President

ARCHSTONE PARALLEL RESIDUAL JV 2, LLC
LIST OF EXHIBITS AND SCHEDULES

EXHIBIT 1

FORM OF FUNDING NOTICE

$

AVB Residual Parallel II, LLC
671 N. Glebe Road
Suite 800
Arlington, VA 22203

EQR-Parallel Residual JV 2 Member, LLC
Two N. Riverside Plaza
Suite 400
Chicago, Illinois 60606

Re: Funding of Capital to Archstone Parallel Residual JV 2, LLC

Gentlemen:

Reference is hereby made to the Limited Liability Company Agreement of Archstone Parallel Residual JV 2, LLC, dated as of February 27, 2013 (the "**Limited Liability Company Agreement**"). Capitalized terms not otherwise defined have the meanings ascribed to them in the Limited Liability Company Agreement.

Pursuant to Section 3.4 of the Limited Liability Company Agreement, you are advised that the Member has determined that capital is required to fund cash needs of the Company in the aggregate amount of $.

Each Member is hereby requested to contribute, by wire transfer of immediately available funds to the account designated below, funds in the amount of its Proportionate Share (as set forth below) of such required amount on or before , *[insert appropriate time period which shall not be less than as set forth in Article III]*.

[add description of reason for capital]

	Contributions	Percentage Interest
AVB Member	$	40%
ERP Member	$	60%
TOTAL		100%

Such funds shall be wire transferred to the following account on or before

, :

[MEMBER]

By: _____
Name:
Title:

EXHIBIT 2

FORM OF PARENT GUARANTY

(Attached)

Exhibit 2-1

AvalonBay/
Archstone Parallel Residual JV 2, LLC

GUARANTY

THIS GUARANTY (this "**Guaranty**"), dated as of the 27th day of February, 2013, is made by AVALONBAY COMMUNITIES, INC., a Maryland corporation ("**Guarantor**"), for the benefit of EQR-PARALLEL RESIDUAL JV 2 MEMBER, LLC, a Delaware limited liability company ("**Creditor Member**").

RECITALS

A. Creditor Member and AVB RESIDUAL PARALLEL II, LLC, a Delaware limited liability company ("**Guarantor-Affiliated Member**"), formed and own the membership interests in Archstone Parallel Residual JV 2, LLC, a Delaware limited liability company (the "**Company**"), pursuant to that certain Limited Liability Company of the Company dated as of even date herewith (as the same may be amended from time to time, the "**Limited Liability Company Agreement**"). All capitalized terms which are used but not expressly defined in this Guaranty shall have the same meaning herein as are given to such terms in the Limited Liability Company Agreement.

B. Guarantor has an indirect or direct financial and/or ownership interest in Guarantor-Affiliated Member.

C. In partial consideration of Guarantor-Affiliated Member's execution of the Limited Liability Company Agreement and as a condition precedent thereto, the Guarantor is required to execute and deliver this Guaranty for the benefit of Creditor Member and its permitted successors and assigns under the Limited Liability Company Agreement (collectively, "**Beneficiary**").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce Creditor Member to enter into the Limited Liability Company Agreement, Guarantor hereby agrees as follows:

1. GUARANTY. Guarantor, as primary obligor and not merely as a surety, hereby absolutely and irrevocably guarantees to Beneficiary the punctual payment and performance when due of the Guaranteed Obligations (as hereinafter defined). As used herein, "**Guaranteed Obligations**" means, collectively, (i) the full and prompt payment of all amounts, capital contributions, sums and charges payable by Guarantor-Affiliated Member under the Limited Liability Company Agreement, including, without limitation, all obligations of Guarantor-Affiliated Member to make Guaranty Equalization Payments and all indemnification obligations of Guarantor-Affiliated Member under the Limited Liability Company Agreement, (ii) the full and punctual performance and observance of all the terms, covenants and conditions provided to be performed, observed and complied with by Guarantor-Affiliated Member under the Limited Liability Company Agreement, or provided to be performed, observed and complied with by Guarantor-Affiliated Member or an affiliate or designee thereof (each, individually and collectively, "**Obligor**") under any assumption agreement or other instrument delivered by it pursuant to the Limited Liability Company Agreement, whether in respect of any Office Lease or otherwise, and (iii) the full and prompt payment of all damages, costs and expenses which shall

at any time be recoverable by Creditor Member from Guarantor-Affiliated Member or any other Obligor by virtue of or under the Limited Liability Company Agreement or under any assumption agreement or other instrument delivered by it pursuant to the Limited Liability Company Agreement, including, without limitation, on account of any representations or warranties made by Guarantor-Affiliated Member thereunder. Guarantor further agrees to pay all Enforcement Costs (as hereinafter defined), in addition to all other amounts due hereunder. Any amounts owed under this Guaranty (that are not accruing interest under the Limited Liability Company Agreement) which are not timely made by Guarantor in accordance with the terms of this Guaranty shall bear interest from the date payable at the rate of fifteen percent (15%) per annum until all such amounts are fully paid. Notwithstanding anything to the contrary herein, (x) Guarantor shall have all of the same rights, remedies and defenses as Guarantor-Affiliated Member, including, without limitation, the right to exercise the dispute resolution procedures under and in accordance with the terms of the Limited Liability Company Agreement, and (y) other than the payment of Enforcement Costs, Guarantor shall have no greater liability than Guarantor-Affiliated Member or other Obligor under the Limited Liability Company Agreement or with respect to any assumption agreement or instrument delivered by it pursuant thereto.

2. NATURE OF GUARANTY. This Guaranty is an absolute, irrevocable, present and continuing guaranty of payment and performance and not of collectability. The obligations of Guarantor hereunder are independent of the obligations of Guarantor-Affiliated Member and any other Obligor and, in the event of any default hereunder, a separate action or actions may be brought and prosecuted against Guarantor whether or not Guarantor-Affiliated Member or any other Obligor is joined therein. Beneficiary shall not be required to prosecute collection, enforcement or other remedies against Guarantor-Affiliated Member or any other Obligor or any other guarantor of the Guaranteed Obligations, or to enforce or resort to any collateral for the repayment of the Guaranteed Obligations or other rights and remedies pertaining thereto, before calling on the Guarantor for payment. If for any reason Guarantor-Affiliated Member or any other Obligor shall fail or be unable to pay, punctually and fully, any of the Guaranteed Obligations, Guarantor shall pay such obligations to Beneficiary in full, immediately upon demand. One or more successive actions may be brought against Guarantor, as often as Beneficiary deems advisable, until all of the Guaranteed Obligations are paid and performed in full. Payment or performance by Guarantor of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge Guarantor's liability for any portion of the Guaranteed Obligations which has not been paid and performed. Without limiting the generality of the foregoing, if Creditor Member is awarded a judgment in any suit brought to enforce Guarantor's covenant to pay or perform a portion of the Guaranteed Obligations, such judgment shall not be deemed to release Guarantor from its covenant to pay and perform the portion of the Guaranteed Obligations that is not the subject of such judgment.

3. ENFORCEMENT COSTS. If: (a) this Guaranty, is placed in the hands of one or more attorneys for collection or is collected through any legal proceeding, (b) one or more attorneys is retained to represent Beneficiary in any bankruptcy, reorganization, receivership or other proceedings affecting creditors' rights and involving a claim under this Guaranty, or (c) one or more attorneys is retained to represent Beneficiary in any other proceedings whatsoever in connection with this Guaranty, then Guarantor shall pay to Beneficiary upon demand all fees, reasonable costs and expenses incurred by Beneficiary in connection therewith,

including, without limitation, reasonable attorney's fees, court costs and filing fees (all of which are referred to herein as the "**Enforcement Costs**"). Beneficiary is only entitled to Enforcement Costs if it is the prevailing party.

4. NO DISCHARGE OR DIMINISHMENT OF GUARANTY. Except as otherwise provided herein and to the extent provided herein, the obligations of Guarantor hereunder are absolute and not subject to termination for any reason other than the satisfaction of the Guaranteed Obligations or expiration of this Guaranty. Guarantor agrees that the liability of the Guarantor hereunder shall not be discharged by, and Guarantor hereby irrevocably consents to: (i) any subsequent change, modification or amendment of the Limited Liability Company Agreement in any of its terms, covenants and conditions; (ii) the renewal or extension of time for the payment or performance of the Guaranteed Obligations; (iii) any transfer, waiver, compromise, settlement, modification, surrender or release of Guarantor-Affiliated Member's or any other Obligor's obligations; (iv) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Limited Liability Company Agreement, at law, in equity or otherwise) with respect to the Guaranteed Obligations; (v) any act or event which might otherwise discharge, reduce, limit or modify Guarantor's obligations under this Guaranty; and (vi) any forbearance, delay or other act or omission of Creditor Member. In addition, the Guaranteed Obligations of the Guarantor hereunder are not subject to counterclaim (other than mandatory or compulsory counterclaims), set-off, abatement, deferment or defense based upon any claim that Guarantor may have against Beneficiary:

(a) unrelated to the transaction giving rise to the Guaranteed Obligations; or

(b) regarding any lack of capacity, lack of authority or any other disability or other defense of Guarantor-Affiliated Member or any other Obligor, including, without limitation, any defense based on or arising out of the lack of validity or enforceability of the Limited Liability Company Agreement or any assumption agreement or other instrument delivered thereunder; or

(c) regarding (i) the release or discharge of Guarantor-Affiliated Member or any other Obligor in any receivership, bankruptcy or other proceedings, (ii) the impairment, limitation, modification or termination of the liabilities of Guarantor-Affiliated Member or any other Obligor to Beneficiary or the estate of Guarantor-Affiliated Member or any other Obligor in bankruptcy, or any remedy for the enforcement of Guarantor-Affiliated Member's or any other Obligor's liability under the Limited Liability Company Agreement or any assumption agreement or other instrument delivered thereunder, resulting from the operation of any present or future provision of Title 11 of the United States Code or other statute or from the decision in any court, (iii) the cessation of the liability of Guarantor-Affiliated Member or any other Obligor from any cause other than payment and performance in full of the Guaranteed Obligations, or (iv) any rejection or disaffirmance of the Guaranteed Obligations, or any part thereof, or any security held therefor, in any proceedings in bankruptcy, insolvency or reorganization.

5. DEFENSES WAIVED. Guarantor irrevocably waives acceptance hereof, presentment, demand, protest, to the fullest extent permitted by applicable law, any notice

(including, without limitation, notices of protest, notices of dishonor, notices of any action or inaction, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, and notices of any extension of credit to Guarantor-Affiliated Member or any other Obligor and any right to consent to any thereof) not provided for herein or in the Limited Liability Company Agreement, as well as any requirement that at any time any action be taken by any person against Guarantor-Affiliated Member, any other Obligor or Guarantor. Guarantor further irrevocably waives: (a) any right to require Creditor Member, as a condition of payment or performance, to (i) proceed against Guarantor-Affiliated Member or any other Obligor or other Person, (ii) proceed against or exhaust any security held from Guarantor-Affiliated Member or any other Obligor or other Person, (iii) proceed against or have resort to any balance on the books of Creditor Member owed to Guarantor-Affiliated Member or any other Obligor or other Person, or (iv) pursue any other remedy in the power of Creditor Member whatsoever; (b) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; and (c) the benefit of any statute of limitations affecting Guarantor's liability hereunder or the enforcement hereof. Until payment of the Guaranteed Obligations by Guarantor-Affiliated Member and any other Obligor, any right of subrogation, contribution, reimbursement or indemnification on the part of Guarantor as against Guarantor-Affiliated Member or any other Obligor shall be in all respects subordinate to all rights and claims of Beneficiary for all other payments or damages which shall be or become due and payable by Guarantor-Affiliated Member or any other Obligor under the provisions of the Limited Liability Company Agreement or any assumption agreement or other instrument delivered thereunder. Beneficiary may compromise or adjust any part of the Guaranteed Obligations, make any other accommodation with Guarantor-Affiliated Member or any other Obligor or exercise any other right or remedy available to it against Guarantor-Affiliated Member or any other Obligor without affecting or impairing in any way the liability of Guarantor under this Guaranty except to the extent the Guaranteed Obligations have been performed.

6. REINSTATEMENT; STAY OF ACCELERATION. If at any time any payment of any portion of the Guaranteed Obligations is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, or reorganization of Guarantor-Affiliated Member or any other Obligor or otherwise, Guarantor's obligations under this Guaranty with respect to that payment shall be reinstated at such time as though the payment had not been made. If acceleration of the time for payment of any of the Guaranteed Obligations is stayed upon the insolvency, bankruptcy or reorganization of Guarantor-Affiliated Member or any other Obligor, all such amounts otherwise subject to acceleration under the terms of any agreement relating to the Guaranteed Obligations shall nonetheless be payable by Guarantor forthwith on demand by the Beneficiary.

7. INFORMATION. Guarantor assumes all responsibility for being and keeping itself informed of Guarantor-Affiliated Member's or any other Obligor's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope and extent of the risks that Guarantor assumes and incurs under this Guaranty, and agrees that Beneficiary does not have any duty to advise Guarantor of any information known to it regarding those circumstances or risks.

8. SURVIVAL. This Guaranty shall remain in full force and effect as to any Guaranteed Obligation for so long as such Guaranteed Obligation survives under the terms and conditions of the Limited Liability Company Agreement.

9. SEVERABILITY. The provisions of this Guaranty are severable, and in any action or proceeding involving any state corporate, partnership or limited liability company law, or any state, federal or foreign bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of Guarantor under this Guaranty would otherwise be held or determined to be avoidable, invalid or unenforceable on account of the amount of Guarantor's liability under this Guaranty, then, notwithstanding any other provision of this Guaranty to the contrary, the amount of such liability shall, without any further action by Guarantor or Beneficiary, be automatically limited and reduced to the highest amount that is valid and enforceable as determined in such action or proceeding. This Section with respect to the maximum liability of Guarantor is intended solely to preserve the rights of Beneficiary, to the maximum extent not subject to avoidance under applicable law, and neither Guarantor nor any other person or entity shall have any right or claim under this Section with respect to such maximum liability, except to the extent necessary so that the obligations of Guarantor hereunder shall not be rendered voidable under applicable law.

10. REPRESENTATIONS BY GUARANTOR. Guarantor represents that: (a) it is duly organized, validly existing and in good standing under the laws where it is organized and has all requisite authority to conduct its business in each jurisdiction in which its business is conducted; (b) the execution and delivery of this Guaranty and the performance of the obligations it imposes (i) are within its powers; (ii) have been duly authorized by all necessary action of its governing body; and (iii) do not violate any law, conflict with the terms of its articles or agreement of incorporation or organization, its by-laws or any agreement by which it is bound or require the consent or approval of any governmental authority or any third party; and (c) this Guaranty is a valid and binding agreement, enforceable according to its terms, except as such enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally.

11. NOTICES. All notices, requests and other communications to any party under this Guaranty must be in writing (including facsimile transmission or similar writing) and must be given to Beneficiary at the address for Beneficiary set forth in the Limited Liability Company Agreement, to Guarantor-Affiliated Member at the address for Guarantor-Affiliated Member set forth in the Limited Liability Company Agreement, and to Guarantor at the address for Guarantor-Affiliated Member set forth in the Limited Liability Company Agreement, or in each case as otherwise specified in a notice by one party to the other in accordance with the Limited Liability Company Agreement. Each notice, request or other communication shall be effective in accordance with the Limited Liability Company Agreement.

12. MISCELLANEOUS. No provision of this Guaranty may be amended, supplemented or modified, or any of its terms and provisions waived, except by a written instrument executed by Beneficiary and Guarantor. No failure on the part of the Beneficiary to exercise, and no delay in exercising, any right under this Guaranty waives that right; nor does any single or partial exercise of any right under this Guaranty preclude any other or further exercise of that or any other right. The remedies provided in this Guaranty are cumulative and

not exclusive of any remedies provided by law. This Guaranty binds Guarantor, and its successors and assigns, and benefits Beneficiary, and its respective successors and assigns. The use of headings does not limit the provisions of this Guaranty.

13. ASSIGNMENT OF GUARANTY. Notwithstanding anything to the contrary contained in this Guaranty, Guarantor shall not assign, transfer or otherwise delegate its obligations under this Guaranty without first obtaining Beneficiary's prior written consent, which shall be granted or withheld in Beneficiary's sole and absolute discretion. No transfer of interests in Guarantor or merger involving Guarantor that is permitted under the Limited Liability Company Agreement shall be deemed to be an assignment that requires Beneficiary's consent hereunder.

14. GOVERNING LAW. THIS GUARANTY IS TO BE CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS (AND NOT THE LAW OF CONFLICTS) OF DELAWARE.

15. CONSENT TO JURISDICTION. GUARANTOR AND BENEFICIARY HEREBY CONSENT AND AGREE TO THE EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR STATE COURT SITTING IN THE STATE OF DELAWARE IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTY AND GUARANTOR IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH COURT AND IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY OBJECTION IT MAY NOW OR LATER HAVE AS TO THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH A COURT OR THAT SUCH A COURT IS AN INCONVENIENT FORUM.

16. WAIVER OF JURY TRIAL. GUARANTOR AND BENEFICIARY ACKNOWLEDGE AND AGREE THAT ANY CONTROVERSY OR CLAIM WHICH MAY ARISE UNDER THIS GUARANTY IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE CONTEMPLATED TRANSACTIONS. THIS WAIVER MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 16) AND EXECUTED BY EACH OF GUARANTOR AND BENEFICIARY). THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER HEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. IN THE EVENT OF LITIGATION, THIS GUARANTY MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first above written.

GUARANTOR:

AVALONBAY COMMUNITIES, INC.,
a Maryland corporation

By: _____
Name: Edward M. Schulman
Title: Executive Vice President, General Counsel & Secretary

[Signature Page — Archstone Parallel Residual JV 2, LLC (AvalonBay)]

THIS GUARANTY (this "**Guaranty**"), dated as of the 27th day of February, 2013, is made by ERP OPERATING LIMITED PARTNERSHIP, an Illinois limited partnership ("**Guarantor**"), for the benefit of AVB RESIDUAL PARALLEL II, LLC, a Delaware limited liability company ("**Creditor Member**").

RECITALS

A. Creditor Member and EQR-PARALLEL RESIDUAL JV 2 MEMBER, LLC, a Delaware limited liability company ("**Guarantor-Affiliated Member**"), formed and own the membership interests in Archstone Parallel Residual JV 2, LLC, a Delaware limited liability company (the "**Company**"), pursuant to that certain Limited Liability Company of the Company dated as of even date herewith (as the same may be amended from time to time, the "**Limited Liability Company Agreement**"). All capitalized terms which are used but not expressly defined in this Guaranty shall have the same meaning herein as are given to such terms in the Limited Liability Company Agreement.

B. Guarantor has an indirect or direct financial and/or ownership interest in Guarantor-Affiliated Member.

C. In partial consideration of Guarantor-Affiliated Member's execution of the Limited Liability Company Agreement and as a condition precedent thereto, the Guarantor is required to execute and deliver this Guaranty for the benefit of Creditor Member and its permitted successors and assigns under the Limited Liability Company Agreement (collectively, "**Beneficiary**").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce Creditor Member to enter into the Limited Liability Company Agreement, Guarantor hereby agrees as follows:

1. GUARANTY. Guarantor, as primary obligor and not merely as a surety, hereby absolutely and irrevocably guarantees to Beneficiary the punctual payment and performance when due of the Guaranteed Obligations (as hereinafter defined). As used herein, "**Guaranteed Obligations**" means, collectively, (i) the full and prompt payment of all amounts, capital contributions, sums and charges payable by Guarantor-Affiliated Member under the Limited Liability Company Agreement, including, without limitation, all obligations of Guarantor-Affiliated Member to make Guaranty Equalization Payments and all indemnification obligations of Guarantor-Affiliated Member under the Limited Liability Company Agreement, (ii) the full and punctual performance and observance of all the terms, covenants and conditions provided to be performed, observed and complied with by Guarantor-Affiliated Member under the Limited Liability Company Agreement, or provided to be performed, observed and complied with by Guarantor-Affiliated Member or an affiliate or designee thereof (each, individually and collectively, "**Obligor**") under any assumption agreement or other instrument delivered by it pursuant to the Limited Liability Company Agreement, whether in respect of any Office Lease or otherwise, and (iii) the full and prompt payment of all damages, costs and expenses which shall

at any time be recoverable by Creditor Member from Guarantor-Affiliated Member or any other Obligor by virtue of or under the Limited Liability Company Agreement or under any assumption agreement or other instrument delivered by it pursuant to the Limited Liability Company Agreement, including, without limitation, on account of any representations or warranties made by Guarantor-Affiliated Member thereunder. Guarantor further agrees to pay all Enforcement Costs (as hereinafter defined), in addition to all other amounts due hereunder. Any amounts owed under this Guaranty (that are not accruing interest under the Limited Liability Company Agreement) which are not timely made by Guarantor in accordance with the terms of this Guaranty shall bear interest from the date payable at the rate of fifteen percent (15%) per annum until all such amounts are fully paid. Notwithstanding anything to the contrary herein, (x) Guarantor shall have all of the same rights, remedies and defenses as Guarantor-Affiliated Member, including, without limitation, the right to exercise the dispute resolution procedures under and in accordance with the terms of the Limited Liability Company Agreement, and (y) other than the payment of Enforcement Costs, Guarantor shall have no greater liability than Guarantor-Affiliated Member or other Obligor under the Limited Liability Company Agreement or with respect to any assumption agreement or instrument delivered by it pursuant thereto.

2. NATURE OF GUARANTY. This Guaranty is an absolute, irrevocable, present and continuing guaranty of payment and performance and not of collectability. The obligations of Guarantor hereunder are independent of the obligations of Guarantor-Affiliated Member and any other Obligor and, in the event of any default hereunder, a separate action or actions may be brought and prosecuted against Guarantor whether or not Guarantor-Affiliated Member or any other Obligor is joined therein. Beneficiary shall not be required to prosecute collection, enforcement or other remedies against Guarantor-Affiliated Member or any other Obligor or any other guarantor of the Guaranteed Obligations, or to enforce or resort to any collateral for the repayment of the Guaranteed Obligations or other rights and remedies pertaining thereto, before calling on the Guarantor for payment. If for any reason Guarantor-Affiliated Member or any other Obligor shall fail or be unable to pay, punctually and fully, any of the Guaranteed Obligations, Guarantor shall pay such obligations to Beneficiary in full, immediately upon demand. One or more successive actions may be brought against Guarantor, as often as Beneficiary deems advisable, until all of the Guaranteed Obligations are paid and performed in full. Payment or performance by Guarantor of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge Guarantor's liability for any portion of the Guaranteed Obligations which has not been paid and performed. Without limiting the generality of the foregoing, if Creditor Member is awarded a judgment in any suit brought to enforce Guarantor's covenant to pay or perform a portion of the Guaranteed Obligations, such judgment shall not be deemed to release Guarantor from its covenant to pay and perform the portion of the Guaranteed Obligations that is not the subject of such judgment.

3. ENFORCEMENT COSTS. If: (a) this Guaranty, is placed in the hands of one or more attorneys for collection or is collected through any legal proceeding, (b) one or more attorneys is retained to represent Beneficiary in any bankruptcy, reorganization, receivership or other proceedings affecting creditors' rights and involving a claim under this Guaranty, or (c) one or more attorneys is retained to represent Beneficiary in any other proceedings whatsoever in connection with this Guaranty, then Guarantor shall pay to Beneficiary upon demand all fees, reasonable costs and expenses incurred by Beneficiary in connection therewith,

including, without limitation, reasonable attorney's fees, court costs and filing fees (all of which are referred to herein as the "**Enforcement Costs**"). Beneficiary is only entitled to Enforcement Costs if it is the prevailing party.

4. NO DISCHARGE OR DIMINISHMENT OF GUARANTY. Except as otherwise provided herein and to the extent provided herein, the obligations of Guarantor hereunder are absolute and not subject to termination for any reason other than the satisfaction of the Guaranteed Obligations or expiration of this Guaranty. Guarantor agrees that the liability of the Guarantor hereunder shall not be discharged by, and Guarantor hereby irrevocably consents to: (i) any subsequent change, modification or amendment of the Limited Liability Company Agreement in any of its terms, covenants and conditions; (ii) the renewal or extension of time for the payment or performance of the Guaranteed Obligations; (iii) any transfer, waiver, compromise, settlement, modification, surrender or release of Guarantor-Affiliated Member's or any other Obligor's obligations; (iv) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Limited Liability Company Agreement, at law, in equity or otherwise) with respect to the Guaranteed Obligations; (v) any act or event which might otherwise discharge, reduce, limit or modify Guarantor's obligations under this Guaranty; and (vi) any forbearance, delay or other act or omission of Creditor Member. In addition, the Guaranteed Obligations of the Guarantor hereunder are not subject

to counterclaim (other than mandatory or compulsory counterclaims), set-off, abatement, deferment or defense based upon any claim that Guarantor may have against Beneficiary:

(a) unrelated to the transaction giving rise to the Guaranteed Obligations; or

(b) regarding any lack of capacity, lack of authority or any other disability or other defense of Guarantor-Affiliated Member or any other Obligor, including, without limitation, any defense based on or arising out of the lack of validity or enforceability of the Limited Liability Company Agreement or any assumption agreement or other instrument delivered thereunder; or

(c) regarding (i) the release or discharge of Guarantor-Affiliated Member or any other Obligor in any receivership, bankruptcy or other proceedings, (ii) the impairment, limitation, modification or termination of the liabilities of Guarantor-Affiliated Member or any other Obligor to Beneficiary or the estate of Guarantor-Affiliated Member or any other Obligor in bankruptcy, or any remedy for the enforcement of Guarantor-Affiliated Member's or any other Obligor's liability under the Limited Liability Company Agreement or any assumption agreement or other instrument delivered thereunder, resulting from the operation of any present or future provision of Title 11 of the United States Code or other statute or from the decision in any court, (iii) the cessation of the liability of Guarantor-Affiliated Member or any other Obligor from any cause other than payment and performance in full of the Guaranteed Obligations, or (iv) any rejection or disaffirmance of the Guaranteed Obligations, or any part thereof, or any security held therefor, in any proceedings in bankruptcy, insolvency or reorganization.

5. DEFENSES WAIVED. Guarantor irrevocably waives acceptance hereof, presentment, demand, protest, to the fullest extent permitted by applicable law, any notice

(including, without limitation, notices of protest, notices of dishonor, notices of any action or inaction, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, and notices of any extension of credit to Guarantor-Affiliated Member or any other Obligor and any right to consent to any thereof) not provided for herein or in the Limited Liability Company Agreement, as well as any requirement that at any time any action be taken by any person against Guarantor-Affiliated Member, any other Obligor or Guarantor. Guarantor further irrevocably waives: (a) any right to require Creditor Member, as a condition of payment or performance, to (i) proceed against Guarantor-Affiliated Member or any other Obligor or other Person, (ii) proceed against or exhaust any security held from Guarantor-Affiliated Member or any other Obligor or other Person, (iii) proceed against or have resort to any balance on the books of Creditor Member owed to Guarantor-Affiliated Member or any other Obligor or other Person, or (iv) pursue any other remedy in the power of Creditor Member whatsoever; (b) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; and (c) the benefit of any statute of limitations affecting Guarantor's liability hereunder or the enforcement hereof. Until payment of the Guaranteed Obligations by Guarantor-Affiliated Member and any other Obligor, any right of subrogation, contribution, reimbursement or indemnification on the part of Guarantor as against Guarantor-Affiliated Member or any other Obligor shall be in all respects subordinate to all rights and claims of Beneficiary for all other payments or damages which shall be or become due and payable by Guarantor-Affiliated Member or any other Obligor under the provisions of the Limited Liability Company Agreement or any assumption agreement or other instrument delivered thereunder. Beneficiary may compromise or adjust any part of the Guaranteed Obligations, make any other accommodation with Guarantor-Affiliated Member or any other Obligor or exercise any other right or remedy available to it against Guarantor-Affiliated Member or any other Obligor without affecting or impairing in any way the liability of Guarantor under this Guaranty except to the extent the Guaranteed Obligations have been performed.

6. REINSTATEMENT; STAY OF ACCELERATION. If at any time any payment of any portion of the Guaranteed Obligations is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, or reorganization of Guarantor-Affiliated Member or any other Obligor or otherwise, Guarantor's obligations under this Guaranty with respect to that payment shall be reinstated at such time as though the payment had not been made. If acceleration of the time for payment of any of the Guaranteed Obligations is stayed upon the insolvency, bankruptcy or reorganization of Guarantor-Affiliated Member or any other Obligor, all such amounts otherwise subject to acceleration under the terms of any agreement relating to the Guaranteed Obligations shall nonetheless be payable by Guarantor forthwith on demand by the Beneficiary.

7. INFORMATION. Guarantor assumes all responsibility for being and keeping itself informed of Guarantor-Affiliated Member's or any other Obligor's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope and extent of the risks that Guarantor assumes and incurs under this Guaranty, and agrees that Beneficiary does not have any duty to advise Guarantor of any information known to it regarding those circumstances or risks.

8. SURVIVAL. This Guaranty shall remain in full force and effect as to any Guaranteed Obligation for so long as such Guaranteed Obligation survives under the terms and conditions of the Limited Liability Company Agreement.

9. SEVERABILITY. The provisions of this Guaranty are severable, and in any action or proceeding involving any state corporate, partnership or limited liability company law, or any state, federal or foreign bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of Guarantor under this Guaranty would otherwise be held or determined to be avoidable, invalid or unenforceable on account of the amount of Guarantor's liability under this Guaranty, then, notwithstanding any other provision of this Guaranty to the contrary, the amount of such liability shall, without any further action by Guarantor or Beneficiary, be automatically limited and reduced to the highest amount that is valid and enforceable as determined in such action or proceeding. This Section with respect to the maximum liability of Guarantor is intended solely to preserve the rights of Beneficiary, to the maximum extent not subject to avoidance under applicable law, and neither Guarantor nor any other person or entity shall have any right or claim under this Section with respect to such maximum liability, except to the extent necessary so that the obligations of Guarantor hereunder shall not be rendered voidable under applicable law.

10. REPRESENTATIONS BY GUARANTOR. Guarantor represents that: (a) it is duly organized, validly existing and in good standing under the laws where it is organized and has all requisite authority to conduct its business in each jurisdiction in which its business is conducted; (b) the execution and delivery of this Guaranty and the performance of the obligations it imposes (i) are within its powers; (ii) have been duly authorized by all necessary action of its governing body; and (iii) do not violate any law, conflict with the terms of its articles or agreement of incorporation or organization, its by-laws or any agreement by which it is bound or require the consent or approval of any governmental authority or any third party; and (c) this Guaranty is a valid and binding agreement, enforceable according to its terms, except as such enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally.

11. NOTICES. All notices, requests and other communications to any party under this Guaranty must be in writing (including facsimile transmission or similar writing) and must be given to Beneficiary at the address for Beneficiary set forth in the Limited Liability Company Agreement, to Guarantor-Affiliated Member at the address for Guarantor-Affiliated Member set forth in the Limited Liability Company Agreement, and to Guarantor at the address for Guarantor-Affiliated Member set forth in the Limited Liability Company Agreement, or in each case as otherwise specified in a notice by one party to the other in accordance with the Limited Liability Company Agreement. Each notice, request or other communication shall be effective in accordance with the Limited Liability Company Agreement.

12. MISCELLANEOUS. No provision of this Guaranty may be amended, supplemented or modified, or any of its terms and provisions waived, except by a written instrument executed by Beneficiary and Guarantor. No failure on the part of the Beneficiary to exercise, and no delay in exercising, any right under this Guaranty waives that right; nor does any single or partial exercise of any right under this Guaranty preclude any other or further exercise of that or any other right. The remedies provided in this Guaranty are cumulative and

not exclusive of any remedies provided by law. This Guaranty binds Guarantor, and its successors and assigns, and benefits Beneficiary, and its respective successors and assigns. The use of headings does not limit the provisions of this Guaranty.

13. ASSIGNMENT OF GUARANTY. Notwithstanding anything to the contrary contained in this Guaranty, Guarantor shall not assign, transfer or otherwise delegate its obligations under this Guaranty without first obtaining Beneficiary's prior written consent, which shall be granted or withheld in Beneficiary's sole and absolute discretion. No transfer of interests in Guarantor or merger involving Guarantor that is permitted under the Limited Liability Company Agreement shall be deemed to be an assignment that requires Beneficiary's consent hereunder.

14. GOVERNING LAW. THIS GUARANTY IS TO BE CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS (AND NOT THE LAW OF CONFLICTS) OF DELAWARE.

15. CONSENT TO JURISDICTION. GUARANTOR AND BENEFICIARY HEREBY CONSENT AND AGREE TO THE EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR STATE COURT SITTING IN THE STATE OF DELAWARE IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTY AND GUARANTOR IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH COURT AND IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY OBJECTION IT MAY NOW OR LATER HAVE AS TO THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH A COURT OR THAT SUCH A COURT IS AN INCONVENIENT FORUM.

16. WAIVER OF JURY TRIAL. GUARANTOR AND BENEFICIARY ACKNOWLEDGE AND AGREE THAT ANY CONTROVERSY OR CLAIM WHICH MAY ARISE UNDER THIS GUARANTY IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE CONTEMPLATED TRANSACTIONS. THIS WAIVER MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 16) AND EXECUTED BY EACH OF GUARANTOR AND BENEFICIARY). THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER HEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. IN THE EVENT OF LITIGATION, THIS GUARANTY MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first above written.

GUARANTOR:

ERP OPERATING LIMITED PARTNERSHIP,
an Illinois limited partnership

By: Equity Residential, a Maryland real estate investment trust
its General Partner

By: _____
Name: _____
Title: _____

[Signature Page — Archstone Parallel Residual JV 2, LLC (ERPOP)]

SCHEDULE A

ORGANIZATION CHART FOR THE COMPANY

(Final organization chart to be attached following the closing,
pursuant to the terms of the limited liability company agreement)

SCHEDULE B

ARCHSTONE SUBSIDIARIES

1. Archstone Communities, LLC

SCHEDULE C

MEMBERS, CAPITAL CONTRIBUTIONS, AND PROPORTIONATE SHARES
(As of February 27, 2013)

Member Name and Address	Capital Contribution	Proportionate Share
AVB Residual Parallel II, LLC 671 N. Glebe Road Suite 800 Arlington, VA 22203		40%
EQR-Parallel Residual JV 2 Member, LLC Two N. Riverside Plaza Suite 400 Chicago, Illinois 60606		60%
TOTALS	**$**	**100%**

SCHEDULE D

INITIAL BUSINESS PLANS

(To be attached following the closing, pursuant to
the terms of the limited liability company agreement)

SCHEDULE E

TAXES; ALLOCATIONS; RELATED MATTERS

A. **Target Allocations.**

After application of Section B of this Schedule E, any remaining items of Profits and Losses shall be allocated among the Members and to their Capital Accounts so as to cause the balance of each Member's Economic Capital Account to be as nearly equal to such Member's Target Balance as possible.

B. Regulatory Allocations and other Allocation Rules.

Notwithstanding anything in the Agreement to the contrary, the following special allocations shall be made as follows, and, as appropriate, in the following order:

(1) Items of Company loss and deduction otherwise allocable to an Member hereunder that would cause such Member (hereinafter, a "**Restricted Holder**") to have a deficit balance in his or her or its Adjusted Capital Account, or would increase the deficit balance in his or her or its Adjusted Capital Account, as of the end of the Fiscal Year to which such items relate shall not be allocated to such Restricted Holder.

(2) If there is a net decrease in Company Minimum Gain for any Fiscal Year (except as a result of conversion or refinancing of Company indebtedness, certain capital contributions or revaluation of the Company's property as further outlined in Treasury Regulation Sections 1.704-2(d)(4), (f)(2) or (f)(3)), each Member shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to that Member's share of the net decrease in Company Minimum Gain. The items to be so allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(f). This Section B(2) is intended to comply with the minimum gain chargeback requirement in said Section of the Treasury Regulations and shall be interpreted consistently therewith. Allocations pursuant to this Section B(2) shall be made in proportion to the respective amounts required to be allocated to each Member pursuant hereto.

(3) If there is a net decrease in Minimum Gain Attributable to Member Nonrecourse Debt during any Fiscal Year (other than due to the conversion, refinancing or other change in the debt instrument causing it to become partially or wholly nonrecourse, certain capital contributions, or certain reevaluations of the Company's property as further outlined in Treasury Regulations Section 1.704-2(i)(4)), each Member shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to that Member's share of the net decrease in the Minimum Gain Attributable to Member Nonrecourse Debt. The items to be so allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(i)(4) and (j)(2). This Section B(3) is intended to comply with the minimum gain chargeback requirement with respect to Member Nonrecourse Debt contained in said Section of the Treasury Regulations and shall be interpreted consistently therewith. Allocations pursuant to this Section B(3) shall be made in proportion to the respective amounts required to be allocated to each Member pursuant hereto.

(4) In the event an Member unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5), or (6), and such Member has an Adjusted Capital Account Deficit, items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate the Adjusted Capital Account Deficit as quickly as possible. This Section B(4) is intended to constitute a "qualified income offset" under Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(5) Nonrecourse Deductions for any Fiscal Year or other applicable period shall be allocated to the Members in accordance with their Proportionate Share, but only as permitted by the Treasury Regulations.

(6) Member Nonrecourse Deductions for any Fiscal Year or other applicable period shall be specially allocated to the Member that bears the economic risk of loss for the debt (i.e., the Member Nonrecourse Debt) in respect of which such Member Nonrecourse Deductions are attributable (as determined under Treasury Regulations Section 1.704-2(b)(4) and (i)(1)).

(7) Allocations to Members whose interests vary during a year by reason of transfer, redemption, admission, capital contributions, or otherwise, shall be made as determined by the Management Committee in accordance with permissible methods under Section 706 of the Code.

C. **Tax Allocations.**

(1) Subject to Section C(2), items of income, gain, loss, deduction and credit to be allocated for income tax purposes (collectively, "**Tax Items**") shall be allocated among the Members on the same basis as their respective book items, as provided in Sections A and B.

(2) If any Company property is subject to Section 704(c) of the Code or is reflected in the Capital Accounts of the Members and on the books of the Company at a value that differs from the adjusted tax basis of such property, then the Tax Items with respect to such property shall, in accordance with the requirements of Treasury Regulations Section 1.704-1(b)(4)(i), be shared among the Members in a manner that takes account of the variation between the adjusted tax basis of the applicable property and its value in the same manner as variations between the adjusted tax basis and fair market value of property contributed to the Company are taken into account in determining the Members' share of Tax Items under Section 704(c) of the Code. The Management Committee is authorized to choose any reasonable method permitted by the Treasury Regulations pursuant to Section 704(c) of the Code, including the "remedial allocation" method, the "curative" method and the "traditional" method.

(3) Pursuant to Treasury Regulations Section 1.752-3, each Member's interest in Company profits, for purposes of determining such Member's shares of excess "nonrecourse liabilities" for such purpose shall be that Member's Proportionate Share.

(4) Any payment of foreign tax that may be creditable against any Member's United States federal income tax liability shall be allocated to the Members in a manner reasonably determined by the Management Committee and in accordance with Treasury Regulation 1.704-1(b)(4)(viii). Other tax credits shall be allocated to the Members in a manner reasonably determined by the Management Committee.

(5) The Members are aware of the income tax consequences of the allocations made by this Agreement and shall report their shares of Profits and Losses and other items of Company, gross income, gain, loss and deduction for income tax purposes consistently with this Agreement.

D. **Tax Classification.**

It is the intent of the Members that the Company shall always be operated in a manner consistent with its treatment as a "partnership" for federal, state and local income and franchise tax purposes. In accordance therewith, (a) no Member shall file any election with any taxing authority to have the Company treated otherwise, and (b) each Member hereby represents, covenants, and warrants that it shall not maintain a position inconsistent with such treatment. The Management Committee shall, except as otherwise required by applicable law, (i) not cause or permit the Company to elect (A) to be excluded from the provisions of Subchapter K of the Code, or (B) to be treated as a corporation or an association taxable as a corporation for any tax purposes; (ii) cause the Company to make any election reasonably determined to be necessary or appropriate in order to ensure the treatment of the Company as a partnership for all tax purposes; (iii) cause the Company to file any required tax returns in a manner consistent with its treatment as a partnership for tax purposes; and (iv) not take any action or cause any officer or agent or representative of the Company to take any action that would be inconsistent with the treatment of the Company as a partnership for such purposes.

E. **[Reserved.]**

F. **Additional Tax Matters.**

(1) The Tax Matters Member shall be the sole signatory to any federal, state, local and foreign tax on behalf of the Company, except to the extent any other Person is required by law to also sign such returns.

(2) The Tax Matters Partner shall take no action in such capacity without the authorization or consent of the other Members, other than (after reasonable notice to the other Member) such action as the Tax Matters Partner may be required to take by applicable law. The Tax Matters Partner shall comply with the responsibilities outlined in Sections 6222 through 6232 of the Code.

(3) The Tax Matters Partner shall not enter into any extension of the period of limitations for making assessments on behalf of the Members without first obtaining the written consent of each Member.

(4) The Tax Matters Partner shall not bind the Company to a settlement agreement without obtaining the written concurrence of the other Members. For purposes of this Section F(4), the term "settlement agreement" shall include a settlement agreement at either an administrative or judicial level. Any Member that enters into a settlement agreement with respect to any Company items (within the meaning of Section 6231(a)(3) of the Code) shall notify the other Members of such settlement agreement and its terms within ninety (90) calendar days after the date of settlement.

(5) The provisions of this Section F shall survive the termination of the Company or the termination of any Member's interest in the Company and shall remain binding on the Members (with respect to the period of time during which such Person is a Member) for a period of time necessary to resolve with the Internal Revenue Service or the United States Department of the Treasury any and all matters regarding the United States federal income taxation of the Company.

(6) The Tax Matters Partner, in its capacity as the Tax Matters Partner, shall be reimbursed by the Company for any third party out-of-pocket costs and expenses reasonably incurred by it in the performance of its duties as Tax Matters Partner. No Member shall be reimbursed by the Company for any costs and expenses incurred by such Member in pursuing on its own behalf any of its rights to file petitions, seek judicial review, etc. under this Section F or in participating in Company-level administrative or judicial tax proceedings unless the other Member, in its sole discretion, agrees to such reimbursement.

(7) During any Company income tax audit or other income tax controversy with any governmental agency, the Tax Matters Partner shall keep the Members informed of all material facts and developments on a reasonably prompt basis. Prompt notice shall be given to the Members upon receipt of advice that the Internal Revenue Service or other taxing authority intends to examine any income tax return, or records or books of the Company.

(8) The cost of any adjustments to all Members and the cost of any resulting audits or adjustments of Members shall be borne solely by the Members without reimbursement by the Company.

SCHEDULE F

EXISTING GUARANTY OBLIGATIONS OF MEMBERS, PARENTS AND AFFILIATES

(To be attached following the closing, pursuant to the terms of the limited liability company agreement)

SCHEDULE G

ADDRESSES FOR NOTICES TO THE MEMBERS

If to AVB Member, to:

AvalonBay Communities, Inc.
671 N. Glebe Road, Suite 800
Arlington, VA 22203
Facsimile No.: (703) 329-4830
Attention: Kevin P. O'Shea

with a copy (which shall not constitute notice) to:

AvalonBay Communities, Inc.
671 N. Glebe Road, Suite 800
Arlington, VA 22203
Facsimile No.: (703) 329-4830
Attention: Edward M. Schulman

and to:

Goodwin Procter LLP
Exchange Place
Boston, Massachusetts 02109
Facsimile No.: (617) 523-1231
Attention: Craig C. Todaro

If to EQR Member, to:

Equity Residential
Two N. Riverside Plaza, Suite 400
Chicago, Illinois 60606
Facsimile No.: (312) 526-9252
Attention: Mark Parrell, EVP and Chief Financial Officer

with copies (which shall not constitute notice) to:

Equity Residential
Two N. Riverside Plaza, Suite 400
Chicago, Illinois 60606
Facsimile No.: (312) 526-0680
Attention: Bruce Strohm, EVP and General Counsel

and to:

Hogan Lovells US LLP
555 13th Street, NW
Washington, DC 20004
Facsimile No.: (202) 637-5910
Attention: J. Warren Gorrell, Jr.
Bruce W. Gilchrist

and to:

Morrison & Foerster LLP
2000 Pennsylvania Avenue, NW
Washington, DC 20006
Facsimile No.: (202) 785-7522
Attention: David P. Slotkin

and to:

Morrison & Foerster LLP
555 West Fifth Street
Los Angeles, CA 90013-1024
Facsimile: (213) 892-5454
Attention: Thomas R. Fileti

SCHEDULE H

AUTHORIZED DOCUMENTS

1. Trademark Assignment Agreement and other documentation by which Subsidiary Entities will Transfer trademark assets to Archstone Trademark JV, LLC
2. Assignment of Lease from Archstone Communities, LLC to AvalonBay Communities, Inc. relating to premises in Austin, TX
3. Archstone Identified Systems Agreement
4. Documents on attached list if any

SCHEDULE I

INSURANCE

(Unless attached hereto, to be attached following the closing,
pursuant to the terms of the limited liability company agreement)

SCHEDULE J

**ALLOCATION OF RESPONSIBILITIES/
FUNCTIONS TO DESIGNATED MANAGERS**

(Attached)

Archstone Acquisition
AVB/EQR - Transition Issues/Wind-Down List
Updated February 25, 2013

Area/Issue	Items to be considered—as applicable	Follow Properties	Owner	
			EQR	AVB
Risk Management (GL, WC, property)	Manage claims for preclose period and parking lot coverage and claims	X	X	X
Corporate Maintenance	File doing business qualifications where needed; file annual statements with applicable Secretary of State; maintain minute book, member list and organizational documents	N	X	
Legal	Manage litigation claims for preclose period (includes and not limited to property, employment)	N	X	
Office Leases	Includes lease terms or sublets, sale of office furniture, etc.	N	X	
Benefit Plans	401(k) - administration for wind-down, transition and parking lot JV	N		X

	COBRA - administration for wind-down, transition and parking lot JV	N	X	
Federal, State and franchise tax	Manage oversight of 2012 and 2013 stub period tax returns - to be prepared by ASN	N	X	
See more detail below for services	Manage historical audits/litigation/issues	N	X	
	2013 and future tax returns for parking lot JV and tax protection JV	N	X	
Books and Records, JV-Level Reporting	maintain accounting and contractual records; "umbrella" quarterly and annual reporting for parking lot JV	N		X
Germany Operational oversight	Management oversight of ASN European business, including fund team, DeWag, legal, financing and accounting	Y	X	
Manage JV Parking lot accounting	Germany - accounting, reporting, tax returns	N	X	
	SWIB - accounting, reporting, tax returns	Y		X
	Development - National Gateway, Harlem	Y		X
	Transition accounting - payroll and other compensation, cash receipts/disbursements, etc.	N		X
	Other - liabilities (coordination with legal, risk, etc.), consolidation, etc.	N		X
Cash management/oversight See further detail below	Provide oversight over cash receipts post-close (collect and distribute)	Y		X
(lead admin members handle cash management for JVs they handle (i.e. AVB - SWIB)	Provide oversight of disbursements (A/P and wire transfers) post-close	Y		X
	Provide cash forecasts and funding requirements post-close	Y		X
	Maintain/wind-down bank accounts	Y		X
Payroll and HR related items	Employment claims/issues for termed/former employees/ employee verification - pkg lot and disposed only	Y		X
	Filing of 2012 ASN W-2s (to be done by ASN)	N		X
	Filing of 2013 ASN W-2s (to be done by ASN)	N		X
	Escheatment of Payroll	N		X
Real Estate tax claims	Management of appeals/questions/issues regarding disposed and parking lot assets	Y		X

Area/Issue	Items to be considered—as applicable	Follow Properties	Owner	
			EQR	AVB
Accounts payable related items	Sales and use taxes - filing requirements to go with property (to be done by ASN) - pkg lot and disposed (if not done by ASN) only	Y		X
	2013 1099's (to be done by ASN) - pkg lot and disposed (if not done by ASN) only	Y		X
	A/P historical vendor questions - questions will follow the property - pkg lot and disposed only	Y		X
	Manage any vendor rebates	Y		X
	Escheatment of Accounts payable preclose period	Y		X
Collections of resident accounts	Collections of resident accounts (follow the property) pkg lot and disposed only	X		X

More detail on tax services -
***management/oversight of, and assistance as needed with, the completion of tax return compliance obligations by the Archstone personnel for the 2012 tax year and short period ending with our closing in 2013

· negotiation and approval of services and expenses contracted with vendors/consultants

· regular communication and decision-making related to notices and assessments from taxing authorities
· provision of support for audits
· tax related services relative to the tax protection joint venture and Germany
· general consulting relative to transition and integration matters (ie. Software/IT, Data migration, historical files and storage, etc.).

Further detail re Cash Management/Bank Accounts:

THE GENERAL RESIDUAL JV BANK ACCOUNT WILL COME UNDER THE "CASH MANAGEMENT" OVERSIGHT TO BE PROVIDED BY AVB, WITH 2 CHECK SIGNERS FROM EACH OF AVB & EQR. THERE WILL BE SOME ADDITIONAL DETAIL TO BE WORKED OUT ON WIRE AUTHORIZATION PROTOCOL WHERE MUTUAL APPROVAL NECESSARY FOR WIRES OF A CERTAIN SIZE (OTHER THAN REPETITIVE PAYMENTS AFTER APPROVAL OF INITIAL WIRE).

SCHEDULE K

FEES

(To be attached following the closing, pursuant to
the terms of the limited liability company agreement)

SCHEDULE L

OFFICE LEASES

1. Office Lease dated May 12, 2011, executed by and between Archstone Communities, LLC, a Delaware limited liability company ("**Archstone Communities**"), and The Commons At Cliff Creek, Ltd., for a property located at 11149 Research Boulevard, Austin, Texas.

2. Office Lease dated May , 1999, executed by and between Archstone Communities and CarrAmerica Development, Inc., for a property located at 9200 East Panorama Circle, Suite 210, Englewood, Colorado.

3. Lease dated June , 2008, executed by and between Archstone Communities and Tishman Speyer Archstone-Smith South Market, L.L.C., for a property located at 333 Third Street, Suite 210, San Francisco, California.

4. Lease dated January 4, 2011, executed by and between Archstone Communities and Koll/Per Mission Courtyard, LLC, for a property located at 5030 Camino de La Siesta, Suite 104, San Diego, California.

5. Lease dated March , 2008, executed by and between Archstone Communities and PSAI Old Oakland Associates, LLC, for a property located at 807 Broadway, Suite 210, Oakland, California.

Exhibit 10.6

EXECUTION VERSION

LIMITED LIABILITY COMPANY AGREEMENT

LEGACY HOLDINGS JV, LLC

by and between

AvalonBay Communities, Inc.

and

EQR-Legacy Holdings JV Member, LLC

February 27, 2013

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

TABLE OF CONTENTS
(continued)

TABLE OF CONTENTS
(continued)

Page

LIMITED LIABILITY COMPANY AGREEMENT
OF
LEGACY HOLDINGS JV, LLC

THIS LIMITED LIABILITY COMPANY AGREEMENT (this "**Agreement**") of Legacy Holdings JV, LLC (the "**Company**") is made and entered into as of February 27, 2013 (the "**Effective Date**") between AvalonBay Communities, Inc., a Maryland corporation ("**AVB Member**"), and EQR-Legacy Holdings JV Member, LLC, a Delaware limited liability company ("**ERP Member**").

R E C I T A L S

A. WHEREAS, AVB (as such term and any other capitalized term used in this Agreement is defined in Article II), Equity Residential and ERP have entered into the Purchase Agreement with Seller, pursuant to which they have agreed to acquire certain assets of Enterprise from Seller; and

B. WHEREAS, AVB, Equity Residential and ERP have entered into the Buyers Agreement, which sets forth certain understandings among AVB, Equity Residential and ERP concerning the acquisition of the assets of Enterprise pursuant to the Purchase Agreement; and

C. WHEREAS, the Buyers Agreement provides for the formation of a joint venture (referred to therein as "Legacy Holdings JV") and attaches a term sheet setting forth the terms applicable to the governance of such joint venture (referred to therein as the "Archstone Legacy JV Term Sheet"), which are to be set forth in a definitive joint venture agreement (referred to therein as the "Definitive Archstone Legacy JV Agreement"); and

D. WHEREAS, ERP Member is a wholly owned Subsidiary of ERP; and

E. WHEREAS, AVB Member and ERP Member desire to form the Company and to set forth in this Agreement the definitive terms for the governance of the Company, in furtherance of the provisions of the Buyers Agreement calling for the formation of Archstone Legacy JV and the execution and delivery of the Definitive Archstone Legacy JV Agreement consistent with the Archstone Legacy JV Term Sheet.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, AVB Member and ERP Member hereby agree as follows:

ARTICLE I
IN GENERAL

Section 1.1 Name.

The name of the limited liability company is Legacy Holdings JV, LLC (the "**Company**").

Section 1.2 Formation of Limited Liability Company.

The Company was duly formed upon the filing of a certificate of formation of the Company with the Secretary of State of the State of Delaware on February 15, 2013, which certificate sets forth the information required by Section 18-201 of the Delaware Limited Liability Company Act (the "**Certificate of Formation**"). Michelle La Pelle, as an "authorized person" within the meaning of the Act, has executed, delivered and filed the Certificate of Formation of the Company with the Secretary of State of the State of Delaware, such execution, delivery and filing being hereby ratified and approved by the Members. Upon the filing of the Certificate of Formation with the Secretary of State of the State of Delaware, such person's powers as an "authorized person" ceased.

Section 1.3 Agreement; Inconsistencies with Act.

(a) This Agreement constitutes the "limited liability company agreement" of the Company within the meaning of the Act.

(b) This Agreement shall govern the relationship of the Members, except to the extent a provision of this Agreement is expressly prohibited under the Act. If any provision of this Agreement is prohibited under the Act, this Agreement shall be considered amended to the least degree possible in order to make such provision effective under the Act.

Section 1.4 Principal Place of Business.

The principal place of business of the Company shall be c/o Equity Residential, Two North Riverside Plaza, Suite 400, Chicago, Illinois 60606. The Company may locate its place of business at any other place or places as may be Approved by the Members from time to time.

Section 1.5 Registered Office and Registered Agent.

The Company's initial registered office shall be at the office of its registered agent at 1209 Orange Street, Wilmington, Delaware 19801, and the name of its initial registered agent is The Corporation Trust Company. The registered office and registered agent may be changed with the Approval of the Members from time to time by filing the address of the new registered office and/or the name of the new registered agent with the Secretary of State of the State of Delaware pursuant to the Act.

Section 1.6 Term.

The term of existence of the Company (the "**Term**") shall continue until the Company is terminated, dissolved or liquidated in accordance with this Agreement and the Act.

Section 1.7 Permitted Businesses.

(a) The business of the Company shall be (i) to acquire, own, manage, operate, improve, develop, sell and otherwise deal with the Archstone Legacy Assets, the AVB Units, the ERP Units, and any other assets that may, from time to time, be acquired by the Company pursuant to this Agreement, directly or through Subsidiary Entities; (ii) to collect and distribute to the Members dividends, interest and other distributions received with respect to such assets after payment of Expenditures of the Company and the Subsidiary Entities, (iii) cause Holdings,

Archstone and Archstone Trustee to operate in a manner consistent with their respective governing documents, including with respect to the terms of the Holdings Preferred Interests and Holdings Senior Preferred Interests, Archstone Preferred Units and the Series I Preferred Shares of Archstone Trustee, and to make required redemption payments and other required payments to holders of the Archstone Preferred Units and the Series I Preferred Shares including, without limitation, Tax Protection Payments, and (iv) to do all other lawful acts and things as may be necessary, desirable, expedient, convenient for or incidental to the furtherance and accomplishment of the foregoing objectives and purposes and for the protection and benefit of the Company. The Company shall not engage in any other business without the Approval of the Members.

(b) In connection with the Company's business, the Company shall have the power and authority, subject to any Approval of the Members or Approval of the Management Committee required under this Agreement, among other things:

(i) to acquire, hold and dispose of any real or personal property;

(ii) to borrow money from banks, other lending institutions, Members, or Affiliates of Members, and in connection therewith, to hypothecate, encumber and grant security interests in the assets of the Company to secure repayment of the borrowed sums;

(iii) to purchase liability and other insurance to protect the Company's property and business and to protect the assets of the Members and Management Committee Representatives;

(iv) to invest any Company funds temporarily (by way of example but not limitation) in demand deposits, money market mutual funds, short-term governmental obligations, commercial paper or other investments;

(v) to sell or otherwise dispose of any, all or substantially all of the assets of the Company;

(vi) to execute all instruments and documents, including, without limitation, checks; drafts; notes and other negotiable instruments; mortgages or deeds of trust; security agreements; financing statements; documents providing for the acquisition, mortgage or disposition of the Company's property; assignments; bills of sale; leases; contracts; partnership agreements, operating agreements of other limited liability companies; and any other instruments or documents necessary, to conduct the business of the Company;

(vii) to employ accountants, legal counsel, managing agents or other experts to perform services for the Company and to compensate them from Company funds;

(viii) to enter into any and all other agreements, with any other Person as may be necessary or appropriate to the conduct of the Company's business; and

(ix) to do and perform all other acts as may be necessary or appropriate to the conduct of the Company's business.

Section 1.8 Qualification in Other Jurisdictions.

The Administrative Manager is authorized to cause the Company to be qualified or registered as required under applicable laws in any jurisdiction in which the Company transacts business and to execute, deliver and file any certificates and documents necessary to effect such qualification or registration. The Administrative Manager is authorized to cause the Company to comply with all applicable requirements of the State of Delaware for the filing of annual statements with the Secretary of State of the State of Delaware, and shall be responsible for the maintenance of minute books and the organizational documents of the Company.

Section 1.9 Rules of Construction.

The following rules of construction shall apply to this Agreement:

(a) Unless otherwise specifically and expressly limited in the context, any reference herein to a decision, determination, act, action, exercise of a right, power or privilege, or other procedure by a Member or Management Committee Representative shall mean and refer to the decision, determination, act, action, exercise of a right, power, privilege, or other procedure by the Member or Management Committee Representative in its sole and absolute discretion acting in the best interests of such Member (or, in the case of a Management Committee Representative, the best interests of the Member which appointed such Management Committee Representative) and not as a fiduciary for the Company or the other Member.

(b) All references in this Agreement to "Dollars" as a unit of currency shall be deemed a reference to United States dollars and United States currency.

(c) Unless explicitly stated to the contrary, the term "includes", "including" and other expressions of inclusion shall be construed in each instance to mean "includes without limitation", "including but not limited to" or other phraseology denoting the non-exclusive nature of the item to which reference is being made.

(d) The Members acknowledge that, as set forth on the face or cover page of certain schedules attached to this Agreement, certain schedules attached to this Agreement are incomplete or have been left blank. In such cases, the actions taken that refer to any incomplete provisions of such a schedule shall not be taken unless and until the Management Committee or Members Approve the form of the complete, final form of the schedule.

Section 1.10 Title to Company Assets.

All Company assets, whether real or personal, tangible or intangible, shall be deemed to be owned by the Company as an entity, and no Member, individually, shall have any direct ownership interest in such property.

ARTICLE II
DEFINITIONS

Section 2.1 Defined Terms.

As used in this Agreement, the following terms shall have the following meanings:

"**Accountants**" means the independent certified public accountants Approved by the Members and engaged from time to time by the Company for purposes of reviewing or auditing the Company's financial statements and performing such other services as are required to be performed by the Accountants by this Agreement.

"Act" means the Delaware Limited Liability Company Act, as amended or superseded from time to time.

"Adjusted Asset Value" means, with respect to any asset of the Company, such adjusted basis of such asset for federal income tax purposes, except as follows:

(i) The Adjusted Asset Value of any asset contributed to the Company by a Member shall be the gross fair market value of such asset as determined jointly by the Management Committee and the contributing Member, in their joint and reasonable discretion.

(ii) If the Management Committee reasonably determines that an adjustment is necessary or appropriate to reflect the relative Proportionate Shares of the Members in the Company, the Adjusted Asset Values of all Company assets shall be adjusted to equal their gross fair market value, as determined by the Management Committee, taking Section 7701(g) of the Code into account, as of the following times: (a) a Capital Contribution (other than a *de minimis* capital contribution) to the Company by a new or existing Member; (b) any distribution by the Company to an Member of more than a *de minimis* amount of Company property (other than cash); (c) any distribution by the Company to an Member of more than a *de minimis* amount of cash in connection with the redemption of all or a portion of a Member's Membership Interest in the Company; and (d) at such other times as the Management Committee reasonably determines necessary or advisable in order to comply with Treasury Regulations Sections 1.704-1(b) and 1.704-2.

(iii) The Adjusted Asset Values of Company property shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Section 734(b) or 743(b) of the Code, but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m) ; provided, however, that Adjusted Asset Values shall not be adjusted pursuant to this paragraph to the extent that the Management Committee reasonably determines that an adjustment pursuant to paragraph (ii) above is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this paragraph (iii).

(iv) The Adjusted Asset Value of an asset shall be adjusted by the Depreciation taken into account with respect to such asset, for purposes of computing Profits and Losses.

Any determination to be made by the Management Committee pursuant to this definition shall be made with the Approval of the Management Committee.

"Adjusted Capital Account" means, with respect to any Member, such Member's Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments: (i) credit to such Capital Account any amounts which such Member is obligated or treated as obligated to restore with respect to any deficit balance in such Capital Account

pursuant to Treasury Regulations Section 1.704-1(b)(2)(ii)(c), or is deemed to be obligated to restore with respect to any deficit balance pursuant to the penultimate sentences of Treasury Regulations Section 1.704-2(g)(1) and 1.704-2(i)(5); and (ii) debit to such Capital Account the items described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) and 1.704-1(b)(2)(ii)(d)(6). The foregoing definition of Adjusted Capital Account is intended to comply with the provisions of Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

"**Administrative Manager**" means the Member so designated pursuant to Section 4.2(b).

"Affiliate" or **"Affiliated"** means, with respect to any Person, (i) any Person who directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with such Person, or (ii) any Person in which such Person has, directly or indirectly, a twenty five percent (25%) or more ownership or beneficial

interests or as to which such Person serves as a trustee, manager, general partner or in a similar fiduciary capacity (other than as a member of a board of directors, board of trustees or board of managers). A Person shall be deemed to control a Person if it owns, directly or indirectly, at least twenty five percent (25%) of the ownership interest in such Person or otherwise has the power to direct the management, operations or business of such Person. Notwithstanding the foregoing, an Affiliate of the Company that is controlled by the Company shall not be deemed to be an Affiliate of any Member for any of the purposes of this Agreement. The ERP DownREITs, AVB DownREIT, and their respective Subsidiaries shall not be deemed to be Affiliates of the Company.

"Agreement" means this Limited Liability Company Agreement and any amendments hereto.

"**Annual Budget**" means an annual operating and, if applicable, capital budget for the Company and the Subsidiary Entities.

"**Approval of the Management Committee," "Approval by the Management Committee**" or similar phrases means the unanimous approval of the AVB Representatives and ERP Representatives, excluding the Management Committee Representatives appointed by a Capital Defaulting Member with respect to any matter as to which such Capital Defaulting Member has no approval rights pursuant to Section 3.4.

"**Approval of the Members," "Approval by the Members**" or similar phrases means the unanimous approval of the Members, excluding the Capital Defaulting Member with respect to any matter as to which a Capital Defaulting Member has no approval rights pursuant to Section 3.4.

"**Archstone**" means Archstone, a Maryland real estate investment trust.

"**Archstone Acquired Property**" has the meaning set forth in Section 10.4(a).

"**Archstone Entities**" means, collectively, each of the Subsidiaries of Archstone Enterprise LP, including Archstone and each of Archstone Multifamily Parallel Guarantor LLC, Archstone Multifamily Parallel Guarantor II LLC, Archstone Multifamily Parallel Guarantor I

LLC, Archstone Multifamily Guarantor LP, Archstone Multifamily Guarantor (GP) LLC, Archstone Multifamily CM LLC and Archstone Inc.

"**Archstone Intercompany Loans**" means all intercompany loans with respect to which the borrower is Archstone, Archstone Trustee, Holdings, or any Subsidiary of Archstone or Holdings that are held immediately prior to the Initial Closing by Enterprise or any Subsidiary of Enterprise other than an Entity that will be a Subsidiary Entity after the Initial Closing.

"**Archstone Legacy Assets**" means (i) the Holdings Preferred Interests, (ii) all outstanding common interests in Archstone Trustee, (iii) all outstanding interests in Archstone Multifamily Series II LLC, (iv) all outstanding interests in Archstone Multifamily Series III LLC, and (v) all outstanding interests in Archstone Multifamily Series IV LLC, (vi) the Holdings Voting Interests, and (vii) all Archstone Intercompany Loans.

"**Archstone Preferred Units**" means, collectively, the Series I, O, P and Q units in Archstone.

"**Archstone Trustee**" means Archstone Multifamily Series I Trust, a Maryland real estate investment trust.

"**AVB**" means AvalonBay Communities, Inc., a Maryland corporation, and its successors and permitted assigns.

"**Archstone Distribution Property**" has the meaning set forth in Section 10.4(b).

"**AVB DownREIT**" means AVB Legacy DownREIT, LLC, a Delaware limited liability company, and its successors and permitted assigns.

"**AVB Items**" means all items of gross income, gain, deduction and loss of the Company, as determined for purposes of maintaining Capital Accounts (or comparable capital accounts maintained by a Subsidiary), including, without limitation, Depreciation, attributable to the AVB Units or liabilities funded by AVB pursuant to this Agreement (including, without limitation, Tax Protection Payments funded by AVB pursuant to Section 3.3(b)(i)(B)).

"**AVB Member**" has the meaning set forth in the introductory paragraph of this Agreement, and includes any successors or permitted assigns.

"**AVB Representatives**" has the meaning set forth in Section 4.1(a).

"**AVB Units**" means common and/or preferred partnership or membership interests in any Subsidiary of AVB that is taxed as a partnership for federal income tax purposes. For the avoidance of doubt, AVB DownREIT and each of its Subsidiaries is a Subsidiary of AVB (and not of the Company).

"**Baseline Debt Maintenance Obligation**" means an amount with respect to each Tax Protected Person under each applicable Tax Protection Agreement that shall be established for each DownREIT pursuant to the terms of Section 10.3.

"**Business Day**" means any day excluding a Saturday, Sunday or any other day during which there is no scheduled trading on the New York Stock Exchange.

"**Buyers Agreement**" means that certain Joint Buyers Agreement, dated as of November 26, 2012, among Equity Residential, ERP and AVB.

"**Camargue**" means Archstone Camargue III LLC, a Delaware limited liability company, and its successors and assigns.

"Capital Account" means the capital account established on behalf of each Member on the books of the Company. In general, the Capital Account of each Member shall be initially credited with the amount of such Member's initial Capital Contribution to the Company, as set forth on Schedule A. Thereafter, each such Member's Capital Account shall be increased by (a) the amount of money contributed by such Member to the Company, (b) the Adjusted Asset Value of any property contributed by such member to the Company (net of liabilities securing such contributed property that the Company is considered to assume or take subject to under Section 752 of the Code), and (c) allocations to such Member of Profits and other items of book income and gain, and is decreased by (d) the amount of money distributed to the Member by the Company, (e) the Adjusted Asset Value of property distributed by the Company to the Member (net of liabilities securing such distributed property that the Member is considered to assume or take subject to under Section 752 of the Code) and (f) allocations to such Member of Losses and other items of book loss and deduction, and is otherwise adjusted in

accordance with the additional rules set forth in Treasury Regulations Section 1.704-1(b)(2)(iv). The Capital Accounts shall also be adjusted (x) as reasonably determined by the Management Committee, to reflect any redemption, forfeiture or transfer of Membership Interests, and (y) in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(m). It is the intent of the Members that the Capital Accounts of all Members be determined and maintained in accordance with the principles of Treasury Regulations Section 1.704-1(b)(2)(iv) at all times throughout the full term of the Company. Accordingly, the Management Committee is authorized to make any other adjustments to the Capital Accounts so that the Capital Accounts and allocations thereto comply with said Section of the Treasury Regulations, provided that such adjustments do not have a material adverse effect on any Member. Any determination to be made by the Management Committee pursuant to this definition shall be made with the Approval of the Management Committee.

"Capital Contribution" means any contribution to the capital of the Company in cash or other assets or property by a Member in accordance with Article III.

"**Capital Default Amount**" has the meaning set forth in Section 3.4.

"**Capital Default Loan**" has the meaning set forth in Section 3.4(a).

"**Capital Defaulting Member**" has the meaning set forth in Section 3.4.

"**Capital Transaction**" means the sale, financing, refinancing, total or partial destruction, condemnation or other disposition of any substantial asset of the Company or any Subsidiary Entity.

"Certificate of Formation" has the meaning set forth in Section 1.2 of this Agreement.

"**Change in Board Control**" means, with respect to any Person, during any period beginning on or after the Initial Closing, individuals who at the beginning of such period constituted such Person's board of directors (or equivalent governing body), and any new member of such board whose nomination to or election by such board was approved by a vote of at least a majority of the board members then still in office who either were board members at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute at least a majority of such board.

"**Closing Date Transactions**" has the meaning set forth in Section 3.3(b)(i)(B)(1).

"Code" means the Internal Revenue Code of 1986 as amended, or corresponding provisions of subsequent superseding federal revenue laws.

"Company" has the meaning set forth in the introductory paragraph of this Agreement.

"Company Minimum Gain" means "partnership minimum gain" set forth in Treasury Regulations Section 1.704-2(b)(2).

"**Contemplated Transactions**" has the meaning set forth in the Purchase Agreement.

"**Contracting Member**" means, in relation to any contract that is entered into between the Company or any Subsidiary Entity and a Member or that Member's Affiliates, the Member that is or whose Affiliate is the party to that contract.

"**Covered Person**" has the meaning set forth in Section 7.1.

"Depreciation" means, with respect to any Company asset for any Fiscal Year or other period, the depreciation, depletion or amortization, as the case may be, allowed or allowable for federal income tax purposes in respect of such asset for such fiscal year or other period; provided, however, that if there is a difference between the Adjusted Asset Value and the adjusted tax basis of such asset, Depreciation means "book depreciation, depletion or amortization" with respect to such asset as determined under Treasury Regulations Section 1.704-1(b)(2)(iv)(g)(3); provided further that, if any property has a zero adjusted basis for federal income tax purposes, Depreciation may be determined under any reasonable method selected by the Management Committee.

"**Discussion Period**" has the meaning set forth in Section 11.13.

"**Dissolution Event**" has the meaning set forth in Section 9.1.

"**Distributable Cash**" means, for any period, the excess, if any, of (a) the aggregate Gross Receipts during such period of any kind and description over (b) the sum of the aggregate Expenditures paid during such period.

"**Distribution Properties**" has the meaning set forth in Section 10.4(b).

"**DownREIT**" has the meaning set forth in Section 10.3(a).

"**Economic Capital Account**" means, with respect to any Member, such Member's Capital Account as of the date of determination, after crediting to such Capital Account any amounts that the Member is deemed obligated to restore under Treasury Regulations Section 1.704-2.

"**Enterprise**" means Archstone Enterprise LP, a Delaware limited partnership.

"**Entity**" means any general partnership, limited partnership, corporation, limited liability company, limited liability partnership, joint venture, trust, business trust, cooperative or association or other comparable business entity.

"**Equity Interest**" means (a) the equity ownership rights in a business entity, whether a corporation, company, joint stock company, limited liability company, general or limited partnership, joint venture, bank, association, trust, trust company, land trust, business trust, sole proprietorship or other business entity or organization, and whether in the form of capital stock, ownership unit, limited liability company interest, membership interest, limited or general partnership interest or any other form of ownership, including any preferred stock, preferred membership interests, preferred partnership interests and/or any capital or profits interest, and (b) all rights, warrants, options,

convertible securities, convertible indebtedness, exchangeable securities or other instruments or rights that are outstanding and exercisable for, convertible into or exchangeable for any Equity Interest described in the foregoing clause (a) whether at the time of issuance or upon the passage of time or occurrence of some future event.

"**Equity Residential**" means Equity Residential, a Maryland real estate investment trust, and its successors and permitted assigns.

"**ERP**" means ERP Operating Limited Partnership, an Illinois limited partnership, and its successors and permitted assigns.

"**ERP Distribution Property**" has the meaning set forth in Section 10.4(b).

"**ERP DownREITs**" means Lexford, Master Property Holdings and Camargue, and their respective successors and assigns.

"**ERP Items**" means all items of gross income, gain, deduction and loss of the Company, as determined for purposes of maintaining Capital Accounts (or comparable capital accounts maintained by a Subsidiary), including, without limitation, Depreciation, attributable to the ERP Units or liabilities funded by ERP pursuant to this Agreement (including, without limitation, Tax Protection Payments funded by ERP pursuant to Section 3.3(b)(i)(B)).

"**ERP Member**" has the meaning set forth in the introductory paragraph of this Agreement, and includes any successors and permitted assigns.

"**ERP Representatives**" has the meaning set forth in Section 4.1(a).

"**ERP Units**" means common or preferred partnership or membership interests in ERP or any Subsidiary of ERP that is taxed as a partnership for federal income tax purposes. For the avoidance of doubt, each of the ERP DownREITs and their respective Subsidiaries is a Subsidiary of ERP (and not of the Company).

"**Expenditures**" means, for any period, the sum of all cash expenditures and increases in reserves during such period (determined on a standalone basis for the Company) including, without limitation: (i) all cash expenditures for operating expenses, (ii) principal, interest, fees, debt service payments and other payments on account of any Indebtedness, (iii) expenditures for capital improvements and other expenses of a capital nature with respect to any asset, (iv) additions to any reserves as may be approved as hereby required from time to time, (v) any and all expenditures related to any acquisition, development, sale, disposition, financing or refinancing of any asset, (vi) any amounts contributed or loaned by the Company to any Subsidiary of the Company, (vii) any other cash expenses incurred in connection with the Company's business, and (viii) any organizational expenses incurred by or on behalf of the Company (but not any costs or expenses incurred by ERP Member or AVB Member in connection with the formation of the Company and its Subsidiary Entities as applicable, including the costs and expenses incurred in connection with the negotiation, execution and delivery of this Agreement, which costs and expenses shall be the sole responsibility of ERP Member and AVB Member, respectively). In no event shall any deduction be made for non-cash expenses such as depreciation or amortization.

"**Extraordinary Transaction**" has the meaning set forth in Section 8.4.

"Fiscal Year" means the Company's fiscal year. The Company's fiscal year shall be its taxable year. The Company's taxable year shall be the calendar year, unless otherwise required by the Code or Treasury Regulations, or other applicable law in the case of the Company's taxable year(s) for foreign, state or local tax purposes, as reasonably determined by the Management Committee.

"**Funding Notice**" has the meaning set forth in Section 3.3(b).

"**Governmental Authority**" means any governmental or political subdivision, whether federal, state, local or foreign, or any agency or instrumentality of any such government or political subdivision, or any federal, state, local or foreign court, authority, tribunal, department, bureau or commission, in each case having jurisdiction over the matter.

"**Gross Receipts**" means, for any period, any and all cash receipts (including, without limitation, gross proceeds resulting from a Capital Transaction) during such period (determined on a standalone basis for the Company), including, without limitation, Capital Contributions, funds received in repayment of Archstone Intercompany Loans, and amounts released from (or paid from) reserves (except as provided in the last sentence of Section 3.3(b)). In addition, notwithstanding the foregoing, the term "Gross Receipts" shall also include the fair market value (as reasonably determined by agreement between the Members) of any property distributions received by the Company (following a distribution of such property by a Subsidiary Entity) with respect to the Member Units.

"**Holdings**" means Archstone Property Holdings LLC.

"**Holdings LLC Agreement**" means the Second Amended and Restated Limited Liability Company Agreement of Holdings, effective as of December 1, 2010, as amended from time to time.

"**Holdings Preferred Interests**" mean the Class B Membership Interests in Holdings, as such term is defined in the Holdings LLC Agreement.

"**Holdings Senior Preferred Interests**" means the Senior Preferred Interests in Holdings issued to Archstone or Archstone Smith Corporate Holdings LLC as part of the Contemplated Transactions in exchange for the contribution by Archstone or Archstone Smith Corporate Holdings LLC of certain assets.

"**Holdings Voting Interests**" mean the Voting Membership Interests, as such terms are defined in the Holdings LLC Agreement.

"Hypothetical Liquidation" shall mean a hypothetical liquidation of the Company in accordance with the terms of this Agreement that includes (i) a sale of all of the assets of the Company for cash at prices equal to their Adjusted Asset Values and (ii) the cash contribution by the Members of the aggregate maximum amounts, if any, that the Members would be required to contribute to the Company under this Agreement as and to the extent such amounts would be needed to pay all partnership recourse liabilities.

"**Indebtedness**" of any Person means without duplication, (a) all indebtedness for borrowed money, (b) all obligations issued, undertaken or assumed as the deferred purchase price of property or services, (c) all reimbursement obligations with respect to surety bonds, letters of credit, bankers' acceptances and similar instruments (in each case, to the extent non-contingent), (d) all obligations evidenced by notes, bonds, debentures or similar instruments, (e) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to properties acquired by the Person (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such properties), and (f) all obligations under capital leases, (g) all indebtedness

referred to in clauses (a) through (f) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any lien upon or in any property (including accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness.

"Indemnified Losses" has the meaning set forth in Section 7.1 of this Agreement.

"**Initial Closing**" has the meaning ascribed thereto in the Purchase Agreement.

"**JAMS**" has the meaning set forth in Section 11.13.

"**Lexford**" means Lexford Properties, L.P., a Delaware limited partnership, and its successors and assigns.

"**Major Decision**" has the meaning set forth in Section 4.3.

"**Management Committee**" has the meaning set forth in Section 4.1(a).

"**Management Committee Representative**" has the meaning set forth in Section 4.1(a).

"**Master Holdings**" means Archstone Master Property Holdings LLC, a Delaware limited liability company, and its successors and assigns.

"Member" or **"Members"** means AVB Member, ERP Member or any successors or Substitute Members thereto.

"Member Nonrecourse Debt" means "partner nonrecourse debt" as set forth in Treasury Regulations Section 1.704-2(b)(4).

"Member Nonrecourse Deductions" means "partner nonrecourse deductions" as set forth in Treasury Regulations Section 1.704-2(i)(2).

"**Member Units**" means, collectively, the ERP Units and the AVB Units.

"Membership Interest" means the entire ownership interest of a Member in the Company at any particular time, including all economic rights and voting rights of the Member in the Company, the right of such Member to any and all benefits to which a Member may be entitled as provided in this Agreement and under law, and the obligations of such Member to comply with all of the terms and provisions set forth in this Agreement and under applicable law.

"Minimum Gain Attributable to Member Nonrecourse Debt" means "partner nonrecourse debt minimum gain" as determined in accordance with Treasury Regulations Section 1.704-2(i)(2).

"**Non-Contracting Member**" means, in relation to any contract that is entered into between the Company or any Subsidiary Entity and a Member or that Member's Affiliates, the Member that is not the Contracting Member.

"Nonrecourse Deductions" has the meaning set forth in Treasury Regulations Sections 1.704-2(b)(1) and (c).

"Nonrecourse Liabilities" has the meaning set forth in Treasury Regulations Section 1.704-2(b)(3).

"Oakwood" has the meaning set forth in Section 11.8(c).

"**Parent**" means (a) in relation to ERP Member, ERP, and (b) in relation to AVB Member, AVB.

"**Parent Guaranty**" means that certain Guaranty, of even date herewith, executed and delivered by ERP in favor of AVB Member (but not any other person), pursuant to which ERP has guaranteed the obligations of ERP Member to fund its Capital Contributions to the Company

and to pay and perform its other obligations under this Agreement. The form of such Parent Guaranty is substantially in the form of Exhibit 2 attached hereto.

"**Person**" means any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so permits.

"Profits" and **"Losses"** means, for each Fiscal Year or other period, the Company's items of taxable income or loss for such year or other period, determined in accordance with Section 703(a) of the Code (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in taxable income or loss), with the following adjustments: (i) any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses shall be added to such taxable income or loss; (ii) any expenditures of the Company described in Section 705(a)(2)(B) of the Code or treated as Section 705(a)(2)(B) of the Code expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i) shall be subtracted from such taxable income or loss; (iii) gain or loss resulting from any disposition of a property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Adjusted Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Adjusted Asset Value; (iv) in lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, the Company shall compute such deductions based on the Depreciation of a property; (v) if the Adjusted Asset Value of an asset is adjusted pursuant to the definition of Adjusted Asset Value (except with respect to Depreciation), then the amount of such adjustment shall be treated as an item of gain or loss and included in the computation of Profits and Losses; and (vi) items of Company gross income, gains, deductions and losses allocated pursuant to Section B of Schedule B and all items allocated pursuant to Sections C(1) through (and including) C(5) of Schedule B shall not be included in the computation of Profits and Losses.

"**Proportionate Share**" means, unless and until there has been a transfer of an interest in the Company or an admission of a new Member, with respect to AVB Member, 40%, and with respect to ERP Member, 60%.

"**Purchase Agreement**" means that certain Asset Purchase Agreement, dated as of November 26, 2012, among Equity Residential, ERP, AVB, Lehman Brothers Holdings, Inc., a Delaware corporation, and Enterprise.

"**REIT**" means a "real estate investment trust" as defined in Section 856 of the Code.

"**Restricted AVB Property**" shall mean any of the multifamily residential communities designated as "AVB Properties" on Schedule D attached hereto, which are subject to contractual restrictions on transfer or other obligations (including with respect to the maintenance of certain indebtedness) pursuant to Tax Protection Agreements, or any property acquired in exchange therefor to the extent acquired in a tax-free exchange.

"**Restricted EQR Property**" shall mean any of the multifamily residential communities designated as "EQR Properties" on Schedule D attached hereto, which are subject to contractual

restrictions on transfer or other obligations (including with respect to the maintenance of certain indebtedness) pursuant to Tax Protection Agreements, or any property acquired in exchange therefor to the extent acquired in a tax-free exchange.

"**Restricted Holder**" has the meaning set forth in Section B(1) of Schedule B.

"**Restricted Property**" means any Restricted AVB Property or Restricted EQR Property.

"**Seller**" means Enterprise and Lehman Brothers Holdings, Inc., collectively.

"**Series I Preferred Shares**" means the Series I preferred shares of Archstone Trustee.

"**Subsidiary**" means, with respect to any Person, any other Person as to which the first Person, either (a) owns, directly or indirectly, 50% or more of the equity interests of the second Person, or (b) directly or through or together with any other of its Subsidiaries, owns securities or other ownership interests or equity interests having voting power to elect a majority of the board of directors or trustees or other governing body or Persons performing similar functions on behalf of such second Person or is the general partner or managing member or trustee of such second Person. The ERP DownREITs, AVB DownREIT and their respective Subsidiaries shall not be deemed to be Subsidiaries of the Company.

"**Subsidiary Entity**" means any Entity that is a Subsidiary of the Company.

"**Substitute Member**" means a Person that acquires a Membership Interest and that has been admitted as a Member pursuant to Article VIII of this Agreement.

"**Successor Parent**" has the meaning set forth in Section 8.4.

"**Target Balance**" means, with respect to any Member as of the close of any period for which allocations are made under Schedule B, the net amount such Member would receive (or be required to contribute) in a Hypothetical Liquidation of the Company as of the close of such period, expressed as a negative number if the Member is required to contribute a net amount to the Company in connection with a Hypothetical Liquidation and expressed as a positive number if the Member would receive a net distribution in connection with a Hypothetical Liquidation.

"**Tax**" or "**Taxes**" means any federal, state, local or foreign net income, gross income, net receipts, gross receipts, profit, severance, property, production, sales, use, license, excise, occupation, franchise, employment, unemployment, disability, payroll, severance, withholding, alternative or add-on minimum, ad valorem, value-added, transfer, stamp, estimated, capital stock, registration, license, social security (or similar) or other tax, custom duty, governmental fee or other governmental charge, fee, levy, impost, tariff or assessment of any kind, together with any interest, fine, penalty, addition to tax or additional amount imposed with respect thereto, whether disputed or not, imposed by a governmental authority.

"**Tax Items**" has the meaning set forth in Section C(1) of Schedule B.

"**Tax Matters Member**" means the "tax matters partner" as defined in Section 6231(a)(7) of the Code.

"**Tax Protected Person**" means any Person that is entitled to receive benefits under a Tax Protection Agreement.

"**Tax Protection Agreement**" means any written agreement to which any Archstone Entity is a party (and which has not expired or otherwise terminated) pursuant to which, in connection with the deferral of income Taxes of any party to such agreement (or any intended beneficiary of such agreement), any Archstone Entity (or its predecessor) has agreed to (w) maintain a minimum level of debt or continue a particular debt, (x) retain or not dispose of assets for a period of time, whether or not that period now has expired, (y) only dispose of assets in a particular manner, and/or (z) permit any party thereto to guarantee (or have guaranteed) debt of any Archstone Entity. Schedule C sets forth the Tax Protection Agreements relating to the Restricted Properties (and as soon as practicable following the Initial Closing, and in any event before the parties allocate the Baseline Debt Maintenance Obligations, AVB Member shall complete Schedule C with respect to Tax Protection Agreements relating to the Restricted AVB Properties).

"**Tax Protection Payment**" has the meaning ascribed to that term in the Buyers Agreement.

"**Term**" has the meaning set forth in Section 1.6 of this Agreement.

"**Transfer**" means sell, assign, transfer, mortgage, pledge, hypothecate, encumber, exchange or otherwise dispose of, whether or not for value, and whether voluntarily, by operation of law or otherwise.

"**Treasury Regulations**" means the temporary and final regulations issued by the U.S. Treasury Department under the Code, as amended or superseded from time to time.

"**Undistributed Unit Receipts**" means, as of any date of determination, (x) with respect to the AVB Member, an amount (not less than zero) equal to (i) the cumulative amounts of Unit Receipts from and after the Initial Closing to the date of determination attributable to the AVB Units *minus* (ii) the aggregate amounts of distributions made to the AVB Member pursuant to Section 5.2(i) or (ii) or deemed to have been made in compliance with Section 3.3(b)(ii); and, (y) with respect to the ERP Member, an amount (not less than zero) equal to (i) the cumulative amounts of Unit Receipts from and after the Initial Closing to the date of determination attributable to the ERP Units *minus* (ii) the aggregate amounts of distributions made to the ERP Member pursuant to Section 5.2(i) or (ii) or deemed to have been made in compliance with Section 3.3(b)(ii).

"**Unit Receipts**" means any amounts of cash received by the Company or any Subsidiary Entity or the fair market value (as determined by agreement between the Members) of other property received by the Company or such Subsidiary Entity with respect to any AVB Units or ERP Units held by the Company or such Subsidiary Entity (including, without limitation, as distributions on, or proceeds for, the redemption of such Member Units and without double counting, but excluding, for the avoidance of doubt, any amounts required to be reimbursed to ERP pursuant to those certain Assignment Agreements, dated February 27, 2013, between each of Holdings and OEC Holdings LLC, on the one hand, and Lexford, on the other hand).

ARTICLE III
MEMBERS; MEMBERSHIP INTERESTS; CAPITAL CONTRIBUTIONS; GUARANTEES

Section 3.1 One Class of Members.

All Members of the Company shall be of one class.

Section 3.2 Members of the Company.

Effective upon the adoption and execution of this Agreement, AVB Member and ERP Member are the sole Members of the Company. The respective addresses and percentage of Capital Contributions to the Company of AVB Member and ERP Member are set forth in Schedule A. Additional Members may not be admitted to the Company except in accordance with Section 8.7 hereof.

Section 3.3 Capital Contributions and Capital Accounts

(a) Initial Capital Contributions. Each Member has contributed or agrees to contribute to the Company the amount of capital having the value set forth opposite such Member's name on Schedule A in exchange for its Membership Interest, which capital shall be contributed in such form as may be required to enable the Company to acquire the Archstone Equity Interests from Enterprise pursuant to the Purchase Agreement, as more fully set forth in Section 4.4 of the Buyers Agreement.

(b) Additional Capital Contributions. If any Member reasonably determines (after taking into account any existing cash reserves of the Company) that capital is needed to fund any cash needs of the Company, such Member may issue a notice (a "**Funding Notice**") substantially in the form attached hereto as Exhibit 1 setting forth the amount of capital being requested (the "**Additional Capital Requested Amount**"); provided, however, that with respect to Capital Contributions needed to fund the Company's obligations addressed in Section 3.3(b)(i)(A) below, a copy of the redemption notice delivered by the applicable holder of Series I Preferred Shares or Archstone Preferred Units shall constitute a Funding Notice. Within ten (10) Business Days following the date of receipt of a Funding Notice, each Member shall advance to the Company as a Capital Contribution such Member's share of the Additional Capital Requested Amount as determined in accordance with Section 3.3(b)(i) below. Any funds advanced by the Members to the Company pursuant to this Section constitute additional Capital Contributions to the Company. Any unused amounts of the Capital Contributions funded by the Members or withheld from distributions under Section 3.3(b)(ii) with respect to a specific reserve that have not been used for the purpose of such reserve, shall be refunded to the Members in the proportions that such amounts were originally funded by the Members with respect to such specific reserve.

(i) Unless the Members determine a different sharing proportion as a Major Decision, or as otherwise expressly provided in this Agreement the Members shall make cash Capital Contributions to fund the following amounts in the sharing proportions specified below:

(A) redemption or distribution payments to holders of Series I Preferred Shares or to holders of Archstone Preferred Units, which shall be funded 60%

with Capital Contributions from ERP Member and 40% with Capital Contributions from AVB Member;

(B) Tax Protection Payments, which except as provided in Section 10.3 or Section 10.4 shall be funded as follows:

(1) with respect to any Tax Protection Payment becoming due and payable with respect to the underlying properties (including those set forth on Schedule D) as a result of the Contemplated Transactions or the Post-Closing Asset Transfers (as defined in the Buyers Agreement, collectively, the "**Closing Date Transactions**"), 60% with Capital Contributions from ERP Member and 40% with Capital Contributions from AVB Member, regardless of which Member (or its Affiliate) manages (directly or indirectly) the Entity that owns the underlying property to which such Tax Protection Payment relates; and

(2) with respect to any Tax Protection Payment becoming due and payable following the Initial Closing Date, other than as a result of any of the Closing Date Transactions (but including any other transaction that results in any of the Restricted AVB Properties or Restricted EQR Properties being treated as sold for tax purposes at the time of the Closing Date Transactions), 100% with Capital Contributions from (x) ERP Member if it relates to a Restricted EQR Property, or (y) AVB Member if it relates to a Restricted AVB Property.

(C) any liabilities (including contingent liabilities) of any Subsidiary Entity or any Entity that was a Subsidiary of Archstone, Archstone Trustee, or Holdings immediately prior to the Initial Closing (excluding any property-level and any other liabilities expressly addressed otherwise in Exhibit A to the Archstone Residual JV Term Sheet, the Archstone Residual Joint Venture Agreement or the Buyers Agreement) of Archstone, Archstone Trustee, and their Subsidiaries (including Holdings), which shall be funded 60% with Capital Contributions from ERP Member and 40% with Capital Contributions from AVB Member;

(D) any operating or other expenses of the Company and the Subsidiary Entities, which shall be funded 60% with Capital Contributions from ERP Member and 40% with Capital Contributions from AVB Member; and

(E) any amounts required pursuant to Section 5.3(b) or 9.2, which shall be funded 60% with Capital Contributions from ERP Member and 40% with Capital Contributions from AVB Member.

(ii) In lieu of calling for any such cash Capital Contributions from any Member, if the Members elect to do so as a Major Decision, the Company may use amounts of Distributable Cash that would otherwise be distributable by the Company to a Member to make such Member's required capital contribution (in which case such amounts shall be deemed distributed pursuant to Section 5.2 to, and then contributed to the Company by, such Member).

(c) Limitations. No Member shall have any liability for the repayment of the Capital Contribution of any other Member and, subject to Section 3.6, each Member shall look only to the assets of the Company for return of its Capital Contributions.

(d) No Right to Return of Contribution; No Interest on Capital. Except as provided in this Agreement, no Member shall have the right to withdraw or receive any return of, or interest on, any Capital Contribution or on any balance in such Member's Capital Account. If the Company is required to return any Capital Contribution to a Member, the Member shall not have the right to receive any property other than cash.

(e) Capital Accounts. The Company shall establish and maintain an individual Capital Account for each Member.

Section 3.4 Failure to Contribute Capital.

If any Member fails to make a Capital Contribution required under Section 3.3(b) by the date such Capital Contribution is due and such failure continues for ten (10) Business Days after written notice from the Member which has not failed to make its Capital Contribution (any such failing Member shall be a "**Capital Defaulting Member**" and the amount of the failed Capital Contribution shall be the "**Capital Default Amount**"), then the non-Capital Defaulting Member shall have any one and only one of the following remedies:

(a) to advance or to allow, for REIT compliance or other purposes, one of its Affiliates to advance, to the Company on behalf of, and as a loan to, the Capital Defaulting Member, an amount equal to the Capital Default Amount (each such loan, a "**Capital Default Loan**"). The Capital Account of the Capital Defaulting Member shall be credited with the amount of such Capital Default Loan, which shall be deemed to be a Capital Contribution made by the Capital Defaulting Member, and such amount shall constitute a debt owed by the Capital Defaulting Member to the non-Capital Defaulting Member (or, if applicable, its Affiliate). Any Capital Default Loan shall bear interest at a rate equal to fifteen (15%) per annum and shall be payable from any distributions due to the Capital Defaulting Member hereunder, but shall in all events be payable in full by the ninetieth (90^{th}) day following the date such Capital Default Loan was made. Interest on a Capital Default Loan to the extent unpaid shall accrue and compound monthly. A Capital Default Loan shall be prepayable at any time or from time to time without penalty. While any Capital Default Loan is outstanding, notwithstanding anything in this Agreement to the contrary, all distributions to the Capital Defaulting Member hereunder shall be applied first to payment of any interest due under any Capital Default Loan and then to principal until all amounts due thereunder are paid in full. All payments made in repayment of any Capital Default Loan shall be applied first toward payment of unpaid accrued interest and then (if any remains) toward payment of principal. If a Capital Default Loan is not paid on or prior to the date such Capital Default Loan becomes due, the non-Capital Defaulting Member may pursue all

available rights and remedies against the Capital Defaulting Member and, if applicable, pursuant to the Parent Guaranty, its Parent;

(b) to revoke the Funding Notice for both Members (if there has been a Funding Notice for both Members with respect to the applicable Capital Default Amount), whereupon any Capital Contributions paid by the non-Capital Defaulting Member pursuant to such Funding Notice shall be returned, in which event the Members may reconsider the needs of the Company for additional Capital Contributions, and any Member may thereafter issue any Funding Notice as permitted hereunder following such reconsideration; or

(c) to make its required Capital Contribution and, if applicable, pursue its rights under the Parent Guaranty delivered by the Parent of the Capital Defaulting Member with respect to such Capital Default Amount.

Unless the non-Capital Defaulting Member shall have elected to revoke the Funding Notice for both Members pursuant to Section 3.4(b) (if applicable), then, until either the Capital Default Loan made by the non-Capital Defaulting Member shall have been repaid in full or the amounts due with respect to such Capital Contribution have been funded by the Capital Defaulting Member or, if applicable, its Parent pursuant to the Parent Guaranty, the Capital Defaulting Member and the Management Committee Representatives appointed by it shall have no voting or approval rights as a Member or as a Management Committee Representative (other than voting or approval rights with respect to any action, decision or transaction, to be taken, made or entered into with respect to the Member Units, which will continue to be exercised solely by the Management Committee Representatives appointed by the Member affiliated with the issuer of the Member Units pursuant to Section 4.1(e)(ii) except as provided in Section 4.3(i)), but the other Member shall continue to act in good faith in the interest of the Company and shall not unilaterally take any action that is inconsistent with the business purposes of the Company. Such voting and approval rights shall be restored in the event that the Capital Defaulting Member (or, if applicable, its Parent, pursuant to its Parent Guaranty) repays the Capital Default Loan in accordance with the terms of this Agreement, but the Capital Defaulting Member and the Management Committee Representatives appointed by it shall be bound by all decisions that were made with respect to the Company without its or their approval while the Capital Default Loan was outstanding. Notwithstanding the foregoing, under no circumstances shall the non-Capital Defaulting Member or the Management Committee Representatives appointed by it have any authority, without the written consent of the Capital Defaulting Member or, as applicable, the Management Committee Representatives appointed by it, to cause the Company to incur on behalf of the Company any indebtedness which includes any recourse obligations of any Member, to engage in any transaction with any Affiliate of the non-Capital Defaulting Member, or to amend this Agreement, nor shall the Capital Defaulting Member forfeit any of its rights to receive distributions, to receive reports or obtain information as a result of the making of any Capital Default Loan.

Section 3.5 Parent Guaranty.

Concurrently with the execution and delivery of this Agreement, ERP has delivered its Parent Guaranty to AVB Member. No creditor or third party shall have rights to enforce any obligations under any Parent Guaranty.

Section 3.6 Members as Creditors.

With the Approval of the Members and subject to any other applicable terms in this Agreement, any Member may lend money to and transact other business with the Company as a creditor and, subject to applicable law, any Member has the same rights and obligations with respect thereto as a person who is not a Member.

Section 3.7 No Right of Withdrawal or Resignation.

No Member shall have the right to withdraw or resign from the Company except with the Approval of the Members, and then only upon such terms and conditions as may be specifically agreed upon between the Members. Notwithstanding any other provision of this Agreement, unless otherwise Approved by the Members, the withdrawing or resigning Member shall not be entitled to any return or repayment of its Capital Contribution or other distribution or transfer in the event of withdrawal or resignation. The foregoing provisions are exclusive and no Member shall be entitled to claim any distribution or transfer upon withdrawal or resignation under Section 18-604 of the Act or otherwise.

Section 3.8 Limited Liability.

Except as expressly set forth in this Agreement or required by law, no Member shall (a) be personally liable for any Indebtedness or other liability or obligation of the Company, whether that Indebtedness, liability or obligation arises in contract, tort, or otherwise, solely by reason of being a Member of the Company, or (b) have any obligation to restore any deficit or negative balance in the Capital Account of such Member.

Section 3.9 No Third Party Rights.

Any obligations or rights of the Company or the Members to make or require any Capital Contribution under this Article III shall not result in the grant of any rights or confer any benefits upon any Person who is not a Member.

ARTICLE IV
MANAGEMENT AND CONTROL OF THE COMPANY

Section 4.1 Management Committee

(a) Composition. The Company shall have a Management Committee (the "**Management Committee**") which shall be composed of four (4) individuals (each, a "**Management Committee Representative**"). Two (2) Management Committee Representatives shall be Persons appointed by AVB Member (the "**AVB Representatives**") and two Management Committee Representatives shall be Persons appointed by ERP Member (the "**ERP Representatives**"). As of the date hereof, the initial AVB Representatives are Kevin O'Shea and Matthew Birenbaum, and the initial ERP Representatives are Mark Parrell and Bruce Strohm.

(b) Vacancies; Removal. Each Management Committee Representative shall hold office at the discretion of the Member appointing such Management Committee Representative. Any AVB Representative may be removed and replaced, with or without cause and for any reason at any time, by (and only by) AVB Member. Any ERP Representative may be removed

and replaced, with or without cause and for any reason at any time, by (and only by) ERP Manager. A Management Committee Representative may also resign of its own volition at any time, by written notice to the Members. In the event of any vacancy in the office of a Management Committee Representative, such vacancy shall be filled, by written notice to the Members, by an individual designated by (i) AVB Member if such vacancy relates to an AVB Representative, and (ii) ERP Member if such vacancy relates to an ERP Representative.

(c) Meetings.

(i) Meetings of the Management Committee shall be held once per fiscal year of the Company on such dates and at such places and times as may be Approved by the Members. The agenda items for each annual meeting shall include a review of the Company's business and the other activities of the Company.

(ii) With the Approval of the Members, Management Committee meetings may be held more frequently than annually, and, notwithstanding the foregoing, a special meeting may be called by any Management Committee Representative by written notice delivered at least 3 business days in advance and stating the purpose of the meeting.

(iii) Management Committee Representatives may vote in person or by proxy; such proxy may be granted in writing, by electronic transmission (as defined in the Act), or as otherwise permitted by applicable law.

(iv) At the election of either Member, Management Committee meetings may be held by telephone conference or other communications equipment by means of which all participating Management Committee Representatives can simultaneously hear each other during the meeting.

(v) Any action required or permitted to be taken by the Management Committee may be taken without a meeting, if a consent to such action is delivered in writing or via electronic transmission (as defined in the Act) by the requisite number of the Management Committee Representatives. Such written consent or a record of such electronic transmission shall be filed with the records of the Management Committee.

(d) Attendance at Management Committee Meetings. Subject to Section 3.4, no action may be taken at a meeting of the Management Committee unless at least one Management Committee Representative appointed by each Member is present in person or as otherwise permitted in Section 4.1(c). Notwithstanding the foregoing, during any period when a Member shall be a Capital Defaulting Member, action may be taken at a meeting of the Management Committee without regard to the attendance at such meeting of the Management Committee Representatives appointed by such Capital Defaulting Member, but only with respect to matters as to which its Management Committee Representatives have no voting rights as more fully provided in Section 3.4, and only if at least five (5) Business Days' notice of the meeting shall have been provided to the Capital Defaulting Member and an opportunity to be present at such meeting (in person or via telephone) shall have been provided to such Capital Defaulting Member.

(e) Voting Rights; Required Votes. Except as provided below, and subject to Section 3.4, each Management Committee Representative shall be entitled to cast one vote with respect to any matter requiring Approval of the Management Committee. Any action, decision or transaction considered by the Management Committee at a meeting thereof must be Approved by the Management Committee in order to be authorized; provided that (i) any action to be considered by the Management Committee involving any contract or agreement between the Company or any of its Subsidiaries (which, for the avoidance of doubt, does not include AVB DownREIT, the ERP DownREITs or their respective Subsidiaries) and a Contracting Member shall not be effective or authorized unless it is unanimously approved by the Management Committee Representatives appointed by the Non-Contracting Member (which approval shall constitute "Approval by the Management Committee" for all purposes hereof) and the Management Committee Representatives appointed by the Contracting Member shall have no right to vote or approve of any such action and (ii) except for the decisions or actions set forth in Section 4.3(i), with respect to any action, decision or transaction to be taken, made or entered into with respect to any Member Units, including voting any Member Units, whether directly by the Subsidiary Entity holding such Member Units or indirectly through voting by the Company of its equity interest in such Subsidiary Entity, only Management Committee Representatives appointed by the Member affiliated with the issuer of the Member Units shall have the right to vote on or approve of any such action, decision or transaction (which approval shall constitute "Approval by the Management Committee" for all purposes hereof). Notwithstanding anything to the contrary contained herein, if only one of the Management Committee Representatives appointed by a Member is present in person, via other means permitted pursuant to Section 4.1(c) or by proxy at a meeting of the Management Committee, the votes cast by such Management Committee Representative shall count as two (2) votes and shall be deemed to consist of the entire voting power of both Management Committee Representatives appointed by such Member.

(f) Approval by Members in Lieu of the Management Committee. At any time, the Members may consider and Approve or disapprove any action, decision or transaction that this Agreement contemplates will be considered, Approved or disapproved by the Management Committee. In the event of any conflict or inconsistency between any action, decision or transaction that has been Approved by the Members and any action, decision or transaction that has been Approved by the Management Committee, the action, decision or transaction Approved by the Members shall govern and control, and shall not be overridden or superseded by an action, decision or transaction Approved by the Management Committee unless such action, decision or transaction is also Approved by the Members.

Section 4.2 Administrative Manager.

(a) As expressly provided in this Agreement, or at any time and from time to time hereafter with the Approval of the Members or the Approval of the Management Committee, a Member shall be designated as administrative member of the Company (in such capacity, the "**Administrative Manager**"). The Administrative Manager is intended to be a "manager" as defined in the Act having the specific authority expressly described herein or in the applicable Approval of the Members or Approval of the Management Committee.

(b) The Members hereby designate ERP Member to be the Administrative Manager with the responsibility for general administrative oversight and management of the Company. The Administrative Manager shall have authority to manage the day-to-day general business and administrative affairs of the Company, including the opening and maintenance of bank accounts, the handling of funds, the maintenance of the Company's books and records, the preparation and distribution of quarterly and annual reports, the preparation and distribution of tax returns, the procurement of insurance policies consistent with this Agreement, serving as manager, authorized signatory or agent of the Company with respect to the execution of documents or consummation of transactions, or otherwise with respect to specific assets or obligations of the Company, and the other specific authorities provided for in this Agreement, together with the authority, rights and powers in connection with the general and administrative management of the Company's business to do any and all other acts and things necessary, proper, appropriate, advisable, incidental or convenient to effectuate the purposes of this Agreement, but all subject to the limitations, restrictions, conditions and requirements set forth in this Agreement.

(c) The Member appointed as the Administrative Manager shall serve at the discretion of the Members, and such Member may be removed as the Administrative Manager upon the Approval of the Members (if such Member was appointed with the Approval of the Members or the Approval of the Management Committee) or removed upon the Approval of the Management Committee (if such Member was appointed with the Approval of the Management Committee).

(d) Without limiting the Administrative Manager's express obligations under this Agreement, the Members hereby agree that the Administrative Manager shall not have any fiduciary duty to the Company or the Members, any such requirement of fiduciary duty being forever and unconditionally waived by the Members to the extent permitted by the Act. Notwithstanding anything to the contrary in this Agreement, in addition to the express limitations set forth in this Agreement with respect to the duties and obligations of the Administrative Manager, Administrative Manager shall not be in default of its duties and obligations under this Agreement in the event that (i) such Administrative Manager is unable to cause the Company or a Member to take any action because the action to be taken constitutes a Major Decision and such Major Decision is not then Approved by the Members or Approved by the Management Committee, or (ii) such Administrative Manager is unable to cause the Company or a Member to take any action due to a lack of available Company funds.

(e) Officers. From time to time, the Management Committee may appoint officers of the Company or its Subsidiaries with such designations, responsibilities, and authority as the Management Committee deems appropriate or advisable.

Section 4.3 Major Decisions.

Notwithstanding any other provision of this Agreement to the contrary, no Member or Administrative Manager shall take or cause any of the following actions, make any of the following decisions or enter into any of the following transactions (each a "**Major Decision**"), whether by or on behalf of the Company directly, or by or on behalf of any of the Subsidiary Entities, without first obtaining the Approval of the Management Committee (or, pursuant to Section 4.1(f), the Approval of the Members) (it being understood that such Approval may be

obtained through the approvals that are granted for an Annual Budget and that a Member's or the Management Committee's approval of any such Annual Budget shall be deemed to include the approval of all matters identified therein and of the implementation thereof by the Administrative Manager in good faith and in the ordinary course of business) or take any other action which contravenes the conditions or limitations that expressly apply to any Approval by the Members or Approval by the Management Committee pursuant to the terms of this Agreement:

(a) Amend Organizational Documents. (x) Amend or otherwise change any material provision of any organizational document of any Subsidiary Entity or (y) cause or permit the amendment or other change to any organizational document of an Entity issuing the Member Units that could reasonably be expected to effect the ability of Equity Residential or AVB to qualify as a REIT under the Code, to materially and adversely affect the accounting treatment of ownership of Common Shares by a Member or the treatment of transfers of Restricted Properties or interests therein to the Entities issuing Member Units as tax deferred contributions under Section 721 of the Code.

(b) Enter into New Partnership. Enter into or establish any partnership, joint venture or similar arrangement (including, without limitation, funds or other investment vehicles) with a third party.

(c) Elections or Changes to Governing Boards of Subsidiary Entities. Elect members to, or voluntarily permit any changes to, any board, management committee or similar governing board of any Subsidiary Entity; provided, however, that the Management Committee and the Members will use all commercially reasonably efforts to cause the membership of any such governing board to consist of as nearly equal a number as practicable of designees by the AVB Member and designees by the ERP Member.

(d) Acquisition of Assets; Formation of New Subsidiary Entities. Invest in, purchase or otherwise acquire (whether by merger, consolidation or acquisition of equity interests or assets, or any other business combination, and whether directly or indirectly) any assets, including equity interests in any entity, or an interest therein, other than the Archstone Legacy Assets and the Member Units, or form any new Subsidiary Entity.

(e) Sales and Dispositions. Cause any sale, transfer, assignment, conveyance, exchange or other disposition of any assets of the Company or any Subsidiary Entity, including any of the Archstone Legacy Assets or any Member Units other than redemptions of Member Units in compliance with Section 10.4.

(f) Annual Budget; Expenditures in Excess of Budget. Approve an Annual Budget or any modification to an Annual Budget or expend (or commit to expend) on an aggregate basis amounts in excess of 110% of the total budgeted amount in any such Annual Budget.

(g) Archstone Preferred Units. Make any decision or take any action involving the redemption, purchase, re-purchase, cancellation or exchange of, or the declaration, setting aside or payment of a dividend or distribution with respect to, the Archstone Preferred Units; .

(h) Series I Preferred Shares. Make any decision or take any action involving the redemption, purchase, re-purchase, cancellation or exchange of, or the declaration, setting aside or payment of a dividend or distribution with respect to, the Series I Preferred Shares.

(i) Member Units. Make any decision or take any action relating to the redemption or other disposition of any Member Units (or action having a comparable effect on Holdings' direct or indirect interest in the ERP DownREITs or AVB DownREIT), whether directly by the Subsidiary Entity holding such Member Units or indirectly through voting by the Company of its equity interest in such Subsidiary Entity, other than any distribution of Member Units to the applicable Member upon liquidation of the Company in accordance with this Agreement or distributions in redemption in accordance with Section 10.4.

(j) Additional Capital Contributions. Issue a Funding Notice unless the funds requested in such Funding Notice are for an expense that is specified in Section 3.3(b)(i) or that has been Approved by the Members or Approved by the Management Committee in an Annual Budget.

(k) Waiver of Requirement to make Additional Capital Contributions. Waive any requirements of any Member to make Additional Capital Contributions required to be made pursuant to a Funding Notice.

(l) Transactions with Members, Affiliates. Enter into or consummate any transaction or arrangement between the Company or any Subsidiary Entity, on the one hand, and any Member or any Affiliate of any Member, on the other hand.

(m) Indebtedness. Cause the Company or any Subsidiary Entity to incur, assume, prepay, purchase, amend, extend, renew, refinance, recast, compromise or otherwise deal with any Indebtedness (other than payables incurred in the ordinary course of business in accordance with an Approved Annual Budget).

(n) Liens. Mortgage, pledge, hypothecate or subject to any type of lien (other than inchoate liens for contractors and subcontractors, real estate taxes and utility charges established by applicable law) any of the assets of the Company or any Subsidiary Entity, or amend, extend or renew any of the agreements entered into in connection with the foregoing.

(o) Accountants. Engage, remove or appoint any accountants for the Company or any Subsidiary Entity (other than the Accountants).

(p) Change Accounting Principles or Policies. Except as required by changes in law or changes in generally accepted accounting principles, change any financial accounting principles or policies in any material respect.

(q) Material Liabilities. Take any action that is not contemplated in the Annual Budget that would reasonably be anticipated to create a material liability, obligation, cost or expense for the Company or any Subsidiary Entity in an amount that is reasonably anticipated to exceed $250,000.

(r) Material Contracts. Except as set forth in Section 4.5, enter into, renew, modify or terminate or cause the Company or any Subsidiary Entity to enter into, renew, modify or terminate any contract (i) involving aggregate annual payments in an amount in excess of (A) $50,000 with respect to any single contract or (B) 110% of the line item in the Annual Budget which governs the subject matter of such contract, with respect to all such contracts in the aggregate during the period covered by such Annual Budget, or (ii) for a term of greater than one year, or (iii) which is not terminable by the Company or Subsidiary Entity without cause or penalty on sixty (60) days' or less prior written notice.

(s) Employees. Hire any employee of the Company or any Subsidiary Entity or establish, adopt, enter into or amend any collective bargaining (or similar), bonus, profit-sharing, thrift, compensation, stock option, restricted stock, stock unit, dividend equivalent, pension, retirement, deferred compensation, employment, loan, retention, consulting, indemnification, termination, severance or other similar plan, agreement, trust, fund, policy or arrangement with any independent contractor of the Company.

(t) Legal Proceedings. Commence any material legal or arbitration proceeding on behalf of the Company or any Subsidiary Entity; confess a material judgment against the Company or any Subsidiary Entity; settle any material claim asserted against the Company or any Subsidiary Entity in any legal or arbitration proceeding.

(u) Indemnification Claims. Except as provided in the Buyers Agreement, make any decision or take any action involving indemnification claims against Seller pursuant to the Purchase Agreement or any documents related to, or executed in connection with, the Purchase Agreement.

(v) Bankruptcy. Cause any of the following to occur with respect to the Company or any Subsidiary Entity: (i) making an assignment for the benefit of creditors, (ii) filing a voluntary petition in bankruptcy, (iii) filing a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, (iv) filing an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of this nature, (v) filing a petition seeking, consenting to or acquiescing in the appointment of a trustee, receiver or liquidator, whether for itself or for all or any substantial part of its properties, or (vi) taking any action in furtherance of the foregoing.

(w) Reorganization. Cause the formation of any Subsidiary Entity or any Affiliate of the Company, or merge the Company or any Subsidiary Entity into any other Person, or convert the form of such Entity into a different form of Entity or otherwise enter into any similar entity reorganization.

(x) Dissolution of the Company; In-Kind Distributions. Except in accordance with Section 9.1, cause the dissolution and winding-up of the Company or any Subsidiary Entity, except for the dissolution and liquidation of a Subsidiary Entity following the approved sale of all of the assets owned by such Subsidiary Entity, or make any in-kind distribution of the assets of the Company or any Subsidiary Entity, except as provided in Section 5.3 or 9.2 or 10.4.

(y) Insurance. Determine, modify or waive the requirements of the Company's insurance program, including insurers, coverage and policy amounts.

(z) Tax Elections. Make, rescind or revoke any material tax election (whether or not such election is filed with a tax return) or change a material method of tax accounting, amend any material tax return, agree to waive or extend any period of adjustment, assessment or collection of material taxes, or settle or compromise any material federal, state, local or foreign income tax liability, audit, claim or assessment, or enter into any material closing agreement related to taxes, or surrender any right to claim any material tax refund unless in each case such action is required by applicable law.

(aa) Prohibited Tax Shelter Transactions. Use any assets of the Company or any Subsidiary Entity in a "prohibited tax shelter transaction" within the meaning of Section 4965(e)(1) of the Code.

(bb) Reserves. Except for reserves that are expressly provided for in the Annual Budget, establish reserves for future working capital or other capital needs or for any other purpose of the Company or any Subsidiary Entity.

(cc) Designation of Administrative Manager. Appoint or remove a Member as the Administrative Manager or appoint or remove any Person as a member, manager or officer of any Subsidiary Entity.

(dd) Other Major Decisions. Approve any action, decision or transaction for which the Approval of the Members or Approval of the Management Committee is required pursuant to any other provision of this Agreement.

Notwithstanding the provisions of this Section 4.3, the final documents for any material action, decision or transaction that would, but for its inclusion in an Annual Budget, be a "Major Decision" hereunder shall be subject to Approval of the Management Committee, which Approval shall not be unreasonably withheld, conditioned or delayed if the proposed action, decision or transaction is consistent with the Annual Budget for the applicable asset or liability in all material respects. It is understood and agreed that any Member or Administrative Manager may initiate a request to the Management Committee for consideration of a proposed Major Decision.

Section 4.4 Budgets and Business Plans.

(a) On or before October 15th of each year during the term hereof, the Administrative Manager shall prepare and submit to the Members for Approval of the Members a proposed Annual Budget for the next calendar year.

(b) At a Management Committee meeting following the completion of each Fiscal Year (to be called by the Administrative Manager for a date during the first quarter of the next Fiscal Year), the agenda items shall include approval of the proposed Annual Budget for the ensuing year. If the Management Committee does not approve the proposed Annual Budget for any year, then, until an Annual Budget for such year is Approved by the Management Committee, the prior year's Annual Budget shall be utilized with adjustments thereto to reflect

(i) any increases in particular line items that have been Approved by the Management Committee, (ii) as to other items, adjustments to reflect increases in the cost of living and increases in the cost of non-discretionary items (such as debt service payments, insurance premiums (for coverages required pursuant to this Agreement) or costs required to be incurred pursuant to the requirements of contracts to which the Company or any Subsidiary Entity is a party or to which the Company or any Subsidiary Entity is otherwise bound), and (iii) increases resulting from emergencies or force majeure events.

Section 4.5 Reserves — General.

The Company shall maintain, and shall cause the Subsidiary Entities to maintain, such reserves as are Approved by the Members or Approved by the Management Committee or set forth or contemplated in the Annual Budget. In the Annual Budget, the Members may provide for the retention of sufficient amounts of cash on hand in the accounts of the Company and the Subsidiary Entities to pay reasonably anticipated costs and expenses of the Company and the Subsidiary Entities to the extent mutually agreed.

Section 4.6 Contracts With Contracting Members.

(a) Except as expressly approved in this Agreement, in an Annual Budget or otherwise Approved by the Members or Approved by the Management Committee, neither any Member nor the Administrative Manager shall cause or permit the Company or any Subsidiary Entity to engage or pay any compensation to a Member or any Affiliate of a Member for the provision of services to the Company or any Subsidiary Entity.

(b) Notwithstanding any provision herein to the contrary, in its sole discretion, the Non-Contracting Member, acting on behalf of the Company or any Subsidiary Entity, may terminate (or otherwise exercise the rights and remedies of the Company or a Subsidiary Entity under) any agreements with any Contracting Member or any Affiliate of the Contracting Member pursuant to the terms of any such agreement (after it complies with the requirements set forth in the immediately following paragraph), provided that the Non-Contracting Member may not so act on behalf of the Company or any Subsidiary Entity to terminate any such agreement pursuant to any "without cause" termination right. No decision under any such agreement that would constitute a "Major Decision" under this Agreement may be made on behalf of the Company or any Subsidiary Entity without the Approval of the Members or Approval of the Management Committee.

(c) Notwithstanding the provisions of Section 4.6(b), if the Non-Contracting Member reasonably believes that the Contracting Member or any Affiliate of the Contracting Member is not fulfilling its obligations under any agreement, the Non-Contracting Member shall, before exercising any termination right or other right or remedy thereunder, (i) obtain any and all necessary consents and approvals, and (ii) provide the Contracting Member (or Affiliate) with written notice thereof, which shall have 30 days from its receipt of the notice to remedy the situation to the Non-Contracting Member's reasonable satisfaction; provided, that if such situation is reasonably susceptible of cure, but a period longer than 30 days is reasonably required to complete the cure, then such Contracting Member (or Affiliate) shall have an additional period to remedy the situation so long as such Contracting Member (or Affiliate) promptly commences to remedy the situation and diligently prosecutes the same to completion,

but such additional period shall not exceed an additional 60 days. If the Non-Contracting Member is not reasonably satisfied that the situation has been remedied within such period, the Non-Contracting Member shall have the right to terminate the applicable agreement pursuant to the terms thereof, and replace such Contracting Member (or Affiliate) with an Entity selected by the Contracting Member from a list provided by the Non-Contracting Member provided that the list includes the names of at least three (3) Persons unaffiliated with the Non-Contracting Member, all of whom have at least ten (10) years' experience in performing the management or other services that were provided under the applicable terminated agreement.

Section 4.7 Limited Liability of Management Committee Representatives and Administrative Manager.

Except as expressly set forth in this Agreement or as required by law, no Management Committee Representative or Administrative Manager shall be personally liable for any debt, obligation or liability of the Company whether that liability or obligation arises in contract, tort, or otherwise, solely by reason of being a Management Committee Representative or Administrative Manager of the Company.

Section 4.8 Standard of Care of Management Committee Representatives and Administrative Manager.

Each Management Committee Representative and the Administrative Manager shall perform the respective duties as Management Committee Representative and Administrative Manager in good faith and in the ordinary course of business, consistent with the terms of this Agreement, subject, in the case of Management Committee Representatives, to the terms of Section 1.9, and subject, in the case of both Management Committee Representatives and the Administrative Manager, to the terms of Section 7.4. Management Committee Representatives and the Administrative Manager do not, in any manner, guarantee the return of the Members' Capital Contributions or a profit for the Members from the operations of the Company. Management Committee Representatives and the Administrative Manager shall not be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of fraud, gross negligence, willful misconduct, a willful, knowing or intentional breach of this Agreement, or the result of any act or omission performed or omitted by it not in good faith.

Section 4.9 Transactions between the Company and an Interested Management Committee Representative.

Notwithstanding that it may constitute a conflict of interest, a Management Committee Representative that is not a Member or Affiliate of a Member may directly or indirectly engage in any transaction (including without limitation the purchase, sale, lease, or exchange of any property, or the lending of funds, or the rendering of any service, or the establishment of any salary, other compensation, or other terms of employment) with the Company; provided however that in each case (a) such transaction is not expressly prohibited by this Agreement, (b) the terms and conditions of such transaction on an overall basis are fair and reasonable to the Company, and (c) the transaction has been Approved by the Members after disclosure of all material facts relating to the conflict or potential conflict.

Section 4.10 Bank Accounts.

The Administrative Manager may from time to time open bank accounts in the name of the Company (which shall be segregated from, and not commingled with the funds of any Person other than a Subsidiary Entity), and representatives of the Administrative Manager shall be the sole signatories thereon.

Section 4.11 Reimbursement of Expenses; Compensation.

(a) The Management Committee Representatives and the Administrative Manager shall be entitled to reimbursement from the Company of all third-party out-of-pocket expenses of the Company reasonably incurred and paid by such Management Committee Representative or Administrative Manager on behalf of the Company.

(b) Except as specifically provided in this Section 4.11, Members, Management Committee Representatives and the Administrative Manager shall not otherwise be entitled to compensation.

Section 4.12 Reliance by Third Parties.

Any Person dealing with the Company or any Subsidiary Entity may rely upon a certificate signed by any Member or the Administrative Manager as to:

(i) the identity of the Members or the Administrative Manager;

(ii) the existence or non-existence of any fact or facts that constitute a condition precedent to acts by the Company or any Subsidiary Entity or that are in any other manner germane to the affairs of the Company or any Subsidiary Entity;

(iii) the Persons, if any, that are authorized to execute and deliver any instrument or document of, or on behalf of, the Company or any Subsidiary Entity; or

(iv) any act or failure to act by the Company or any Subsidiary Entity, or any other matter whatsoever, involving the Company or any Subsidiary Entity.

Section 4.13 Member Unit Voting Rights.

Each Member shall be entitled to exercise all voting rights with respect to the Member Units issued by its Affiliate (other than any voting rights with respect to an action that would result in the redemption or other disposition of such Member Units, the voting rights with respect to which action shall require Approval as a Major Decision).

ARTICLE V
TAXES, ALLOCATIONS AND DISTRIBUTIONS

Section 5.1 Allocations and Tax Provisions.

Notwithstanding any contrary provision of this Agreement, rules governing allocations of income, gains, losses and deductions, certain tax matters and related items are set forth in Schedule B attached hereto and made a part hereof.

Section 5.2 Non-Liquidating Distributions.

Subject to Section 5.5, non-liquidating distributions of Distributable Cash shall be made no less frequently than once each fiscal quarter to the Members based on the source of the applicable funds as follows:

(i) An amount equal to the aggregate Undistributed Unit Receipts as of the date with respect to which the Distributable Cash shall have been determined attributable to the ERP Units shall be distributed to the ERP Member and an amount equal to the aggregate Undistributed Unit Receipts as of the date with respect to which the Distributable Cash shall have been determined attributable to the AVB Units shall be distributed to the AVB Member; provided that, if the aggregate amount of Distributable Cash as of the date of the applicable distribution is less than the aggregate amount of Undistributed Unit Receipts as of such date, then all of the Distributable Cash as of such date will be distributed to the Members in proportion to the respective percentages of the aggregate Undistributed Unit Receipts attributable to the ERP Units or the AVB Units, as the case may be.

(ii) If and to the extent that Unit Receipts consist of property other than cash distributed with respect to AVB Units or ERP Units, then a distribution shall be made, as promptly as practicable after receipt thereof, to the ERP Member in the form of the property distributed with respect to the ERP Units or to the AVB Member in the form of the property distributed with respect to the AVB Units, as the case may be, and shall be valued, for purposes of determining the amount of Distributable Cash and Undistributed Unit Receipts, at the fair market value of such property as determined by agreement between the Members.

(iii) Any Distributable Cash remaining after the distributions made pursuant to paragraph (i) of this Section 5.2 on any date shall be distributed to the Members equitably, after taking into account the source of the revenue and the relative Capital Contributions of the Members.

Section 5.3 Distributions in Liquidation.

(a) All distributions in liquidation of the Company shall be made in compliance with the applicable provisions of the Act and otherwise pursuant to this Agreement. After appropriate payments have been made to the Company's creditors and holders of preferred securities, (i) any AVB Units held by a Subsidiary Entity upon liquidation of such Subsidiary Entity shall be distributed in kind, through one or more transfers, to the Company and the Company shall distribute such AVB Units to AVB Member and (ii) any ERP Units held by a Subsidiary Entity upon liquidation of such Subsidiary Entity shall be distributed in kind, through one or more transfers, to the Company and the Company shall distribute such ERP Units to ERP Member. No distribution of AVB Units or ERP Units pursuant to this Section 5.3 shall be considered, for purposes of Section 5.2(i), to be a distribution of Undistributed Unit Receipts. All Distributable Cash of the Company, upon liquidation, shall be distributed in accordance with the priorities set forth in Section 5.2, subject to the provisions of Section 5.3(b).

(b) In the event that, the amount of Distributable Cash available to be distributed in liquidation of the Company is less than the amount of Undistributed Unit Receipts at such time, the Members shall make Capital Contributions (x) first, in the amount necessary to fulfill any previously unsatisfied Capital Contribution call with respect to such Member and (y) second, in their respective Proportionate Shares in an aggregate amount sufficient to cause the amount of Distributable Cash to equal the amount of Undistributed Unit Receipts.

(c) Subject to the provisions of Sections 5.3(b) and 9.2, the Members shall have no obligation to restore a deficit Capital Account balance at any time.

Section 5.4 Withholding.

(a) General. Each Member shall, to the fullest extent permitted by applicable law, indemnify and hold harmless the Company and each Covered Person who is or who is deemed to be the responsible withholding agent for U.S. federal, state or local or non-U.S. income tax purposes against all claims, liabilities and expenses of whatever nature relating to the Company's or such Covered Person's obligation to withhold and to pay over, or otherwise pay, any withholding or other taxes payable by the Company with respect to such Member or as a result of such Member's participation in the Company.

(b) Authority to Withhold; Treatment of Withheld Tax. Notwithstanding any other provision of this Agreement, each Member hereby authorizes the Company to withhold and to pay over, or otherwise pay, any withholding or other taxes payable or required to be deducted by the Company or any of its Affiliates (pursuant to the Code or any provision of U.S. federal, state or local or non-U.S. tax law) with respect to such Member or as a result of such Member's participation in the Company (including as a result of a distribution in kind to such Member). If and to the extent that the Company shall be required to withhold or pay any such withholding or other taxes, such Member shall be deemed for all purposes of this Agreement to have received from the Company as of the time that such withholding or other tax is withheld or paid, whichever is earlier, a distribution of Distributable Cash in the amount thereof, pursuant to the applicable clause of Section 5.2 or 5.3, to the extent that such Member would have received a cash distribution, pursuant to the applicable clause of Section 5.2 or 5.3, but for such withholding. To the extent that such withholding or payment exceeds the cash distribution that such Member would have received but for such withholding, the Administrative Manager shall notify such Member as to the amount of such excess and such Member shall make a prompt payment to the Company of such amount by wire transfer, which payment shall not constitute a Capital Contribution and, consequently, shall not increase the Capital Account of such Member.

(c) Withholding Tax Rate. Any withholdings referred to in this Section 5.4 shall be made at the maximum applicable statutory rate under the applicable tax law unless the Administrative Manager shall have received an opinion of counsel, or other evidence, reasonably satisfactory to the Administrative Manager to the effect that a lower rate is applicable or that no withholding or payment is required.

(d) Withholding from Distributions to the Company. In the event that the Company or any Subsidiary Entity receives a distribution or payment from or in respect of which tax has been withheld, the Company shall be deemed to have received cash in an amount equal to the

amount of such withheld tax, and amounts withheld shall be deemed to be Distributable Cash that has been paid to the Member to whom such withholding is attributable. To the extent that such payment exceeds the cash distribution that such Member would have received but for such withholding, the Administrative Manager shall notify such Member as to the amount of such excess and such Member shall make a prompt payment to the Company of such amount by wire transfer, which payment shall not constitute a Capital Contribution and, consequently, shall not increase the Capital Account of such Member.

Section 5.5 Initial Distributions in Connection with Restructuring.

The Members acknowledge that, immediately following the Company acquiring the Holdings Preferred Interests from Archstone Enterprise LP, it is contemplated that the Company will receive the assets set forth on Schedule E as distributions from Holdings. Notwithstanding anything in this Article V or elsewhere in this Agreement to the contrary, the Company will distribute the assets set forth on Schedule E to its Members in the manner indicated on such Schedule E promptly following the Company's receipt of such assets.

ARTICLE VI
ACCOUNTING, RECORDS AND REPORTING

Section 6.1 Accounting and Records.

The books and records of the Company shall be kept, and its financial position and the results of its operations recorded, in accordance with generally accepted accounting principles. The books and records of the Company shall reflect all Company transactions and shall be appropriate and adequate for the Company's business in accordance with the Act. All books and records of the Company shall be maintained at the Company's principal executive offices.

Section 6.2 Access to Accounting and Other Records.

The following provisions of this Section 6.2 shall supersede and act in lieu of the provisions of Section 18-305 of the Act:

(a) Upon request of any Member, the Company shall promptly deliver or cause to be delivered to the requesting Member, at the expense of the Company, a copy of (i) a current list of the full name and last known address of each Member and the Capital Contributions and Proportionate Share held of record by each Member; (ii) a current list of the Management Committee Representatives and the Administrative Manager; and (iii) the Company's federal, state and local income tax returns and reports, if any, for each of its taxable years.

(b) Each Member also has the right to inspect and copy during normal business hours any of the Company's books and records, including (i) the Certificate of Formation of the Company, any amendments to the Certificate of Formation, and executed copies of any powers of attorney granted for the purpose of executing the Certificate of Formation; (ii) this Agreement and any amendments to this Agreement; (iii) financial statements of the Company; and (iv) the written minutes of any meeting of the Management Committee or the Members and any written consents of the Management Committee or the Members for actions taken without a meeting.

(c) Management Committee Representatives and the Administrative Manager shall also have the right to inspect any and all books and records of the Company for purposes reasonably related to their duties as Management Committee Representatives or Administrative Manager.

Section 6.3 Required Reports.

The Administrative Manager shall furnish to each Member the following reports prepared for and at the expense of the Company:

(a) Annual Financial Reports. Within one hundred fifty (150) days after the end of each calendar year during the term of this Agreement, the Administrative Manager shall cause to be prepared and furnished to the Members, annual unaudited financial statements for such (full or partial) calendar year accurately reflecting the financial condition of the Company and each Subsidiary Entity.

(b) Quarterly Reports; Other Information. The Administrative Manager shall, within sixty (60) days after the end of each calendar quarter, cause to be prepared and furnished to the Members unaudited balance sheets and profit and loss statements and unaudited cash flow statements accurately reflecting the operating results of the Company and each Subsidiary Entity, a comparison to the Annual Budget, and containing a narrative executive summary, which shall include information with respect to the amounts of Unit Receipts, Undistributed Unit Receipts and distributions to the Members. In addition, each Member is entitled to receive (x) all information reasonably requested to permit such Member to complete deferred tax/FAS 109 calculations on a quarterly basis, and (y) all information reasonably requested with respect to the amounts of Unit Receipts, Undistributed Unit Receipts and distributions to the Members.

(c) Bank Accounts. With respect to the bank account or accounts maintained by the Administrative Manager in the name of the Company, the Administrative Manager shall:

(i) promptly following the receipt of any bank account statement, send a copy of such bank account statement to the AVB Member;

(ii) to the extent permitted and reasonably practicable, arrange to have the applicable bank send such bank account statements directly to the AVB Member; and

(iii) promptly following request, provide to the AVB Member information regarding deposits or withdrawals from any such bank accounts or any other information related to such bank accounts as reasonably requested by the AVB Member.

(d) Costs and Expenses. The costs and expenses incurred by the Company or the Administrative Manager in establishing and maintaining the books and records of the Company, as well as the annual audit of the books and records of the Company and the Subsidiary Entities, and the costs and expenses incurred in preparing and furnishing any and all such reports and information shall be borne by the Company.

Section 6.4 Tax Returns.

The Administrative Manager shall cause to be prepared by the Accountants all tax returns required of the Company and each Subsidiary Entity. Not later than August 1 of each year, the Administrative Manager shall distribute or cause to be distributed to the Members drafts of the proposed tax returns to be filed on behalf of the Company or any Subsidiary Entity. Following the distribution of such draft tax returns, but prior to ten (10) Business Days prior to the due date for the filing thereof (or such alternative date as may be Approved by the Management Committee), any of the Members may provide comments and input to the Administrative Manager, and such Member and the Administrative Manager shall consult with the Accountants concerning the comments and input so provided, as to the advisability of incorporating such comments and input into the tax returns to be so filed. Following the preparation of revised tax returns reflecting such input and comments (to the extent deemed appropriate by the Accountants), the Administrative Manager shall timely file or cause to be timely filed all such tax returns required by the Company. All decisions regarding or affecting the reporting or characterization for tax purposes of any material items of Company income, gain, loss or deduction or the allocation of liabilities of the Company and its Subsidiaries for tax purposes shall require the Approval of the Members (which approval shall not be unreasonably withheld).

Section 6.5 Tax Matters Partner.

The Administrative Manager is designated the Tax Matters Member of the Company as provided in Section 6231(a)(7) of the Code and corresponding provisions of applicable state law. This designation is effective only for the purpose of activities performed pursuant to the Code, corresponding provisions of applicable state law and under this Agreement. The Administrative Manager shall inform the Members of all tax audits and other tax proceedings, promptly update the Members of all material developments with respect thereto and provide copies of all correspondence with and submissions to the tax authorities. The Administrative Manager shall not make any material decision or take any material action as the Tax Matters Member that could adversely affect a Member or its Parent or affiliate without the consent of such Member. The Administrative Manager, as the Tax Matters Member, shall permit the Members at their own expense to participate in any tax audit or other proceeding which could affect the taxes of the Company or income or loss allocable to or taxes payable by any Member with respect to its interest in the Company. The Administrative Manager shall also perform its obligations with respect to tax matters under Schedule B.

ARTICLE VII
INDEMNIFICATION, INSURANCE AND EXCULPATION

Section 7.1 Indemnification.

(a) To the fullest extent permitted by law, the Company shall indemnify, hold harmless and defend ERP Member, AVB Member, each Parent, each Affiliate of any Member, each Management Committee Representative, the Administrative Manager, each Member's, Affiliate's or Parent's agents, officers, partners, members, employees, representatives, directors or shareholders and each Subsidiary Entity's officers, agents and employees (each, a "**Covered Person**") from and against any and all losses, claims, damages, liabilities, whether joint or

several, expenses (including legal fees and expenses), judgments, fines and other amounts paid in settlement (collectively, "**Indemnified Losses**"), incurred or suffered by such Covered Person, as a party or otherwise, in connection with any threatened, pending or completed claim, demand, action, suit or proceeding, whether civil, criminal, administrative or investigative, and whether formal or informal, arising out of or in connection with the business or the operation of the Company or any Subsidiary Entity, unless the Indemnified Losses were the result of fraud, gross negligence, willful misconduct or a willful, knowing or intentional breach of this Agreement by such Covered Person, or the result of any act or omission performed or omitted by such Covered Person not in good faith (in which case the Company shall have no indemnification obligation with respect to such Indemnified Losses).

(b) No Covered Person shall be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of fraud, gross negligence, willful misconduct or a willful, knowing or intentional breach of this Agreement, or any breach of Section 11.8 of this Agreement, by such Covered Person, or the result of any act or omission performed or omitted by such Covered Person not in good faith.

(c) To the fullest extent permitted by law, unless it is determined that a Covered Person is not entitled to be indemnified therefor pursuant to this Section 7.1, expenses incurred by such Covered Person in defending any claim, demand, action, suit or proceeding subject to this Section shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking by or on behalf of the Covered Person to repay such amount.

(d) The indemnification provided by this Section 7.1 shall be in addition to any other rights to which any Covered Person may be entitled under this Agreement, any other agreement, as a matter of law or otherwise, and shall inure to the benefit of the heirs, legal representatives, successors, assigns and administrators of the Covered Person.

Section 7.2 Procedures; Survival.

(a) If a Covered Person wishes to make a claim under Section 7.1, the Covered Person should notify the Company in writing within ten (10) days after receiving a written notice of the commencement of any action that may result in a right to be indemnified under Section 7.1; provided however that the failure to notify the Company shall not relieve the Company of any liability for indemnification pursuant to Section 7.1 (except to the extent that the failure to give notice will have been materially prejudicial to the Company).

(b) A Covered Person shall have the right to employ separate legal counsel in any action pursuant to Section 7.1 and to participate in the defense of the action. The fees and expenses of such legal counsel shall be at the expense of the Covered Person unless (i) the Members or Management Committee have Approved the Company's payment of such fees and expenses, (ii) the Company has failed to assume the defense of the action without reservation and employ counsel within a reasonable period of time after being given the notice required above, or (iii) the named parties to any such action (including any impleaded parties) include both the Covered Person and the Company and the Covered Person has been advised by its legal counsel

that representation of the Covered Person and the Company by the same counsel would be inappropriate under applicable standards of professional conduct because of actual or potential differing interests between them. It is understood, however, that the Company shall, in connection with any one such action or separate but substantially similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances, be liable for the reasonable fees and expenses of only one separate firm of attorneys at any time for all such Covered Persons having actual or potential differing interests with the Company.

(c) The Company shall not be liable for any settlement of any action against any Covered Person for which the Company is required to indemnify such Covered Person hereunder which is agreed to without the Approval of the Members or Management Committee.

(d) The indemnification obligations set forth in this Article VII hereof shall survive the termination of this Agreement.

Section 7.3 Insurance.

The Company shall maintain, for the benefit of the Company, its Subsidiary Entities, the Members, the Management Committee Representatives and the Administrative Manager, and at the expense of the Company, policies of insurance as determined by the Management Committee.

Section 7.4 Rights to Rely on Legal Counsel, Accountants.

No Covered Person shall be liable, responsible or accountable in damages or otherwise to the Company or any Member for any performance or omission to perform any acts in reliance on the advice of accountants or legal counsel for the Company.

ARTICLE VIII
TRANSFER OF MEMBERSHIP INTERESTS; ADMISSION OF ADDITIONAL MEMBERS

Section 8.1 Transfer or Assignment of Membership or Manager Interests.

No Member shall be entitled to assign, convey, sell, encumber or in any manner alienate or otherwise Transfer all or part of such Member's Membership Interest *except* in strict compliance with each and all of the other Sections of this Article VIII. Administrative Manager shall not be entitled to assign, convey, sell, encumber or in any manner alienate or otherwise Transfer all of part of such Administrative Manager's rights, interests, duties or obligations under this Agreement, in its capacity as the Administrative Manager, without the Approval of the Members, except to a successor to which the entire Membership Interest of such Administrative Manager has been Transferred in full compliance with this Agreement.

Section 8.2 Conditions to Transfer by Member.

Except as provided in Section 8.3 or Section 8.4, no Member may Transfer all or part of such Member's Membership Interest, nor shall the direct or indirect interests in any Member be transferred to any Person if, as a result thereof, that Member would no longer be directly or

indirectly wholly owned by ERP or Equity Residential (in the case of a Transfer of the interests in ERP Member) or AVB (in the case of a Transfer of the interests in AVB Member), unless such Transfer has been approved in writing by the other Member in its sole and absolute discretion.

Section 8.3 Permitted Transfers.

A Member shall be permitted to Transfer all or any part of its Membership Interest without further consent hereunder to an Affiliate of that Member which is directly or indirectly wholly owned by ERP or Equity Residential (in the case of a Transfer by ERP Member) or by AVB (in the case of a Transfer by AVB Member), so long as, as applicable, in connection with such Transfer that Member's Parent provides to the other Member a ratification and reaffirmation of its Parent Guaranty or executes a guaranty to guaranty the obligations of such Affiliate transferee to fund its Capital Contributions to the Company and to pay and perform its other obligations under this Agreement, and such Transfer would not be a violation of or an event of default under, or give rise to a right to accelerate any indebtedness described in, any note, mortgage, loan agreement or similar instrument or document or other material agreement to which the Company or any Subsidiary Entity is a party unless such violation or event of default shall be waived by the parties thereto.

Section 8.4 Transfer of Interests in Equity Residential, ERP or AVB.

Notwithstanding anything to the contrary contained in this Agreement, (a) neither Transfers of interests in ERP, nor the issuance or redemption of interests in ERP, nor Transfers of common or preferred shares or other equity interests in Equity Residential, nor issuance or redemption of common or preferred shares or other equity interests in Equity Residential (other than those occurring in connection with an Extraordinary Transaction), shall constitute a "Transfer" of the interest of ERP Member under this Agreement, or constitute a default, breach or withdrawal by ERP Member or any other violation of this Agreement by ERP Member; (b) neither Transfers of shares of stock in AVB, nor issuance or redemption of shares of stock in AVB (other than those occurring in connection with an Extraordinary Transaction), shall constitute a "Transfer" of the interest of AVB Member under this Agreement, or constitute a default, breach or withdrawal by AVB Member or any other violation of this Agreement by AVB Member; and (c) notwithstanding clauses (a) and (b) above, neither any merger or other consolidation of Equity Residential, ERP or AVB with any other Person, nor any transfer of all or substantially all of the common equity of Equity Residential, ERP or AVB (including by way of tender offer), nor any sale of all or substantially all of the assets of Equity Residential, ERP or AVB, nor any transfer, issuance or redemption of common or preferred shares or other equity interests in ERP or Equity Residential or AVB, as applicable, in connection with such a merger or consolidation of Equity Residential, ERP or AVB, as applicable (each, an "**Extraordinary Transaction**"), shall constitute a "Transfer" of the interest of ERP Member or AVB Member, as applicable, under this Agreement, or constitute a default, breach or withdrawal by ERP Member or AVB Member, as applicable, or any other violation of this Agreement by ERP Member or AVB Member, as applicable, so long as, in the case of any such Extraordinary Transaction, the surviving Entity or buyer (the "**Successor Parent**"), as applicable, in any such transaction provides notice of such transaction to the other Member within five (5) Business Days thereafter and certifies that as of the date of consummation of, and after giving effect to, such transaction, it is either (i) a publicly traded company which continues to qualify as a REIT and has total equity

as determined in accordance with U.S. generally accepted accounting principles of not less than $1.5 billion, or (ii) it has total equity as determined in accordance with U.S. generally accepted accounting principles of not less than $2 billion. If the Successor Parent delivers a notice and certificate in accordance with clause (ii) of the immediately preceding sentence, then, within ninety (90) days following the end of each fiscal year of the Successor Parent thereafter, the Successor Parent shall deliver a certificate to the other Member that certifies that, at the end of such fiscal year, it had total equity as determined in accordance with U.S. generally accepted accounting principles of not less than $2 billion. For the avoidance of doubt, a Change in Board Control of Equity Residential or AVB shall not constitute a "Transfer" of the interest of ERP Member or AVB Member, as applicable, under this Agreement, or constitute a default, breach or withdrawal by ERP Member or AVB Member, as applicable, or any other violation of this Agreement by ERP Member or AVB Member, as applicable.

Section 8.5 Unauthorized Transfers Void.

Any Transfer or purported Transfer in violation of the provisions of this Article VIII shall be null and void *ab initio* and shall constitute a material breach of this Agreement. In the event of any Transfer or purported Transfer of all or any part of a Member's Membership Interest in violation of this Agreement, without limiting any other rights or remedies of the Company or the other Members, the assignee or purported assignee shall have no right to participate in the management of the business and affairs of the Company or to become a Member, or to receive any distributions of any kind or to receive any part of the share of profits or other compensation by way of income and the return of contributions, or any allocation of income, gain, loss, deduction, credit or other items to the owner of such Membership Interest in the Company would otherwise be entitled.

Section 8.6 Admission of Substitute Member; Liabilities.

(a) An assignee of all or any part of Membership Interest shall be admitted as a Substitute Member only if (i) the Transfer of such Membership Interest complies in all respects with this Article VIII and (ii) the prospective Substitute Member delivers a signed instrument pursuant to which the assignee agrees to all of the terms and conditions of, and to be bound by, this Agreement, and to assume all of the obligations of the transferring Member and to be subject to all the restrictions and obligations to which the transferring Member is subject under the terms of this Agreement. The admission of a Substitute Member shall not release the transferring Member from any liability to the Company or to the other Members in respect of its Membership Interest that may have existed prior to such admission.

(b) The Administrative Manager shall reflect the admission of such Substitute Member in the records of the Company as soon as possible after satisfaction of the conditions set forth in this Agreement. Schedule A of this Agreement shall be deemed to be amended to reflect the admission of the Substitute Member upon such admission; and each of Members then of record hereby consents to such amendment to the extent required by law or this Agreement.

Section 8.7 Admission of Additional Members.

Unless the Approval of the Members has been obtained, and then, only in accordance with the terms and conditions Approved by the Members, the Company shall not admit any additional Members.

ARTICLE IX
DISSOLUTION AND
LIQUIDATION OF THE COMPANY

Section 9.1 Events Causing Dissolution.

The Company shall be dissolved only upon the occurrence of any of the following events ("**Dissolution Event**"):

(a) The sale, exchange or other disposition or distribution of all or substantially all of the assets of the Company (other than the transfer or contribution of assets either to Subsidiaries of the Company or to Affiliates of AVB or Equity Residential in exchange for Membership Units);

(b) The Approval of the Members; or

(c) The final decree of a court of competent jurisdiction that such dissolution is required under applicable law.

The bankruptcy or dissolution of a Member shall not cause the Member to cease to be a member of the Company and, upon the occurrence of such an event, the business of the Company shall continue without dissolution.

Section 9.2 Liquidation and Winding Up.

Upon the occurrence of a Dissolution Event, the Company shall be liquidated and the Management Committee (or other Person designated by the Management Committee or a decree of court) shall wind up the affairs of the Company. In such case, the Management Committee (or such Administrative Manager or other Person designated by the Management Committee or a decree of court) shall have the authority, in its sole and absolute discretion, to sell the Company's assets or distribute them in kind; provided that the Member Units and any property received as distributions in respect of Member Units shall not be sold and shall instead be distributed in kind to the applicable Member in accordance with Section 5.3. The Management Committee or other Person winding up the affairs of the Company shall promptly proceed to the liquidation of the Company. In proceeding with the winding-up process, it is the Members' objective that the winding-up process for the Company shall be completed within three (3) years following the sale of the Company's last asset (assuming that the Company and its Subsidiary Entities are not then parties to any outstanding litigation which has not been resolved). If the Approval of the Members is obtained, the Members may elect to accelerate the winding-up process by mutually agreeing to set aside reserves or entering into a cost-sharing agreement with respect to any trailing liabilities of the Company or its Subsidiary Entities. In a liquidation, the assets of the Company shall be distributed in the following order of priority

(a) To the payment of all debts and liabilities of the Company in the order of priority as provided by law (other than outstanding loans from a Member or Management Committee Representative);

(b) To the establishment of any reserves deemed necessary by the Management Committee or the Person winding up the affairs of the Company, for any contingent liabilities or obligations of the Company (including those of the Person serving as the liquidator);

(c) To the repayment of any outstanding loans from a Member or Management Committee Representative to the Company;

(d) The Member Units and any property received as distributions in respect of Member Units to the applicable Member; and

(e) The balance, if any, to the Members in accordance with Section 5.3 of this Agreement.

Subject to the immediately preceding paragraph, upon liquidation of the Company, no Member shall be required to contribute any amount to the Company solely because of a deficit or negative balance in the Capital Account of such Member and any deficit or negative balance shall not be considered an asset of the Company for any

purpose.

ARTICLE X
REPRESENTATIONS AND WARRANTIES; COVENANTS

Section 10.1 Representations and Warranties of ERP Member.

ERP Member hereby represents and warrants to AVB Member as follows:

(a) Organization. ERP Member is a limited liability company duly organized, validly existing and in good standing under the laws of the state of Delaware and has all requisite limited liability company power and authority to own, lease and operate its properties and to carry on its business as it is presently being conducted.

(b) Authorization; Validity of Agreements.

(i) ERP Member has the requisite limited liability company power and authority to execute and deliver this Agreement and to perform all of its obligations hereunder. The execution and delivery by ERP Member of this Agreement, and the performance by ERP Member of its obligations hereunder, have been duly authorized by, and no other proceedings, actions or authorizations on the part of ERP Member or any holder of equity interest in ERP Member are necessary to authorize the execution and delivery by ERP Member of this Agreement.

(ii) This Agreement has been duly executed and delivered and constitutes the legal, valid and binding obligation of ERP Member, enforceable against it in accordance with its terms, except that (a) such enforcement may be subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws, now or hereafter in effect, affecting creditors' rights generally, and (b) general equitable principles.

(c) Consents and Approvals; No Violations. The execution and delivery by ERP Member of this Agreement, and the performance by ERP Member of its obligations hereunder, does not and will not (a) violate, contravene or conflict with any provision of any organizational documents of ERP Member; (b) violate, contravene or conflict with any material orders or laws applicable to ERP Member or any of its material properties or assets; or (c) require on the part of ERP Member any filing or registration with, notification to, or authorization, consent or approval of, any Governmental Authority, except for such filings or registrations with, notifications to, or authorizations, consents or approvals of any Governmental Authority as may be referenced in Section 7.3 of the Purchase Agreement.

Section 10.2 Representations and Warranties of AVB Member.

AVB Member hereby represents and warrants to ERP Member as follows:

(a) Organization. AVB Member is a corporation that is duly organized, validly existing and in good standing under the laws of the state of Maryland and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as it is presently being conducted.

(b) Authorization; Validity of Agreements.

(i) AVB Member has the requisite corporate power and authority to execute and deliver this Agreement and to perform all of its obligations hereunder. The execution and delivery by AVB Member of this Agreement, and the performance by AVB Member of its obligations hereunder, have been duly authorized by, and no other proceedings, actions or authorizations on the part of AVB Member or any holder of equity interest in it are necessary to authorize the execution and delivery by AVB Member of this Agreement.

(ii) This Agreement has been duly executed and delivered and constitutes the legal, valid and binding obligation of AVB Member, enforceable against it in accordance with its terms, except that (a) such enforcement may be subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws, now or hereafter in effect, affecting creditors' rights generally, and (b) general equitable principles.

(c) Consents and Approvals; No Violations. The execution and delivery by AVB Member and the performance by AVB Member of its obligations hereunder, does not and will not (a) violate, contravene or conflict with any provision of any organizational documents of AVB Member; (b) violate, contravene or conflict with any material orders or laws applicable to AVB or any of its respective material properties or assets; or (c) require on the part of AVB Member any filing or registration with, notification to, or authorization, consent or approval of, any Governmental Authority, except for such filings or registrations with, notifications to, or authorizations, consents or approvals of any Governmental Authority as may be referenced in Section 8.3 of the Purchase Agreement.

Section 10.3 Debt Maintenance Covenants.

(a) AVB DownREIT, the ERP DownREITs, and their respective Subsidiaries (each, a "**DownREIT**" and together, the "**DownREITs**") shall each be entitled to repay, at any time, any

indebtedness encumbering its Restricted Properties, subject to the provisions of this Section 10.3. For purposes of this Section 10.3, Tax Protection Payments resulting from the failure of any Baseline Debt Maintenance Obligation allocated in respect of a Tax Protected Person to qualify as "qualified nonrecourse financing" under Section 465(b)(6) of the Code if such Tax Protection Agreement in respect of such Tax Protected Person requires maintenance of "qualified nonrecourse financing" in respect of such Tax Protected Person shall be treated in a manner similar to, and any liability resulting from such failure shall be allocated between the Members in a manner consistent with, the failure to maintain applicable Baseline Debt Maintenance Obligations under this Section 10.3 (without double counting). The provisions of this Section 10.3 and Section 10.4 shall be interpreted in a manner consistent with the applicable Tax Protection Agreements and related federal income tax rules (e.g. "nonrecourse" generally should be given the meaning of such term under Section 752 of the Code). References to "Section 704(c) gain" shall also include gain recognized as "reverse 704(c) gain." References to a Restricted Property include any "exchanged basis property" within the meaning of Section 7701(a)(44) of the Code whose basis is determined in whole or part by the basis of such Restricted Property.

(b) In the event that, following the Closing Date Transactions, any obligation to make a Tax Protection Payment arises as a result of the failure to comply with nonrecourse debt maintenance obligations imposed by any Tax Protection Agreement (other than in connection with the disposition of a Restricted Property (which shall be governed by Section 10.3(d) or Section 10.4) or the failure to provide an opportunity to guaranty debt in accordance with a Tax Protection Agreement (which shall be governed

by Section 10.3(e)), ERP Member and AVB Member shall share the liability for such Tax Protection Payment ratably based upon the extent to which each of their affiliated DownREITs has repaid debt, changed nonrecourse debt allocations, or taken any other action after the Closing Date Transactions so that the amount of nonrecourse debt that such DownREIT is then providing to cover the applicable Tax Protected Person's amount of nonrecourse debt maintenance required under the applicable Tax Protection Agreement is less than the applicable Baseline Debt Maintenance Obligation of such DownREIT with respect to such Tax Protected Person.

(c) The Baseline Debt Maintenance Obligations for each DownREIT with respect to each Tax Protected Person under each applicable Tax Protection Agreement shall be established by ERP Member and AVB Member in good faith as soon as practicable following the Initial Closing, based on the required nonrecourse debt maintenance for each Tax Protected Person under the applicable Tax Protection Agreement and the nonrecourse debt allocations satisfying such required debt maintenance, each as in effect immediately following the Closing Date Transactions (and, if different, separate Baseline Debt Maintenance Obligations shall be established for purposes of application of the "at-risk" rules under Section 465 of the Code to each Tax Protected Person under each such applicable Tax Protection Agreement), in accordance with the following principles.

(i) If a Tax Protected Person's Tax Protection Agreement relates solely to, and its required nonrecourse debt maintenance as of immediately after the Closing Date Transactions is covered by an allocation of nonrecourse debt attributable in its entirety to, one or more properties held solely by either (A) the AVB DownREIT or (B) one or more of the ERP DownREITs, then the Baseline Debt Maintenance Obligation for AVB

DownREIT or the applicable ERP DownREIT (or the ERP DownREITs, if there is more than one), as the case may be (whichever party controls the applicable property owner(s)) will be equal to such Tax Protected Person's required nonrecourse debt allocation amount under such Tax Protection Agreement (and the Baseline Debt Maintenance Obligation for the other(s) with respect to such Tax Protected Person under such Tax Protection Agreement will be zero).

(ii) Subject to the following subsection (iii), if a Tax Protected Person's required nonrecourse debt maintenance as of immediately after the Closing Date Transactions is covered by nonrecourse debt allocated from AVB DownREIT, on the one hand, and one or more ERP DownREITs, on the other hand, (regardless of property ownership), then AVB DownREIT's Baseline Debt Maintenance Obligation shall be equal to 40% of such Tax Protected Person's required nonrecourse debt maintenance and the ERP DownREITs' joint Baseline Debt Maintenance Obligation shall be equal to 60% of such Tax Protected Person's required nonrecourse debt maintenance.

(iii) If the nonrecourse debt allocable from the AVB DownREIT to a Tax Protected Person is less than 40% of such Tax Protected Person's required nonrecourse debt maintenance as of immediately after the Closing Date Transactions, then the AVB DownREIT's Baseline Debt Maintenance Obligation shall be equal to the amount of such debt allocable from the AVB DownREIT to such Tax Protected Person as of immediately after the Closing Date Transactions, and the ERP DownREITs' Baseline Debt Maintenance Obligation shall be equal to the Tax Protected Person's required nonrecourse debt maintenance less AVB DownREIT's Baseline Debt Maintenance Obligation for such Tax Protected Person. Conversely, if the nonrecourse debt allocable from the ERP DownREITs to a Tax Protected Person is less than 60% of such Tax Protected Person's required nonrecourse debt maintenance as of immediately after the Closing Date Transactions, then the ERP DownREITs' Baseline Debt Maintenance Obligation shall be equal to the amount of such debt allocable from the ERP DownREITs to such Tax Protected Person as of immediately after the Closing Date Transactions, and AVB Member's Baseline Debt Maintenance Obligation shall be equal to the Tax Protected Person's required nonrecourse debt maintenance less the aggregate Baseline Debt Maintenance Obligation of the ERP DownREITs for such Tax Protected Person.

(iv) In making any determination of the Baseline Debt Maintenance Obligation of any ERP DownREIT, the portion of such ERP DownREIT's Baseline Debt Maintenance Obligation that is derived from another ERP DownREIT's Baseline Debt Maintenance Obligation shall be excluded to avoid double counting.

(v) The Members acknowledge that certain facts may warrant varying from the foregoing principles in specific instances and agree that the Members will cooperate in good faith to address any such situation.

(vi) To illustrate the application of the foregoing principles, if after the Closing Date Transactions, Lexford's Baseline Debt Maintenance Obligation with respect to Tax Protected Person A is $60 and Lexford at such time allocates $100 of nonrecourse debt to such Tax Protected Person, and AVB DownREIT's Baseline Debt Maintenance

Obligation is $40 and it at such time allocates $80 of nonrecourse debt to Tax Protected Person A, and the amount of nonrecourse debt allocations necessary to satisfy the debt maintenance obligation to Tax Protected Person A under its Tax Protection Agreement is $100, and if in 2013 AVB DownREIT repays $50 of nonrecourse debt allocated to Tax Protected Person A (which would not result in any Tax Protection Payment) and in 2014 Lexford repays $45 of nonrecourse debt allocated to Tax Protected Person A, which would trigger a Tax Protection Payment, then AVB DownREIT would be obligated to pay 10/15 (*i.e.* the amount AVB DownREIT repaid the applicable debt below its Baseline Debt Maintenance Obligation ($10) *divided by* the aggregate shortfall in the amount of nonrecourse debt allocated to Tax Protected Person A ($15) or 66-2/3%) of the Tax Protection Payment and Lexford would be obligated to pay 5/15 or 33-1/3% of the Tax Protection Payment.

(vii) The DownREIT Baseline Debt Maintenance Obligation with respect to each Tax Protected Person shall be adjusted annually to reflect changes in each Tax Protected Person's required nonrecourse debt amounts (and "qualified nonrecourse financing" amounts) under its Tax Protection Agreement. Adjustments in Baseline Debt Maintenance Obligations shall be allocated between AVB DownREIT and the ERP DownREITs based on the principles set forth in Sections 10.3(b). To the extent that a Tax Protected Person recognizes gain under section 731 of the Code related to a decrease in allocated nonrecourse liabilities under section 752 of the IRC that triggers a Tax Protection Payment, the DownREITs, in allocating the Baseline Debt Maintenance Obligation for that Tax Protected Person, shall reduce to the ERP DownREITs and/or AVB DownREIT, as applicable, the applicable Baseline Debt Maintenance Obligation of the party paying the Tax Protection Payment with respect to the Tax Protected Person in respect of such gain.

(d) Except to the extent otherwise provided in Section 10.4, Tax Protection Payments triggered with respect to Section 704(c) gain as the result of a taxable disposition of a Restricted Property after the Closing Date Transactions will be paid 100% by the DownREIT that owns the Restricted Property with respect to Tax Protected Persons whose gain is triggered by the disposition. After taking into account Tax Protection Payments resulting from the preceding sentence, any additional Tax Protection Payments owed to any Tax Protected Person as a result of the disposition of such Restricted Property due to a reduction in the Tax Protected Person's share of liabilities (and not due to Section 704(c) gain) will be shared under the same principles described in Sections 10.3(b) and (c), including subparagraph (vii). The parties agree that under such principles, the Baseline Debt Maintenance Obligation of the party paying the Tax Protection Payment with respect to a Tax Protected Person's Section 704(c) gain shall be reduced by the amount of such Section 704(c) gain. For example, suppose (i) there was initially a Baseline Debt Maintenance Obligation of $100 with respect to a Tax Protected Person whose negative capital account also equals $100, (ii) such obligation was allocated between Lexford and AVB DownREIT on a 60%/40% basis, (iii) Lexford holds such Tax Protected Person's Restricted Property and (iv) such person has Section 704(c) gain of $20. Suppose further that AVB paid off all nonrecourse debt allocated to such Tax Protected Person, but Lexford has $100 of nonrecourse debt secured by such Restricted Property that is allocated to such Tax Protected Person, thereby deferring any Tax Protection obligation to such Tax Protected Person. If Lexford then sells such Restricted Property, and assuming no other adjustments to basis during the

taxable year, the Tax Protected Person recognizes Section 704(c) gain of $20 and additional gain under Section 731 of $80. The ERP Member is responsible for the Tax Protection Payment attributable to the $20 of Section 704(c) gain. ERP Member and AVB Member should share the Tax Protection Payments required as a result of the recognition of the gain with respect to the elimination of that debt on a 60%/40% basis, except ERP Member would reduce its Baseline Debt Maintenance Obligation for section 704(c) gain with respect to which it is required to make a Tax Protection Payment as a result of such disposition. Accordingly, if there were $20 of tax protected Section 704(c) gain attributable to the disposition, ERP Member would pay the Tax Protection Payments related to the $20 of Section 704(c) gain and then each of ERP Member and AVB Member would pay the Tax Protection Payments related to $40 of gain on the nonrecourse debt payoff.

(e) All decisions whether or not to cause the Company or any of its Subsidiaries (including Archstone) to provide any Tax Protected Person with a required opportunity to guarantee indebtedness and the terms of any such offered guarantee must be Approved by the Members. The foregoing requirement shall not apply to a decision by either the AVB Member or the ERP Member to offer a Tax Protected Person an opportunity to guarantee indebtedness of a DownREIT affiliated with such Member that is not required by a Tax Protection Agreement, but the Member voluntarily offering such guarantee opportunity shall provide the other Member reasonable notice of such offer. (AVB Member acknowledges that ERP Member has provided it with reasonable notice of the offer by ERPOP to certain holders of Series O Units of Archstone of an opportunity to guarantee indebtedness of an ERP DownREIT in connection with the Closing Date Transactions.) Tax Protection Payments triggered with respect to debt maintenance obligations as the result of the Company or any of its Subsidiaries failing to provide a required guarantee opportunity to a Tax Protected Person after the Closing Date Transactions will be paid 60% by the ERP Member and 40% by the AVB Member. If the Company or any of its Subsidiaries does not provide a Tax Protected Person with a required opportunity to guarantee indebtedness or a Tax Protected Person declines to guarantee indebtedness of the Company or any of its Subsidiaries, then any of the DownREITs may, but is not obligated to, provide such Tax Protected Person an opportunity to guarantee indebtedness. If and to the extent that a Tax Protected Person accepts a guarantee of a DownREIT's debt in lieu of a guarantee of debt of the Company or any of its Subsidiaries where the Company or any of its Subsidiaries was required to offer a guaranteed opportunity and did not, any Tax Protection Payments triggered with respect to a failure of such DownREIT debt guarantee opportunity to allocate the debt initially intended to be allocated to such Tax Protected Person (e.g., as a result of the repayment of such debt subject to such guarantee by a DownREIT or the failure of such guarantee to allocate such debt for federal income tax purposes) at any time subsequent to the issuance of such guarantee will be paid 60% by the ERP Member and 40% by the AVB Member. If the Tax Protected Person rejected the offer of a guarantee by the Company or any of its Subsidiaries and no further offer by the Company or any of its Subsidiaries was required under the applicable Tax Protection Agreement, or if the Company or any of its Subsidiaries was not required by a Tax Protection Agreement to offer a guarantee opportunity, then if and to the extent that a Tax Protected Person accepts a guarantee of a DownREIT's debt, then any claim for any Tax Protection Payments triggered with respect to a failure of such DownREIT debt guarantee opportunity to allocate the debt initially intended to be allocated to such Tax Protected Person (e.g., as a result of the repayment of such debt subject to such guarantee by a DownREIT or the failure of such guarantee to allocate such debt for federal income tax purposes) at any time subsequent to the

issuance of such guarantee will be paid by the AVB member, with respect to a guarantee of AVB DownREIT debt, or the ERP Member, with respect to a guarantee of an ERP DownREIT's debt. All communications by either Member to any Tax Protected Person with respect to projected allocations of liabilities must be Approved by the Members to the extent such communication relates to the allocation of liabilities attributable to the DownREIT of the other Member. If the communication relates only to the allocation of liabilities attributable to the DownREIT of the Member making such communication, the Member making such communication shall provide reasonable notice thereof to the other Member and shall confer with the other Member regarding such communications. (AVB Member agrees that it has had reasonable notice of communications to certain holders of Series O Units of an opportunity to guarantee indebtedness of an ERP DownREIT in connection with the Closing Date Transactions.) If a DownREIT affiliated with a Member provides a guarantee of its indebtedness to a Tax Protected Person, such DownREIT shall provide reasonable notice (but in any event at least forty-five (45) days in advance) to the other Member before any refinancing or repayment of such indebtedness that is reasonably likely to result in an obligation of the other Member to share in Tax Protection Payments.

Section 10.4 Withdrawal Rights of AVB Member.

(a) During the two-year period beginning on the date hereof, ERP Member shall not permit any ERP DownREIT, and AVB Member shall not permit AVB DownREIT, to make in-kind distributions of Restricted Properties or to distribute out the sales proceeds from any disposition, directly or indirectly of a Restricted Property or other property acquired directly or indirectly by such DownREIT from Holdings in the Closing Date Transactions (any such property, an "**Archstone Acquired Property**") to holders of interests in the applicable DownREIT (and for the avoidance of doubt, the DownREITs shall not be restricted from disposing of Archstone Acquired Properties and retaining and reinvesting the proceeds thereof (including lending out such proceeds), engaging in like-kind exchanges of Archstone Acquired Properties or contributing Archstone Acquired Properties for interests in other entities); provided that, distributions in respect of Archstone Acquired Properties, directly or indirectly owned by the AVB DownREIT, or any of the ERP DownREITs, that are sold or otherwise disposed of during the two-year period described in this sentence shall not be subject to the limitations of this sentence to the extent such distribution is equal to or less than gain in excess of the fair market value of such Restricted Property at the time of the Closing Date Transactions (i.e., gain may be distributed) and provided that such distribution is not used to redeem outstanding Member Units and would not otherwise result in recognition of gain under the "disguised sale" regulations under Section 707(a) of the Code with respect to the Closing Date Transactions.

(b) Beginning on March 1, 2015, AVB Member shall be entitled to cause the redemption of AVB Units by AVB DownREIT in exchange for the transfer to Holdings of either (a) direct or indirect ownership of a Restricted Property (an "**AVB Distribution Property**"), or (b) the cash proceeds from the sale of an AVB Distribution Property. Beginning on March 1, 2015, ERP Member shall be entitled to cause the redemption of ERP Units by an ERP DownREIT in exchange for the transfer to Holdings of either (a) direct or indirect ownership of a Restricted Property (an "**ERP Distribution Property**" and, together with the AVB Distribution Property, the "**Distribution Properties**"), or (b) the cash proceeds from the sale of an ERP Distribution Property. The number of AVB Units or ERP Units, as the case may be, redeemed

will have a fair value equal to the equity value of the applicable Distribution Property at such time or the cash proceeds from the sale of such Distribution Property, as applicable.

(c) Each Distribution Property shall be distributed by Holdings to the Company in redemption of a portion of the outstanding Holdings Preferred Interests held by the Company, valued for purposes of such distribution based on the equity value of such Distribution Property. Such distribution shall be made after a distribution is paid in cash in respect of the accrued and unpaid distributions on the Holdings Senior Preferred Interests, and subject to such other limitations on distributions with respect to the Holdings Senior Preferred Interests as are set forth in the terms of the Holdings Senior Preferred Interests. In the event that Holdings does not have sufficient cash available to pay accrued and unpaid distributions on the Holdings Senior Preferred Interests and ratable cash distributions on the Holdings Preferred Interests held by Archstone in order to permit the in-kind distribution of a Distribution Property, upon the request of the applicable Member (which request may not be made with respect to more than one

Distribution Property during the term of the Company), the Members shall cause their affiliated DownREITs to make cash distributions, to the extent of undistributed profits to enable cash distributions to be made on the Holdings Senior Preferred Interests and the Holdings Preferred Interests held by Archstone in the amount necessary to permit such in-kind distribution.

(a) The Company shall distribute any AVB Distribution Property to AVB Member and any ERP Distribution Property to ERP Member as an in kind distribution.

ARTICLE XI
MISCELLANEOUS

Section 11.1 Complete Agreement.

This Agreement and the Certificate of Formation constitute the complete and exclusive statement of agreement among the Members with respect to the subject matter hereof. This Agreement and the Certificate of Formation replace and supersede all prior agreements by and among the Members or any of them in respect of the Company including, without limitation, the Archstone Legacy JV Term Sheet that is attached to the Buyers Agreement (but does not supersede as among the Parents the provisions of the Buyers Agreement that survive the Initial Closing, unless such provisions are contrary to the provisions set forth in this Agreement, in which case, this Agreement shall govern with respect to the matters set forth in such provisions). This Agreement and the Certificate of Formation supersede all prior written and oral statements; and no representation, statement, condition or warranty not contained in this Agreement or the Certificate of Formation shall be binding on the Members or the Company or have any force or effect whatsoever.

Section 11.2 Governing Law; Venue.

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to the principles of conflicts of law; provided that in the event of any conflict or inconsistency between the provisions of this Agreement and the requirements of the Act, the provisions of this Agreement shall govern to the extent permitted under the Act. Proper venue for any litigation involving this Agreement shall be in any federal or state court located in the State of Delaware. Each Member hereto hereby irrevocably and unconditionally

waives, to the extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement brought in any court referred to in this Section 11.2. The Members hereby irrevocably waive, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court. This provision shall survive the termination of this Agreement.

Section 11.3 No Assignment; Binding Effect.

This Agreement may not be transferred or assigned by any party hereto other than in the case of a Member, in full compliance with Article VIII hereof as an integrated part of a permissible Transfer of all of the Membership Interest of the Member. Any purported assignment, sale, Transfer, delegation or other disposition, except as expressly permitted herein, shall be null and void and shall constitute a material breach of this Agreement. Subject to the foregoing restrictions and Article VIII hereof, this Agreement shall be binding upon and inure to the benefit of the Members and their respective successors and assigns.

Section 11.4 Severability.

If any provision of this Agreement is held to be illegal, invalid, or unenforceable under any present or future laws applicable to the Company effective during the Term of this Agreement, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement.

Section 11.5 No Partition.

No Member shall have the right to partition the Company or its assets or any part thereof or interest therein, or to file a complaint or institute any proceeding at law or in equity to partition the Company or its assets or any part thereof or interest therein. Each Member, for such Member and its successors and assigns, hereby waives any such rights. The Members intend that, during the term of this Agreement, the rights of the Members and their successors in interest, as among themselves, shall be governed solely by the terms of this Agreement and by the Act.

Section 11.6 Multiple Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed a duplicate original and all of which, when taken together, shall constitute one and the same document. Execution and delivery of this Agreement by exchange of facsimile copies bearing the signatures of the parties shall constitute a valid and binding execution and delivery of this Agreement by the parties.

Section 11.7 Additional Documents and Acts.

Each Member agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out

and perform all of the terms, provisions, and conditions of this Agreement and the transactions contemplated hereby at any time.

Section 11.8 REIT Compliance.

Each Member acknowledges that it has been advised that Equity Residential (in the case of ERP Member) and AVB (in the case of AVB Member) are REITs. Each Member agrees that the other Member shall be entitled to exercise any vote, consent, election or other right under this Agreement with a view to maintaining the status of such Parents as REITs. Without limiting the foregoing and notwithstanding anything herein to the contrary, each Member acknowledges and agrees that the Company and its Subsidiaries and Affiliates shall be operated in such a manner so that the Parent of a Member qualifying as a REIT can continue to so qualify (applied assuming for this purpose that the Parent of such Member has invested substantially all of its assets in the Company and derives no income from other sources). In addition, ERP Member agrees that

Equity Residential will, and AVB Member agrees that AVB will, in each case, conduct their operations in such a manner so that (i) the Company's ownership of ERP Units will not prevent AVB from continuing to qualify as a REIT and (ii) the Company's ownership of AVB Units will not prevent Equity Residential from continuing to qualify as a REIT (including, without limitation, providing reasonable opportunity to Equity Residential or AVB, as the case may be, to make a timely TRS election with respect to the other REIT's TRSs). In furtherance of the foregoing and notwithstanding anything herein to the contrary, the ERP Member and AVB shall each have the authority to cause Archstone pursuant to Section E(vii) of Exhibit F to Annex A of the Declaration of Trust of Archstone, dated March 10, 2009, or any similar provision of any succeeding governing documents, to exercise its rights with respect to the Series O units of Archstone if such Member believes there is a significant risk that Archstone will be treated as a "publicly traded partnership," within the meaning of Section 7704 of the Code.

(a) Accordingly, the Members agree, and AVB shall ensure (in the case of the issuer of AVB Units) and Equity Residential shall ensure (in the case of the issuers of ERP Units) that, except as otherwise provided in this Section 11.8, each issuer of AVB Units and ERP Units shall conduct its business and activities (including the business and activities of any Subsidiary) in such a manner that each such issuer, assuming it were a REIT, would satisfy the income and asset tests applicable to REITs on a standalone basis and would not be subject to any taxes under Section 857 of the Code (determined without regard to the distributions required in order to maintain REIT qualification and avoid excise taxes imposed on a REIT). In furtherance of the foregoing (and not in limitation thereof) except as provided in this Section 11.8, each issuer of AVB Units and ERP Units will satisfy the following requirements: (A) at least seventy-five percent (75%) of the assets of the issuer at the close of any calendar quarter qualify as "real estate assets" under Section 856(c)(4)(A) of the Code, (B) no more than twenty-five percent (25%) of the assets of the issuer at the close of any calendar quarter will consist of assets described in Section 856(c)(4)(B) of the Code, (C) no asset of the issuer at the close of any calendar quarter will violate or exceed the limitations described in Section 856(c)(4)(B)(iii)(I), (II) or (III) of the Code (determined as if the issuer were a REIT), (D) at least seventy-five percent (75%) of the gross income of the issuer in any calendar year will qualify as income described in Section 856(c)(3) of the Code and at least ninety-five percent (95%) of gross income of the issuer in any calendar year will qualify as income described in Section 856(c)(2) of the Code, (E) no material portion of the gross revenues or net income of the issuer in any calendar year will constitute income from a "prohibited transaction" as defined in Section

857(b)(6)(B)(iii) of the Code, (F) no amount of the issuer's assets will be described in Section 1221(a)(1) of the Code, and (G) no more than twenty-five percent (25%) of the assets of the shall consist of interests in any "taxable REIT subsidiary" of AVB and Equity Residential.

For purposes of compliance with this Section 11.8, (i) an issuer of AVB Units and ERP Units shall not treat an entity as a "taxable REIT subsidiary" unless and only for so long as both of AVB and Equity Residential are considered to own for purposes of Section 856(l)(1)(A) of the Code, stock of, and have been timely offered (taking into account the function of the TRS) the opportunity to make and have in effect a joint election with, the purported taxable REIT subsidiary to be treated as such with respect to both AVB and Equity Residential for federal income tax purposes and (ii) Section 856 of the Code shall be applied as if it did not provide special treatment for "qualified temporary investment income" and "temporary investment of new capital." This Section 11.8 shall be interpreted and applied consistently with the provisions of Section 856-857 of the Code and the Treasury Regulations thereunder.

(b) Each issuer of AVB Units and ERP Units will, as and when requested, make available to the Members a list of all Persons that such issuer (and any Subsidiary that is treated as a partnership or disregarded entity for federal income tax purposes) uses to provide services to tenants or with respect to the properties in which the issuer owns a direct or indirect interest and which the Company is treating as an "independent contractor" (within the meaning of Section 856(d)(3) of the Code) and whose status as an independent contractor could affect the characterization of amounts received or accrued, directly or indirectly, by the issuer as "rents from real property" within the meaning of Section 856(d) of the Code. At least ten (10) days prior to entering into any contract or other arrangement (directly or through a Subsidiary) with a party whose status as an independent contractor with respect to Equity Residential or AVB could affect the characterization of amounts received or accrued, directly or indirectly, by the issuer as "rents from real property" when taken into account by Equity Residential or AVB in accordance with Treasury Regulations Section 1.856-3(g), an issuer of AVB Units or ERP Units shall provide the Members with written notice of the identity of such party.

(c) Equity Residential shall not permit (including through granting any waiver of ownership restriction under Equity Residential's Declaration of Trust) Lehman Brothers Holdings, Inc. or any of Lehman Brothers Holdings, Inc.'s affiliates to own more than 9.8% (including shares treated as constructively owned by them through the application of Section 318 of the Code (as modified by Section 856(d)(5) of the Code) (by value) of Equity Residential's shares for so long as Oakwood (as successor to R&B Realty) (together with any successor or assign, collectively, "**Oakwood**") or any affiliate of Oakwood is a tenant of AVB or any Affiliate of AVB or for any period of time while any Master OCH Agreement (as defined in any existing leases with Oakwood and AVB or any Affiliate of AVB) between Oakwood and AVB or any Affiliate of AVB remains in effect. Affiliates of Oakwood shall include any master lessee of AVB or an AVB Affiliate that is treated as constructively owned within the meaning of Section 318 of the Code (as modified by Section 856(d)(5) of the Code) by Archstone or by a Subsidiary of Equity Residential through Preferred Units in Archstone or through partnership interests received in exchange for Preferred Units.

(d) Within (i) twenty (20) days after the end of each calendar quarter with respect to asset tests which can be corrected within thirty (30) days after the end of such quarter pursuant to

the Code (e.g., the "75% of gross asset test" set forth in Section 856(c)(4) of the Code), and (ii) for any other matters, forty-five (45) days after the end of each calendar quarter or calendar year, as applicable (or, if earlier, no later than ten (10) days prior to the expiration of any applicable cure period), ERP Member shall cause Equity Residential to provide the Company and the AVB Member, and AVB Member shall cause AVB to provide the Company and the ERP Member, in each case, a statement signed by the chief financial officer of the applicable Parent, in form and substance reasonably satisfactory to the other Parent, certifying that each issuer of ERP Units (in the case of Equity Residential) or that the issuer of AVB Units (in the case of AVB) has complied with the applicable provisions of the Section 11.8 for all periods. As soon as practicable following request of the other Member, ERP Member shall cause Equity Residential to provide the Company and the AVB Member, and AVB Member shall cause AVB to provide the Company and the ERP Member, in each case, such other information (x) as is reasonably necessary for the Company and the requesting Member to determine the REIT compliance of its Parent or (y) as is otherwise reasonably requested by its Parent. For the avoidance of doubt, information reasonably necessary for the Members and their Parents to determine REIT compliance is understood to include, without limitation, quarterly compliance with the gross income tests of Sections 856(c)(2) and (c)(3) of the Code and the gross asset tests of Section 856(c) of the Code; it being understood that such information is necessary to identify potential compliance issues early enough in the taxable year to cure before year end. AVB DownREIT and the ERP DownREITs each shall cause (or shall cause the manager of) each multifamily apartment community that such entity owns an equity interest in (directly or indirectly through Subsidiaries treated as disregarded entities, partnership and REITs for federal income tax purposes) to complete an annual survey of tenant services performed at each such community, the form of which shall be mutually agreed to by the Members. Promptly after completion of such surveys, AVB DownREIT and the ERP DownREITs each shall distribute copies of such surveys to the Members; provided, that AVB agrees, in respect of such surveys it receives in respect of the ERP DownREITs, and Equity Residential agrees, in respect of such surveys it receives in respect of AVB DownREIT, that such surveys were provided and shall only be used for purposes of determining compliance with this Section 11.8 and shall not be distributed beyond employees responsible for such determination and third party advisors with respect thereto.

(e) Notwithstanding Section 11.8(a), each of the issuer of the ERP Units and the issuer of the AVB Units shall be permitted to hold investments in debt of ERP or AVB, respectively, that would exceed five percent of the assets of the issuer so long as (i) such debt would not cause the issuer to violate any of the REIT requirements under Sections 856-857 of the Code other than Section 856(c)(4)(B)(iii)(I) of the Code if the issuer were a REIT, and (ii) such debt of ERP held by the ERP DownREITs, collectively on an aggregate basis, does not exceed at any time $500,000,000, or such debt of AVB held by the AVB DownREIT does not exceed in aggregate at any time $500,000,000.

(f) If either Member fails to comply with the provisions of this Section 11.8 and as a result, the other Member reasonably determines that such failure may result or has resulted in failure of such other Member or the Parent of such other Member to satisfy the income or asset tests applicable to REITs, the Member failing to comply with this Section 11.8 shall indemnify the other Member or its Parent for any taxes incurred under Sections 856(c)(7), 856(g), 857(b)(5) or similar provisions as a result of utilizing applicable "cure" or "savings" provisions, and for

any costs to obtain a "closing agreement" under Section 7121 of the Code or similar arrangement, to avoid loss (or potential loss) of REIT status as a result of the other Member's failure to comply with this Section 11.8, but only to the extent that such indemnities do not prevent the recipient (or its Parent) from qualifying as a REIT. This Section 11.8(f) shall not apply with respect to an alleged failure to comply with the provisions of this Section 11.8 that relates to one or more questions of law rather than questions of fact if the Member alleged to have failed to comply with the provisions of this Section 11.8 provides to the other Member an opinion of nationally recognized tax counsel experienced in REIT matters to the effect that there should not be considered to have been a breach of this Section 11.8 unless and until either: (1) the IRS has initiated an audit of either Equity Residential or AVB and in connection with such audit, it asserts circumstances exist which indicate that such a breach has occurred, (2) the Member providing such opinion of counsel fails, upon the request of the other Member, to deliver an update from such counsel confirming that such opinion is still applicable, provided that, the other Member shall not requested such an update more frequently than every six months unless it asserts that there has been a material change in the facts or law relevant to such opinion, or (3) the Member providing such opinion is no longer a publicly traded REIT.

(g) Without limiting Section11.8(f), if either Member fails to comply with the provisions of this Section 11.8 and as a result, the other Member reasonably determines that such failure may result or has resulted in failure of such other Member or the Parent of such other Member to satisfy the income or asset tests applicable to REITS or avoid material U.S. federal income or excise tax liability to the extent permitted under the Code with respect to REITs, such other Member may cause the Company and each partially or wholly owned Subsidiary (to the extent necessary to effectuate such distribution) thereof to liquidate and distribute to the AVB Member all of the AVB Units, and to liquidate and distribute to the ERP Member all of the ERP Units, owned directly by the Company, or indirectly through any partially or wholly owned Subsidiary of the Company. Subject to the following sentence, the provisions of Article IX shall apply in connection with such liquidation. In connection with any liquidation described in this Section 11.8(g) and notwithstanding anything in this Agreement to the contrary (including Section 3.3), all expenses and costs (including any Tax Protection Payments or redemption or liquidation payments to holders of Series I Preferred Shares or to holders of Archstone Preferred Units) incurred in connection with the transactions described in this Section 11.8(g) and incurred to maintain REIT status shall be borne by the Member that failed to comply with the provisions of this Section 11.8(g) and the other Member shall be indemnified and held harmless from any expense associated with the transactions described in this Section 11.8(g).

(h) The Members covenant that until such time as AVB Units and the ERP Units are no longer owned directly or indirectly by the Company, AVB shall cause the AVB DownREIT and ERP shall cause the ERP DownREITs each to limit its activities to (i) the ownership and operation of rental property of a type consistent with Equity Residential's, in the case of the ERP DownREITs, and AVB's, in the case of AVB DownREIT, existing properties as of the date hereof (directly or indirectly through Subsidiaries treated as disregarded entities, partnership and REITs for federal income tax purposes), and activities incident thereto and (ii) lending funds to affiliates as contemplated Section 11.8(e), and (iii) owning any other assets acquired in connection with the Closing Date Transactions that would not cause it not to be considered to satisfy the asset requirements applicable to REITs under Section 856(c)(4) of the Code (provided that if such assets consist of stock of entities treated as corporations for federal income tax

purposes, elections to treat such corporations as taxable REIT subsidiaries with respect to AVB and Equity Residential as contemplated in Section 11.8(a) (second paragraph) shall have been made).

(i) To the extent either Member has questions or concerns with respect to or in connection with the operation or implementation of this Section 11.8, the Members shall confer with each other to discuss such questions or concerns.

Section 11.9 Amendments.

All amendments and modifications to this Agreement shall be in writing and, to be effective, shall be Approved by the Members.

Section 11.10 No Waiver.

No delay, failure or waiver by any party to exercise any right or remedy under this Agreement, and no partial or single exercise of any such right or remedy, shall operate to limit, preclude, cancel, waive or otherwise affect such right or remedy, nor shall any single or partial exercise of such right or remedy limit, preclude, impair or waive any further exercise of such right or remedy or the exercise of any other right or remedy.

Section 11.11 Time Periods.

Any time period hereunder which expires on, or any date for performance hereunder which occurs on, a day which is not a Business Day, shall be deemed to be postponed to the next Business Day. The first day of any time period hereunder which runs "from" or "after" a given day shall be deemed to occur on the day subsequent to that given day.

Section 11.12 Notices.

Except as otherwise provided in this Agreement regarding notices by electronic mail or other electronic means to Members and Management Committee Representatives and regarding Member proxies, all notices, consents and other communications hereunder shall be in writing (including telecopy or similar writing) and shall be deemed to have been duly given (a) when delivered by hand or by Federal Express or a similar overnight courier to (or if that day is not a Business Day, or if delivered after 5:00 p.m., New York, New York time on a Business Day, on the first following day that is a Business Day), (b) five (5) days after being deposited in any United States Post Office enclosed in a postage prepaid, registered or certified envelope addressed to, or (c) when successfully transmitted by facsimile to, the Member for whom intended, at the address or facsimile number for such Member set forth in Schedule A attached hereto.

Section 11.13 Dispute Resolution; Mediation.

In the event of any claim, dispute or other matter in controversy between the Members arising under this Agreement, each Member agrees that, prior to commencing any lawsuit relating to such claim, dispute or other matter in controversy, (i) it shall notify the other Member in writing of the claim, dispute or other matter in controversy, including a reasonably detailed explanation of such Member's understanding of the respective positions of each of the Members with respect to the matters in dispute; (ii) the respective chief executive officers of Equity

Residential and AVB or their designees shall meet and confer at a mutually convenient time and place within twenty (20) Business Days following the request of either Member concerning such claim, dispute or other matter in controversy (such period is referred to herein as the "**Discussion Period**"); (iii) if the Members are unable during the Discussion Period to reach a final agreement concerning such claim, dispute or other matter in controversy, then, prior to commencing any lawsuit relating to such dispute, the Member that would intend to commence such lawsuit shall deliver a written request to the other Member for non-binding mediation to be administered by the New York, New York office of Judicial Arbitration & Mediation Services, Inc. or its successor ("**JAMS**") or any other office of JAMS agreed to by the Members, in accordance with JAMS's mediation procedures in effect on the date of the Agreement (and if the Members cannot agree on the selection of a mediator, the Member asserting the claim, dispute or controversy shall file a request in writing for the appointment of a mediator with the New York, New York office of JAMS, with a copy of the request being served on the other Member, and the mediation shall be conducted by the appointed mediator). Mediation shall proceed in advance of the commencement of any lawsuit for a period of 60 days from the date that the applicable Member's request for commencement of the mediation procedure was delivered to the other Member. The parties shall share the mediator's fee and any filing fees equally. Without limiting any other applicable limitation in this Agreement, in no event shall the procedures and limitations set forth in this Section 11.13 limit or condition the right of any Member to commence a lawsuit against any third party or to file an answer or counterclaim or cross-claim (including, without limitation, as against the other Member) in any lawsuit that has been commenced by any third party. The Members agree that the provisions in this Section 11.13 shall apply to any claim, dispute or controversy asserted by any Member, but once the Members have engaged in the Discussion Period and mediation procedures provided for herein with respect to such claim, dispute or controversy, no Member shall be bound to comply with the Discussion Period and mediation procedures provided for herein with respect to any further claim, dispute or controversy that relates to substantially the same acts, omissions or occurrences with respect to which the Discussion Period and mediation procedures provided for herein have already taken place. The Members agree that the discussions during the Discussion Period or in connection with such mediation procedures are intended to be settlement communications, and accordingly (i) none of the discussions during the Discussion Period or in connection with such mediation procedures, nor any proposals (whether written or oral), correspondence, or documents of any kind generated during the period of and in connection with the Discussion Period or in connection with such mediation procedures, shall be raised, disclosed or admissible in any judicial, arbitration or similar proceeding for any purpose nor shall any such discussions, proposals, correspondence or documents be used as a defense or counter-claim in any action; (ii) such discussions, proposals, correspondence or documents are without prejudice to any of the parties' rights, defenses and remedies at law, in equity or hereunder; and (iii) neither the preparation, distribution, response to or failure to respond to any such discussions, proposals, correspondence or documents shall constitute an agreement, or the basis on which any party may claim reliance on any agreement, except to the extent that the Members in connection with the discussions during the Discussion Period or in connection with such mediation procedures enter into a written agreement that is intended to be definitive and binding. The foregoing provisions are intended to be broader than the restrictions on admissibility with respect to settlement discussions contained in any applicable state or federal statute or rule of court, including, without limitation, Rule 408 of the Federal Rules of Evidence. If the Members or Management

Committee Representatives reach an impasse over a proposed Major Decision or any other proposed decision requiring the Approval of the Members or the Approval of the Management Committee, at the election of either Member, upon not less than ten (10) Business Days' notice to the other Member, the Discussion Period and non-binding mediation process provided for in this Section 11.13 shall be commenced, to assist the Members in attempting to resolve the impasse, notwithstanding that no claim, dispute or other controversy with respect to which a Member may seek to commence a lawsuit then exists with respect to such matter.

Section 11.14 Specific Performance.

Because of the unique character of the Membership Interests, the Members and the Company shall be irreparably damaged if this Agreement is not specifically enforced. If any dispute arises concerning the Transfer of all or any part of a Member's Membership Interest, an injunction may be issued restraining any purported Transfer pending the determination of such controversy. Such remedy shall, however, be cumulative and not exclusive, and shall be in addition to any other remedy which the Members or the Company may have.

Section 11.15 No Third Party Beneficiary.

This Agreement is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and permitted assigns, and no other Person shall have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise.

Section 11.16 Waiver of Jury Trial.

EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY OR CLAIM WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE CLOSING DATE TRANSACTIONS. THIS WAIVER MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 12.16) AND EXECUTED BY EACH OF THE PARTIES HERETO). The scope of this waiver is intended to be all-encompassing of any and all disputes that may be filed in any court and that relate to the subject matter herein, including contract claims, tort claims, breach of duty claims and all other common law and statutory claims. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

Section 11.17 Cumulative Remedies.

The rights and remedies of any party as set forth in this Agreement are not exclusive and are in addition to any other rights and remedies now or hereafter provided by law or at equity, subject to the provisions of Section 11.13 hereof.

Section 11.18 Exhibits and Schedules.

All Exhibits and Schedules attached hereto are hereby incorporated by reference into, and made a part of, this Agreement.

Section 11.19 Interpretation.

The titles and section headings set forth in this Agreement are for convenience only and shall not be considered as part of agreement of the parties. When the context requires, the plural shall include the singular and the singular the plural, and any gender shall include all other genders. No provision of this Agreement shall be interpreted or construed against any party because such party or its counsel was the drafter thereof.

Section 11.20 Survival.

It is the express intention and agreement of the Members that all covenants, agreements, statement, representations, warranties and indemnities made in this Agreement shall survive the execution and delivery of this Agreement and, where appropriate to facilitate the intent of this Agreement, the dissolution, liquidation and winding up of the Company.

Section 11.21 Attorneys' Fees.

If any Member seeks to enforce such Member's rights under this Agreement by legal proceedings or otherwise the non-prevailing party shall be responsible for all costs and expenses in connection therewith, including without limitation, reasonable attorneys' fees and costs and court costs and witness fees. In this Section 11.21, non-prevailing party shall not be meant to refer to a Member who initiates or accepts a settlement offer with regards to such legal proceeding.

Section 11.22 Confidentiality.

The Members hereby incorporate herein by this reference the terms of the Confidentiality Agreement (as defined in the Buyers Agreement), and agree to be bound thereby as if each Member was directly a party thereto. Each Member shall not disclose or furnish to any third party (other than any third party who is bound by confidentiality obligations reasonably expected to prevent further disclosure) the terms and conditions of this Agreement. Notwithstanding the foregoing, each Member may disclose the terms and conditions of this Agreement to the extent such disclosure is reasonably necessary to comply with applicable law (including any securities law or regulation or the rules of a securities exchange) and with judicial process, and to its affiliates, partners, managers, trustees, directors, officers, employees, accountants, attorneys, advisors and other representatives, each of whom shall be informed of the confidential nature of the terms and conditions of this Agreement and directed to treat such information confidentially in accordance with the terms of this Agreement.

* * *

IN WITNESS WHEREOF, the undersigned Members have executed this Agreement as of the date first hereinabove set forth.

AVALONBAY COMMUNITIES, INC.

By: /s/ Edward M. Schulman
Name: Edward M. Schulman
Title: Executive Vice President

EQR-LEGACY HOLDINGS JV MEMBER, LLC

By: ERP Operating Limited Partnership, its sole member

By: Equity Residential, its general partner

By: /s/ Scott J. Fenster
Name: /s/ Scott J. Fenster
Title: Senior Vice President

EXHIBIT 1

Form of Funding Notice

$

AvalonBay Communities, Inc.
671 N. Glebe Road
Suite 800
Arlington, VA 22203

EQR-Legacy Holdings JV Member, LLC
Two N. Riverside Plaza
Suite 400
Chicago, Illinois 60606

Re: Funding of Capital to Legacy Holdings JV, LLC

Gentlemen:

Reference is hereby made to the Limited Liability Company Agreement of Legacy Holdings JV, LLC, dated as of , 2013 (the "**Limited Liability Company Agreement**"). Capitalized terms not otherwise defined have the meanings ascribed to them in the Limited Liability Company Agreement.

Pursuant to Section 3.4 of the Limited Liability Company Agreement, you are advised that the Member has determined that capital is required to fund cash needs of the Company in the aggregate amount of $.

Each Member is hereby requested to contribute, by wire transfer of immediately available funds to the account designated below, funds in the amount of its Proportionate Share (as set forth below) of such required amount on or before , *[insert appropriate time period which shall not be less than as set forth in Article III]. [To be appropriately modified if the required funds are required to be provided 100% by a Member in accordance with Section 3.3 of the Limited Liability Company Agreement.]*

[add description of reason for capital]

	Contributions	Percentage Interest
AVB Member	$	40%
ERP Member	$	60%
TOTAL		100%

[To be appropriately modified if the required funds are required to be provided in different percentages in accordance with Sections 3.3, 10.4 and/or 10.3 of the Limited Liability Company Agreement.]

Such funds shall be wire transferred to the following account on or before

, :

[MEMBER]

By: _____
Name:
Title:

EXHIBIT 2

FORM OF PARENT GUARANTY

GUARANTY

THIS GUARANTY (this "**Guaranty**"), dated as of the day of , 2013, is made by ERP OPERATING LIMITED PARTNERSHIP, an Illinois limited partnership ("**Guarantor**"), for the benefit of AVALONBAY COMMUNITIES, INC., a Maryland corporation ("**Creditor Member**").

RECITALS

A. Creditor Member and EQR-Legacy Holdings JV Member, LLC, a Delaware limited liability company ("**Guarantor-Affiliated Member**"), formed and own the membership interests in Legacy Holdings JV, LLC, a Delaware limited liability company (the "**Company**"), pursuant to that certain Limited Liability Company of the Company dated as of even date herewith (as the same may be amended from time to time, the "**Limited Liability Company Agreement**"). All capitalized terms which are used but not expressly defined in this Guaranty shall have the same meaning herein as are given to such terms in the Limited Liability Company Agreement.

B. Guarantor has an indirect or direct financial and/or ownership interest in Guarantor-Affiliated Member.

C. In partial consideration of Creditor Member's execution of the Limited Liability Company Agreement and as a condition precedent thereto, the Guarantor is required to execute and deliver this Guaranty for the benefit of Creditor Member and its permitted successors and assigns under the Limited Liability Company Agreement (collectively, "**Beneficiary**").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce Creditor Member to enter into the Limited Liability Company Agreement, Guarantor hereby agrees as follows:

1. GUARANTY. Guarantor, as primary obligor and not merely as a surety, hereby absolutely and irrevocably guarantees to Beneficiary the punctual payment and performance when due of the Guaranteed Obligations (as hereinafter defined). As used herein, "**Guaranteed Obligations**" means, collectively, (i) the full and prompt payment of all amounts, capital contributions, sums and charges payable by Guarantor-Affiliated Member under the Limited Liability Company Agreement, including, without limitation, all obligations of Guarantor-Affiliated Member to make additional capital contributions pursuant to Section 3.3(b) of the Limited Liability Company Agreement and all indemnification obligations of Guarantor-Affiliated Member under the Limited Liability Company Agreement, (ii) the full and punctual performance and observance of all the terms, covenants and conditions provided to be performed, observed and complied with by Guarantor-Affiliated Member under the Limited

Liability Company Agreement, or provided to be performed, observed and complied with by Guarantor-Affiliated Member or an affiliate or designee thereof (each, individually and collectively, "**Obligor**") under any assumption agreement or other instrument delivered by it pursuant to the Limited Liability Company Agreement, and (iii) the full and prompt payment of all damages, costs and expenses which shall at any time be recoverable by Creditor Member from Guarantor-Affiliated Member or any other Obligor by virtue of or under the Limited Liability Company Agreement or under any assumption agreement or other instrument delivered by it pursuant to the Limited Liability Company Agreement, including, without limitation, on account of any representations or warranties made by Guarantor-Affiliated Member thereunder. Guarantor further agrees to pay all Enforcement Costs (as hereinafter defined), in addition to all other amounts due hereunder. Any amounts owed under this Guaranty (that are not accruing interest under the Limited Liability Company Agreement) which are not timely made by Guarantor in accordance with the terms of this Guaranty shall bear interest from the date payable at the rate of fifteen percent (15%) per annum until all such amounts are fully paid. Notwithstanding anything to the contrary herein, (x) Guarantor shall have all of the same rights, remedies and defenses as Guarantor-Affiliated Member, including, without limitation, the right to exercise the dispute resolution procedures under and in accordance with the terms of the Limited Liability Company Agreement, and (y) other than the payment of Enforcement Costs, Guarantor shall have no greater liability than Guarantor-Affiliated Member or other Obligor under the Limited Liability Company Agreement or with respect to any assumption agreement or instrument delivered by it pursuant thereto.

2. NATURE OF GUARANTY. This Guaranty is an absolute, irrevocable, present and continuing guaranty of payment and performance and not of collectability. The obligations of Guarantor hereunder are independent of the obligations of Guarantor-Affiliated Member and any other Obligor and, in the event of any default hereunder, a separate action or actions may be brought and prosecuted against Guarantor whether or not Guarantor-Affiliated Member or any other Obligor is joined therein. Beneficiary shall not be required to prosecute collection, enforcement or other remedies against Guarantor-Affiliated Member or any other Obligor or any other guarantor of the Guaranteed Obligations, or to enforce or resort to any collateral for the repayment of the Guaranteed Obligations or other rights and remedies pertaining thereto, before calling on the Guarantor for payment. If for any reason Guarantor-Affiliated Member or any other Obligor shall fail or be unable to pay, punctually and fully, any of the Guaranteed Obligations, Guarantor shall pay such obligations to Beneficiary in full, immediately upon demand. One or more successive actions may be brought against Guarantor, as often as Beneficiary deems advisable, until all of the Guaranteed Obligations are paid and performed in full. Payment or performance by Guarantor of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge Guarantor's liability for any portion of the Guaranteed Obligations which has not been paid and performed. Without limiting the generality of the foregoing, if Creditor Member is awarded a judgment in any suit brought to enforce Guarantor's covenant to pay or perform a portion of the Guaranteed Obligations, such judgment shall not be deemed to release Guarantor from its covenant to pay and perform the portion of the Guaranteed Obligations that is not the subject of such judgment.

3. ENFORCEMENT COSTS. If: (a) this Guaranty, is placed in the hands of one or more attorneys for collection or is collected through any legal proceeding, (b) one or more attorneys is retained to represent Beneficiary in any bankruptcy, reorganization, receivership or other proceedings affecting creditors' rights and involving a claim under this Guaranty, or (c) one or more attorneys is retained to represent Beneficiary in any other proceedings whatsoever in connection with this Guaranty, then Guarantor shall pay to Beneficiary upon demand all fees, reasonable costs and expenses incurred by Beneficiary in connection therewith, including, without limitation, reasonable attorney's fees, court costs and filing fees (all of which are referred to herein as the "**Enforcement Costs**"). Beneficiary is only entitled to Enforcement Costs if it is the prevailing party.

4. NO DISCHARGE OR DIMINISHMENT OF GUARANTY. Except as otherwise provided herein and to the extent provided herein, the obligations of Guarantor hereunder are absolute and not subject to termination for any reason other than the satisfaction of the Guaranteed Obligations or expiration of this Guaranty. Guarantor agrees that the liability of the Guarantor hereunder shall not be discharged by, and Guarantor hereby irrevocably consents to: (i) any subsequent change, modification or amendment of the Limited Liability Company Agreement in any of its terms, covenants and conditions; (ii) the renewal or extension of time for the payment or performance of the Guaranteed Obligations; (iii) any transfer, waiver, compromise, settlement, modification, surrender or release of Guarantor-Affiliated Member's or any other Obligor's obligations; (iv) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Limited Liability Company Agreement, at law, in equity or otherwise) with respect to the Guaranteed Obligations; (v) any act or event which might otherwise discharge, reduce, limit or modify Guarantor's obligations under this Guaranty; and (vi) any forbearance, delay or other act or omission of Creditor Member. In addition, the Guaranteed Obligations of the Guarantor hereunder are not subject to counterclaim (other than mandatory or compulsory counterclaims), set-off, abatement, deferment or defense based upon any claim that Guarantor may have against Beneficiary:

(a) unrelated to the transaction giving rise to the Guaranteed Obligations; or

(b) regarding any lack of capacity, lack of authority or any other disability or other defense of Guarantor-Affiliated Member or any other Obligor, including, without limitation, any defense based on or arising out of the lack of validity or enforceability of the Limited Liability Company Agreement or any assumption agreement or other instrument delivered thereunder; or

(c) regarding (i) the release or discharge of Guarantor-Affiliated Member or any other Obligor in any receivership, bankruptcy or other proceedings, (ii) the impairment, limitation, modification or termination of the liabilities of Guarantor-Affiliated Member or any other Obligor to Beneficiary or the estate of Guarantor-Affiliated Member or any other Obligor in bankruptcy, or any remedy for the enforcement of Guarantor-Affiliated Member's or any other Obligor's liability under the Limited Liability Company Agreement or any assumption

agreement or other instrument delivered thereunder, resulting from the operation of any present or future provision of Title 11 of the United States Code or other statute or from the decision in any court, (iii) the cessation of the liability of Guarantor-Affiliated Member or any other Obligor from any cause other than payment and performance in full of the Guaranteed Obligations, or (iv) any rejection or disaffirmance of the Guaranteed Obligations, or any part thereof, or any security held therefor, in any proceedings in bankruptcy, insolvency or reorganization.

5. DEFENSES WAIVED. Guarantor irrevocably waives acceptance hereof, presentment, demand, protest, to the fullest extent permitted by applicable law, any notice (including, without limitation, notices of protest, notices of dishonor, notices of any action or inaction, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, and notices of any extension of credit to Guarantor-Affiliated Member or any other Obligor and any right to consent to any thereof) not provided for herein or in the Limited Liability Company Agreement, as well as any requirement that at any time any action be taken by any person against Guarantor-Affiliated Member, any other Obligor or Guarantor. Guarantor further irrevocably waives: (a) any right to require Creditor Member, as a condition of payment or performance, to (i) proceed against Guarantor-Affiliated Member or any other Obligor or other Person, (ii) proceed against or exhaust any security held from Guarantor-Affiliated Member or any other Obligor or other Person, (iii) proceed against or have resort to any balance on the books of Creditor Member owed to Guarantor-Affiliated Member or any other Obligor or other Person, or (iv) pursue any other remedy in the power of Creditor Member whatsoever; (b) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; and (c) the benefit of any statute of limitations affecting Guarantor's liability hereunder or the enforcement hereof. Until payment of the Guaranteed Obligations by Guarantor-Affiliated Member and any other Obligor, any right of subrogation, contribution, reimbursement or indemnification on the part of Guarantor as against Guarantor-Affiliated Member or any other

Obligor shall be in all respects subordinate to all rights and claims of Beneficiary for all other payments or damages which shall be or become due and payable by Guarantor-Affiliated Member or any other Obligor under the provisions of the Limited Liability Company Agreement or any assumption agreement or other instrument delivered thereunder. Beneficiary may compromise or adjust any part of the Guaranteed Obligations, make any other accommodation with Guarantor-Affiliated Member or any other Obligor or exercise any other right or remedy available to it against Guarantor-Affiliated Member or any other Obligor without affecting or impairing in any way the liability of Guarantor under this Guaranty except to the extent the Guaranteed Obligations have been performed.

6. REINSTATEMENT; STAY OF ACCELERATION. If at any time any payment of any portion of the Guaranteed Obligations is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, or reorganization of Guarantor-Affiliated Member or any other Obligor or otherwise, Guarantor's obligations under this Guaranty with respect to that payment shall be reinstated at such time as though the payment had not been made. If acceleration of the time for payment of any of the Guaranteed Obligations is stayed upon the insolvency, bankruptcy or reorganization of Guarantor-Affiliated Member or any other Obligor, all such amounts otherwise subject to acceleration under the terms of any agreement relating to

the Guaranteed Obligations shall nonetheless be payable by Guarantor forthwith on demand by the Beneficiary.

7. INFORMATION. Guarantor assumes all responsibility for being and keeping itself informed of Guarantor-Affiliated Member's or any other Obligor's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope and extent of the risks that Guarantor assumes and incurs under this Guaranty, and agrees that Beneficiary does not have any duty to advise Guarantor of any information known to it regarding those circumstances or risks.

8. SURVIVAL. This Guaranty shall remain in full force and effect as to any Guaranteed Obligation for so long as such Guaranteed Obligation survives under the terms and conditions of the Limited Liability Company Agreement.

9. SEVERABILITY. The provisions of this Guaranty are severable, and in any action or proceeding involving any state corporate, partnership or limited liability company law, or any state, federal or foreign bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of Guarantor under this Guaranty would otherwise be held or determined to be avoidable, invalid or unenforceable on account of the amount of Guarantor's liability under this Guaranty, then, notwithstanding any other provision of this Guaranty to the contrary, the amount of such liability shall, without any further action by Guarantor or Beneficiary, be automatically limited and reduced to the highest amount that is valid and enforceable as determined in such action or proceeding. This Section with respect to the maximum liability of Guarantor is intended solely to preserve the rights of Beneficiary, to the maximum extent not subject to avoidance under applicable law, and neither Guarantor nor any other person or entity shall have any right or claim under this Section with respect to such maximum liability, except to the extent necessary so that the obligations of Guarantor hereunder shall not be rendered voidable under applicable law.

10. REPRESENTATIONS BY GUARANTOR. Guarantor represents that: (a) it is duly organized, validly existing and in good standing under the laws where it is organized and has all requisite authority to conduct its business in each jurisdiction in which its business is conducted; (b) the execution and delivery of this Guaranty and the performance of the obligations it imposes (i) are within its powers; (ii) have been duly authorized by all necessary action of its governing body; and (iii) do not violate any law, conflict with the terms of its articles or agreement of incorporation or organization, its by-laws or any agreement by which it is bound or require the consent or approval of any governmental authority or any third party; and (c) this Guaranty is a valid and binding agreement, enforceable according to its terms, except as such enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally.

11. NOTICES. All notices, requests and other communications to any party under this Guaranty must be in writing (including facsimile transmission or similar writing) and must be given to Beneficiary at the address for Beneficiary set forth in the Limited Liability Company Agreement, to Guarantor-Affiliated Member at the address for Guarantor-Affiliated Member set

forth in the Limited Liability Company Agreement, and to Guarantor at the address for Guarantor-Affiliated Member set forth in the Limited Liability Company Agreement, or in each case as otherwise specified in a notice by one party to the other in accordance with the Limited Liability Company Agreement. Each notice, request or other communication shall be effective in accordance with the Limited Liability Company Agreement.

12. MISCELLANEOUS. No provision of this Guaranty may be amended, supplemented or modified, or any of its terms and provisions waived, except by a written instrument executed by Beneficiary and Guarantor. No failure on the part of the Beneficiary to exercise, and no delay in exercising, any right under this Guaranty waives that right; nor does any single or partial exercise of any right under this Guaranty preclude any other or further exercise of that or any other right. The remedies provided in this Guaranty are cumulative and not exclusive of any remedies provided by law. This Guaranty binds Guarantor, and its successors and assigns, and benefits Beneficiary, and its respective successors and assigns. The use of headings does not limit the provisions of this Guaranty.

13. ASSIGNMENT OF GUARANTY. Notwithstanding anything to the contrary contained in this Guaranty, Guarantor shall not assign, transfer or otherwise delegate its obligations under this Guaranty without first obtaining Beneficiary's prior written consent, which shall be granted or withheld in Beneficiary's sole and absolute discretion. No transfer of interests in Guarantor or merger involving Guarantor that is permitted under the Limited Liability Company Agreement shall be deemed to be an assignment that requires Beneficiary's consent hereunder.

14. GOVERNING LAW. THIS GUARANTY IS TO BE CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS (AND NOT THE LAW OF CONFLICTS) OF DELAWARE.

15. CONSENT TO JURISDICTION. GUARANTOR AND BENEFICIARY HEREBY CONSENT AND AGREE TO THE EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR STATE COURT SITTING IN THE STATE OF DELAWARE IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTY AND GUARANTOR IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH COURT AND IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY OBJECTION IT MAY NOW OR LATER HAVE AS TO THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH A COURT OR THAT SUCH A COURT IS AN INCONVENIENT FORUM.

16. WAIVER OF JURY TRIAL. GUARANTOR AND BENEFICIARY ACKNOWLEDGE AND AGREE THAT ANY CONTROVERSY OR CLAIM WHICH MAY ARISE UNDER THIS GUARANTY IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR

RELATING TO THIS GUARANTY OR THE CLOSING DATE TRANSACTIONS. THIS WAIVER MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 16) AND EXECUTED BY EACH OF GUARANTOR AND BENEFICIARY). THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER HEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. IN THE EVENT OF LITIGATION, THIS GUARANTY MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first above written.

GUARANTOR:

ERP OPERATING LIMITED PARTNERSHIP,
an Illinois limited partnership

By: Equity Residential, a Maryland real estate investment trust, its general partner

By: _____
Name: _____
Title: _____]

SCHEDULE A

MEMBERS AND CAPITAL CONTRIBUTIONS
(As of February 27, 2013)

Member Name and Address	Capital Contribution	Percentage of Capital Contribution
AvalonBay Communities, Inc. 671 N. Glebe Road Suite 800 Arlington, VA 22203	$ 789,004,403	52.578%
EQR-Legacy Holdings JV Member, LLC Two N. Riverside Plaza Suite 400 Chicago, Illinois 60606	$ 711,621,730	47.422%
TOTALS	**$** 1,500,626,133	**100%**

SCHEDULE B

TAXES; ALLOCATIONS; RELATED MATTERS

A. **Profits and Losses Generally.**

After application of Section B of this Schedule B, any remaining Profits and Losses shall be allocated among the Members and to their Capital Accounts so as to cause the balance of each Member's Economic Capital Account to be as nearly equal to such Member's Target Balance as possible. In allocating Profits and Losses pursuant to the previous sentence of this Section A, to the maximum extent possible consistent with Section 704(b) of the Code, such allocations shall be made in a manner that would result in all AVB Items being allocated to the AVB Member and all ERP Items being allocated to the ERP Member.

B. **Regulatory Allocations and Other Allocation Rules.**

Notwithstanding anything in the Agreement to the contrary, the following special allocations shall be made as follows, and, as appropriate, in the following order:

(1) Items of Company loss and deduction otherwise allocable to an Member hereunder that would cause such Member (hereinafter, a "**Restricted Holder**") to have a deficit balance in his or her or its Adjusted Capital Account, or would increase the deficit balance in his or her or its Adjusted Capital Account, as of the end of the Fiscal Year to which such items relate shall not be allocated to such Restricted Holder.

(2) If there is a net decrease in Company Minimum Gain for any Fiscal Year (except as a result of conversion or refinancing of Company indebtedness, certain capital contributions or revaluation of the Company's property as further outlined in Treasury Regulation Sections 1.704-2(d)(4), (f)(2) or (f)(3)), each Member shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to that Member's share of the net decrease in Company Minimum Gain. The items to be so allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(f). This Section C(2) is intended to comply with the minimum gain chargeback requirement in said Section of the Treasury Regulations and shall be interpreted consistently therewith. Allocations pursuant to this Section B(2) shall be made in proportion to the respective amounts required to be allocated to each Member pursuant hereto.

(3) If there is a net decrease in Minimum Gain Attributable to Member Nonrecourse Debt during any Fiscal Year (other than due to the conversion, refinancing or other change in the debt instrument causing it to become partially or wholly nonrecourse, certain capital contributions, or certain reevaluations of the Company's property as further outlined in Treasury Regulations Section 1.704-2(i)(4)), each Member shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to that Member's share of the net decrease in the Minimum Gain Attributable to Member Nonrecourse Debt. The items to be so allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(i)(4) and (j)(2). This Section B(3) is intended to comply with the minimum gain

chargeback requirement with respect to Member Nonrecourse Debt contained in said Section of the Treasury Regulations and shall be interpreted consistently therewith. Allocations pursuant to this Section B(3) shall be made in proportion to the respective amounts required to be allocated to each Member pursuant hereto.

(4) In the event an Member unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5), or (6), and such Member has an Adjusted Capital Account Deficit, items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate the Adjusted Capital Account Deficit as quickly as possible. This Section B(4) is intended to constitute a "qualified income offset" under Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(5) Nonrecourse Deductions for any Fiscal Year or other applicable period shall be allocated to the Members as deemed appropriate by the Management Committee, provided that to the maximum extent permissible under the Code and the applicable Treasury Regulations, all Nonrecourse Deductions, if any, attributable to the AVB Units shall be allocated to the AVB Member and all Nonrecourse Deductions, if any, attributable to the ERP Units shall be allocated to the ERP Member.

(6) Member Nonrecourse Deductions for any Fiscal Year or other applicable period shall be specially allocated to the Member that bears the economic risk of loss for the debt (i.e., the Member Nonrecourse Debt) in respect of which such Member Nonrecourse Deductions are attributable (as determined under Treasury Regulations Section 1.704-2(b)(4) and (i)(1)).

(7) Allocations to Members whose interests vary during a year by reason of transfer, redemption, admission, capital contributions, or otherwise, shall be made as determined by the Management Committee in accordance with permissible methods under Section 706 of the Code.

C. **Tax Allocations.**

(1) Subject to Section D(2), items of income, gain, loss, deduction and credit to be allocated for income tax purposes (collectively, "**Tax Items**") shall be allocated among the Members on the same basis as their respective book items, as provided in Sections A and B.

(2) If any Company property is subject to Section 704(c) of the Code or is reflected in the Capital Accounts of the Members and on the books of the Company at a value that differs from the adjusted tax basis of such property, then the Tax Items with respect to such property shall, in accordance with the requirements of Treasury Regulations Section 1.704-1(b)(4)(i), be shared among the Members in a manner that takes account of the variation between the adjusted tax basis of the applicable property and its value in the same manner as variations between the adjusted tax basis and fair market value of property contributed to the Company are taken into account in determining the Members' share of Tax Items under Section 704(c) of the Code. The Management Committee is authorized to choose any reasonable method permitted by the Treasury Regulations pursuant to Section 704(c) of the Code, including the "remedial allocation" method, the "curative" method and the "traditional" method.

(3) Pursuant to Treasury Regulations Section 1.752-3, each Member's interest in Company profits, for purposes of determining such Member's shares of excess "nonrecourse liabilities" shall, to the extent permissible under the Code, be as follows: (i) all excess "nonrecourse liabilities" attributable to the AVB Units shall be allocate to the AVB Member; (ii) all excess "nonrecourse liabilities" attributable to the ERP Units shall be allocate to the ERP Member; and (iii) all remaining excess "nonrecourse liabilities" shall be allocated to the Members in accordance with their respective Proportionate Shares.

(4) Any payment of foreign tax that may be creditable against any Member's United States federal income tax liability shall be allocated as follows: (i) foreign tax attributable to the AVB Units shall be allocated to the AVB Member; (ii) foreign tax attributable to the AVB Units shall be allocated to the AVB Member; and (iii) any other foreign taxes to the Members pro rata in proportion to the Proportionate Shares of the Members at the time of allocation. Other tax credits shall be allocated to the Members in a manner reasonably determined by the Management Committee consistent with the principles of this Schedule B.

(5) To the extent permissible under the Code and taking into account the economic rights of the Members, the intent of the book and tax allocations in this Schedule B is to allocate items of income, gain, loss, and deduction for book and tax purposes to the Members in a manner such that each Member is allocated such items as if each of the AVB Member and ERP Member directly held AVB Units and ERP Units, respectively, and directly paid its share of any liabilities the responsibility for which is allocated to such Member under this Agreement. The Management Committee shall have discretion to implement the provisions of this Schedule, including for the avoidance of doubt regulatory allocations under Section B of this Schedule, in a manner consistent with the foregoing intent. The Members are aware of the income tax consequences of the allocations made by this Agreement and shall report their shares of profits and losses and other items of Company, gross income, gain, loss and deduction for income tax purposes consistently with this Agreement.

D. Tax Classification.

It is the intent of the Members that the Company shall always be operated in a manner consistent with its treatment as a "partnership" for federal, state and local income and franchise tax purposes. In accordance therewith, (a) no Member shall file any election with any taxing authority to have the Company treated otherwise, and (b) each Member hereby represents, covenants, and warrants that it shall not maintain a position inconsistent with such treatment. The Management Committee shall, except as otherwise required by applicable law, (i) not cause or permit the Company to elect (A) to be excluded from the provisions of Subchapter K of the Code, or (B) to be treated as a corporation or an association taxable as a corporation for any tax purposes; (ii) cause the Company to make any election reasonably determined to be necessary or appropriate in order to ensure the treatment of the Company as a partnership for all tax purposes; (iii) cause the Company to file any required tax returns in a manner consistent with its treatment as a partnership for tax purposes; and (iv) not take any action or cause any officer or agent or representative of the Company to take any action that would be inconsistent with the treatment of the Company as a partnership for such purposes.

E. Additional Tax Matters.

(1) The Tax Matters Member shall be the sole signatory to any federal, state, local and foreign tax on behalf of the Company, except to the extent any other Person is required by law to also sign such returns.

(2) The Tax Matters Partner shall take no action in such capacity without the authorization or consent of the other Members, other than (after reasonable notice to the other Member) such action as the Tax Matters Partner may be required to take by applicable law. The Tax Matters Partner shall comply with the responsibilities outlined in Sections 6222 through 6232 of the Code.

(3) The Tax Matters Partner shall not enter into any extension of the period of limitations for making assessments on behalf of the Members without first obtaining the written consent of each Member.

(4) The Tax Matters Partner shall not bind the Company to a settlement agreement without obtaining the written concurrence of the other Members. For purposes of this Section F(4), the term "settlement agreement" shall include a settlement agreement at either an administrative or judicial level. Any Member that enters into a settlement agreement with respect to any Company items (within the meaning of Section 6231(a)(3) of the Code) shall notify the other Members of such settlement agreement and its terms within ninety (90) calendar days after the date of settlement.

(5) The provisions of this Section F shall survive the termination of the Company or the termination of any Member's interest in the Company and shall remain binding on the Members (with respect to the period of time during which such Person is a Member) for a period of time necessary to resolve with the Internal Revenue Service or the United States Department of the Treasury any and all matters regarding the United States federal income taxation of the Company.

(6) The Tax Matters Partner, in its capacity as the Tax Matters Partner, shall be reimbursed by the Company for any third party out-of-pocket costs and expenses reasonably incurred by it in the performance of its duties as Tax Matters Partner. No Member shall be reimbursed by the Company for any costs and expenses incurred by such Member in pursuing on its own behalf any of its rights to file petitions, seek judicial review, etc. under this Section F or in participating in Company-level administrative or judicial tax proceedings unless the other Member, in its sole discretion, agrees to such reimbursement.

(1) During any Company income tax audit or other income tax controversy with any governmental agency, the Tax Matters Partner shall keep the Members informed of all material facts and developments on a reasonably prompt basis. Prompt notice shall be given to the Members upon receipt of advice that the Internal Revenue Service or other taxing authority intends to examine any income tax return, or records or books of the Company.

(2) The cost of any adjustments to all Members and the cost of any resulting audits or adjustments of Members shall be borne solely by the Members without reimbursement by the Company.

SCHEDULE C

TAX PROTECTION AGREEMENTS

Tax Protection Agreements for Restricted EQR Properties

1. Tax Protection Agreement attached as Exhibit D to Annex A to the Archstone-Smith Operating Trust Articles of Amendment and Restatement Amended and Restated Declaration of Trust entered into in connection with the closing of the merger of Charles E. Smith Residential Realty, L.P., with and into the Archstone-Smith Operating Trust pursuant to the Agreement and Plan of Merger, dated as of May 3, 2001, by and among the Archstone-Smith Trust, Archstone-Smith Operating Trust, Charles E. Smith Residential Realty, Inc. and Charles E. Smith Residential Realty, L.P.

2. Tax Protection Agreement (Atlantic Multifamily), dated as of April 30, 1998, by and among Atlantic Multifamily Limited Partnership-I, Security Capital Atlantic Incorporated and E.C. Griffith Co., William A. White, Jr., White-Cavu Limited Partnership, Thomas A. Hunter III, G. Dan Page, Jr., Joseph E. Kaylor, Dean R. Devillers, Close Family Partnership, The Springs Company, Elm Land Co.

3. Tax Protection Agreement (Mission Bay-Boston), dated as of July 28, 2005, by and among Archstone-Smith Operating Trust, Archstone-Smith Trust, and Mission Bay Country Club Apartments, LP, HFR R&B Holdings, LLC, ERB R&B Holdings, LLC.

4. Tax Protection Agreement (KIP-Houston Midtown), dated as of July 28, 2005, by and among Archstone-Smith Operating Trust, Archstone-Smith Trust, and KIP Properties, LLC, HAKP Property, LLC, JMKP Property, LLC, Sanron, LLC, SAF Holdings, LLC, HFR R&B Holdings, LLC, ERB R&B Holdings, LLC.

5. Tax Protection Agreement (OGA-San Jose North; Minneapolis), dated as of July 28, 2005, by and among Archstone-Smith Operating Trust, Archstone-Smith Trust, and Oakwood LaSalle, L.P., HFR R&B Holdings, LLC, ERB R&B Holdings, LLC.

6. Tax Protection Agreement (Garden-Grove-30% Regency Club TIC), dated as of July 28, 2005, by and among Archstone-Smith Operating Trust, Archstone-Smith Trust, and Garden Grove Country Club Apartments, LP, HFR R&B Holdings, LLC, ERB R&B Holdings, LLC.

7. Tax Protection Agreement (AWCI-70% Regency Club TIC), dated as of July 28, 2005, by and among Archstone-Smith Operating Trust, Archstone-Smith Trust, and Alexandria West Coast Investors, LLC, HFR R&B Holdings, LLC, ERB R&B Holdings, LLC.

8. *Tax Protection Agreement (OGA Newport Beach-20% Portland TIC), dated as of July 28, 2005, by and among Archstone-Smith Operating Trust, Archstone-Smith Trust, and Oakwood Garden Apartments-Newport Beach, LP, HFR R&B Holdings, LLC, ERB R&B Holdings, LLC.

9. *Tax Protection Agreement (Mission Bay-80% Portland TIC), dated as of July 28, 2005, by and among Archstone-Smith Operating Trust, Archstone-Smith Trust, and Mission Bay Country Club Apartments, LP, HFR R&B Holdings, LLC, ERB R&B Holdings, LLC.

10. For Archstone Emeryville, a Restricted EQR Property, a corresponding tax protection agreement has not been identified.

* Tax Protection Agreement has not been provided and thus has not been reviewed to verify that the description is accurate.

Tax Protection Agreements for Restricted AVB Properties

[AVB Member shall complete Schedule C with respect to Tax Protection Agreements relating to the Restricted AVB Properties and as soon as practicable following the Initial Closing, and in any event before the parties allocate the Baseline Debt Maintenance Obligations.]

SCHEDULE D

TAX PROTECTED PROPERTIES BEING TRANSFERRED

A. AVB Properties

1. Archstone Oak Creek
2. Archstone Del Mar Station
3. Archstone La Jolla Colony
4. Archstone Old Town Pasadena
5. Archstone Thousand Oaks
6. Archstone Walnut Ridge
7. Archstone San Bruno III
8. Archstone Ballston Square
9. Arlington Courthouse Place
10. Archstone Pasadena
11. Los Feliz
12. West Valley
13. Woodland Hills
14. Bear Hill
15. Meadows at Russett
16. Lexington

B. EQR Properties

1. Archstone Santa Monica
2. Archstone Santa Clara
3. Archstone San Mateo
4. Archstone South Market
5. Villa Venetia

6. Camargue
7. Fairchase
8. Flats at DuPont Circle
9. Calvert Woodley
10. Cleveland House
11. Archstone 2501 Porter
12. Archstone Columbia Crossing

SCHEDULE E

INITIAL DISTRIBUTIONS

The following assets received in distribution from Archstone Property Holdings LLC immediately following the Company's acquisition of Class B Preferred Membership Interests in Archstone Property Holdings LLC will be distributed to the indicated Member:

Asset	Member
$20,486,370 in cash	AvalonBay Communities, Inc.
$68,101,321 in cash	EQR-Legacy Holdings JV Member, LLC
$42,000 in domain names	AvalonBay Communities, Inc.
$63,000 in domain names	EQR-Legacy Holdings JV Member, LLC
Equity interests in Archstone Wheaton Station and Oakwood Philadelphia	AvalonBay Communities, Inc.

Exhibit 10.7

EXECUTION

MASTER CREDIT FACILITY AGREEMENT

(TERM LOAN)

BY AND BETWEEN

BORROWERS SIGNATORY HERETO

AND

FANNIE MAE

DATED AS OF

FEBRUARY 27, 2013

TABLE OF CONTENTS

EXHIBITS

MASTER CREDIT FACILITY AGREEMENT

THIS MASTER CREDIT FACILITY AGREEMENT is made as of February 27, 2013 (the "**Effective Date**"), by and among (i) (a) the **Borrowers identified on Schedule I** attached hereto, (b) such Additional Borrowers as may from time to time become Borrowers under this Agreement (the entities described in (a) and (b), individually and collectively, "**Borrower**"); and (ii) **FANNIE MAE**, the body corporate duly organized under the Federal National Mortgage Association Charter Act, as amended, 12 U.S.C. §1716 et seq. and duly organized and existing under the laws of the United States (together with its successors and assigns, "**Fannie Mae**").

RECITALS

A. Certain of the Borrowers have executed that certain Amended and Restated Master Credit Facility Agreement dated December 2, 2010 (as amended, modified, restated or supplemented prior to the date hereof (collectively, the "**Original Agreement**"). Pursuant to the Original Agreement, Fannie Mae is the holder of certain loans in the aggregate original principal amount of $1,652,985,405.00 (collectively, the "**Loans**").

B. As of the Effective Date, the Loans are secured by, among other things, the Initial Mortgaged Properties.

C. As of the effectiveness of this Agreement, the outstanding principal balance under the Loans is $1,190,115,195.00.

D. The Borrowers are the owners of the Initial Mortgaged Properties.

E. As more particularly described in Exhibit A to this Agreement (unless otherwise defined or the context clearly indicates otherwise, capitalized terms shall have the meanings ascribed to such terms in Appendix I of this Agreement), reference to "relevant" or "applicable" Loans, Mortgaged Properties or Loan Documents shall refer to the Loans made to a Collateral Pool Borrower, the Mortgaged Properties securing such Loans or the Loan Documents entered into by such Collateral Pool Borrower in respect of such Loans, respectively. As set forth below, each Mortgaged Property is part of a Collateral Pool and each such Mortgaged Property in a Collateral Pool secures all Loans made with respect to such Collateral Pool.

F. This Agreement amends and restates the Original Agreement in its entirety as it relates to the Loans. As set forth below, the Mortgaged Properties identified on Exhibit A to this Agreement as part of "Collateral Pool 2" each secure one or more Loans made in respect of such Mortgaged Properties, and constitute Collateral Pool 2. As set forth below, the Mortgaged Properties identified on Exhibit A to this Agreement as part of "Collateral Pool 6" each secure one or more Loans made in respect of such Mortgaged Properties, and constitute Collateral Pool 6. Certain other loans outstanding pursuant to the Original Agreement (the "**Other Loans**") are governed by a separate Master Credit Facility Agreement of even date herewith, which agreement amends and restates the Original Agreement in its entirety as it relates to the Other

Loans. The Original Agreement is of no further force and effect. For avoidance of doubt, there are no Collateral Pools 1, 3, 4, 5, 7, 8 or 9 that are covered by this Agreement.

G. To secure the obligations of each Collateral Pool Borrower under this Agreement and the other Loan Documents executed in connection with the Loan made to such Borrower, such Collateral Pool Borrower pledged its respective Collateral to Fannie Mae. Each Borrower's Collateral is comprised of (i) Multifamily Residential Properties owned by Borrower or any Additional Borrower and (ii) any other collateral pledged to Fannie Mae from time to time by any Borrower, any Additional Borrower pursuant to this Agreement or any other Loan Documents.

H. The Multifamily Residential Properties comprising the Collateral are grouped into two (2) Collateral Pools, as set forth on Exhibit A. Each Collateral Pool Borrower is the obligor on the Note or Notes secured by the Mortgaged Properties comprising its related Collateral Pool and each such Loan is secured by a Security Instrument on the Mortgaged Property owned by such Collateral Pool Borrower.

I. Each Loan, Note and Security Document related to the Mortgaged Properties comprising each Collateral Pool is cross-defaulted (i.e., a default under any Loan, Note, Security Document relating to each Mortgaged Property comprising Collateral Pool 2 (for example) under this Agreement, shall constitute a default under each Loan, Note and Security Document comprising Collateral Pool 2 (for example) and under this Agreement related to the Mortgaged Properties in such Collateral Pool) and cross-collateralized (i.e., each Security Instrument related to the Mortgaged Properties within Collateral Pool 6 (for example) shall secure all of Borrower's obligations under this Agreement and the other Loan Documents related to the Loan secured by the Mortgaged Properties within Collateral Pool 6 (for example)) to the other Notes and Security Documents related to the Mortgaged Properties in such Collateral Pool, and it is the intent of the parties to this Agreement that after an Event of Default, Fannie Mae may accelerate any Note related to such Collateral Pool without needing to accelerate any other Note and that in the exercise of its rights and remedies under the Loan Documents and the Guaranty, Fannie Mae may, except as provided in this Agreement, exercise and perfect any and all of its rights in and under the Loan Documents and the Guaranty with regard to any Mortgaged Property in such Collateral Pool without needing to exercise and perfect its rights and remedies with respect to any other Mortgaged Property in such Collateral Pool and that any such exercise shall be without regard to the Allocable Loan Amount assigned to such Mortgaged Property and that Fannie Mae may recover an amount equal to the full amount outstanding in respect of any of the Notes related to the Mortgaged Properties within a Collateral Pool, in connection with such exercise and any such amount shall be applied to the Obligations as determined by Fannie Mae in its sole and absolute discretion.

J. In addition to the cross-default and cross-collateralization described in Recital I above, as set forth below, the Loan secured by Collateral Pool 2 is cross-defaulted, but not cross-collateralized, with Loan secured by Collateral Pool 6, and vice versa.

NOW, THEREFORE, Borrower and Fannie Mae, in consideration of the mutual promises and agreements contained in this Agreement, hereby agree that the foregoing Recitals are incorporated herein and hereby agree as follows:

ARTICLE 1
THE LOANS

Section 1.01. The Loans.

Subject to the terms, conditions and limitations of this Agreement:

(a) [RESERVED].

(b) Fixed Loans. Each applicable Collateral Pool Borrower has obtained a Fixed Loan in the original principal amounts in respect of such Collateral Pool Borrower set forth on Exhibit A attached hereto. No Fixed Loan shall be made as a result of a decrease in the Loan to Value Ratio or an increase in the Debt Service Coverage Ratio of any Mortgaged Property. No additional Loans are permitted.

Section 1.02. Maturity Date of Loans; Amortization; Prepayment.

(a) [RESERVED]

(b) Fixed Loans.

(i) Maturity Date of Fixed Loans. The maturity date of each Fixed Loan is set forth in the applicable Note.

(ii) Amortization and Payment of Fixed Loans. Fixed Loans are payable interest only.

(iii) Prepayment of Fixed Loans. Fixed Loans are not prepayable without premium prior to the date that is six (6) months prior to the maturity date of such Fixed Loan (as more specifically described in the applicable Fixed Loan Note); provided that, notwithstanding the foregoing, Borrower may prepay all or any portion of any Fixed Loan pursuant to the yield maintenance provisions of the applicable Fixed Loan Note.

Section 1.03. Interest on Loans.

(a) [RESERVED].

(b) Fixed Loans. Each Fixed Loan bears interest at the rate set forth in the related Fixed Loan Note. Interest payments for Fixed Loans shall be calculated on an actual/360 basis.

Section 1.04. Notes.

(a) [RESERVED].

(b) Fixed Loans. The obligation of the applicable Collateral Pool Borrower to repay the related Fixed Loan is and shall be evidenced by one or more Fixed Loan Notes executed by each applicable Collateral Pool Borrower.

Section 1.05. Extension of Loan Secured by Collateral Pool 2 and Collateral Pool 6.

(a) Upon the maturity of the Loan secured by Collateral Pool 2 or the Loan secured by Collateral Pool 6, Borrower shall have the right to extend such Loan (and, as relates to Section 1.05(a)(iv) below only, the option to convert such Loan to a variable-rate loan) (an "**Extension**"), as follows:

(i) the Loan secured by Collateral Pool 2 or the Loan secured by Collateral Pool 6 may be extended to a date that is ten (10) years from the closing date of the Extension or, if the applicable Collateral Pool Borrower so elects, fifteen (15) years from the closing date of the Extension, subject to the following terms and conditions (which, solely in connection with an Extension pursuant to this Section 1.05(a)(i), shall control over any inconsistent provision of this Agreement applicable to an Extension of such Loan):

(A) In order to exercise the option set forth in this Section 1.05(a)(i), the applicable Collateral Pool Borrower shall deliver notice of its intent to do so not later than the earlier of (1) ninety (90) days prior to the requested closing date for the Extension, or (2) June 1, 2013.

(B) The maturity date of the applicable Loan, as extended pursuant to this Section 1.05(a)(i), shall not be later than September 1, 2023 (in the case of a ten (10) year Extension) or September 1, 2028 (in the case of a fifteen (15) year Extension).

(C) Not later than September 1, 2013, the applicable Collateral Pool Borrower and Fannie Mae shall have negotiated, finalized and executed the applicable closing documents for the Extension, which documents: (1) subject to the provisions of Section 1.05(c) below, shall conform in all respects to Fannie Mae's then-current requirements (including MBS Requirements and other requirements regarding the form of loan documents for Loans similar to the applicable Loan, as extended pursuant to this Section 1.05(a)(i)), and (2) shall require that the applicable Loan, as extended pursuant to this Section 1.05(a)(i), shall have an Aggregate Debt Service Coverage Ratio (which, for the avoidance of doubt, shall be calculated using the definition of such term set forth in Appendix I to this Agreement) not less than 1.25:1.0 and an Aggregate Loan to Value Ratio (which, for the avoidance of doubt, shall be calculated on the basis of the definition of such term set forth in Appendix I to this Agreement) not in excess of seventy five percent (75%) as of August 1, 2015 (in the case of an extension of the Loan

secured by Collateral Pool 6) or August 1, 2017 (in the case of an extension of the Loan secured by Collateral Pool 2), and shall require that if the Loan does not meet the foregoing tests the applicable Collateral Pool Borrower must pay down the outstanding principal under the Loan (including with the payment of yield maintenance) and/or shall add additional Collateral satisfactory to Fannie Mae and in accordance with the provisions of the applicable loan documents relating to the addition of collateral, so as to increase the Aggregate Debt Service Coverage (calculated in the manner set forth above in this Section 1.05(a)(i)(C)) to not less than 1.25:1.0 and/or decrease the Aggregate Loan to Value Ratio (calculated in the manner set forth above in this Section 1.05(a)(i)(C)) to no more than 75% as of November 1, 2015 (in the case of an extension of the Loan secured by Collateral Pool 6) or November 1, 2017 (in the case of an extension of the Loan secured by Collateral Pool 2).

(D) The interest rate for the extended Loan shall be reset to a fixed rate of interest that reflects Fannie Mae's then current market rate of interest for loans similar to the applicable Loan being extended pursuant to this Section 1.05(a)(i) and having a 10-year term or a 15-year term, as applicable, in either case plus the additional spread as calculated by Fannie Mae required to compensate Fannie Mae for the yield maintenance that would have been owing if the Loan had been fully repaid on the date of the Extension.

(E) The Loan, as extended pursuant to this Section 1.05(a)(i), shall be non-amortizing (interest only) from the effective date of the Extension through November 1, 2015 (in the case of an extension of the Loan secured by Collateral Pool 6) or November 1, 2017 (in the case of an extension of the Loan secured by Collateral Pool 2), and will then amortize based on a 30-year amortization schedule.

(ii) The Loan secured by Collateral Pool 2 or the Loan secured by Collateral Pool 6 may be extended to a date that is ten (10) years from the closing date of the Extension, subject to the following terms and conditions (which, solely in connection with an Extension pursuant to this Section 1.05(a)(ii), shall control over any inconsistent provision of this Agreement applicable to an Extension of such Loan):

(A) In order to exercise the option set forth in this Section 1.05(a)(ii), the applicable Collateral Pool Borrower shall deliver notice of its intent to do so not later than the earlier of (1) ninety (90) days prior to the requested closing date for the Extension, or (2) June 1, 2013.

(B) the maturity date of the applicable Loan, as extended pursuant to this Section 1.05(a)(ii) shall not be later than September 1, 2023.

(C) Not later than September 1, 2013, the applicable Collateral Pool Borrower and Fannie Mae shall have negotiated, finalized and executed the applicable closing documents for the Extension, which documents: (1) subject to the provisions of Section 1.05(c) below, shall conform in all respects to Fannie Mae's then-current requirements (including MBS Requirements and other requirements regarding the

form of loan documents for Loans similar to the applicable Loan, as extended pursuant to this Section 1.05(a)(ii)), and (2) shall require that the applicable Loan, as extended pursuant to this Section 1.05(a)(ii), shall have an Aggregate Debt Service Coverage Ratio (which, for the avoidance of doubt, shall be calculated using the definition of such term set forth in Appendix I to this Agreement) not less than 1.25:1.0 and an Aggregate Loan to Value Ratio (which, for the avoidance of doubt, shall be calculated using the definition of such term set forth in Appendix I to this Agreement) not in excess of seventy five percent (75%) as of the date selected by Fannie Mae for the issuance of MBS related to the Loan being extended pursuant to this Section 1.05(a)(ii) (Borrower recognizing that Fannie Mae's intention would be to issue MBS by no later than September 1, 2013 in order to fund an Extension pursuant to this Section 1.05(a)(ii)),and shall require that if the Loan does not meet the foregoing tests the applicable Collateral Pool Borrower must pay down the outstanding principal under the Loan (including with the payment of yield maintenance) and/or shall add additional Collateral satisfactory to Fannie Mae and in accordance with the provisions of the applicable loan documents relating to the addition of collateral, so as to increase the Aggregate Debt Service Coverage Ratio (calculated in the manner set forth above in this Section 1.05(a)(ii)(C)) to not less than 1.25:1.0 and/or decrease the Aggregate Loan to Value Ratio (calculated in the manner set forth above in this Section 1.05(a)(ii)(C)) to no more than 75% as of the date selected by Fannie Mae for the issuance of MBS related to the Loan being extended pursuant to this Section 1.05(a)(ii).

(D) The interest rate for the extended Loan shall be reset to a fixed rate of interest that reflects Fannie Mae's then current market rate of interest for loans similar to the applicable Loan being extended pursuant to this Section 1.05(a)(ii) and having a 10-year term, plus the additional spread, as calculated by Fannie Mae, required to compensate Fannie Mae for the pair-off amount (based on the difference between (a) the existing interest rate on the Loan and (b) the then-current market rate for a loan with the same remaining term as the Loan (without giving effect to the Extension) on the date the Loan is extended) that would have been owing if the Loan had been paid on the closing date of the Extension.

(E) The Loan, as extended pursuant to this Section 1.05(a)(ii), shall be non-amortizing (interest only) from the effective date of the Extension through November 1, 2015 (in the case of an extension of the Loan secured by Collateral Pool 6) or November 1, 2017 (in the case of an extension of the Loan secured by Collateral Pool 2), and will then amortize based on a 30-year amortization schedule.

(F) The applicable Collateral Pool Borrower may make a Request for an Extension pursuant to this Section 1.05(a)(ii) with respect to less than the full amount outstanding under the Loan secured by Collateral Pool 2 or the Loan Secured by Collateral Pool 6, but no Extension may be granted for less than fifty percent (50%) of the Loan being extended pursuant to this Section 1.05(a)(ii). If the applicable Collateral Pool Borrower makes a Request to extend a portion, but not all, of the Loan secured by Collateral Pool 2 or the Loan Secured by Collateral Pool 6 pursuant to this Section 1.05(a)(ii), such Loan shall be divided into two Loans and the Collateral Pool securing

such Loan shall be divided into two Collateral Pools, one such Collateral Pool (which will include the Mortgaged Properties from Collateral Pool 2 or Collateral Pool 6, as applicable, that continue to secure the portion of the Loan that is not extended) being referred to herein as the "B Pool," and the other Collateral Pool (which will include the balance of the Mortgaged Properties from Collateral Pool 2 or Collateral Pool 6, as applicable) being referred to herein as the "A Pool."

(iii) The Loan secured by Collateral Pool 2 or the Loan Secured by Collateral Pool 6may be extended to November 1, 2016 (in the case of an extension of the Loan secured by Collateral Pool 6) or November 1, 2018 (in the case of an extension of the Loan secured by Collateral Pool 2) or, if the applicable Collateral Pool Borrower so elects, to November 1, 2017 (in the case of an extension of the Loan secured by Collateral Pool 6) or November 1, 2019 (in the case of an extension of the Loan secured by Collateral Pool 2), subject to the following terms and conditions (which, solely in connection with an Extension pursuant to this Section 1.05(a)(iii), shall control over any inconsistent provision of this Agreement applicable to an Extension of such Loan):

(A) In order to exercise the option set forth in this Section 1.05(a)(iii), the applicable Collateral Pool Borrower shall deliver notice of its intent to do so not later than the earlier of (1) ninety (90) days prior to the requested closing date for the Extension, or (2) June 1, 2013.

(B) Any Extension of the applicable Collateral Pool Loan pursuant to this Section 1.05(a)(iii) shall be conditioned upon payment by the applicable Collateral Pool Borrower to Fannie Mae of an extension fee equal to: (i) in the case of an Extension of the Loan secured by Collateral Pool 6 to November 1, 2016 or an extension of the Loan secured by Collateral Pool 2 to November 1, 2018, 1.5% multiplied by the amount to be extended, or (ii) in the case of an extension of the Loan secured by Collateral Pool 6 to November 1, 2018 or an extension of the Loan secured by Collateral Pool 2 to November 1, 2019, 2% multiplied by the amount to be extended.

(C) Not later than September 1, 2013, the applicable Collateral Pool Borrower and Fannie Mae shall have negotiated, finalized and executed the applicable closing documents for the Extension, which documents, subject to the provisions of Section 1.05(c) below, shall conform in all respects to Fannie Mae's then-current requirements (including MBS Requirements and other requirements regarding the form of loan documents for Loans similar to the applicable Loan, as extended pursuant to this Section 1.05(a)(iii)).

(D) The interest rate for the extended Loan shall not be reset, and shall equal the interest rate set forth in the Note evidencing the Loan secured by Collateral Pool 2 or the Loan secured by Collateral Pool 6, as applicable, on the Effective Date.

(E) Borrower may make extend the Loan secured by Collateral Pool 2 or the Loan secured by Collateral Pool 6 pursuant to this Section 1.05(a)(iii) with

respect to all or any portion of the Loan being extended pursuant to this Section 1.0-5(a)(iii). If the applicable Collateral Pool Borrower makes a Request to extend a portion, but not all, of the Loan secured by Collateral Pool 2 or the Loan secured by Collateral Pool 6 pursuant to this Section 1.05(a)(iii), the Loan being extended shall be divided into two Loans and the applicable Collateral Pool shall be divided into two Collateral Pools, one such Collateral Pool (which will include the Mortgaged Properties from Collateral Pool 2 or Collateral Pool 6, as applicable that continue to secure the portion of the Loan that is not extended) being referred to herein as the "B Pool," and the other Collateral Pool (which will include the balance of the Mortgaged Properties from Collateral Pool 2 or Collateral Pool 6, as applicable) being referred to herein as the "A Pool."

(iv) The Loan secured by Collateral Pool 2 or the Loan secured by Collateral Pool 6 may be extended to November 1, 2016 (in the case of an extension of the Loan secured by Collateral Pool 6) or November 1, 2018 (in the case of an extension of the Loan secured by Collateral Pool 2) or, if the applicable Collateral Pool Borrower so elects, to November 1, 2017 (in the case of an extension of the Loan secured by Collateral Pool 6) or November 1, 2019 in the case of an extension of the Loan secured by Collateral Pool 2), subject to the following terms and conditions (which, solely in connection with an Extension pursuant to this Section 1.05(a)(iv), shall control over any inconsistent provision of this Agreement applicable to an Extension of such Loan):

(A) In order to exercise the option set forth in this Section 1.05(a)(iv), the applicable Collateral Pool Borrower shall deliver notice of its intent to do so not later than the earlier of (1) ninety (90) days prior to the requested closing date for the Extension, or (2) February 1, 2015 in the case of an extension of the Loan secured by Collateral Pool 6) or February 1, 2017 (in the case of an extension of the Loan secured by Collateral Pool 6).

(B) Not later than May 1, 2015 (in the case of an extension of the Loan secured by Collateral Pool 6) or May 1, 2017 (in the case of an extension of the Loan secured by Collateral Pool 2), the applicable Collateral Pool Borrower and Fannie Mae shall have negotiated, finalized and executed the applicable closing documents for the Extension, which documents: (1) subject to the provisions of Section 1.05(c) below, shall conform in all respects to Fannie Mae's then-current requirements (including MBS Requirements and other requirements regarding the form of loan documents for Loans similar to the applicable Loan, as extended pursuant to this Section 1.05(a)(iv)); and (2) shall require that the applicable Loan, as extended pursuant to this Section 1.05(a)(iv), shall have an Aggregate Debt Service Coverage Ratio not less than 1.25:1.0 and an Aggregate Loan to Value Ratio not in excess of seventy five percent (75%) as of August 1, 2015 (in the case of an extension of the Loan secured by Collateral Pool 6) or August 1, 2017 (in the case of an extension of the Loan secured by Collateral Pool 2), and shall require that the Loan does not meet the foregoing tests, then prior to November 1, 2015 (in the case of an extension of the Loan secured by Collateral Pool 6) or November 1, 2017 (in the case of an extension of the Loan secured by Collateral Pool 2) the applicable Collateral Pool Borrower must pay down the outstanding principal under the Loan (including with the payment of yield maintenance) and/or shall add additional Collateral

satisfactory to Fannie Mae and in accordance with the provisions of the applicable loan documents relating to the addition of collateral, so as to increase the Aggregate Debt Service Coverage to not less than 1.25:1.0 and/or decrease the Aggregate Loan to Value Ratio to no more than 75%.

(C) The Loan that is extended pursuant to this Section 1.05(a)(iv) shall be converted to a variable-rate loan with an interest rate determined based on the Extension period (one year or two years) and based on market conditions at the time of the Extension.

(b) Except as expressly provided above in Section 1.05(a)(ii)(F) and in Section 1.05(a)(iii)(E), an Extension pursuant to this Section 1.05 must be made with respect to the full amount outstanding in respect of the Loan secured by Collateral Pool 2 or the Loan secured by Collateral Pool 6. As a condition to any Extension of a portion of a Loan pursuant to Section 1.05(a)(ii) or Section 1.05(a)(iii), such that the applicable Collateral Pool is split into an A Pool and a B Pool as set forth above in

Section 1.05(a)(ii)(F) or Section 1.05(a)(iii)(E), then Fannie Mae shall determine the Aggregate Debt Service Coverage Ratio and the Aggregate Loan to Value Ratio, both (i) in the aggregate (i.e., without giving effect to the proposed splitting of the Loan and such Collateral Pool) and (ii) solely with respect to the B Pool and the portion of the Loan that will be secured by the B Pool after giving effect to the Extension. As a condition to such Extension, Fannie Mae must determine that the Extension will not cause (i) an increase in the Aggregate Loan to Value Ratio of the portion of the Loan secured by the B Pool as compared to the Aggregate Loan to Value Ratio of the applicable Loan, in the aggregate, prior to the Extension; and (ii) will not cause a decrease in the Aggregate Debt Service Coverage Ratio of the portion of the Loan secured by the B Pool as compared to the Aggregate Debt Service Coverage Ratio of the applicable Collateral Pool, in the aggregate, prior to the Extension.

(c) Any Loan extended pursuant to this Section 1.05 will be converted to an MBS, will be removed from this Agreement and will be governed by a new Master Credit Facility Agreement and related loan documentation, on Fannie Mae's then-current standard form MBS loan documentation for loans of the same type as the Loan that is extended; provided, however, that (i) the provisions of such loan documentation will be modified to be substantially consistent with the terms and conditions of this Agreement and the other Loan Documents and the Guaranty pertaining to such matters as insurance, reporting requirements and thresholds for lender control over insurance disputes and condemnation proceedings; (ii) the provisions of such loan documentation relating to substitution, release and addition of collateral will be modified to be substantially consistent with the analogous terms and provisions in this Agreement and the other Loan Documents and the Guaranty; (iii) any guaranty of such extended loan shall guaranty only the same type of obligations as are guaranteed under the guaranty currently in effect for the Loans; (iv) the transfer provisions of such loan documentation shall be modified to be substantially consistent with the terms and conditions of this Agreement and the other Loan Documents and the Guaranty relating to transfers; (v) Fannie Mae and Borrower will attempt in good faith to reach an agreement regarding any modifications requested by the applicable Collateral Pool Borrower relating to other matters; and (vi) except as set forth in clause (i) and clause (iv) of this sentence, notwithstanding anything to the contrary, all provisions of such

amended and restated loan documentation shall be consistent with Fannie Mae's requirements relating to mortgaged-backed securities issuance, disclosure and tax matters.

(d) If the applicable Collateral Pool Borrower and Fannie Mae so agree, each in its sole discretion, an Extension of the Loan secured by Collateral Pool 2 or the Loan secured by Collateral Pool 6 may be effected by a combination of the alternatives set forth in Sections 1.05(a)(i) through (a)(iv).

Section 1.06. [RESERVED].

Section 1.07. [RESERVED].

Section 1.08. [RESERVED].

Section 1.09. [RESERVED].

Section 1.10. Limitations on Executions.

For so long as Fannie Mae (or any successor thereto by merger, reorganization, combination or other corporate or organizational restructuring or otherwise created by legislation or applicable regulation ("**FNMA Successor**")) owns and holds an interest in the Loans, notwithstanding anything in this Agreement or any other Loan Document to the contrary, any extension of a Loan pursuant to Section 1.05 shall be subject to the precondition that Fannie Mae (or FNMA Successor) is generally offering to purchase in the marketplace loans of the execution type requested by Borrower at the time of the Request for such extension or conversion and on the closing date of such extension or conversion. In the event Fannie Mae (or FNMA Successor) is not purchasing loans of the execution type requested by Borrower at the time of the Request for such extension or conversion and on the closing date of such extension or conversion, Fannie Mae (or FNMA Successor) agrees to offer alternative loan executions based on the types of executions Fannie Mae (or FNMA Successor) is generally offering to purchase, with respect to loans secured by similar property type, in the marketplace at that time, and such executions shall not require (i) an Aggregate Debt Service Coverage Ratio greater than the Aggregate Debt Service Coverage Ratio set forth in Section 1.05, or (ii) an increase in the Re-Underwriting Fee payable pursuant to Section 8.01. Any alternative execution offered would be subject to mutually agreeable documentation necessary to implement the terms and conditions of such alternative execution.

ARTICLE 2
BREAKAGE AND ALLOCATED LOAN AMOUNTS

Section 2.01. [RESERVED].

Section 2.02. Breakage and other Costs.

If, in connection with an Extension pursuant to Section 1.05, Servicer obtains a commitment from Fannie Mae's trading desk for a Loan with respect to which Borrower has made a Request for Extension pursuant to Section 1.05 (a "**Fannie Mae Commitment**"), and if

the Servicer fails to fulfill such Fannie Mae Commitment because the Loan is not made (for a reason other than Servicer's or Fannie Mae's default), the applicable Collateral Pool Borrower shall pay all reasonable out-of-pocket costs (including attorneys' fees and costs), fees and damages incurred by Servicer or Fannie Mae in connection with its failure to fulfill the Fannie Mae Commitment. Fannie Mae reserves the right to require the applicable Collateral Pool Borrower to post a deposit at the time the Fannie Mae Commitment is obtained. Such deposit shall be refunded to the applicable Collateral Pool Borrower upon the closing of the Extension.

Section 2.03. Reserved.

Section 2.04. Determination of Allocable Loan Amount and Valuations.

(a) Initial Determinations. On the Effective Date, Fannie Mae has determined (i) the Allocable Loan Amount and Valuation for each Initial Mortgaged Property (each of which are set forth on **Exhibit A** hereto), (ii) the Aggregate Debt Service Coverage Ratio and the Aggregate Loan to Value Ratio for each Collateral Pool, and (iii) the Loan Amount supported by such Collateral Pool. The determinations made in clause (a) as of the Effective Date shall remain unchanged until a Collateral Event occurs under such Collateral Pool. Changes in Allocable Loan Amount, Valuations, the Aggregate Debt Service Coverage Ratio and the Aggregate Loan to Value Ratio shall be made pursuant to Section 2.04(b).

(b) Monitoring Determinations. Once each Calendar Quarter or, if a Collateral Pool consists only of Fixed Loans that have an Aggregate Debt Service Coverage Ratio equal to or greater than 1.25:1.0, once each Calendar Year, within twenty (20) Business Days after Borrower has delivered to Fannie Mae the reports required in

Section 6.03, Fannie Mae shall determine the Aggregate Debt Service Coverage Ratio and the Aggregate Loan to Value Ratio for such Collateral Pool, and whether Borrower is in compliance with the other covenants set forth in the Loan Documents and the Guaranty. After a Collateral Event with respect to the relevant Collateral Pool, Fannie Mae shall redetermine Allocable Loan Amounts and Valuations for such Collateral Pool. Fannie Mae shall determine Cap Rates when determining Valuations in its sole and absolute discretion on the basis of its internal survey and analysis of Cap Rates for comparable sales in the vicinity of the Mortgaged Property, with such adjustments as Fannie Mae deems appropriate and shall not be obligated to use any information provided by Borrower. Fannie Mae shall promptly disclose its determinations to the applicable Collateral Pool Borrower. Until redetermined, the Allocable Loan Amounts and Valuations determined by Fannie Mae shall remain in effect. In performing a Valuation of a Multifamily Residential Property to be added to any Collateral Pool as part of a Substitution, Fannie Mae shall be entitled to obtain an Appraisal, and the Valuation will be based on such Appraisal. Fannie Mae shall also have the right to obtain an Appraisal or a Cap Rate study conducted by an appraiser in connection with the redetermination of a Valuation of a Mortgaged Property if Fannie Mae is unable to determine a Cap Rate for such Mortgaged Property.

(c) If a Collateral Pool Borrower disagrees with Fannie Mae's Valuation of any Mortgaged Property that is part of such Collateral Pool, such Borrower shall have the right to substitute for the Cap Rate determined by Fannie Mae or Appraisal obtained by Fannie Mae, as applicable, a new Cap Rate based on a capitalization rate study conducted by an appraiser or a

new Appraisal, as applicable, provided such Borrower gives notice to Fannie Mae of its desire to substitute a new Cap Rate or a new Appraisal, as applicable, for Fannie Mae's Cap Rate or Appraisal, as applicable, within fifteen (15) Business Days after such Borrower receives Fannie Mae's determinations.

(i) In the event the applicable Collateral Pool Borrower has requested a new Cap Rate, the applicable Collateral Pool Borrower and Fannie Mae shall determine the Cap Rate in accordance with the following procedure:

(A) Fannie Mae shall give such Collateral Pool Borrower a list of approved appraisers for the local market in which the Multifamily Residential Property is located within ten (10) Business Days after the date on which such Borrower gives Fannie Mae its notice;

(B) The relevant Collateral Pool Borrower shall select an appraiser within ten (10) Business Days after the date on which Fannie Mae gives such Collateral Pool Borrower the list of Fannie Mae-approved appraisers;

(C) Fannie Mae shall engage the appraiser selected by Collateral Pool Borrower pursuant to clause (i)(B) to perform the Cap Rate study within ten (10) Business Days after the date on which such Borrower makes its selection; and

(D) Such Collateral Pool Borrower shall pay all reasonable out-of-pocket fees and expenses of obtaining the Cap Rate study, whether incurred by such Collateral Pool Borrower or Fannie Mae.

(ii) In the event the applicable Collateral Pool Borrower has requested a new Appraisal, the applicable Collateral Pool Borrower and Fannie Mae shall obtain the new Appraisal in accordance with the following procedure:

(A) Fannie Mae shall give such Collateral Pool Borrower a list of approved appraisers for the local market in which the relevant Multifamily Residential Property is located within ten (10) Business Days after the date on which such Collateral Pool Borrower gives Fannie Mae its notice;

(B) The relevant Collateral Pool Borrower shall select an appraiser from the list of approved Appraisers delivered by Fannie Mae to Borrower within ten (10) Business Days after the date on which Fannie Mae gives such Collateral Pool Borrower the list of Fannie Mae-approved appraisers;

(C) Fannie Mae shall engage the appraiser selected by Collateral Pool Borrower pursuant to clause (ii)(B) above to perform the Appraisal study within ten (10) Business Days after the date on which such Collateral Pool Borrower makes its selection; and

(D) Such Collateral Pool Borrower shall pay all reasonable out-of-pocket fees and expenses of obtaining the Appraisal, whether incurred by such Collateral Pool Borrower or Fannie Mae.

(iii) If the applicable Collateral Pool Borrower elects to substitute a new Cap Rate for Fannie Mae's Rate or a new Appraisal, the new Cap Rate or appraised value, as applicable, shall be used to determine the Valuation for the Mortgaged Property and, until the earlier of (1) the thirtieth (30th) day after the date on which the appraiser is engaged by Fannie Mae or (2) the date on which the new Cap Rate is determined, the Valuation of the Mortgaged Property in effect immediately prior to Fannie Mae's Valuation shall continue to be in effect. In the event the new Cap Rate or Appraisal is not determined or delivered on or before the thirtieth (30th) day after which the appraiser is engaged by Fannie Mae, then commencing on such thirtieth (30th) day and continuing until the new Cap Rate is determined or the new Appraisal is delivered, the Valuation based on Fannie Mae's determination of the Cap Rate or Appraisal, as applicable, shall be in effect.

(iv) Notwithstanding anything in this Agreement to the contrary, no change in Allocable Loan Amounts, Valuations, the Aggregate Loan to Value Ratio or the Aggregate Debt Service Coverage Ratio shall (i) result in a Potential Event of Default or Event of Default under such Collateral Pool, (ii) require the prepayment of any Loans under such Collateral Pool, or (iii) require the addition of Collateral to such Collateral Pool.

ARTICLE 3
COLLATERAL CHANGES

Section 3.01. Right to Obtain Releases of Collateral.

Subject to the terms and conditions of this Article 3, Collateral Pool Borrower shall have the right from time to time to obtain a release of Collateral (a "**Release**") from the respective Collateral Pool.

Section 3.02. Procedure for Obtaining Releases of Collateral.

(a) Request. To obtain a release of Collateral from a Collateral Pool, the applicable Collateral Pool Borrower shall deliver a Release Request to Fannie Mae.

(b) Closing. If all conditions precedent contained in Section 4.04 and all General Conditions contained in Section 4.01 are satisfied, Fannie Mae shall cause the Release Mortgaged Property to be released, at a closing to be held at offices designated by Fannie Mae and reasonably acceptable to the applicable Collateral Pool Borrower on a Closing Date proposed by such Borrower and approved by Fannie Mae, and occurring (A) in the case of a Collateral Pool with ten (10) or less Mortgaged Properties, within thirty (30) days after Fannie Mae's receipt of the Release Request and any other information required by Fannie Mae (or on such other date as such Borrower and Fannie Mae may agree), and (B) in the case of a Collateral Pool with more than ten (10) Mortgaged Properties, within sixty (60) days after Fannie Mae's receipt of the Release Request and any other information required by Fannie Mae (or on such

other date as such Borrower and Fannie Mae may agree), by executing and delivering, and causing all applicable parties to execute and deliver, all at the sole cost and expense of Borrower, the Release Documents. Unless otherwise instructed by Fannie Mae, the applicable Collateral Pool Borrower, shall prepare the documents pertaining to the release of the Security Instrument and submit them to Fannie Mae for its review.

(c) Release Price.

(i) The "**Release Price**" for each Release Mortgaged Property means the greater of (A) the Allocable Loan Amount for such Release Mortgaged Property and (B) one hundred percent (100%) of the amount, if any, of the Loans Outstanding that are required to be repaid by the applicable Collateral Pool Borrower to Fannie Mae in connection with the proposed release of the Release Mortgaged Property from such Collateral Pool so that, immediately after the Release, the Coverage and LTV Tests for the Collateral Pool will be satisfied.

(ii) In the event the proposed Release is of a Mortgaged Property that is in a Collateral Pool that secures a Fixed Loan and the Coverage and LTV Tests for the applicable Collateral Pool are not satisfied after the Release of the Release Mortgaged Property, but the Aggregate Debt Service Coverage Ratio of such Collateral Pool is not less than the required Aggregate Debt Service Coverage Ratio set forth in clause (2)(a) of the definition of Coverage and LTV Tests for such Collateral Pool in effect on the Closing Date of the proposed Release minus 0.05 (for example, if the required Aggregate Debt Service Coverage set forth in clause (2)(a) of the definition of Coverage and LTV Tests for the relevant Collateral Pool on the Closing Date of the proposed Release is 1.1:1.0, the Aggregate Debt Service Coverage Ratio of such Collateral Pool on the Closing Date of the proposed Release may not be less than 1.05:1.0), the applicable Collateral Pool Borrower may deposit with Fannie Mae cash or a Letter of Credit (in accordance with the terms of Section 4.08 of this Agreement) in an amount equal to the sum of the amount determined pursuant to clause (c)(i)(B) in this subsection above minus the amount determined pursuant to clause (c)(i)(A) in this subsection above subject to the provisions of Section 3.02(c)(iii) below (the "**Shortfall Deposit**"). In no event shall Borrower pay down less than the Allocable Loan Amount for such Release Mortgaged Property on the Closing Date of such Release. In addition to the Release Price, the applicable Collateral Pool Borrower shall pay to Fannie Mae all associated prepayment premiums, accrued interest and other amounts due under the Notes evidencing the Loans being repaid.

The Shortfall Deposit shall be subject to the following terms and conditions:

(A) Such Collateral Pool Borrower shall deposit either (1) cash and/or Permitted Investments or (2) a Letter of Credit, not both.

(B) In the event such Collateral Pool Borrower deposits cash and/or Permitted Investments with Fannie Mae as the Shortfall Deposit, the amount of the Shortfall Deposit shall not exceed fifteen percent (15%) of the principal balance of the Loans Outstanding under such Collateral Pool calculated after the release of the Release Mortgaged Property. If the Shortfall Deposit would otherwise exceed fifteen percent

(15%) of the balance of the Loans Outstanding under such Collateral Pool calculated after the release of the Release Mortgaged Property, then as a condition to making the Shortfall Deposit in the form of cash and/or Permitted Investments, the applicable Collateral Pool Borrower shall make a payment to Fannie Mae to be applied to the principal balance of the Loans Outstanding, such that, after giving effect to such payment, Section 3.02(c)(ii) shall not require a Shortfall Deposit in excess of fifteen percent (15%) of the principal balance of the Loans Outstanding under such Collateral Pool calculated after the release of the Release Mortgaged Property. Permitted Investments deposited to satisfy the Shortfall Deposit requirements shall, in the case of cash or other Permitted Investments in which Fannie Mae's security interest is perfected by possession, be deposited by Fannie Mae into an account maintained by Fannie Mae in accordance with Fannie Mae's requirements for similar accounts (the "**Shortfall Deposit Account**") and, in the case of other Permitted Investments, pledged to Fannie Mae pursuant to a pledge agreement, in form and substance acceptable to Fannie Mae. All interest and other earnings accruing on any cash or Permitted Investments shall remain in the Shortfall Deposit Account and shall be subject to this Agreement, provided that all such interest and other earnings shall be credited to the applicable Collateral Pool Borrower. Cash shall be held in an institution (which may be Fannie Mae, if Fannie Mae is such an institution) whose deposits or accounts are insured or guaranteed by a federal agency. The Fannie Mae shall not be obligated to open additional accounts or deposit Imposition Deposits in additional institutions when the amount of the Imposition Deposits exceeds the maximum amount of the federal deposit insurance or guaranty. Fannie Mae shall not guaranty the rate of return or rate of interest on any cash held as part of the Shortfall Deposit.

(C) In the event such Collateral Pool Borrower posts a Letter of Credit pursuant to the terms of Section 4.08 of this Agreement as the Shortfall Deposit, the value of the Shortfall Deposit shall not exceed ten percent (10%) of the principal balance of the Loans Outstanding under such Collateral Pool calculated after the release of the Release Mortgaged Property. If the Shortfall Deposit would otherwise exceed ten percent (10%) of the balance of the Loans Outstanding under such Collateral Pool calculated after the release of the Release Mortgaged Property, then as a condition to making the Shortfall Deposit in the form of a Letter of Credit, the applicable Collateral Pool Borrower shall make a payment to Fannie Mae to be applied to the principal balance of the Loans Outstanding, such that, after giving effect to such payment, Section 3.02(c)(ii) shall not require a Shortfall Deposit in excess of ten percent (10%) of the principal balance of the Loans Outstanding under such Collateral Pool calculated after the release of the Release Mortgaged Property.

(D) The Shortfall Deposit (including any interest and other earnings accruing on any Permitted Investments in the Shortfall Deposit Account) shall be disbursed to the applicable Collateral Pool Borrower upon the earliest of (1) payment of all Obligations of such Collateral Pool Borrower under the Loan Documents, (2) the date the applicable Collateral Pool satisfies the Coverage and LTV Tests for such Collateral Pool, and (3) upon compliance with the next sentence, the date one hundred eighty (180) days after the Closing Date of the Release Request. If on the date one

hundred eighty (180) days after the Closing Date of the Release Request the Coverage and LTV Tests for such Collateral Pool in effect as of the Closing Date of the Release Request are not satisfied, the applicable Collateral Pool Borrower shall pay down the Loans Outstanding under such Collateral Pool such that the Coverage

and LTV Tests are satisfied.

(iii) In the event the proposed Release of a Mortgaged Property is in connection with the anticipated sale of such Mortgaged Property to a third party in an arm's length transaction, and the anticipated sale proceeds are less than the Release Price that would be calculated pursuant to the terms of either Section 3.02(c)(i) or Section 3.02(c)(ii) (if applicable), provided that the Aggregate Debt Service Coverage Ratio of such Collateral Pool after the Release is not less than the Aggregate Debt Service Coverage Ratio for such Collateral Pool in effect immediately prior to the Release, the Release Price shall be the sum of (A) one hundred ten percent (110%) of the Allocable Loan Amount for such Release Mortgaged Property plus (B) seventy-five percent (75%) of the Remaining Net Sale Proceeds. As used herein, "**Remaining Net Sale Proceeds**" shall mean the sale price of the Release Mortgaged Property less one hundred ten percent (110%) of the Allocable Loan Amount for such Release Mortgaged Property less reasonable customary closing costs in connection with the sale as determined by Fannie Mae, including, without limitation, tax indemnity or tax protection payments in an amount not to exceed $1,500,000 per Release Mortgaged Property (unless a greater amount is approved by Fannie Mae). Notwithstanding the foregoing, in the event the Net Operating Income for the Trailing 12 Month Period for the applicable Collateral Pool results in an Aggregate Debt Service Coverage Ratio of 1.10:1.0 or greater, the percentage of Remaining Net Sale Proceeds referenced in this subclause (iii) above shall be reduced to twenty-five percent (25%). For purposes of determining Aggregate Debt Service Coverage Ratio in connection with the calculations set forth in this Section 3.02, Debt Service Coverage Ratio shall be calculated after taking into account the payment of one hundred ten percent (110%) of the Allocable Loan Amount for such Release Mortgaged Property.

(iv) Notwithstanding anything to the contrary in this Section 3.02, the requirements set forth in Section 3.02(c)(i), Section 3.02(c)(ii) or Section 3.02(c)(iii) may be waived temporarily by Fannie Mae in its sole discretion, if neither the Aggregate Debt Service Coverage Ratio will be reduced nor the Aggregate Loan to Value Ratio for such Collateral Pool will be increased as a result of such proposed Release, with such waiver based on factors that are not in conflict with Fannie Mae's Underwriting Requirements, including but not limited to the then current Valuation of the Mortgaged Properties in such Collateral Pool, the then current Aggregate Debt Service Coverage Ratio of such Collateral Pool, the then current Aggregate Loan to Value Ratio of such Collateral Pool, the strength of the Guarantor, the quality of the market where the remaining Mortgaged Properties are located, and the geographic distribution of the Mortgaged Properties in such Collateral Pool at that time. In connection with a release pursuant to this Section 3.02(c)(iv) only, the applicable Collateral Pool Borrower shall otherwise comply with the terms of Section 3.02(c)(i), Section 3.02(c)(ii), and Section 3.02(c)(iii), including depositing any Shortfall Deposit.

(d) Application of Release Price.

(i) The Release Price for the Release Mortgaged Property shall be applied against the Outstanding Loans in the applicable Collateral Pool Borrower's discretion, provided that (A) any Outstanding Loan which Borrower elects to prepay must be prepaid in full, or if the Release Price is not sufficient to do so, must be the only Loan partially prepaid; (B) any prepayment of such Loan is permitted (for example, not subject to a lock out period) under the applicable Note, (C) any prepayment premium due and owing is paid, and (D) interest must be paid through the end of the month.

(ii) In the event no Loan may be prepaid under the terms of the applicable Note, the remainder of the Release Price, if any, shall be held by Fannie Mae (or its appointed collateral agent) in an interest-bearing account designated by Fannie Mae for the benefit of the applicable Collateral Pool Borrower (provided that Fannie Mae shall not guaranty any rate of interest to such Borrower) as substitute Collateral (collectively, with any interest thereon, "**Substitute Cash Collateral**"), in accordance with a security agreement (if required by Fannie Mae) and other documents in form and substance acceptable to Fannie Mae. Notwithstanding the foregoing, the release of the Release Mortgaged Property may not be approved unless the aggregate Valuation of all Mortgaged Properties remaining in such Collateral Pool is greater than Outstanding Loans under such Collateral Pool. Any Substitute Cash Collateral remaining will be returned to the applicable Collateral Pool Borrower on the date all Loans made to such Collateral Pool Borrower are repaid in full, or after an event that brings such Collateral Pool back into compliance with the Coverage and LTV Tests for such Collateral Pool.

Section 3.03. Substitutions.

(a) Right to Substitute Collateral. Subject to the terms, conditions and limitations of Article 3 and Article 4 from time to time prior to the date that is twelve (12) months prior to the Pool Termination Date, Borrower shall have the right to obtain the release of one or more Release Mortgaged Properties from the relevant Collateral Pool (including the Release of a Mortgaged Property that is simultaneously added to another Collateral Pool) by replacing such Release Mortgaged Property with one or more Multifamily Residential Properties (including a Mortgaged Property that has simultaneously been released from another Collateral Pool) that meet the requirements of this Agreement (the "**Substitute Mortgaged Property**") thereby effecting a "**Substitution**" of Collateral. Notwithstanding anything to the contrary contained herein, there shall be no limitation on the number of Substitutions that may be effected within the first twelve (12) months following the Effective Date of this Agreement.

(b) Request. Borrower shall deliver to Fannie Mae a completed and executed Substitution Request. Each Substitution Request shall be accompanied by the following: (i) the information required by the Underwriting Requirements with respect to the proposed Substitute Mortgaged Property and any additional information Fannie Mae reasonably requests; and (ii) the payment of all Additional Due Diligence Fees.

(c) Underwriting.

(i) (A) A Collateral Pool Borrower may release one or more Release Mortgaged Properties from a Collateral Pool and request the addition of one or more Substitute Mortgaged Properties to such Collateral Pool provided that each Substitute Mortgaged Property is in a comparable (or better) market as and of equivalent quality (or better) to the Release Mortgaged Property, and provided further that after such Substitution, the applicable Coverage and LTV Tests for the relevant Collateral Pool are satisfied, and (i) the Aggregate Debt Service Coverage Ratio with respect to the relevant Collateral Pool equals or exceeds the Aggregate Debt Service Coverage Ratio of the relevant Collateral Pool immediately prior to such proposed Substitution, and (ii) the Aggregate Loan to Value Ratio with respect to the relevant Collateral Pool is equal to or less than the Aggregate Loan to Value Ratio of the relevant Collateral Pool immediately prior to such proposed Substitution; provided that in connection with a Collateral Pool which contains only one (1) Mortgaged Property, in the event that more than one (1) Substitute Mortgaged Property is added in replacement of a single Mortgaged Property, each such Substitute Mortgaged Property shall secure the Loan and shall be cross-collateralized and cross-defaulted within such Collateral Pool.

(A) In the event that the Coverage and LTV Tests for the applicable Collateral Pool are not satisfied after the Substitution, but the Aggregate Debt Service Coverage Ratio of such Collateral Pool immediately after the Substitution is not less than the higher of (i) the required Aggregate Debt Service Coverage Ratio as set forth in clause (2)(a) of the definition of Coverage and LTV Tests for such Collateral Pool in effect on the Closing Date of the proposed Substitution and (ii) the Debt Service Coverage Ratio of the Collateral Pool immediately prior to such proposed Substitution, minus 0.05 (for example, if the required Aggregate Debt Service Coverage as set forth in clause (2)(a) of the definition of Coverage and LTV Tests for the relevant Collateral Pool on the Closing Date of the proposed Substitution is 1.1:1.0 and the Debt Service Coverage Ratio of the relevant Collateral Pool immediately prior to the proposed Substitution is 1.08:1.0, the

Aggregate Debt Service Coverage Ratio of such Collateral Pool on the Closing Date of the proposed Substitution may not be less than 1.05:1.0), the applicable Collateral Pool Borrower may deposit with Fannie Mae a Shortfall Deposit pursuant to the terms of Section 3.02(c) of this Agreement in an amount equal to the Loans Outstanding that are required to be repaid by the applicable Collateral Pool Borrower so that the applicable Aggregate Debt Service Coverage as set forth in clause (2)(a) of the definition of Coverage and LTV Tests for the relevant Collateral Pool will be satisfied. In connection with a Substitution completed pursuant to this Section 3.03(c)(i)(B), all provisions in Section 3.02(c)(ii) pertaining to Shortfall Deposits shall apply.

(B) Notwithstanding the foregoing requirements in paragraphs (A) and (B) above to the contrary, a Collateral Pool Borrower may release one or more Release Mortgaged Properties from a Collateral Pool and request the addition of one or more Substitute Mortgaged Properties to such Collateral Pool provided that such Substitute Mortgaged Property is in a comparable (or better) market as and of equivalent quality (or better) to the Release Mortgaged Property, and provided further that in connection with any Collateral Pool with multiple Mortgaged Properties after such Substitution, that the Aggregate Debt Service Coverage Ratio of such Collateral Pool is

greater than the Aggregate Debt Service Coverage Ratio of such Collateral Pool prior to the Substitution.

(C) Notwithstanding the foregoing requirements in paragraphs (A) and (B) above to the contrary, the requirement that the Coverage and LTV Tests or the Debt Service Coverage Ratio of the Collateral Pool immediately prior to such proposed Substitution, as applicable, be satisfied (or that the Aggregate Debt Service Coverage Ratio not be reduced by more than 0.05:1.0 from the required Aggregate Debt Service Coverage Ratio as set forth in clause (2)(a) of the definition of Coverage and LTV Tests in effect on the Closing Date of the proposed Substitution) after the addition of a proposed Substitute Mortgaged Property may be waived temporarily by Fannie Mae in its sole discretion, if neither the Aggregate Debt Service Coverage Ratio will be reduced nor the Aggregate Loan to Value Ratio for such Collateral Pool will be increased as a result of such proposed Substitution, based on factors that are not in conflict with Fannie Mae's Underwriting Requirements, including but not limited to the then current Valuation of the Mortgaged Properties in such Collateral Pool, the then current Aggregate Debt Service Coverage Ratio of such Collateral Pool, the then current Aggregate Loan to Value Ratio or such Collateral Pool, the strength of the Guarantor, the quality of the market where the proposed Substituted Mortgaged Property is located, the quality of any proposed additional Collateral, and the geographic distribution of the Mortgaged Properties in such Collateral Pool at that time. In connection with a Substitution completed pursuant to this Section 3.03(c)(i)(D), Borrower shall provide a Shortfall Deposit and otherwise comply with the provisions of Section 3.02(c)(ii).

(ii) Fannie Mae shall evaluate the proposed Substitute Mortgaged Property in accordance with the Underwriting Requirements, including an exit analysis performed by Fannie Mae, and shall make underwriting determinations as to the Debt Service Coverage Ratio and the Loan to Value Ratio of the proposed Substitute Mortgaged Property and the Aggregate Debt Service Coverage Ratio and the Aggregate Loan to Value Ratio for the applicable Collateral Pool on the basis of the lesser of (A) the acquisition price of the proposed Substitute Mortgaged Property if purchased by Borrower within twelve (12) months of the related Substitution Request, and (B) a Valuation made with respect to the proposed Substitute Mortgaged Property. Notwithstanding the provisions of Section 2.04 regarding the recalculation of Valuations and the calculation of Debt Service Coverage Ratios, for purposes of reviewing proposed Substitute Mortgaged Properties, if Fannie Mae reasonably determines market conditions have changed in a manner adversely affecting any of the Mortgaged Properties since the determination of the then effective Aggregate Loan to Value Ratio for such Collateral Pool and Aggregate Debt Service Coverage Ratio for such Collateral Pool, Fannie Mae may make new determinations of Aggregate Debt Service Coverage Ratio and Aggregate Loan to Value Ratio for purposes of determining whether to permit the addition of the proposed Substitute Mortgaged Property to such Collateral Pool, which determination shall not modify the Coverage and LTV Tests. Borrower shall promptly provide any information reasonably required by Fannie Mae to make the determination permitted by the preceding sentence.

(iii) Within (A) in the case of a Collateral Pool with ten (10) or fewer Mortgaged Properties, thirty (30) days, or (B) in the case of a Collateral Pool with more than ten

(10) Mortgaged Properties, sixty (60) days in each case after receipt of (1) the Substitution Request and (2) all reports, certificates and documents required by the Underwriting Requirements, Fannie Mae shall notify Borrower whether it has determined whether the proposed Substitute Mortgaged Property meets the conditions for addition set forth in this Agreement. Within five (5) Business Days after receipt of Fannie Mae's written consent to the Substitution Request, Borrower shall notify Fannie Mae in writing whether it elects to add the proposed Substitute Mortgaged Property to such Collateral Pool. If Borrower fails to respond within the period of five (5) Business Days, it shall be conclusively deemed to have elected not to add the proposed Substitute Mortgaged Property to such Collateral Pool.

(d) Closing. If, pursuant to this Section 3.03, Fannie Mae determines that the conditions set forth herein for the Substitution of the proposed Substitute Mortgaged Property into the applicable Collateral Pool in replacement of the proposed Release Mortgaged Property, and the applicable Collateral Pool Borrower timely elects to cause such Substitution to occur and all conditions contained in this Section 3.03 and the applicable sections of Article 4, to the extent Fannie Mae determines such Sections are applicable, are satisfied, then the proposed Substitute Mortgaged Property shall be substituted into such Collateral Pool in replacement of the proposed Release Mortgaged Property, at a closing to be held at offices designated by Fannie Mae and reasonably acceptable to the applicable Collateral Pool Borrower on a Closing Date proposed by such Borrower and approved by Fannie Mae, and occurring —

(i) if the Substitution of the proposed Substitute Mortgaged Property is to occur simultaneously with the release of the proposed Release Mortgaged Property, within thirty (30) days after Fannie Mae's receipt of the applicable Collateral Pool Borrower's election (or on such other date to which the applicable Collateral Pool Borrower and Fannie Mae may agree); or

(ii) if the Substitution of a proposed Substitute Mortgaged Property is to occur subsequent to the release of the Release Mortgaged Property, within ninety (90) days after the release of the Release Mortgaged Property (the "**Property Delivery Deadline**"), provided that such Property Delivery Deadline may be extended by one (1) additional ninety (90) day period in the event the applicable Collateral Pool Borrower provides evidence to Fannie Mae's satisfaction that it is diligently pursuing a 1031 exchange with respect to the proposed Substitute Mortgaged Property in accordance with the terms of this Section 3.03(d), provided that, on a case by case basis, Fannie Mae may consent in its sole discretion to extend the Property Delivery Deadline by one (1) additional ninety (90) day period (for a total of one hundred eighty (180) days if the applicable Collateral Pool Borrower is diligently pursuing the acquisition of a proposed Substitute Mortgaged Property that is not in connection with a 1031 exchange.

(e) Substitution Deposit.

(i) The Deposit. If the addition of a proposed Substitute Mortgaged Property is to occur subsequent to the release of the Release Mortgaged Property pursuant to Section 3.03(d), at the Closing Date of the release of the Release Mortgaged Property, Borrower (or in the case of a Collateral Pool with only one (1) Mortgaged Property prior to the release,

Guarantor) shall deposit with Fannie Mae the "**Substitution Deposit**" described in Section 3.03(e)(ii) in the form of cash or, in lieu of (and/or in addition to) depositing cash for the Substitution Deposit, Borrower may post a Letter of Credit in accordance with the terms of Section 4.08 of this Agreement, having a face amount equal to the Substitution Deposit (or such lesser amount that has been deposited in cash). In the event the Release Mortgaged Property is intended to be sold as part of a like-kind exchange permitted under Section 1031 of the Internal Revenue Code, such Substitution Deposit shall be held by a qualified intermediary, provided such qualified intermediary enters into documents reasonably required by Fannie Mae assigning such Substitution Deposit to Fannie Mae, and providing that such qualified intermediary shall distribute the Substitution Deposit in accordance with this Agreement. In the case of a Collateral Pool with only one (1) Mortgaged Property prior to the release, if the relevant Borrower is not able to remain as the obligor on the Note evidencing the related Loan, the relevant Borrower shall provide a replacement Borrower acceptable to Fannie Mae, which replacement Borrower shall join into the Note until the earlier of (A) such time that the Substitute Mortgaged Property is added to the Collateral Pool and the Additional Borrower owning such Substitute Mortgaged Property has joined into the Note and other related Collateral Pool Loan Documents and the Guaranty, and (B) the date the Note is paid in full together with all prepayment premiums due thereunder.

(ii) Substitution Deposit Amount. The "**Substitution Deposit**" for each proposed Substitution shall be an amount equal to, for a Fixed Loan, the Release Price relating to such proposed Release Mortgaged Property; provided that in the event that the applicable Collateral Pool shall contain only one (1) Mortgaged Property after the completion of the Substitution, the Substitution Deposit shall be the sum of (A) all Outstanding Loans for such Collateral Pool, plus (B) any and all of the yield maintenance or prepayment premium for a Fixed Loan through the end of the month in which the Property Delivery Deadline occurs as if the Fixed Loan were to be prepaid in such month, plus (C) interest on the Fixed Loan through the end of the month in which the Property Delivery Deadline occurs.

(iii) Continued Payments on Outstanding Notes. Such Collateral Pool Borrower shall also be obligated to make any regularly scheduled payments of principal and interest due under the applicable Note during any period between the closing of the Release Mortgaged Property and the earlier of the closing of the Substitute Mortgaged Property and the date of prepayment of the Note.

(iv) Failure to Close Substitution. If the addition of the proposed Substitute Mortgaged Property does not occur by the Property Delivery Deadline in accordance with Section 3.03(d)(ii), then:

(A) such Collateral Pool Borrower shall have irrevocably waived its right to substitute such Release Mortgaged Property with a proposed Substitute Mortgaged Property, and the release of the Release Mortgaged Property shall be deemed to require a prepayment (or partial prepayment) of the portion of the Note equal to the Release Price relating to the Release Mortgaged Property, together with all yield maintenance, fee maintenance or prepayment premium then due in connection with such payment; and

(B) the applicable Collateral Pool Borrower shall comply with the requirements set forth in Section 3.02(d) not previously satisfied with respect to the Release Mortgaged Property, including payment of the Release Price. Such Release Price, or the applicable portion thereof, shall be applied in the manner set forth in Section 3.02(d) and the Letter of Credit, if applicable, delivered by such Borrower pursuant to Section 3.03(e) and Section 4.08 of this Agreement shall be returned to Borrower. However, if such Borrower fails to timely pay the Release Price, Fannie Mae may draw upon the Substitution Deposit in satisfaction of such obligation.

(v) Substitution Deposit Disbursement. At closing of the Substitution, Fannie Mae shall disburse the Substitution Deposit (including any interest accrued on such Substitution Deposit) directly to the applicable Collateral Pool Borrower at such time as the conditions precedent for the Substitution have been satisfied, which must occur no later than the Property Delivery Deadline. Notwithstanding the foregoing, in the event that the applicable Collateral Pool Borrower adds a Substitute Mortgaged Property to such Collateral Pool prior to the Property Delivery Deadline but the addition of such Substitute Mortgaged Property has not in and of itself satisfied the requirements to close the Substitution, the Substitution Deposit shall be reduced by the Allocable Loan Amount of such Substitute Mortgaged Property as determined by Fannie Mae, and such reduction in the Substitution Deposit shall be returned to the applicable Collateral Pool Borrower, or in the case of a Letter of Credit, such Letter of Credit shall be reduced by such reduction in the Substitution Deposit.

(f) Conditions Precedent to Substitutions. The obligation of Fannie Mae to make a requested Substitution is subject to Fannie Mae's determination that each of the conditions precedent set forth in Article 4 of this Agreement have been satisfied.

ARTICLE 4
CONDITIONS PRECEDENT TO ALL REQUESTS

Section 4.01. Conditions Applicable to All Requests.

The obligation of Fannie Mae to close the transaction requested in a Request by a Collateral Pool Borrower shall be subject to Fannie Mae's determination that all of the following general conditions precedent ("**General Conditions**") have been satisfied, in addition to any other conditions precedent contained in this Agreement:

(a) Payment of Expenses. The payment by the applicable Collateral Pool Borrower of Fannie Mae's and Servicer's reasonable third-party out-of-pocket fees and expenses payable (without duplication) in accordance with this Agreement, including, but not limited to, the legal fees and expenses described in Section 8.04.

(b) No Material Adverse Effect. There has been no Material Adverse Effect on the financial condition, business or prospects of the applicable Collateral Pool Borrower or Guarantor or in the physical condition, operating performance or value of any of the Mortgaged Properties in such Collateral Pool since the date of the most recent Compliance Certificate.

(c) No Default. There shall have been no monetary or material non-monetary Event of Default (as determined in Fannie Mae's sole and absolute discretion) under such Collateral Pool which has not been cured to the satisfaction of Fannie Mae, provided however, that nothing contained in this section shall be construed to require Fannie Mae to accept any cure, or grant any cure period not otherwise provided for in the Loan Documents or the Guaranty under which such Event of Default may arise, and there shall exist no Event of Default or Potential Event of Default with respect to such Collateral Pool on the Closing Date for the Request and, after giving effect to the transaction requested in the Request, no Event of Default or Potential Event of Default with respect to such Collateral Pool shall have occurred which has not been cured to

the satisfaction of Fannie Mae, provided however, that nothing contained in this section shall be construed to require Fannie Mae to accept any cure, or grant any cure period not otherwise provided for in the Loan Documents or the Guaranty under which such Event of Default may arise.

(d) No Insolvency. Receipt by Fannie Mae on the Closing Date for the Request of evidence satisfactory to Fannie Mae that none of the applicable Collateral Pool Borrower nor Guarantor is insolvent (within the meaning of any applicable federal or state laws relating to bankruptcy or fraudulent transfers) or will be rendered insolvent by the transactions contemplated by the Loan Documents and the Guaranty, or, after giving effect to such transactions, will be left with an unreasonably small amount of capital with which to engage in its business or undertakings, or will have intended to incur, or believe that it has incurred, debts beyond its ability to pay such debts as they mature or will have intended to hinder, delay or defraud any existing or future creditor.

(e) Accuracy of Information. No information, statement or report furnished in writing to Fannie Mae by the applicable Collateral Pool Borrower in connection with this Agreement or any other Loan Document with respect to such Collateral Pool or in connection with the consummation of the transactions contemplated hereby contains any statement which is incorrect in any material respect.

(f) Representations and Warranties. All representations and warranties made by the applicable Collateral Pool Borrower and Guarantor in the Loan Documents and the Guaranty shall be true and correct in all material respects on the Closing Date for the Request with the same force and effect as if such representations and warranties had been made on and as of the Closing Date for the Request; provided, however, that in the case of any Request occurring after the Effective Date, the date-down of such representations and warranties shall exclude Article 9 (financing information) in the Certificate of Borrower related to such Collateral Pool and any representation or warranty contained in any of the other Loan Documents and the Guaranty that is solely related to an earlier date. On the Closing Date of any Request, the applicable representations and warranties as referred to in this Section 4.01(f) shall be deemed remade by the applicable Collateral Pool Borrower.

(g) No Condemnation or Casualty. There shall not be pending or threatened any condemnation or other taking, whether direct or indirect, against any Mortgaged Property (other than a Release Mortgaged Property) in the applicable Collateral Pool and there shall not have occurred any casualty to any improvements located on the Mortgaged Property (other than

a Release Mortgaged Property) in the applicable Collateral Pool, which condemnation or casualty would have, or reasonably may be expected to have, a Material Adverse Effect on the Mortgaged Properties (other than the Release Mortgaged Property) in the applicable Collateral Pool taken as a whole.

(h) Delivery of Closing Documents. The receipt by Fannie Mae of the following, each dated as of the Closing Date for the Request, in form and substance satisfactory to Fannie Mae in all respects:

(i) Fully executed original copies of each Loan Document for such Collateral Pool required to be executed in connection with the Request, duly executed and delivered by the parties thereto (other than Fannie Mae), each of which shall be in full force and effect;

(ii) Other than in connection with a Release Request, a Certificate of Borrower;

(iii) A Compliance Certificate;

(iv) An Organizational Certificate;

(v) Such other documents, instruments, approvals (and, if requested by Fannie Mae, certified duplicates of executed copies thereof) and opinions as Fannie Mae may reasonably request; and

(vi) Other than in connection with a Release Request, a Confirmation of Guaranty.

(i) Covenants. The applicable Collateral Pool Borrower is in full compliance with each of the covenants contained in Article 6 and Article 7 of this Agreement, without giving effect to any notice and cure rights of Borrower.

Section 4.02. Conditions Precedent to Initial Closing.

The obligation of Fannie Mae to enter into this Agreement is subject to each of the following conditions precedent:

(a) Collateral Pool 6 Borrower shall have paid to Fannie Mae the remaining unpaid balance of the Collateral Pool 6 Extension Fee, as that term is defined in Section 8.02 of the Original Agreement.

(b) Delivery of an amendment to each Note, duly executed by the applicable Collateral Pool Borrowers, reflecting the Loan and the Collateral securing each Loan;

(c) Delivery of executed Security Instruments or amendments to each existing Security Instrument affecting the Collateral Pools, as required by Fannie Mae to make the terms of the Security Instrument for each Mortgaged Property consistent with the terms of this

Agreement, each such Security Instrument or amendment to be recorded each in the applicable land records;

(d) Reserved;

(e) Reserved;

(f) Receipt by Fannie Mae of all reasonable legal fees and expenses payable by the applicable Collateral Pool Borrower in connection with this Agreement;

(g) No Governmental Approval not already obtained or made is required for the execution and delivery of the documents to be delivered in connection with this Agreement;

(h) The applicable Collateral Pool Borrower or Guarantor is not under any cease or desist order or other orders of a similar nature, temporary or permanent of any Governmental Authority which would have the effect of preventing or hindering performance of the terms and provisions of the Agreement or any other Loan Documents and the Guaranty for such Collateral Pool, nor are there any proceedings then in progress or, to its knowledge, contemplated which, if successful, would lead to the issuance of any such order;

(i) If required by Fannie Mae, receipt by Fannie Mae of a new Title Insurance Policy, or an endorsement to each Title Insurance Policy, for each Mortgaged Property, amending the effective date of the Title Insurance Policy to the Effective Date, showing no additional exceptions to coverage other than the exceptions shown on the closing date under the Original Agreement (or, if applicable, the last with respect to which the Title Insurance Policy was endorsed) and other than Permitted Liens and other exceptions approved by Fannie Mae, together with any reinsurance agreements required by Fannie Mae.

Section 4.03. Conditions Precedent to Extension.

The obligation of Fannie Mae to consent to an Extension is subject to Fannie Mae's determination that each of the following conditions precedent has been satisfied:

(a) The requirements of Section 1.05, as applicable, will be satisfied;

(b) Receipt by Fannie Mae of all reasonable legal fees and expenses payable by the applicable Collateral Pool Borrower in connection with the Extension;

(c) No Governmental Approval not already obtained or made is required for the execution and delivery of the documents to be delivered in connection with the Extension;

(d) The applicable Collateral Pool Borrower or Guarantor is not under any cease or desist order or other orders of a similar nature, temporary or permanent of any Governmental Authority which would have the effect of preventing or hindering performance of the terms and provisions of the Agreement or any other Loan Documents or the Guaranty for such Collateral Pool, nor are there any proceedings then in progress or, to its knowledge, contemplated which, if successful, would lead to the issuance of any such order; and

(e) If required by Fannie Mae, receipt by Fannie Mae of a new Title Insurance Policy or an endorsement to each Title Insurance Policy for each Mortgaged Property in the applicable Collateral Pool, amending the effective date of the Title Insurance Policy to the Closing Date, showing no additional exceptions to coverage other than the exceptions shown on the Effective Date (or, if applicable, the last Closing Date with respect to which the Title Insurance Policy was endorsed) and other than Permitted Liens and other exceptions approved by Fannie Mae, together with any reinsurance agreements required by Fannie Mae.

Section 4.04. Conditions Precedent to Release of Property from the Collateral Pool.

The obligation of Fannie Mae to release a Mortgaged Property from a Collateral Pool by executing and delivering the Release Documents on the Closing Date is subject to Fannie Mae's determination that each of the following conditions precedent has been satisfied:

(a) The requirements of Section 3.02, as applicable, will be satisfied;

(b) Receipt by Fannie Mae of the Re-Underwriting Fee;

(c) Receipt by Fannie Mae of the Release Price and any other amounts due under the terms of Section 3.02;

(d) Receipt by Fannie Mae of the Release Fee;

(e) Reserved;

(f) Receipt by Fannie Mae on the Closing Date of one (1) or more counterparts of each Release Document, dated as of the Closing Date, signed by each of the parties (other than Fannie Mae) who is a party to such Release Document;

(g) If required by Fannie Mae, amendments to the Notes and the Security Instruments, reflecting the release of the Release Mortgaged Property from the applicable Collateral Pool and, as to any Security Instrument so amended, the receipt by Fannie Mae of an endorsement to the Title Insurance Policy insuring the Security Instrument, amending the effective date of the Title Insurance Policy to the Closing Date and showing no additional exceptions to coverage other than Permitted Liens;

(h) If Fannie Mae determines the Release Mortgaged Property to be one (1) phase of a project, and one (1) or more other phases of the project are Mortgaged Properties which will remain in such Collateral Pool ("**Remaining Mortgaged Properties**"), Fannie Mae must determine that the Remaining Mortgaged Properties can be operated separately from the Release Mortgaged Property and any other phases of the project which are not Mortgaged Properties in such Collateral Pool and whether any cross use agreements or easements are necessary. In making this determination, Fannie Mae shall evaluate access, utilities, marketability, community services, ownership and operation of the Release Mortgaged Properties and any other issues identified by Fannie Mae in connection with similar loans anticipated to be purchased by Fannie Mae;

(i) Receipt by Fannie Mae of endorsements to the tie-in endorsements of the Title Insurance Policies, if deemed necessary by Fannie Mae, to reflect the release. Notwithstanding anything to the contrary herein, no release of any Mortgaged Property in a Collateral Pool shall be made unless the applicable Collateral Pool Borrower has provided title insurance to Fannie Mae in respect of each of the Remaining Mortgaged Properties in such Collateral Pool in an amount equal to (i) one hundred ten percent (110%) of the Initial Valuation of such Mortgaged Properties (taking into account the title insurance coverage provided by "tie-in" endorsements, if available) and, (ii) in the case of the Mortgaged Properties located in states where tie-in endorsements are not available, one hundred ten percent (110%) of the Valuation of such Mortgaged Properties;

(j) Receipt by Fannie Mae on the Closing Date of a Confirmation of Obligations, dated as of the Closing Date, signed by the applicable Collateral Pool Borrower and Guarantor, pursuant to which such Borrower and Guarantor confirm their obligations under the Loan Documents and the Guaranty to which they are a party; and

(k) Receipt by Fannie Mae of all reasonable legal fees and expenses payable by the applicable Collateral Pool Borrower in connection with the Release Request.

Section 4.05. Conditions Precedent to Substitution of a Substitute Mortgaged Property to the Collateral Pool.

Each Substitution is subject to Fannie Mae's determination that each of the following conditions precedent has been satisfied:

(a) The Underwriting Requirements will be satisfied with respect to the Substitute Mortgaged Property;

(b) The requirements of Section 3.03(c), as applicable, will be satisfied;

(c) Receipt by Fannie Mae of the Substitution Fee;

(d) Receipt by Fannie Mae of all reasonable legal fees and expenses payable by the applicable Collateral Pool Borrower in connection with the Substitution Request;

(e) Receipt by Fannie Mae of the Re-Underwriting Fee;

(f) Delivery to the Title Company, with fully executed instructions directing the Title Company to file and/or record in all applicable jurisdictions, all applicable Substitution Loan Documents for such Collateral Pool required by Fannie Mae, including duly executed and delivered original copies of any Security Instruments and UCC-1 Financing Statements covering the portion of the Substitute Mortgaged Property comprised of personal property, and other appropriate documents, in form and substance reasonably satisfactory to Fannie Mae and in form proper for recordation, as may be necessary in the reasonable opinion of Fannie Mae to perfect the Lien created by the applicable additional Security Instrument, and any other Substitute Loan Document for such Collateral Pool creating a Lien in favor of Fannie Mae, and the payment of

all taxes, fees and other charges payable in connection with such execution, delivery, recording and filing;

(g) If required by Fannie Mae, amendments to the Notes and the Security Instruments, reflecting the addition of any Additional Borrower and/or the Substitute Mortgaged Property to such Collateral Pool and, as to any Security Instrument so amended, the receipt by Fannie Mae of an endorsement to the Title Insurance Policy insuring the Security Instrument, amending the effective date of the Title Insurance Policy to the Closing Date and showing no additional exceptions to coverage other than Permitted Liens; and

(h) If the Title Insurance Policy for the Substitute Mortgaged Property contains a tie-in endorsement, an endorsement to each other Title Insurance Policy for the Mortgaged Properties in the same Collateral Pool containing a tie-in endorsement, adding a reference to the Substitute Mortgaged Property.

Section 4.06. Delivery of Opinion Relating to Request for Extension or Substitution Request.

With respect to the closing of a request for an Extension or a Substitution Request, it shall be a condition precedent that Fannie Mae receives each of the following, each dated as of the Closing Date for the Request, in form and substance satisfactory to Fannie Mae in all respects: opinions of counsel (including local counsel, as applicable) to the applicable Collateral Pool Borrower and Guarantor, as to the due organization and qualification of the applicable Collateral Pool Borrower and Guarantor, the due authorization, execution, delivery and enforceability of each Loan Document for such Collateral Pool executed in connection with the Request and such other matters as Fannie Mae may reasonably require, each dated as of the Closing Date for the Request, in form and substance satisfactory to Fannie Mae in all respects.

Section 4.07. Delivery of Property-Related Documents.

With respect to a Substitute Mortgaged Property, it shall be a condition precedent that Fannie Mae receive from the applicable Collateral Pool Borrower each of the documents and reports required by Fannie Mae pursuant to the Underwriting Requirements in connection with the pledge of such Mortgaged Property and, each of the following, each dated (where possible) as of the Closing Date for a Substitute Mortgaged Property, in form and substance satisfactory to Fannie Mae in all respects:

(a) A commitment for the Title Insurance Policy applicable to the Mortgaged Property and a pro forma Title Insurance Policy based on such commitment.

(b) The Insurance Policy (or a certified copy of the Insurance Policy) applicable to the Mortgaged Property.

(c) The Survey applicable to the Mortgaged Property (which shall be last revised no less than ninety (90) days prior to the Closing Date).

(d) Evidence reasonably satisfactory to Fannie Mae of compliance of the Mortgaged Property with Property Laws.

(e) An Appraisal of the Mortgaged Property.

(f) A Replacement Reserve Agreement, providing for the establishment of a replacement reserve account, to be pledged to Fannie Mae, in which the owner shall (unless waived by Fannie Mae) periodically deposit amounts for replacements for improvements at the Mortgaged Property and as additional security for the applicable Collateral Pool Borrower's obligations under the Loan Documents.

(g) A Completion/Repair and Security Agreement, if required by Fannie Mae, together with required escrows, on the standard form required by Fannie Mae.

(h) An Assignment of Management Agreement, on the standard form required by Fannie Mae.

(i) An Assignment of Leases and Rents, if Fannie Mae determines one to be necessary or desirable, provided that the provisions of any such assignment shall be substantively identical to those in the Security Instrument covering the Collateral, with such modifications as may be necessitated by applicable state or local law.

(j) A Certificate of Borrower.

(k) If applicable, a fully executed Master Lease and an estoppel certificate and subordination agreement with respect to each Master Lease, each in form and substance acceptable to Fannie Mae.

(l) If applicable, a fully executed ground lease and an estoppel certificate with respect to each ground lease, each in form and substance acceptable to Fannie Mae.

(m) Copies of each commercial lease affecting a Mortgaged Property and, if required by Fannie Mae, a tenant estoppel certificate and subordination, non-disturbance and attornment agreement, each in form and substance satisfactory to Fannie Mae.

(n) Copies of homeowners associations, easement, declarations and similar agreements affecting any Mortgaged Property and, if required by Fannie Mae, an estoppel certificate with respect to such agreements in form and substance satisfactory to Fannie Mae.

Section 4.08. Conditions Precedent to Letters of Credit.

The right or requirement of a Collateral Pool Borrower to provide a Letter of Credit in connection with this Agreement is subject to Fannie Mae's determination that each of the following conditions precedent has been satisfied:

(a) Letter of Credit Requirements. Any Letter of Credit shall be issued by a financial institution satisfactory to Fannie Mae (the "**Issuer**"). If Borrower provides Fannie Mae

with a Letter of Credit pursuant to this Agreement, the Letter of Credit shall be in form and substance satisfactory to Fannie Mae and Fannie Mae shall be entitled, upon occurrence of circumstances in Section 4.08(b), to draw under such Letter of Credit solely upon presentation of a sight draft to the Issuer. Any Letter of Credit shall be for a term of at least three hundred sixty-four (364) days (provided that in connection with a Substitution, the term of any Letter of Credit shall be at least until the Property Delivery Deadline).

(b) Draws Under Letter of Credit. Fannie Mae shall have the right in its sole discretion to draw monies under the Letter of Credit:

(i) upon the occurrence of an Event of Default under such Collateral Pool;

(ii) if thirty (30) days prior to the expiration of the Letter of Credit, either the Letter of Credit has not been extended for a term of at least three hundred sixty-four (364) days (provided that in connection with a Substitution, the term of any Letter of Credit shall be at least until the Property Delivery Deadline) or such Collateral Pool Borrower has not replaced the Letter of Credit with substitute cash collateral in the amount required by Fannie Mae; or

(iii) upon the downgrading of the ratings of the long-term or short-term debt obligations of the Issuer below the level required by the Underwriting Requirements; provided that Borrower shall have ten (10) Business Days after notice of such downgrading to deliver to Fannie Mae either (A) an acceptable replacement Letter of Credit or (B) substitute cash collateral in the amount required by Fannie Mae.

(c) Deposit to Cash Collateral Agreement. If Fannie Mae draws under the Letter of Credit pursuant to Section 4.08(b)(ii) or Section 4.08(b)(iii) above, Fannie Mae shall deposit such draw monies into the Cash Collateral Account provided any interest thereon shall inure to the benefit of Borrower.

(d) Default Draws. If Fannie Mae draws under the Letter of Credit pursuant to Section 4.08(b)(i) above, Fannie Mae may in its sole discretion use monies drawn under the Letter of Credit for any of the following purposes:

(i) to pay any amounts required to be paid by the applicable Collateral Pool Borrower under the Loan Documents (including, without limitation, any amounts required to be paid to Fannie Mae under this Agreement);

(ii) to (on such Collateral Pool Borrower's behalf, or on its own behalf if Fannie Mae becomes the owner of the Mortgaged Property) pre-pay any Note;

(iii) to make repairs required to address emergency or life and safety conditions to any Mortgaged Property in such Collateral Pool; or

(iv) deposit monies into the Cash Collateral Account.

(e) Legal Opinion. Prior to or simultaneous with the delivery of any new Letter of Credit (but not the extension of any existing Letter of Credit), such Collateral Pool Borrower shall cause the Issuer's counsel to deliver a legal opinion in a customary form satisfactory to Fannie Mae.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES

Section 5.01. Representations and Warranties of Borrower.

The representations and warranties of each Borrower and Guarantor are contained in the Certificates of Borrower.

Section 5.02. Representations and Warranties of Fannie Mae.

Fannie Mae hereby represents and warrants to each Borrower as follows:

(a) Due Organization. Fannie Mae is a corporation duly organized and validly existing under the Federal National Mortgage Association Charter Act, as amended, 12 U.S.C. §1716 et seq.

(b) Power and Authority. Fannie Mae has the requisite power and authority to execute and deliver this Agreement, the Loan Documents, and all other documents contemplated to be entered into by Fannie Mae pursuant to this Agreement, and to perform its obligations under this Agreement, the Loan Documents, and all other documents contemplated to be entered into by Fannie Mae pursuant to this Agreement.

(c) Due Authorization. The execution and delivery by Fannie Mae of this Agreement, the remaining Loan Documents, and all other documents contemplated to be entered into by Fannie Mae pursuant to this Agreement, and the consummation by it of the transactions contemplated thereby, and the performance by it of its obligations thereunder, have been duly and validly authorized by all necessary action and proceedings by it or on its behalf.

ARTICLE 6
AFFIRMATIVE COVENANTS OF BORROWER

Each Borrower agrees and covenants with Fannie Mae that, at all times during the Term of this Agreement:

Section 6.01. Compliance with Agreements.

Each Borrower, and Guarantor shall comply with all the terms and conditions of each Loan Document to which it is a party or by which it is bound; provided, however, that Borrower's or Guarantor's failure to comply with such terms and conditions shall not be an Event of Default until the expiration of the applicable notice and cure periods, if any, specified in the applicable Loan Document.

Section 6.02. Maintenance of Existence.

Each Borrower Party shall maintain its existence and continue to be duly organized under the laws of the state of its organization. Each Borrower Party shall continue to be duly qualified to do business in each jurisdiction in which such qualification is necessary to the conduct of its business and where the failure to be so qualified would adversely affect the validity of, the enforceability of, or the ability to perform, its obligations under this Agreement or any other Loan Document to which it is a party or by which it is bound.

Section 6.03. Books and Records; Financial Reporting

(a) Representations and Warranties.

The representations and warranties made by Borrower to Fannie Mae in this Section 6.03 are made as of the Effective Date.

(i) Financial Information.

All financial statements and data, including statements of cash flow and income and operating expenses, that have been delivered to Fannie Mae in respect of the Mortgaged Properties:

(A) are true, complete and correct in all material respects as of the date hereof; and

(B) accurately represent the financial condition of the Mortgaged Properties and present fairly the financial condition of Borrower and Guarantor as of such date in accordance with GAAP.

(ii) No Change in Facts or Circumstances.

All information in all financial statements, rent rolls, reports, certificates and other documents submitted in connection with the Loans and the transaction contemplated by this Agreement are complete and accurate in all material respects. There has been no material adverse change in any fact or circumstance that would make any such information incomplete or inaccurate

(b) Covenants.

(i) Obligation to Maintain Accurate Books and Records; Access; Discussions with Officers and Accountants.

(A) Borrower shall keep and maintain at all times at the Mortgaged Property or the Borrower's address set forth in Section 13.10 and, upon Fannie Mae's request, shall make available at the Mortgaged Property:

(1) complete and accurate books of account and records (including copies of supporting bills and invoices) adequate to reflect correctly the operation of the Mortgaged Property; and

(2) copies of all written contracts, Leases and other instruments that affect Borrower or the Mortgaged Property.

(B) To the extent permitted by Applicable Laws and subject to the provisions of Section 13 of the Security Instrument, Borrower shall permit Fannie Mae to:

(1) inspect, make copies and abstracts of, and have reviewed or audited, such of Borrower's books and records as may relate to the obligations of Borrower under this Master Agreement and the other Loan Documents or the Mortgaged Properties;

(2) at any time discuss Borrower's affairs, finances and accounts with Senior Management or property managers and independent public accountants, provided that a responsible officer of Guarantor has been given the opportunity to be a party to such discussions;

(3) discuss the Mortgaged Properties' conditions, operation or maintenance with the managers of each Mortgaged Property, the officers and employees of Borrower, Guarantor and Key Principal, provided that a responsible officer of Guarantor has been given the opportunity to be a party to such discussions; and

(4) receive any other information that Fannie Mae reasonably deems necessary or relevant in connection with any Loan Document or the obligations of Borrower under this Master Agreement from the officers and employees of such Borrower, provided that a responsible officer of Guarantor has been given the opportunity to be a party to such discussions.

Notwithstanding the foregoing, prior to an Event of Default or Potential Event of Default under such Collateral Pool and in the absence of an emergency, all inspections shall be conducted at reasonable times during normal business hours upon reasonable notice to the applicable Collateral Pool Borrower.

(C) Borrower shall promptly inform Fannie Mae in writing of:

(1) the occurrence of any act, omission, change or event that has, or would reasonably be expected to have, a Material Adverse Effect, subsequent to the date of the most recent audited financial statements of Borrower delivered to Fannie Mae pursuant to this Section 6.03; and

(2) any material change in Borrower's accounting policies or financial reporting practices not already reported in any financial statement delivered to Fannie Mae pursuant to this Section 6.03.

(ii) Items to Furnish to Fannie Mae.

Borrower shall furnish to Fannie Mae the following, certified as true, complete and accurate, in all material respects, by an individual having authority to bind Borrower (or Guarantor, as applicable), in such form and with such detail as Fannie Mae reasonably requires:

(A) within forty-five (45) days after the end of each calendar quarter, a statement of income and expenses for Borrower and Guarantor, including Borrower's operation of the Mortgaged Property on a calendar quarter basis as of the end of each calendar quarter;

(B) within one hundred twenty (120) days after the end of each calendar year (including the calendar year in which the Effective Date occurs):

(1) for any Borrower and any Guarantor that is an entity, a statement of income and expenses and a statement of cash flows for such calendar year;

(2) for any Borrower and any Guarantor that is an individual, or a trust established for estate-planning purposes, a personal financial statement for such calendar year;

(3) when requested by Fannie Mae, balance sheet(s) showing all assets and liabilities of Borrower and Guarantor and a statement of all contingent liabilities as of the end of such calendar year;

(4) a written certification in the form of **Exhibit H** (Annual Certification (Borrower)) ratifying and affirming that: (a) Borrower has taken no action in violation of Section 6.22; (b) Borrower has received no notice of any building code violation, or if Borrower has received such notice, evidence of remediation; (b) Borrower has made no application for rezoning nor received any notice that the Mortgaged Property has been or is being rezoned; and (d) Borrower has taken no action and has no knowledge of any action that would violate the provisions of Section 6.13 or Section 6.14 regarding liens encumbering the Mortgaged Property;

(5) an annual certification in the form attached as **Exhibit I**;

(6) an accounting of all security deposits held pursuant to all Leases, including the name of the institution (if any) and the names and identification numbers of the accounts (if any) in which such security deposits are held and the name of the person to contact at such financial institution, along with

any authority or release necessary for Fannie Mae to access information regarding such accounts;

(7) written confirmation of: (a) any changes occurring since the Effective Date (or that no such changes have occurred since the Effective Date) in (i) the direct owners of Borrower, (ii) the indirect owners (and any non-member managers) of Borrower that hold a Controlling interest in Borrower (excluding any Publicly-Held Corporations or Publicly-Held Trusts), or (iii) the indirect owners of Borrower that hold twenty-five percent (25%) or more of the ownership interests in Borrower (excluding any Publicly-Held Corporations or Publicly-Held Trusts), and their respective interests; (b) the names of all officers and directors of (i) any Borrower which is a corporation, (ii) any corporation which is a general partner of any Borrower which is a partnership, or (iii) any corporation which is the managing member or non-member manager of any Borrower which is a limited liability company; and (c) the names of all managers who are not members of (i) any Borrower which is a limited liability company, (ii) any limited liability company which is a general partner of any Borrower which is a partnership, or (iii) any limited liability company which is the managing member or non-member manager of any Borrower which is a limited liability company; and

(8) a statement of income and expenses for Borrower's operation of the Mortgaged Property on a year-to-date basis as of the end of each calendar year;

(C) within forty-five (45) days after the end of each calendar quarter, within 120 days after each calendar year, and at any other time upon Fannie Mae's request, a rent schedule for the Mortgaged Property showing the name of each tenant and for each tenant, the space occupied, the lease expiration date, the rent payable for the current month, the date through which rent has been paid and any related information requested by Fannie Mae;

(D) upon Fannie Mae's request (but, absent an Event of Default, no more frequently than once in any six (6) month period):

(1) any item described in Section 6.03(b)(ii) for Borrower, certified as true, complete and accurate by an individual having authority to bind Borrower;

(2) a property management or leasing report for the Mortgaged Property, showing the number of rental applications received from tenants or prospective tenants and deposits received from tenants or prospective tenants, and any other information requested by Fannie Mae;

(3) a statement of income and expenses for Borrower's operation of the Mortgaged Property on a year-to-date basis as of the end of each

month for such period as requested by Fannie Mae, which statement shall be delivered within thirty (30) days after the end of such month requested by Fannie Mae;

(4) a statement of real estate owned by Borrower and Guarantor for such period as requested by Fannie Mae, which statement shall be delivered within thirty (30) days after the end of such month requested by Fannie Mae; and

(5) a statement that identifies: (a) the direct owners of Borrower and their respective interests; (b) the indirect owners (and any non-member managers) of Borrower that own a Controlling interest in Borrower (excluding any Publicly-Held Corporations or Publicly-Held Trusts) and their respective interests; and (c) the indirect owners of Borrower that hold twenty-five percent (25%) or more of the ownership interests in Borrower (excluding any Publicly-Held Corporations or Publicly-Held Trusts) and their respective interests.

(iii) Delivery of Books and Records.

If an Event of Default has occurred and is continuing, Borrower shall deliver to Fannie Mae, upon written demand, all books and records relating to the Mortgaged Property or its operation

(c) Administration Matters Regarding Books and Records and Financial Reporting.

(i) Right to Audit Books and Records.

In the event that Borrower or Guarantor prepares or receives final audited statements, schedules and reports required under this Section 6.03, Borrower shall provide such final audited statements, schedules and reports to Fannie Mae. Notwithstanding the foregoing, Fannie Mae may require that Borrower's or Guarantor's books and records be audited, at Borrower's expense, by an independent certified public accountant selected by Fannie Mae in order to produce or audit any statements, schedules and reports of Borrower, Guarantor or the Mortgaged Property required by this Section 6.03, if

(A) Borrower fails to provide in a timely manner the statements, schedules and reports required by this Section 6.03 and, thereafter, Borrower or Guarantor fails to provide such statements, schedules and reports within the cure period provided in Section 9.01(l); or

(B) the statements, schedules and reports submitted to Fannie Mae pursuant to this Section 6.03 are not full, complete and accurate in all material respects as determined by Fannie Mae and, thereafter, Borrower or Guarantor fails to provide such statements, schedules and reports within the cure period provided in Section 9.01(l); or

(C) an Event of Default has occurred and is continuing.

Notwithstanding the foregoing, the ability of Fannie Mae to require the delivery of audited financial statements shall be limited to not more than once per Borrower's fiscal year so long as no Event of Default has occurred during such fiscal year (or any event which, with the giving of written notice or the passage of time, or both, would constitute an Event of Default has occurred and is continuing). Borrower shall cooperate with Fannie Mae in order to satisfy the provisions of this Section 6.03(c). All related costs and expenses of Fannie Mae shall become immediately due and payable within ten (10) Business Days after demand therefor.

(ii) Credit Reports; Credit Score.

No more often than once in any twelve (12) month period, Fannie Mae is authorized to obtain a credit report (if applicable) on Borrower or any Guarantor, the cost of which report shall be paid by Borrower and Guarantor. Fannie Mae is authorized to obtain a Credit Score (if applicable) for Borrower or any Guarantor at any time at Fannie Mae's expense.

(d) Electronic Delivery. All information required to be provided pursuant to this Section 6.03 may be submitted through electronic delivery (a) to a secure site that Fannie Mae can access, provided that the burden shall be on Borrower to provide the information necessary for Fannie Mae to access such secure site; or (b) to email addresses designated by Fannie Mae, and in each case the delivery requirements shall be deemed satisfied upon such electronic delivery.

(e) SEC Filings. At all times during which AvalonBay is the Guarantor and is a Publicly-Held Corporation, the delivery requirements set forth in this Section 6.03 applicable to AvalonBay shall be deemed satisfied to the extent that (i) AvalonBay has delivered to Fannie Mae AvalonBay's Form 10-K, 10-Q or any other public filing for the applicable time period, and (ii) such public filing contains the information required in this Section 6.03.

Section 6.04. Quincy Survey.

No later than March 29, 2013, Borrower shall deliver Fannie Mae (i) an ALTA Land Title Survey of the Mortgaged Property owned by ASN Quincy LLC Borrower that is consistent with the Underwriting Requirements, (ii) signed and sealed ALTA Land Title Surveys in substantially the same form as those approved by Fannie Mae in connection with this Agreement of the Mortgaged Properties owned by (a) each of Courthouse Hill LLC, Archstone Oak Creek I LLC and Archstone Oak Creek II LLC, ASN Thousand Oaks Plaza LLC, AVB Tunlaw Gardens, LLC, and AVB Glover Park, LLC Borrowers and (b) ASN Meadows at Russett I LLC and ASN Meadows at Russett II LLC.

Section 6.05. [Reserved].

Section 6.06. Maintain Licenses, Permits, Etc.

Each Borrower shall procure and maintain in full force and effect all licenses, Permits, charters and registrations which are material to the conduct of its business.

Section 6.07. [Reserved].

Section 6.08. Compliance with Applicable Laws.

Each Collateral Pool Borrower shall comply in all material respects with all Applicable Laws now or hereafter affecting any Mortgaged Property in such Collateral Pool or any part of any Mortgaged Property in such Collateral Pool or requiring any alterations, repairs or improvements to any Mortgaged Property in such Collateral Pool. The applicable Collateral Pool Borrower shall comply with all written notices from Governmental Authorities.

Section 6.09. Alterations to the Mortgaged Properties.

Except as otherwise provided in the applicable Loan Documents, Borrower shall have the right to undertake any alteration, improvement, demolition, removal or construction (collectively, "**Alterations**") to the Mortgaged Property which it owns without the prior consent of Fannie Mae; provided, however, that in any case, no such Alteration shall be made to any Mortgaged Property without the prior written consent of Fannie Mae if (i) such Alteration could reasonably be expected to adversely affect the value of such Mortgaged Property or its operation as a Multifamily Residential Property in substantially the same manner in which it is being operated on the date such property became Collateral, (ii) the construction of such Alteration could reasonably be expected to result in interference to the occupancy of tenants of such Mortgaged Property such that tenants in occupancy with respect to five percent (5%) or more of the Leases (or Residential Agreements, if applicable) would be permitted to terminate their Leases (or Residential Agreements, if applicable) or to abate the payment of all or any portion of their rent, or (iii) such Alteration exceeds $250,000 per year and will be completed in the last six months of the Term of this Agreement. Notwithstanding the foregoing, unless required by law or court order, Borrower must obtain Fannie Mae's prior written consent to construct Alterations costing in excess of, with respect to any Mortgaged Property, $500,000 per year. Borrower must give prior written notice to Fannie Mae of its intent to construct any Alterations required by law or court order (regardless of cost) or Alterations with respect to such Mortgaged Property costing in excess of $250,000 per year; provided, however, that the preceding requirements shall not be applicable to Alterations made, conducted or undertaken by Borrower as part of Borrower's routine maintenance and repair of the Mortgaged Properties as required by the Loan Documents. Borrower may, on an annual basis, obtain the prior consent of Fannie Mae to undertake, during a fiscal year, Alterations that require Fannie Mae's consent pursuant to this Section 6.09 by requesting such consent in writing and by including in such written request the following information: (A) the identity of the Mortgaged Property or Properties affected by such Alterations, a description of the Alterations to be undertaken, and a description of the expenses that pertain to such Alterations; (B) a description of the number of units that will be affected by such Alterations, and (C) a request, in writing that Fannie Mae consent, in advance, to the undertaking of such specified Alterations. Upon request by Fannie Mae in its evaluation of any such request, Borrower will provide a proposed time schedule for the performance of selected Alterations and the time period that any or all of such units will not be available for occupancy and an estimate of the lost revenue that will result therefrom. Within twenty (20) days after receipt of any such request, Fannie Mae shall approve or disapprove such request in writing and, if Fannie Mae disapproves such request, it will provide Borrower with a brief statement of the

reasons for such disapproval. If Fannie Mae does not either approve or disapprove such request within such twenty (20) day period, such request shall be deemed approved. Fannie Mae agrees and acknowledges that any and all Alterations undertaken prior to the Effective Date are hereby deemed approved, notwithstanding any failure of a Borrower to comply with the requirements set forth above.

Section 6.10. Loan Document Taxes.

If any tax, assessment or Imposition (other than an income tax, franchise tax or excise tax imposed on or measured by, the net income or capital (including branch profits tax) of Fannie Mae (or any transferee or assignee thereof, including a participation holder)) ("**Loan Document Taxes**") is levied, assessed or charged by the United States, or any State in the United States, or any political subdivision or taxing authority thereof or therein upon any of the Loan Documents and the Guaranty or the obligations secured thereby, the interest of Fannie Mae in the Mortgaged Properties, or Fannie Mae by reason of or as holder of the Loan Documents and the Guaranty, the applicable Collateral Pool Borrower shall pay all such Loan Document Taxes to, for, or on account of Fannie Mae (or provide funds to Fannie Mae for such payment, as the case may be) as they become due and payable and shall promptly furnish proof of such payment to Fannie Mae, as applicable. In the event of passage of any law or regulation permitting, authorizing or requiring such Loan Document Taxes to be levied, assessed or charged, which law or regulation in the opinion of counsel to Fannie Mae may prohibit the applicable Collateral Pool Borrower from paying the Loan Document Taxes to or for Fannie Mae, such Borrower shall enter into such further instruments as may be permitted by law to obligate such Borrower to pay such Loan Document Taxes.

Section 6.11. Further Assurances.

Each Collateral Pool Borrower, at the request of Fannie Mae, shall execute and deliver and, if necessary, file or record such statements, documents, agreements, UCC financing and continuation statements and such other instruments and take such further action as Fannie Mae from time to time may request as reasonably necessary, desirable or proper to carry out more effectively the purposes of this Agreement or any of the other Loan Documents and the Guaranty for such Collateral Pool or to subject the Collateral to the lien and security interests of the Loan Documents for such Collateral Pool or to evidence, perfect or otherwise implement, to assure the lien and security interests intended by the terms of the Loan Documents for such Collateral Pool or in order to exercise or enforce its rights under the Loan Documents and the Guaranty for such Collateral Pool.

Section 6.12. Ownership.

At all times during the Term of this Agreement:

(a) Each Borrower shall be a Delaware limited liability company or Delaware limited partnership; and

(b) Each Borrower shall be Controlled by Guarantor or by a Person that is Controlled by Guarantor, and each Borrower shall be at least 51% owned, directly or indirectly, by Guarantor.

Section 6.13. Transfers.

(a) Mortgaged Property.

A Transfer as described in clause (b) of the definition of Transfer of all or any part of any Mortgaged Property (including any interest in any Mortgaged Property) shall not occur other than:

(i) a Transfer to which Fannie Mae has consented in writing;

(ii) the grant of a Residential Lease for a term of two (2) years or less and not containing an option to purchase or right of first refusal (except as required by Applicable Law);

(iii) the grant of a non-Material Commercial Lease provided the use and type of operation of such space is unchanged from the use and type of operation in effect as of the Effective Date and the number and size of residential units at the Mortgaged Property are not reduced;

(iv) a Transfer of obsolete or worn out Personalty or Fixtures that are contemporaneously replaced by items of equal or better function and quality which are free of Liens (other than those created by the Loan Documents) or consented to by Fannie Mae;

(v) the grant of an easement, servitude or restrictive covenant to which Fannie Mae has consented, not to be unreasonably withheld, conditioned, or delayed, and Borrower has paid to Fannie Mae, upon demand, all costs and expenses incurred by Fannie Mae in connection with reviewing Borrower's request;

(vi) the creation of any tax lien, municipal lien, utility lien, mechanics' lien, materialmen's lien, or judgment lien against any Mortgaged Property if bonded off, released of record or otherwise remedied to Fannie Mae's satisfaction within sixty (60) days after the earlier of the date Borrower has actual notice or constructive notice of the existence of such lien; or

(vii) the conveyance of any Mortgaged Property (1) pursuant to a Foreclosure Event or (2) in connection with an involuntary bankruptcy proceeding that does not trigger personal Borrower because of the proviso in Section 13.03(c)(vi) of this Agreement, and in which the conveyance occurred without the consent, encouragement, active participation or the failure to object in a timely and appropriate manner by Borrower, any Borrower Entity or Guarantor (however, nothing in this provision shall be construed as limiting Fannie Mae's rights in connection with any Event of Default related to or in connection with such Bankruptcy Event).

(b) Interests in Borrower, Key Principal or Guarantor.

Subject to the provisions of this Section 6.13, neither a Transfer as described in clause (a) of the definition of Transfer nor a Change of Control shall occur, other than:

(i) the Transfer of shares of common stock or other beneficial or ownership interests or other forms of Securities in Guarantor, and the issuance of all varieties of convertible debt, equity and other similar Securities of Guarantor, and the subsequent Transfer of such Securities, provided that no Change of Control occurs as a result of such Transfer, either upon such Transfer or upon the subsequent conversion to equity of such convertible debt or other securities;

(ii) the issuance by Guarantor of additional common stock or other beneficial ownership interests, convertible debt, equity and other similar Securities, and the subsequent Transfer of such convertible debt or Securities, provided that no Change of Control occurs as a result of such Transfer, either upon such Transfer or upon the subsequent conversion to equity of such convertible debt or other securities;

(iii) a Transfer of direct or indirect Ownership Interests in a Borrower that is not a Tax Protected Asset Borrower, or in any other entity (other than Guarantor) which, directly or indirectly, owns a Borrower that is not a Tax Protected Asset Borrower, provided that Guarantor directly or indirectly owns at least 51% of the Ownership Interest in such Borrower or other Person and there is no Change of Control;

(iv) a Transfer of direct or indirect Ownership Interests in a Tax Protected Asset Borrower, or in any other entity (other than Guarantor) which, directly or indirectly, owns a Tax Protected Asset Borrower, provided that Guarantor directly or indirectly owns at least 51% of the Ownership Interest in such Tax Protected Asset Borrower and there is no Change of Control; or

(v) a Transfer which entails the amendment, modification or other change in the governing instrument or instruments of Guarantor which would not result in a Change of Control.

The merger or consolidation of Guarantor into another Person (the "**Surviving REIT**") shall not constitute a Change of Control or other Event of Default so long as (i) no Acquiring Person becomes (by acquisition, consolidation, merger or otherwise), directly or indirectly, the beneficial owner of more than 40% of the total Voting Equity Capital of the Surviving REIT then outstanding; (ii) the Surviving REIT shall own all the direct and indirect ownership interests of Guarantor in each Borrower and (iii) no more than 50% (or such lesser percentage as is required for decision-making by the board of directors or trustees, if applicable) of the members of the board of directors or trustees, if applicable, of the Surviving REIT are different than the members of the board of directors of Guarantor on the date which is one year prior to the date on which the merger or consolidation is consummated (other than changes solely by reason of retirement at age sixty-two or older, death or disability), where such change shall not have been approved by a vote of at least a majority of the board of directors (or trustees, if applicable) of Guarantor then still in office who were members of Guarantor's board of directors (or trustees, if applicable) at the beginning of such one-year period or whose election as members of the board of directors (or

trustees, if applicable) was previously so approved; provided, however, that if the merger or consolidation involves a series of integrated transactions, then such transactions must be completed within a 90-day period, and, in such case, compliance with conditions (i) through (iii) shall be measured solely upon the full consummation of the merger or consolidation, and further provided that such merger or consolidation does not effect a dissolution of Borrower. If any of the conditions in clauses (i) through (iii) are not complied with, such merger or consolidation shall constitute a Change of Control. For purposes of this Agreement, the Surviving REIT shall be considered Guarantor from and after the date on which the merger or consolidation is consummated.

(c) Entity Conversion.

(i) Borrower shall not change its jurisdiction of organization, or cause or permit a conversion of Borrower from one type of entity into another type of entity if such conversion results in either:

(A) a violation of the Transfer provisions;

(B) a Change of Control; or

(C) a change in any assets, liabilities, legal rights or obligations of Borrower (or of Key Principal, Guarantor or any general partner, manager (if non-member managed) or managing member of Borrower, as applicable), by operation of law or otherwise.

(ii) Notwithstanding the foregoing, Borrower may convert from one type of legal entity into another type of legal entity for tax or other structuring purposes, provided:

(A) the provisions of Section 6.12 (Ownership) are satisfied;

(B) such conversion does not result in a Change of Control;

(C) such conversion does not result in a change in any assets, liabilities, legal rights or obligations of Borrower (or of Key Principal, Guarantor or any general partner, manager (if non-member managed) or managing member of Borrower, as applicable), by operation of law or otherwise;

(D) Borrower provides Fannie Mae with at least thirty (30) days prior written notice of such conversion;

(E) Borrower provides the new Organizational Documents of Borrower which will be satisfactory to Fannie Mae in its reasonable discretion;

(F) Borrower provides Fannie Mae any certificates evidencing such conversion filed with the appropriate Secretary of State within ten (10) days after filing such certificates;

(G) Borrower provides Fannie Mae new certificates of good standing for such entity at least five (5) days prior to such conversion;

(H) Fannie Mae reserves the right to file UCC-3 amendments where necessary reflecting the conversion;

(I) if required by Fannie Mae, Borrower executes an amendment to this Agreement documenting the conversion; and

(J) Borrower shall provide Fannie Mae with confirmation from the title company (via electronic mail or letter) that nothing is needed in the land records (of the appropriate Property Jurisdiction) at such time to evidence such conversion, and no endorsements to the Title Policy are necessary to maintain Fannie Mae's coverage; or if any endorsements are necessary, Borrower shall provide such endorsements at Borrower's cost.

(d) Name Change.

Borrower shall not change its name, unless Borrower furnishes documentation reasonable required by Fannie Mae or its legal counsel sufficient, in their reasonable discretion, and at the expense of Borrower, to protect Fannie Mae's security interest in the Mortgaged Property and UCC Collateral, including title policy endorsements and UCC financing statements and/or amendments sufficient to continue the perfection of Fannie Mae's security interest have been properly filed and copies have been delivered to Fannie Mae

Section 6.14. Administration Matters Regarding Liens, Transfers and Assumptions.

(a) Transfer of Collateral Pool.

Fannie Mae shall consent to a Transfer of the entire Collateral Pool to and an assumption of the Loan Documents by a new borrower if each of the following conditions is satisfied prior to the Transfer:

(i) Borrower has submitted to Fannie Mae all information required by Fannie Mae to make the determination required by this Section 6.14(a) (Transfer of Collateral Pool);

(ii) no Event of Default has occurred and is continuing;

(iii) Fannie Mae determines that:

(A) the proposed new borrower, new key principal and any other new guarantor fully satisfy all of Fannie Mae's then-applicable borrower, key principal or guarantor eligibility, credit, management and other loan underwriting standards (including any standards with respect to previous relationships between Fannie

Mae and the proposed new borrower, new key principal and new guarantor and the organization of the new borrower, new key principal and new guarantor (if applicable));

(B) any proposed new borrower and its managing member , manager or general partner, as applicable is a Single Purpose entity;

(C) none of the proposed new borrower, new key principal and any new guarantor, or any owners of the proposed new borrower, new key principal and any new guarantor, are a Prohibited Person; and

(D) none of the proposed new borrower, new key principal and any new guarantor (if any of such are entities) shall have an organizational existence termination date that ends before the Termination Date;

(iv) Fannie Mae determines that the Mortgaged Properties satisfy all of Fannie Mae's then-applicable loan underwriting standards, including physical condition, occupancy and net operating income, customarily applied by Fannie Mae at the time of the proposed Transfer to the approval of properties in connection with the origination or purchase of similar mortgages on multifamily properties;

(v) the proposed new borrower has executed an assumption agreement acceptable to Fannie Mae that, among other things, requires the proposed new borrower to assume and perform all obligations of Borrower (or any other transferor), and that may require that the new borrower comply with any provisions of any Loan Document which previously may have been waived by Fannie Mae for Borrower, subject to the terms of Section 6.14(b) (Further Conditions to Transfer of Collateral Pool and Assumption of Loan Documents);

(vi) one or more individuals or entities acceptable to Fannie Mae as new guarantors have executed and delivered to Fannie Mae:

(A) if a Non-Recourse Guaranty has been executed and delivered with the Loan Documents, a substitute Non-Recourse Guaranty and other substitute guaranty in a form acceptable to Fannie Mae; or

(B) an assumption agreement acceptable to Fannie Mae that requires the new guarantor to assume and perform all obligations of Guarantor under any Guaranty given in connection with the Loan Documents.

(vii) Fannie Mae has reviewed and approved any other Transfer documents;

(viii) Fannie Mae shall be the servicer of the Loan Documents;

(ix) Borrower has satisfied the applicable provision of Section 6.14(b) (Further Conditions to Transfer of Collateral Pool and Assumption of Loan Documents) including Fannie Mae's receipt of the fees described in Section 6.14(b) (Further Conditions to Transfer of Collateral Pool and Assumption of Loan Documents); and

(x) if any MBS is Outstanding, the Transfer shall not result in a "significant modification," as defined under applicable Treasury Regulations, of any Advance that has been securitized in an MBS.

(b) Further Conditions to Transfer of Collateral Pool and Assumption of Loan Documents.

(i) In connection with any Transfer for which Fannie Mae's approval is required under this Agreement, Fannie Mae may, as a condition to any such approval, require:

(A) additional collateral, guaranties or other credit support to mitigate any risks concerning the proposed transferee or the performance or condition of any Mortgaged Property;

(B) amendment of the Loan Documents and the Guaranty to delete or modify any specially negotiated terms or provisions previously granted for the exclusive benefit of original Borrower, Key Principal or Guarantor and to restore the original provisions of the standard Fannie Mae form multifamily loan documents, to the extent such provisions were previously modified;

(C) a modification to the amounts required to be deposited into the Reserve/Escrow Account pursuant to the terms of Section 6.14(b)(iv);

(D) in connection with any assumption of the Loan Documents, after giving effect to the assumption, the General Conditions shall be satisfied;

(E) delivery to the Title Company for filing and/or recording in all applicable jurisdictions, all applicable Loan Documents including assumption documents and any other appropriate documents in form and substance reasonably satisfactory to Fannie Mae in form proper for recordation as may be necessary in the opinion of Fannie Mae to correctly evidence the assumptions and the confirmation of Liens created hereunder; and/or

(F) if any MBS is Outstanding, the Transfer shall not result in a "significant modification", as defined under applicable Treasury Regulations, of any Advance that has been securitized in an MBS.

(ii) In connection with any request by Borrower for consent to a Transfer, Borrower shall pay to Fannie Mae upon demand:

(A) a one percent (1%) transfer fee (to the extent charged by Fannie Mae);

(B) a review fee of $6,000 (regardless of whether Fannie Mae approves or denies such request); and

(C) all of Fannie Mae's reasonable, third party, out-of-pocket costs (including reasonable attorneys' fees) incurred in reviewing the Transfer request, to the extent such costs exceed the Review Fee and regardless of whether Fannie Mae approves or denies such request.

(iii) Borrower shall provide written notice to Fannie Mae of all Transfers (other than a Transfer of the kind referred to in subsections (i) through (v) of Section 6.13(b)) whether or not such Transfers are permitted under this Agreement or approved by Fannie Mae no later than ten (10) days prior to the date of the

Transfer, provided that Borrower shall not be required to provide written notice of Transfers of Residential Leases or of the replacement of Fixtures or Personalty performed pursuant to the terms of the Loan Documents.

(iv) In connection with any Transfer of any Mortgaged Property in connection with an assumption, or any Transfer of Ownership Interest(s) in a Borrower Entity which requires Fannie Mae's consent, Fannie Mae may review the amounts on deposit, if any, pursuant to the Replacement Reserve Agreement relating to the Mortgaged Property to be Transferred, and the related contingencies which may arise during the remaining Term of this Agreement. Based upon that review, Fannie Mae may require a modification of the applicable Replacement Reserve Agreements and/or additional deposits thereunder as a condition to Fannie Mae's consent to such Transfer. In all events, the transferee shall be required to assume Borrower's duties and obligations under this Agreement and the Loan Documents.

Section 6.15. [RESERVED].

Section 6.16. Change in Senior Management.

Borrower shall give Fannie Mae notice of any change in the identity of Senior Management within ten (10) Business Days of the occurrence thereof.

Section 6.17. [RESERVED].

Section 6.18. Ownership of Mortgaged Properties.

Applicable Borrower shall be the sole owner of its Mortgaged Properties free and clear of any Liens other than Permitted Liens.

Section 6.19. Change in Property Manager.

Collateral Pool Borrower shall give Fannie Mae notice of any change in the identity of the Property Manager of each Mortgaged Property in such Collateral Pool, and no such change shall be made without the prior consent of Fannie Mae, which shall not be unreasonably withheld, conditioned or delayed based on the criteria for approval of Property Managers as required by Fannie Mae for similar loans anticipated to be purchased by Fannie Mae. Notwithstanding the foregoing, so long as no Event of Default has occurred and is continuing, such Collateral Pool Borrower may change the Property Manager to an Affiliate of Borrower without prior consent of Fannie Mae, provided such Collateral Pool Borrower gives Fannie Mae

prior written notice of such change. As of the date hereof, AvalonBay is hereby approved as the Property Manager.

Section 6.20. Reserved.

Section 6.21. Non-Residential Leases.

Borrower shall use commercially reasonable efforts to obtain and deliver to Fannie Mae (a) an estoppel certificate with respect to each non-Residential Lease and each recorded instrument of covenants, conditions and restrictions identified on **Exhibit Q**, and (b) a subordination, non-disturbance and Attornment agreement with respect to each non-Residential Lease identified on Exhibit Q, each in a form previously approved by Fannie Mae.

Section 6.22. Single Purpose Entity.

Each Borrower, and each general partner of a Borrower that is a limited partnership, shall maintain itself as a Single Purpose entity.

ARTICLE 7
NEGATIVE COVENANTS OF BORROWER

Borrower agrees and covenants with Fannie Mae that, at all times during the Term of this Agreement:

Section 7.01. Other Activities.

Other than actions reasonable, customary, and deemed to be necessary, in the reasonable judgment of Fannie Mae, in connection with a Transfer permitted hereunder and subject to the provisions of Section 6.13, no Borrower Party shall:

(a) in the case of any Borrower or managing member or general partner of a Borrower, amend its Organizational Documents in any material respect without the prior written consent of Fannie Mae;

(b) in the case of any Borrower Party not described in (a) of this Section 7.01, amend its Organizational Documents in any way that would have a material adverse effect on any Borrower Party's ability to perform its obligations under the Loan Documents without the prior written consent of Fannie Mae;

(c) dissolve or liquidate in whole or in part (except for the sale of Mortgaged Properties in the ordinary course of business);

(d) in the case of any Borrower or managing member or general partner of a Borrower, except as otherwise provided in this Agreement, without the prior written consent of Fannie Mae, merge or consolidate with any Person;

(e) in the case of any Borrower Party not described in (d) of this Section 7.01, if such merger or consolidation would have a Material Adverse Effect on any Borrower Party's ability to perform its obligations under the Loan Documents, merge or consolidate with any other Person without the prior written consent of Fannie Mae;

(f) use, or permit to be used, any Mortgaged Property in the applicable Collateral Pool for any uses or purposes other than as a Multifamily Residential Property and ancillary uses consistent with Multifamily Residential Properties;

(g) in the case of any Borrower or managing member or general partner of a Borrower, convert from one type of legal entity to another type of legal entity; or

(h) in the case of any Borrower Party not described in (g) of this Section 7.01, if such conversion would have a Material Adverse Effect on any Borrower Party's ability to perform its obligations under the Loan Documents, convert from one type of legal entity to another type of legal entity.

Each Borrower Party shall promptly provide Fannie Mae with notice and a copy of any amendment of its Organizational Documents that does not require prior written consent of Fannie Mae.

Section 7.02. Liens.

Borrower shall not create, incur, assume or suffer to exist any Lien on Borrower's interest in any Mortgaged Property in its Collateral Pool or any part of any Mortgaged Property, except the Permitted Liens.

Section 7.03. Indebtedness.

Borrower shall not incur or be obligated at any time with respect to any Indebtedness (other than Loans) in connection with or secured by any of the Mortgaged Properties. Neither Borrower nor or any entity whose sole asset is a direct or indirect ownership interest in Borrower shall incur any "mezzanine debt," issue any preferred equity or incur any similar Indebtedness or equity with respect to any Mortgaged Property. Notwithstanding the foregoing, in connection with the operation of the Mortgaged Properties, each Borrower, without duplication, shall each be permitted to incur Indebtedness in the maximum aggregate amount of $150,000 provided such Borrower shall not incur or assume any Indebtedness (c) that is not paid when due nor within any applicable grace period in any agreement or instrument relating to such Indebtedness, or (d) that becomes due and payable before its normal maturity by reason of a default or event of default, however described, or any other event of default shall occur and continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Indebtedness.

Section 7.04. Principal Place of Business; Name Change.

Borrower shall not change its principal place of business, its state of formation or the location of its books and records, each as set forth in Borrower's Certificate, without first giving thirty (30) days' prior written notice to Fannie Mae.

Section 7.05. Condominiums.

Borrower shall not submit any Mortgaged Property in its Collateral Pool to a condominium regime during the Term of this Agreement.

Section 7.06. Restrictions on Distributions.

Borrower shall not make any distributions of any nature or kind whatsoever to the owners of its Ownership Interests as such if, at the time of such distribution, an Event of Default has occurred and remains uncured.

Section 7.07. Master Leases.

No Mortgaged Property may be master leased or otherwise leased in whole or in bulk, provided that the Mortgaged Properties identified on **Exhibit M** are master leased to Master Tenant pursuant to a Master Lease in the form approved by Fannie Mae prior to the Effective Date. Borrower shall not, without the prior written consent of Fannie Mae, which consent shall be given in Fannie Mae's reasonable discretion, agree to any material modification or amendment to any Master Lease and shall not terminate any Master Lease without Fannie Mae's prior written consent, unless after such termination all Resident Agreements related to the relevant Mortgaged Property shall remain in full force and effect with Borrower becoming a landlord under such Resident Agreements, provided that Fannie Mae's consent shall no longer be required after a Mortgaged Property is released from a Collateral Pool. In the event Master Tenant terminates the Master Lease, Borrower shall promptly provide notice of such termination to Fannie Mae. Section 4(f) of the applicable Security Instrument shall apply to a Master Lease.

ARTICLE 8
FEES

Section 8.01. Re-Underwriting Fee.

On the Closing Date of any Extension, Release, or Substitution (on the Closing Date of the Release of the Release Mortgaged Property under such Substitution), the applicable Collateral Pool Borrower shall pay to Fannie Mae a re-underwriting fee equal to the product of $5,000 multiplied by the number of Mortgaged Properties in such Collateral Pool at the time of such Extension, Release Request, or Substitution Request, as applicable (the "**Re-Underwriting Fee**").

Section 8.02. Reserved.

Section 8.03. Due Diligence Fees.

(a) Initial Due Diligence Fees. The applicable Collateral Pool Borrower shall pay to Fannie Mae its actual due diligence fees in connection with the underwriting of the transactions contemplated by this Agreement, including underwriting the Mortgaged Properties with respect to the loan-to-value and debt service coverage requirements imposed by Fannie Mae as a condition to entering into this Agreement.

(b) Additional Due Diligence Fees for Substitute Mortgaged Properties. The applicable Collateral Pool Borrower shall pay to Fannie Mae actual due diligence fees including Fannie Mae's review fee of $1,500 for each Mortgaged Property (the "**Additional Due Diligence Fees**") with respect to each proposed Substitute Mortgaged Property anticipated to be added to a Collateral Pool. In connection with any Substitution Request, Borrower shall pay to Fannie Mae a deposit equal to the product obtained by multiplying

(i) $12,000 by

(ii) the number of Substitute Mortgaged Properties (such amount to be allocated to Fannie Mae for its due diligence expenses).

Any Additional Due Diligence Fees not covered by the deposit shall be paid by Borrower on the Closing Date (or if the proposed Substitute Mortgaged Property does not become part of the Collateral Pool, on demand) for the Substitute Mortgaged Property. Any portion of the Additional Due Diligence Fee paid to Fannie Mae not actually used by Fannie Mae to cover reasonable due diligence expenses shall be promptly refunded to the applicable Collateral Pool Borrower.

Section 8.04. Legal Fees and Expenses.

(a) Initial Legal Fees. The applicable Collateral Pool Borrower shall pay, or reimburse Fannie Mae and Servicer for, all reasonable out-of-pocket third-party legal fees and expenses incurred by Fannie Mae and Servicer in connection with the preparation, review and negotiation of (i) this Agreement and any other Loan Documents and the Guaranty executed on the date of this Agreement and (ii) any items that any Collateral Pool Borrower is required to deliver after the Closing Date pursuant to the terms of this Agreement.

(b) Fees and Expenses Associated with Requests. The applicable Collateral Pool Borrower shall pay, or reimburse Fannie Mae and Servicer for, all reasonable out-of-pocket third-party costs and expenses incurred by Fannie Mae and Servicer, including the out-of-pocket legal fees and expenses incurred by Fannie Mae and Servicer in connection with the preparation, review and negotiation of all documents, instruments and certificates to be executed and delivered in connection with each Request for such Collateral Pool Borrower, the performance by Fannie Mae of any of its obligations with respect to the Request, the satisfaction of all conditions precedent to such Borrower's rights or Fannie Mae's obligations with respect to the Request, and all transactions related to any of the foregoing, including the cost of title insurance premiums and applicable recordation and transfer taxes and charges and all other reasonable costs and expenses in connection with a Request. The obligations of the applicable Borrower under this subsection shall be absolute and unconditional, regardless of whether the transaction requested in the Request actually occurs. The applicable Collateral Pool Borrower shall pay such costs and expenses to Fannie Mae on the Closing Date for the Request, or, as the case may be, after demand by Fannie Mae when Fannie Mae determines that such Request will not close.

Section 8.05. Failure to Close any Request.

If a Collateral Pool Borrower makes a Request and fails to close on the Request for any reason other than the default by Fannie Mae, then such Borrower shall pay to Fannie Mae all actual cost and expenses (including any breakage costs) incurred by Fannie Mae in connection with the failure to close.

ARTICLE 9
EVENTS OF DEFAULT

Section 9.01. Events of Default.

Each of the following events shall constitute an "**Event of Default**" under this Agreement, whatever the reason for such event and whether it shall be voluntary or involuntary, or within or without the control of Borrower or Guarantor or be effected by operation of law or pursuant to any judgment or order of any court or any order, rule or regulation of any Governmental Authority:

(a) the occurrence of a default under any Loan Document related to such Borrower's Collateral Pool beyond the cure period, if any, set forth therein; or

(b) the failure by Borrower to pay within thirty (30) days of its due date or request by Fannie Mae, as applicable, when due any amount payable by Borrower under any Note, any Security Instrument, this Agreement or any other Loan Document, including any fees, costs or expenses; provided, however, that (i) such thirty (30) day grace period shall not apply to: (A)regularly scheduled monthly payments of principal, interest, discount (if any) or any payment upon the Maturity Date (as defined in the Note) or the applicable Pool Termination Date or (B) any fees, costs or expenses due and payable on the Effective Date or any fees, costs or expenses due and payable on the Closing Date of any Request; and (ii) such thirty (30) day grace period shall not be more than (or in addition to) any other grace period provided in the Note, any Security Instrument, this Agreement or any other Loan Document; or

(c) the failure by Borrower to perform or observe any covenant set forth in Section 6.03(b)(i)(C), Section 6.09, Section 6.12 (Ownership), Section 6.13 (Transfers), Section 6.14 (Administration Matters Regarding Liens, Transfers and Assumptions), Section 6.18 (Ownership of Mortgaged Properties), Section 6.19 (Change in Property Manager), Section 7.01 (Other Activities), Section 7.02 (Liens), Section 7.03 (Indebtedness), Section 7.06 (Restrictions on Distributions), Section 7.07 (Master Leases); or

(d) the failure by Borrower to perform or observe any covenant contained in Article 6 or Article 7 (other than those sections specifically referenced in Section 9.01(c) above) for thirty (30) days after receipt of notice of such failure by such Borrower from Fannie Mae, provided that such period shall be extended for up to thirty (30) additional days if such Borrower, in the discretion of Fannie Mae, is diligently pursuing a cure of such default within thirty (30) days after receipt of notice from Fannie Mae; or

(e) any warranty, representation or other written statement made by or on behalf of Borrower or Guarantor contained in this Agreement, any other Loan Document or in any instrument furnished in compliance with or in reference to any of the foregoing, is false or misleading in any material respect on any date when made or deemed made and, in the case of any warranty, representation or other written statement that was not intentionally false or misleading when made, and in Fannie Mae's reasonable judgment is curable, remains uncured for thirty (30) days after notice of such false or misleading statement shall have been given to Borrower; or

(f) (i) any Borrower Party shall (A) commence a voluntary case, whether of such entity or an Affiliate thereof, under the Federal bankruptcy laws (as now or hereafter in effect), (B) file a petition seeking to take advantage of any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, debt adjustment, winding up or composition or adjustment of debts, (C) consent to or fail to contest in a timely and appropriate manner any petition filed against it in an involuntary case under such bankruptcy laws or other laws, (D) apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of a substantial part of its property, domestic or foreign, (E) admit in writing its inability to pay, or generally not be paying, its debts as they become due, (F) make a general assignment for the benefit of creditors, (G) assert that any Borrower Party (but with respect to any Guarantor, solely with respect to the Guaranty) has no liability or obligations under this Agreement or any other Loan Document to which it is a party; (H) take any action, petition to or cause or permit any of its assets to be partitioned, or (I) take any action for the purpose of effecting any of the foregoing; or (ii) a case or other proceeding shall be commenced against any Borrower Party in any court of competent jurisdiction seeking (A) relief under the Federal bankruptcy laws (as now or hereafter in effect) or under any other laws, domestic

or foreign, relating to bankruptcy, insolvency, reorganization, winding upon or composition or adjustment of debts, or (B) the appointment of a trustee, receiver, custodian, liquidator or the like of any Borrower Party, whether by such entity or an Affiliate thereof, for all or a substantial part of the property, domestic or foreign, of any Borrower Party, whether by such entity or an Affiliate thereof, and any such case or proceeding shall continue undismissed or unstayed for a period of ninety (90) consecutive days, or any order granting the relief requested in any such case or proceeding against any Borrower Party, whether by such entity or an Affiliate thereof (including an order for relief under such Federal bankruptcy laws), shall be entered; or

(g) if any provision of this Agreement or any other Loan Document or the lien and security interest purported to be created hereunder or under any Loan Document shall at any time for any reason cease to be valid and binding in accordance with its terms on Borrower or Guarantor, or shall be declared to be null and void, or the validity or enforceability hereof or thereof or the validity or priority of the lien and security interest created hereunder or under any other Loan Document shall be contested by Borrower or Guarantor seeking to establish the invalidity or unenforceability hereof or thereof, or Borrower or Guarantor (only with respect to the Guaranty) shall deny that it has any further liability or obligation hereunder or thereunder; or

(h) (i) the execution by Borrower of a chattel mortgage or other security agreement on any materials, fixtures or articles used in the construction or operation of the

improvements located on any Mortgaged Property or on articles of personal property located therein (other than in connection with any Permitted Liens), or (ii) if any such materials, fixtures or articles are purchased pursuant to any conditional sales contract or other security agreement or otherwise so that the Ownership thereof will not vest unconditionally in Borrower free from encumbrances, or (iii) if Borrower does not furnish to Fannie Mae upon request the contracts, bills of sale, statements, receipted vouchers and agreements, or any of them, under which Borrower claims title to such materials, fixtures, or articles; or

(i) the failure by Borrower to comply with any requirement of any Governmental Authority within thirty (30) days after written notice of such requirement shall have been given to Borrower by such Governmental Authority; provided that, if the required action is commenced and diligently pursued by Borrower within such thirty (30) days, then Borrower shall have such additional time to comply with such requirement as permitted by the Governmental Authority; or

(j) a dissolution or liquidation for any reason (whether voluntary or involuntary) of any Borrower Party, except in connection with the sale of Mortgaged Properties in the ordinary course of business; or

(k) any final and nonappealable judgment against Borrower Party, any attachment or other levy against any portion of Borrower Party's assets with respect to a claim or claims in an amount in excess of $250,000 individually and/or $500,000 in the aggregate remains unpaid, unstayed on appeal undischarged, unbonded, not fully insured or undismissed for a period of ninety (90) days; or

(l) the failure by Borrower or Guarantor to perform or observe any material term, covenant, condition or agreement hereunder, other than as contained in subsections (a) through (k) above, or in any other Loan Document, within thirty (30) days after receipt of notice from Fannie Mae identifying such failure, provided such period shall be extended for up to thirty (30) additional days if Borrower, in the discretion of Fannie Mae, is diligently pursuing a cure of such default within thirty (30) days after receipt of notice from Fannie Mae and corrective action is instituted by Borrower within such period and pursued diligently and in good faith, then such failure shall not constitute an Event of Default unless such failure is not cured by Borrower within sixty (60) days after receipt of notice from Fannie Mae identifying such failure.

Notwithstanding the foregoing, collateral Pool 2 and Collateral Pool 6 are cross defaulted with each other. Accordingly, any Event of Default with respect to a Collateral Pool 2 shall result in an Event of Default with respect to Collateral Pool 6 (each, a "**Cross-Defaulted Collateral Pool**") and vice versa.

ARTICLE 10
REMEDIES

Section 10.01. Remedies; Waivers.

Upon the occurrence of an Event of Default, Fannie Mae may do any one or more of the following with respect to any Loan secured by a Collateral Pool to which the Event of Default (or the Borrower causing such Event of Default) relates or with respect to the applicable Cross-Defaulted Collateral Pool (without presentment, protest or notice of protest, all of which are expressly waived by each Borrower Party):

(a) by written notice to the defaulting Collateral Pool Borrower and/or the Borrower of the Cross-Defaulted Collateral Pool, to be effective upon dispatch and declare the principal of, and interest on, the Loans and all other sums owing by such Borrower or by the Borrower of the Cross-Defaulted Collateral Pool to Fannie Mae under any of the Loan Documents and the Guaranty for such Collateral Pool or Cross-Defaulted Collateral Pool immediately due and payable, whereupon the principal of, and interest on, the Loans and all other sums owing by such Collateral Pool Borrower or Borrower of the Cross-Defaulted Collateral Pool to Fannie Mae under any of the Loan Documents and the Guaranty for such Collateral Pool or Cross-Defaulted Collateral Pool will become immediately due and payable.

(b) Fannie Mae shall have the right to pursue any other remedies available to it under any of the Loan Documents and the Guaranty for such Collateral Pool or for such Cross-Defaulted Collateral Pool.

(c) Fannie Mae shall have the right to pursue all remedies available to it at law or in equity, including obtaining specific performance and injunctive relief with respect to such Collateral Pool and/or the Cross-Defaulted Collateral Pool.

Section 10.02. Waivers; Rescission of Declaration.

Fannie Mae shall have the right, to be exercised in its complete discretion, to waive any breach hereunder (including the occurrence of an Event of Default), by a writing setting forth the terms, conditions, and extent of such waiver signed by Fannie Mae and delivered to the applicable Collateral Pool Borrower. Unless such writing expressly provides to the contrary, any waiver so granted shall extend only to the specific event or occurrence which gave rise to the waiver and not to any other similar event or occurrence which occurs subsequent to the date of such waiver.

Section 10.03. Fannie Mae's Right to Protect Collateral and Perform Covenants and Other Obligations.

If any Borrower or Guarantor fails to perform the covenants and agreements contained in this Agreement or any of the other Loan Documents and the Guaranty for the applicable Collateral Pool, after all applicable grace periods, if any, then Fannie Mae at Fannie Mae's option may make such appearances, disburse such sums and take such action as Fannie Mae deems necessary, in its sole discretion, to protect Fannie Mae's interest, including (i)

disbursement of reasonable attorneys' fees, (ii) entry upon the Mortgaged Property to make repairs and replacements, (iii) procurement of satisfactory insurance with respect to the Mortgaged Properties in such Collateral Pool as provided in this Agreement, and (iv) if the Security Instrument is on a leasehold, exercise of any option to renew or extend the ground lease on behalf of Borrower and the curing of any default of Borrower in the terms and conditions of the ground lease. Any amounts disbursed by Fannie Mae pursuant to this Section 10.03, with interest thereon, shall become additional Indebtedness of Collateral Pool Borrower secured by the applicable Collateral Pool Loan Documents. Unless the applicable Collateral Pool Borrower and Fannie Mae agree to other terms of payment, such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the weighted average, as determined by Fannie Mae, of the interest rates in effect from time to time for each Loan unless collection from such Borrower of interest at such rate would be contrary to Applicable Law, in which event such amounts shall bear interest at the highest rate which may be collected from such Borrower under Applicable Law. Nothing contained in this Section 10.03 shall require Fannie Mae to incur any expense or take any action hereunder.

Section 10.04. No Remedy Exclusive.

Unless otherwise expressly provided, no remedy herein conferred upon or reserved is intended to be exclusive of any other available remedy, but each remedy shall be cumulative and shall be in addition to other remedies given under the Loan Documents and the Guaranty or existing at law or in equity.

Section 10.05. No Waiver.

No delay or omission to exercise any right or power accruing under any Loan Document upon the happening of any Event of Default or Potential Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 10.06. No Notice.

To entitle Fannie Mae to exercise any remedy reserved to Fannie Mae in this Article 10, it shall not be necessary to give any notice, other than such notice as may be required under the applicable provisions of this Agreement or any of the other Loan Documents and the Guaranty.

Section 10.07. Cash Management.

In addition to the other remedies set forth herein and elsewhere in the Loan Documents and the Guaranty, upon an Event of Default, Fannie Mae shall be entitled to mandate the use of a lockbox bank account or other depositary account, to be maintained under the control and supervision of Fannie Mae, for all income of each Mortgaged Property, including rents, service charges, insurance payments and other items of revenue.

ARTICLE 11
IMPOSITION DEPOSITS

Section 11.01. Insurance and Water/Sewer Waived; Other Imposition Deposits Required.

Each Collateral Pool Borrower shall establish funds for taxes, insurance premiums and certain other charges for each Mortgaged Property in such Collateral Pool in accordance with Section 7(a) of the Security Instrument for each such Mortgaged Property. Notwithstanding the foregoing and the provisions of Subsection 7(a) of the Security Instrument for each such Mortgaged Property, and subject to the conditions of this Article 11, provided that no Event of Default has occurred and is continuing and Collateral Pool Borrower has timely delivered to Fannie Mae any insurance bills, premium notices and other invoices, bills and notices with respect to Impositions pursuant to the requirements of this Section 11.01, Fannie Mae shall not require Collateral Pool Borrower to deposit with Fannie Mae any sums for Imposition Deposits ONLY to the extent they relate to any water and sewer charges (collectively, "**Water Charges**"), the premiums for fire and other hazard insurance, rent loss insurance and such other insurance as Fannie Mae may require under Section 19 of the Security Instrument (collectively, "**Insurance Premiums**"), and Taxes. Such Collateral Pool Borrower must (i) pursuant to the terms of Section 19 of the Security Instrument, provide Fannie Mae with proof of payment (e.g., paid receipts or cancelled checks) of all Water Charges, Insurance Premiums, Taxes and all other Impositions, (ii) with respect to Impositions for insurance, pursuant to the terms of Section 19 of the Security Instrument, deliver to Fannie Mae the original (or a duplicate original) of a renewal policy in form satisfactory to Fannie Mae, and (iii) to the extent not covered in (i) or (ii) above, pay Impositions for which Fannie Mae is not collecting Imposition Deposits no later than the date sixty (60) days after the date such Impositions are due and, in any event, before the addition of any interest, fine, penalty or cost for nonpayment, and deliver to Fannie Mae evidence of such timely payment. In the event that (A) an Event of Default has occurred and is continuing or (B) such Collateral Pool Borrower does not timely pay any of the Impositions as described in Section 7(a) of the Security Instrument and this Section 11.01, or fails to provide Fannie Mae with proof of such payment as set forth in Section 7(a) of the Security Instrument and this Section 11.01, Fannie Mae may immediately thereafter require such Collateral Pool Borrower to deposit with Fannie Mae all of the Imposition Deposits as provided in this Article 11 and in Section 7(a) of the Security Instrument, without regard to the second sentence of this Section 11.01, which shall be applicable only so long as the current Borrower remains as the record title owner of the Mortgaged Property, and shall immediately terminate and have no further force or effect upon a sale or exchange of the Mortgaged Property by the applicable Borrower to a third-party purchaser in which the Indebtedness secured by the Security Instrument is assumed by such third-party purchaser.

Section 11.02. Imposition Deposits.

Notwithstanding the provision of Section 7(d) of the Security Instrument, but subject to Section 11.01, on or before the first day of each Loan Year after the Effective Date, and on or before the Closing Date of a Substitution Request or a Release Request, if Fannie Mae determines, based on the foregoing methodology, that a modified amount is required to be

deposited with Fannie Mae as Imposition Deposits, applicable Collateral Pool Borrower shall deposit any deficiency with Fannie Mae, or Fannie Mae shall release any overage to such Collateral Pool Borrower, provided that, in the case of the latter, no Event of Default or Potential Event of Default then exists hereunder. The applicable Collateral Pool

Borrower shall, subject to such Collateral Pool Borrower's right to contest under Section 15(d) of the Security Instruments, pay each Imposition relating to a Mortgaged Property before the last date upon which such payment may be made without any penalty or interest charge being added. Subject to such Collateral Pool Borrower's right to contest under Section 15(d) of the Security Instruments, such Collateral Pool Borrower shall deliver to Fannie Mae evidence that such Borrower has paid each Imposition within thirty (30) days after making such payment.

Section 11.03. Replacement Reserves.

Each Collateral Pool Borrower has executed a Replacement Reserve Agreement for each of the Mortgaged Properties in the respective Collateral Pool and shall (unless waived by Fannie Mae) make all deposits for replacement reserves in accordance with the terms of the Replacement Reserve Agreement.

Section 11.04. Completion/Repair Reserves.

Each Borrower that has executed a Completion/Repair and Security Agreement dated as of the Effective Date for Borrower's Mortgaged Property shall (unless waived by Fannie Mae) make all deposits for completion reserves in accordance with the terms of the Completion/Repair and Security Agreement.

ARTICLE 12
LIMITS ON PERSONAL LIABILITY

Section 12.01. Personal Liability to Borrower.

(a) Limits on Personal Liability. Except as otherwise provided in this Article 12, neither Borrower nor any partner, member, shareholder, employee, trustee, officer, director, agent or Affiliate of Borrower, or any partner, member, shareholder, employee, trustee, officer, director, agent, or Affiliate of any such Affiliate or heir, legal representative or successor or assign of the foregoing (the "**Exculpated Parties**") shall have any personal liability under this Agreement, the Note, the Security Instruments or any other Loan Document for the performance of any Obligations of Borrower under the Loan Documents, and Fannie Mae's only recourse for the payment and performance of the Obligations shall be Fannie Mae's exercise of its rights and remedies with respect to the Mortgaged Property and any other Collateral held by Fannie Mae as security for the Obligations. This limitation on the Exculpated Parties' liability shall not limit or impair Fannie Mae's enforcement of its rights against Guarantor under the Guaranty.

(b) Exceptions to Limits on Personal Liability. Each Collateral Pool Borrower shall be personally liable to Fannie Mae for the repayment of a portion of the Loans and other amounts due under the Loan Documents evidencing such Collateral Pool Borrower's Loan equal to any actual loss or actual damage suffered by Fannie Mae as a result of (i) failure of

such Borrower to pay to Fannie Mae, upon demand after an Event of Default, all Rents to which Fannie Mae is entitled under Section 3(a) of the Security Instrument encumbering the Mortgaged Property and the amount of all security deposits collected by such Borrower from tenants then in residence; (ii) failure of such Borrower to apply all insurance proceeds, condemnation proceeds or security deposits from tenants as required by the Security Instrument encumbering the Mortgaged Property; (iii) failure of such Borrower to comply with its obligations under the Loan Documents with respect to the delivery of books and records and financial statements; (iv) fraud or written material misrepresentation by such Borrower or any officer, director, partner or member of Borrower in connection with the application for or creation of the Obligations or any request for any action or consent by Fannie Mae; (v) failure to comply with any and all indemnification obligations contained in Section 18 (environmental) of any Security Instrument; (vi) distribution by the Borrower of any Rents in any Calendar Quarter to the extent that all amounts due and payable to third parties by such Borrower, including but not limited to all operating expenses, capital expenditures and amounts payable under the Loan Documents have not been paid in full (except that such Borrower will not be personally liable to the extent that such Borrower lacks the legal right to direct the disbursement of such sums because of a bankruptcy, receivership or similar judicial proceeding; (vii) the acquisition by any Borrower of any property or operation of any business not permitted by Section 33 (single purpose) of any Security Instrument securing such Borrower's Loan or Section 6.22 hereof; (vi) Borrower's failure to deliver to Fannie Mae the estoppel certificates and the subordination, non-disturbance and attornment agreements referred to in Section 6.21.

(c) Full Recourse. Each Collateral Pool Borrower shall be personally liable to Fannie Mae for the payment and performance of all Obligations upon the occurrence of any of the following Events of Default: (i) if a Transfer shall occur in violation of Sections 6.12, 6.13 or 6.14 of this Agreement or if any Mortgaged Property or any part thereof is otherwise conveyed, assigned, mortgaged, pledged, leased or encumbered in any way other than as permitted under this Agreement or any Security Instrument without the prior written consent of Fannie Mae; or (ii) a Bankruptcy Event. As used in this subparagraph, the term "**Bankruptcy Event**" means any one or more of the following events which occurs during the Term of the Agreement:

(i) the commencement, filing or continuation of a voluntary case or proceeding under one or more of the Insolvency Laws by any Borrower Entity seeking to take advantage of any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, debt adjustment, winding up or composition or adjustment of debts.

(ii) the acknowledgment in writing by any Borrower Entity (other than to Fannie Mae in connection with a workout) that it is unable to pay its debts generally as they mature.

(iii) the making of a general assignment for the benefit of creditors by any Borrower Entity.

(iv) the commencement, filing or continuation of an involuntary case or proceeding under one or more Insolvency Laws against any Borrower Entity.

(v) the appointment of a receiver (other than a receiver appointed at the direction or request of Fannie Mae under the terms of the Loan Documents and the Guaranty), liquidator, custodian, sequestrator, trustee or other similar officer who exercises control over Borrower or any substantial part of the assets of any Borrower Entity; or

(vi) any action by a Borrower Entity for the purpose of effecting any of the foregoing; provided, however, that any proceeding or case under (iv) or (v) above shall not be a Bankruptcy Event so long as such proceeding or case occurred without the consent, encouragement, active participation or the failure to object in a timely and appropriate manner by any Borrower Entity (in which event such case or proceeding shall be a Bankruptcy Event).

(d) Permitted Transfer Not Release. No Transfer by any party of its Ownership Interests in the Borrower shall release the party from liability under this Article 12, this Agreement or any other Loan Document, unless Fannie Mae shall have approved the Transfer in accordance with this Agreement, or such Transfer is otherwise permitted in this Agreement, and shall have expressly released the party in connection with the Transfer.

(e) Miscellaneous. To the extent that any Borrower has personal liability under this Section 1.01, or Guarantor has liability under the Guaranty, such liability shall be joint and several and Fannie Mae may exercise its rights against such Borrower or Guarantor personally without regard to whether Fannie Mae has exercised any rights against any Mortgaged Property securing the Loan to such Borrower or any other security, or pursued any rights against any guarantor, or pursued any other rights available to Fannie Mae under the Loan Documents and the Guaranty or Applicable Law. For purposes of this Article 12, the term "**Mortgaged Property**" shall not include any funds that (i) have been applied by Borrower as required or permitted by the Loan Documents prior to the occurrence of an Event of Default, or (ii) are owned by Borrower or Guarantor and which Borrower was unable to apply as required or permitted by the Loan Documents and the Guaranty because of a bankruptcy, receivership, or similar judicial proceeding.

Section 12.02. Additional Borrowers.

If the owner of a Substitute Mortgaged Property is an Additional Borrower, the owner of such Substitute Mortgaged Property must demonstrate to the satisfaction of Fannie Mae that:

(i) the Additional Borrower is a Single-Purpose entity; and

(ii) the Additional Borrower shall be Controlled by Guarantor and shall be at least 51% owned, directly or indirectly, by Guarantor.

In addition, on the Closing Date of the addition of a Substitute Mortgaged Property, the owner of such Substitute Mortgaged Property, if such owner is an Additional Borrower, shall become a party to a contribution agreement in a manner satisfactory to Fannie Mae, shall deliver a Certificate of Borrower, and shall execute and deliver, along with the other applicable Collateral Pool Borrowers, any other Loan Documents required by Fannie Mae. Any Additional Borrower of a Substitute Mortgaged Property which becomes added to a Collateral Pool shall be

a Borrower for purposes of this Agreement and shall execute and deliver to Fannie Mae an amendment adding such Additional Borrower as a party to this Agreement and revising the Exhibits hereto, as applicable, to reflect the Substitute Mortgaged Property, identify the applicable Collateral Pool, and add the Additional Borrower, in each case satisfactory to Fannie Mae.

Upon the release of a Mortgaged Property, the Borrower which owns such Release Mortgaged Property shall automatically without further action be released from its obligations under this Agreement and the other Loan Documents, except for any liabilities or obligations of such Borrower which arose prior to the Closing Date of such release, and except as specifically set forth in Section 18 of the Security Instrument.

Section 12.03. Borrower Agency Provisions.

(a) Each Borrower and Additional Borrower hereby irrevocably designates AvalonBay as the borrower agent (the "**Borrower Agent**") to be its agent and in such capacity to receive on behalf of Borrower all proceeds, receive all notices on behalf of Borrower under this Agreement, make all Requests under this Agreement, and execute, deliver and receive all instruments, certificates, Requests, documents, amendments, writings and further assurances now or hereafter required hereunder, on behalf of such Borrower, and hereby authorizes Fannie Mae to pay over all loan proceeds hereunder in accordance with the direction of Borrower Agent. Each Borrower hereby acknowledges that all notices required to be delivered by Fannie Mae to any Borrower shall be delivered to Borrower Agent and thereby shall be deemed to have been received by such Borrower.

(b) The handling of this credit facility as a co-borrowing facility with a Borrower Agent in the manner set forth in this Agreement is solely as an accommodation to Borrower and is at their request. Fannie Mae shall not incur liability to Borrower as a result thereof. To induce Fannie Mae to do so and in consideration thereof, each Borrower hereby indemnifies Fannie Mae and holds Fannie Mae harmless from and against any and all liabilities, expenses, losses, damages and claims of damage or injury asserted against Fannie Mae by any Person arising from or incurred by reason of Borrower Agent handling of the financing arrangements of Borrower as provided herein, reliance by Fannie Mae on any request or instruction from Borrower Agent or any other action taken by Fannie Mae with respect to this Section 12.03 except due to willful misconduct or gross negligence of the indemnified party.

Section 12.04. Waivers With Respect to Other Borrower Secured Obligation.

To the extent that a Security Instrument or any other Loan Document executed by one (1) Collateral Pool Borrower secures an Obligation of another Collateral Pool Borrower (the "**Other Borrower Secured Obligation**"), and/or to the extent that a Collateral Pool Borrower has guaranteed the debt of another Borrower subject to such Collateral Pool pursuant to Article 12, the Borrower who executed such Loan Document and/or guaranteed such debt (the "**Waiving Borrower**") hereby agrees to the provisions of this Section 12.04. To the extent that any Mortgaged Properties are located in California, the references to the California Code below shall apply to this Agreement and any California Security Instrument securing a California Mortgaged

Property, otherwise the California Code shall have no effect on this Agreement or any other Loan Document.

(a) The Waiving Borrower hereby waives any right it may now or hereafter have to require the beneficiary, assignee or other secured party under such Loan Document, as a condition to the exercise of any remedy or other right against it thereunder or under any other Loan Document executed by the Waiving Borrower in connection with the Other Borrower Secured Obligation: (i) to proceed against the other Borrower or any other person, or against any other collateral assigned to Fannie Mae by either Borrower or any other person; (ii) to pursue any other right or remedy in Fannie Mae's power; (iii) to give notice of the time, place or terms of any public or private sale of real or personal property collateral assigned to Fannie Mae by the other Borrower or any other person (other than the Waiving Borrower), or otherwise to comply with Section 9615 of the California Commercial Code (as modified or recodified from time to time) with respect to any such personal property collateral located in the State of California; or (iv) to make or give (except as otherwise expressly provided in the Security Documents) any presentment, demand, protest, notice of dishonor, notice of protest or other demand or notice of any kind in connection with the Other Borrower Secured Obligation or any collateral (other than the Collateral described in such Security Document) for the Other Borrower Secured Obligation.

(b) The Waiving Borrower hereby waives any defense it may now or hereafter have that relates to: (i) any disability or other defense of the other Borrower or any other person; (ii) the cessation, from any cause other than full performance, of the Other Borrower Secured Obligation; (iii) the application of the proceeds of the Other Borrower Secured Obligation, by the other Borrower or any other person, for purposes other than the purposes represented to the Waiving Borrower by the other Borrower or otherwise intended or understood by the Waiving Borrower or the other Borrower; (iv) any act or omission by Fannie Mae which directly or indirectly results in or contributes to the release of the other Borrower or any other person or any collateral for any Other Borrower Secured Obligation; (v) the unenforceability or invalidity of any Security Document or other Borrower Loan Document (other than the Security Instrument or Reimbursement Mortgage executed by the Waiving Borrower that secures the Other Borrower Secured Obligation) or guaranty with respect to any Other Borrower Secured Obligation, or the lack of perfection or continuing perfection or lack of priority of any Lien (other than the Lien of such Security Instrument) which secures any Other Borrower Secured Obligation; (vi) any failure of Fannie Mae to marshal assets in favor of the Waiving Borrower or any other person; (vii) any modification of any Other Borrower Secured Obligation, including any renewal, extension, acceleration or increase in interest rate; (viii) any and all rights and defenses arising out of an election of remedies by Fannie Mae, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed the Waiving Borrower's rights of subrogation and reimbursement against the principal by the operation of Section 580d of the California Code of Civil Procedure or otherwise; (ix) any law which provides that the obligation of a surety or guarantor must neither be larger in amount nor in other respects more burdensome than that of the principal or which reduces a surety's or guarantor's obligation in proportion to the principal obligation; (x) any failure of Fannie Mae to file or enforce a claim in any bankruptcy or other proceeding with respect to any person; (xi) the election by Fannie Mae, in any bankruptcy proceeding of any person, of the application or non-application of Section 1111(b)(2) of the Bankruptcy Code; (xii) any extension of credit or the

grant of any lien under Section 364 of the Bankruptcy Code; (xiii) any use of cash collateral under Section 363 of the Bankruptcy Code; or (xiv) any agreement or stipulation with respect to the provision of adequate protection in any bankruptcy proceeding of any person. The Waiving Borrower further waives any and all rights and defenses that it may have because the Other Borrower Secured Obligation is secured by real property; this means, among other things, that: (A) Fannie Mae may collect from the Waiving Borrower without first foreclosing on any real or personal property collateral pledged by the other Borrower; (B) if Fannie Mae forecloses on any real property collateral pledged by the other Borrower, then (1) the amount of the Other Borrower Secured Obligation may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (2) Fannie Mae may foreclose on the real property encumbered by the Security Instrument executed by the Waiving Borrower and securing the Other Borrower Secured Obligation even if Fannie Mae, by foreclosing on the real property collateral of the Other Borrower, has destroyed any right the Waiving Borrower may have to collect from the Other Borrower. Subject to the last sentence of Section 12.03, the foregoing sentence is an unconditional and irrevocable waiver of any rights and defenses the Waiving Borrower may have because the Other Borrower Secured Obligation is secured by real property. These rights and defenses being waived by the Waiving Borrower include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d or 726 of the California Code of Civil Procedure. Without limiting the generality of the foregoing or any other provision hereof, the Waiving Borrower further expressly waives, except as provided in Section 12.04(g) below, to the extent permitted by law any and all rights and defenses, which might otherwise be available to it under California Civil Code Sections 2787 to 2855, inclusive, 2899 and 3433, or under California Code of Civil Procedure Sections 580a, 580b, 580d and 726, or any of such sections.

(c) The Waiving Borrower hereby waives any and all benefits and defenses under California Civil Code Section 2810 and agrees that by doing so the Security Instrument executed by the Waiving Borrower and securing the Other Borrower Secured Obligation shall be and remain in full force and effect even if the other Borrower had no liability at the time of incurring the Other Borrower Secured Obligation, or thereafter ceases to be liable. The Waiving Borrower hereby waives any and all benefits and defenses under California Civil Code Section 2809 and agrees that by doing so the Waiving Borrower's liability may be larger in amount and more burdensome than that of the other Borrower. The Waiving Borrower hereby waives the benefit of all principles or provisions of law, which are or might be in conflict with the terms of any of its waivers, and agrees that the Waiving Borrower's waivers shall not be affected by any circumstances, which might otherwise constitute a legal or equitable discharge of a surety or a guarantor. The Waiving Borrower hereby waives the benefits of any right of discharge and all other rights under any and all statutes or other laws relating to guarantors or sureties, to the fullest extent permitted by law, diligence in collecting the Other Borrower Secured Obligation, presentment, demand for payment, protest, all notices with respect to the Other Borrower Secured Obligation, which may be required by statute, rule of law or otherwise to preserve Fannie Mae's rights against the Waiving Borrower hereunder, including notice of acceptance, notice of any amendment of the Loan Documents evidencing the Other Borrower Secured Obligation, notice of the occurrence of any default or Event of Default, notice of intent to accelerate, notice of acceleration, notice of dishonor, notice of foreclosure, notice of protest, notice of the incurring by the other Borrower of any obligation or indebtedness and all rights to

require Fannie Mae to (i) proceed against the other Borrower, (ii) proceed against any general partner of the other Borrower, (iii) proceed against or exhaust any collateral held by Fannie Mae to secure the Other Borrower Secured Obligation, or (iv) if the other Borrower is a partnership, pursue any other remedy it may have against the other Borrower or any general partner of the other Borrower, including any and all benefits under California Civil Code Sections 2845, 2849 and 2850.

(d) The Waiving Borrower understands that the exercise by Fannie Mae of certain rights and remedies contained in a Security Instrument executed by the other Borrower (such as a nonjudicial foreclosure sale) may affect or eliminate the Waiving Borrower's right of subrogation against the other Borrower and that the Waiving Borrower may therefore incur a partially or totally nonreimburseable liability. Nevertheless, the Waiving Borrower hereby authorizes and empowers Fannie Mae to exercise, in its sole and absolute discretion, any right or remedy, or any combination thereof, which may then be available, since it is the intent and purpose of the Waiving Borrower that its waivers shall be absolute, independent and unconditional under any and all circumstances.

(e) In accordance with Section 2856 of the California Civil Code, the Waiving Borrower also waives any right or defense based upon an election of remedies by Fannie Mae, even though such election (e.g., nonjudicial foreclosure with respect to any collateral held by Fannie Mae to secure repayment of the Other Borrower Secured Obligation) destroys or otherwise impairs the subrogation rights of the Waiving Borrower to any right to proceed against the other Borrower for reimbursement, or both, by operation of Section 580d of the California Code of Civil Procedure or otherwise.

(f) In accordance with Section 2856 of the California Civil Code, the Waiving Borrower waives any and all other rights and defenses available to the Waiving Borrower by reason of Sections 2787 through 2855, inclusive, of the California Civil Code, including any and all rights or defenses the Waiving Borrower may have by reason of protection afforded to the other Borrower with respect to the Other Borrower Secured Obligation pursuant to the antideficiency or other laws of the State of California limiting or discharging the Other Borrower Secured Obligation, including Sections 580a, 580b, 580d, and 726 of the California Code of Civil Procedure.

(g) In accordance with Section 2856 of the California Civil Code and pursuant to any other Applicable Law, the Waiving Borrower agrees to withhold the exercise of any and all subrogation, contribution and reimbursement rights against Borrower, against any other person, and against any collateral or security for the Other Borrower Secured Obligation, including any such rights pursuant to Sections 2847 and 2848 of the California Civil Code, until the Other Borrower Secured Obligation has been indefeasibly paid and satisfied in full, all obligations owed to Fannie Mae under the Loan Documents have been fully performed, and Fannie Mae have released, transferred or disposed of all of their right, title and interest in such collateral or security.

(h) Each Borrower hereby irrevocably and unconditionally agrees that in the event that, notwithstanding Section 12.04(g) hereof, to the extent its agreement and waiver set

forth in Section 12.04(g) is found by a court of competent jurisdiction to be void or voidable for any reason and such Borrower has any subrogation or other rights against any other Borrower, any such claims, direct or indirect, that such Borrower may have by subrogation rights or other form of reimbursement, contribution or indemnity, against any other Borrower or to any security or any such Borrower, shall be and such rights, claims and indebtedness are hereby deferred, postponed and fully subordinated in time and right of payment to the prior payment, performance and satisfaction in full of the Obligations. Until payment and performance in full with interest (including post-petition interest in any case under any chapter of the Bankruptcy Code) of the Obligations, each Borrower agrees not to accept any payment, or satisfaction of any kind, of Indebtedness of any other Borrower in respect of any such subrogation rights arising by virtue of payments made pursuant to this Article 12, and hereby assigns such rights or indebtedness to Fannie Mae, including the right to file proofs of claim and to vote thereon in connection with any case under any chapter of the Bankruptcy Code, including the right to vote on any plan of reorganization. In the event that any payment on account of any such subrogation rights shall be received by any Borrower in violation of the foregoing, such payment shall be held in trust for the benefit of Fannie Mae, and any amount so collected should be turned over to Fannie Mae for application to the Obligations.

(i) At any time without notice to the Waiving Borrower, and without affecting or prejudicing the right of Fannie Mae to proceed against the Collateral described in any Loan Document executed by the Waiving Borrower and securing the Other Borrower Secured Obligation, (i) the time for payment of the principal of or interest on, or the performance of, the Other Borrower Secured Obligation may be extended or the Other Borrower Secured Obligation may be renewed in whole or in part; (ii) the time for the other Borrower's performance of or compliance with any covenant or agreement contained in the Loan Documents evidencing the Other Borrower Secured Obligation, whether presently existing or hereinafter entered into, may be extended or such performance or compliance may be waived; (iii) the maturity of the Other Borrower Secured Obligation may be accelerated as provided in the related Note or any other related Loan Document; (iv) the related Note or any other related Loan Document may be modified or amended by Fannie Mae and the other Borrower in any respect, including an increase in the principal amount; and (v) any security for the Other Borrower Secured Obligation may be modified, exchanged, surrendered or otherwise dealt with or additional security may be pledged or mortgaged for the Other Borrower Secured Obligation.

(j) It is agreed among each Borrower and Fannie Mae that all of the foregoing waivers are of the essence of the transaction contemplated by this Agreement and the Loan Documents and that but for the provisions of this Article 12 and such waivers Fannie Mae would decline to enter into this Agreement.

(k) Waiving Borrower represents and warrants having established with other Borrower adequate means of obtaining, on an ongoing basis, such information as waiving Borrower may require concerning all matters bearing on the risk of nonpayment or nonperformance of the Obligations. Waiving Borrower assumes sole, continuing responsibility for obtaining such information from sources other than from Fannie Mae. Fannie Mae has no duty to provide any information to Waiving Borrower.

Section 12.05. Joint and Several Obligation; Cross-Guaranty.

Notwithstanding anything contained in this Agreement or the other Loan Documents to the contrary (but subject to the last sentence of Section 12.02 and the provisions of Section 12.12), each Borrower shall have joint and several liability for all Obligations of the Loan secured by such Borrower's Collateral Pool. Notwithstanding the intent of all of the parties to this Agreement that all Obligations of each Borrower with respect to a Collateral Pool under this Agreement and the other Borrower Loan Documents shall be joint and several Obligations of each Borrower subject to such Collateral Pool, each Borrower, on a joint and several basis, hereby irrevocably guarantees to Fannie Mae and its successors and assigns, the full and prompt payment of the Loan secured by such Borrower's Collateral Pool (whether at stated maturity, by acceleration or otherwise) and performance of, all Obligations secured by such Borrower's Collateral Pool owed or hereafter owing to Fannie Mae by each other Borrower owning a Mortgaged Property subject to the same Collateral Pool. Each Borrower agrees that its guaranty obligation hereunder is an unconditional guaranty of payment and performance and not merely a guaranty of collection. The Obligations of each Borrower under this Agreement shall not be subject to any counterclaim, set-off, recoupment, deduction, cross-claim or defense based upon any claim any Borrower may have against Fannie Mae or any other Borrower.

Section 12.06. No Impairment.

Each Borrower agrees that the provisions of this Article 12 are for the benefit of Fannie Mae and their successors, transferees, endorsees and assigns, and nothing herein contained shall impair, as between any other Borrower and Fannie Mae, the obligations of such other Borrower under the Loan Documents.

Section 12.07. Election of Remedies.

(a) Fannie Mae, in its discretion, may (i) bring suit against any one or more Collateral Pool Borrower, jointly and severally, without any requirement that Fannie Mae first proceed against any other Borrower or any other Person; (ii) compromise or settle with any one or more Borrower, or any other Person, for such consideration as Fannie Mae may deem proper; (iii) release one or more Borrower, or any other Person, from liability; and (iv) otherwise deal with any Borrower and any other Person, or any one or more of them, in any manner, or resort to any of the Collateral at any time held by it for performance of the Obligations or any other source or means of obtaining payment of the Obligations, and no such action shall impair the rights of Fannie Mae to collect from any Borrower any amount guaranteed by any Borrower under this Article 12.

(b) If, in the exercise of any of its rights and remedies, Fannie Mae shall forfeit any of its rights or remedies, including its rights to enter a deficiency judgment against any Collateral Pool Borrower or any other Person, whether because of any Applicable Laws pertaining to "election of remedies" or the like, each Collateral Pool Borrower hereby consents to such action by Fannie Mae and waives any claim based upon such action, even if such action by Fannie Mae shall result in a full or partial loss or any rights of subrogation which each such Borrower might otherwise have had but for such action by Fannie Mae. Any election of

remedies which results in the denial or impairment of the right of Fannie Mae to seek a deficiency judgment against any Collateral Pool Borrower shall not impair any other such Collateral Pool Borrower's obligation to pay the full amount of the Obligations secured by the applicable Collateral Pool. In the event Fannie Mae shall bid at any foreclosure or trustee's sale or at any private sale permitted by law or any of the Loan Documents, Fannie Mae may bid all or less than the amount of the Obligations secured by the applicable Collateral Pool and the amount of such bid need not be paid by Fannie Mae but shall be credited against the Obligations secured by the applicable Collateral Pool. The amount of the successful bid at any such sale, whether Fannie Mae or any other party is the successful bidder, shall be conclusively deemed to be fair market value of the Collateral secured by the applicable Collateral Pool and the difference between such bid amount and the remaining balance of the Obligations secured by the applicable Collateral Pool shall be conclusively deemed to be amount of the Obligations secured by the applicable Collateral Pool guaranteed under this Article 12, notwithstanding that

any present or future law or court decision or ruling may have the effect of reducing the amount of any deficiency claim to which Fannie Mae might otherwise be entitled but for such bidding at any such sale.

Section 12.08. Subordination of Other Obligations.

(a) Each Borrower hereby irrevocably and unconditionally agrees that all amounts payable from time to time to such Borrower by any other Borrower pursuant to any agreement, whether secured or unsecured, whether of principal, interest or otherwise, other than the amounts referred to in this Article 12 (collectively, the "**Subordinated Obligations**"), shall be and such rights, claims and indebtedness are, hereby deferred, postponed and fully subordinated in time and right of payment to the prior payment, performance and satisfaction in full of the Obligations; provided, however, that payments may be received by any Borrower in accordance with, and only in accordance with, the provisions of Section 12.08(b) hereof.

(b) Until the Obligations under all the Loan Documents and the Guaranty have been finally paid in full or fully performed and all the Loan Documents and the Guaranty for such Collateral Pool have been terminated, each such Collateral Pool Borrower irrevocably and unconditionally agrees it will not ask, demand, sue for, take or receive, directly or indirectly, by set-off, redemption, purchase or in any other manner whatsoever, any payment with respect to, or any security or guaranty for, the whole or any part of the Subordinated Obligations, and in issuing documents, instruments or agreements of any kind evidencing the Subordinated Obligations, each such Collateral Pool Borrower hereby agrees that it will not receive any payment of any kind on account of the Subordinated Obligations, so long as any of the Obligations under all the Loan Documents and the Guaranty are outstanding or any of the terms and conditions of any of the Loan Documents and the Guaranty are in effect; provided, however, that, notwithstanding anything to the contrary contained herein, if no Potential Event of Default or Event of Default or any other event or condition which would constitute an Event of Default after notice or lapse of time or both has occurred and is continuing under any of the Loan Documents and the Guaranty pertaining to such Collateral Pool, then (i) payments may be received by such Borrower in respect of the Subordinated Obligations in accordance with the stated terms thereof, and (ii) each such Borrower and Guarantor shall be permitted to make distributions in accordance with the terms of the applicable Organizational Documents. Except

as aforesaid, each Borrower agrees not to accept any payment or satisfaction of any kind of indebtedness of any other Borrower in respect of the Subordinated Obligations and hereby assigns such rights or indebtedness to Fannie Mae, which assignment shall be of no further force and effect upon full satisfaction of the Obligations, including the right to file proofs of claim and to vote thereon in connection with any case under any chapter of the Bankruptcy Code, including the right to vote on any plan of reorganization. In the event that any payment on account of Subordinated Obligations shall be received by any Borrower in violation of the foregoing, such payment shall be held in trust for the benefit of Fannie Mae, and any amount so collected shall be turned over to Fannie Mae upon demand.

Section 12.09. Insolvency and Liability of Other Borrower.

So long as any of the Obligations are outstanding with respect to the applicable Collateral Pool, if a petition under any chapter of the Bankruptcy Code is filed by or against any Collateral Pool Borrower (the "**Subject Borrower**" for the purposes of Section 12.09, Section 12.10, Section 12.11 and Section 12.12 of this Agreement), each other Collateral Pool Borrower subject to such Collateral Pool (each, an "**Other Borrower**" for the purposes of Section 12.09, Section 12.10, Section 12.11 and Section 12.12 of this Agreement) agrees to file all claims against the Subject Borrower in any bankruptcy or other proceeding in which the filing of claims is required by law in connection with indebtedness owed by the Subject Borrower and to assign to Fannie Mae all rights thereunder up to the amount of such indebtedness, which assignment shall be of no further force and effect upon full satisfaction of the Obligations. In all such cases, the Person or Persons authorized to pay such claims shall pay to Fannie Mae the full amount thereof and Fannie Mae agrees to pay such Other Borrower any amounts received in excess of the amount necessary to pay the Obligations of the Loan secured by such Borrower's Mortgaged Property. Each Other Borrower hereby assigns to Fannie Mae all of such Borrower's rights to all such payments to which such Other Borrower would otherwise be entitled but not to exceed the full amount of the Obligations. In the event that, notwithstanding the foregoing, any such payment shall be received by any Other Borrower before the Obligations shall have been finally paid in full, such payment shall be held in trust for the benefit of and shall be paid over to Fannie Mae upon demand. Furthermore, notwithstanding the foregoing, the liability of each Borrower hereunder shall in no way be affected by:

(a) the release or discharge of any Other Borrower in any creditors', receivership, bankruptcy or other proceedings; or

(b) the impairment, limitation or modification of the liability of any Other Borrower or the estate of any Other Borrower in bankruptcy resulting from the operation of any present or future provisions of any chapter of the Bankruptcy Code or other statute or from the decision in any court.

Section 12.10. Preferences, Fraudulent Conveyances, Etc.

If Fannie Mae is required to refund (and actually refunds), or voluntarily refunds, any payment received from any Borrower because such payment is or may be avoided, invalidated, declared fraudulent, set aside or determined to be void or voidable as a preference, fraudulent

conveyance, impermissible setoff or a diversion of trust funds under the bankruptcy laws or for any similar reason, including without limitation any judgment, order or decree of any court or administrative body having jurisdiction over any Borrower or any of its property, or upon or as a result of the appointment of a receiver, intervenor, custodian or conservator of, or trustee or similar officer for, any Borrower or any substantial part of its property, or otherwise, or any statement or compromise of any claim effected by Fannie Mae with any Borrower or any other claimant (a "**Rescinded Payment**"), then each Other Borrower's liability to Fannie Mae shall continue in full force and effect, or each Other Borrower's liability to Fannie Mae shall be reinstated and renewed, as the case may be, with the same effect and to the same extent as if the Rescinded Payment had not been received by Fannie Mae, notwithstanding the cancellation or termination of any of the Loan Documents, and regardless of whether Fannie Mae contested the order requiring the return of such payment. In addition, each Other Borrower shall pay, or reimburse Fannie Mae for, all expenses (including all reasonable attorneys' fees, court costs and related disbursements) incurred by Fannie Mae in the defense of any claim that a payment received by Fannie Mae in respect of all or any part of the Obligations must be refunded. The provisions of this Section 12.10 shall survive the termination of the Borrower Loan Documents and any satisfaction and discharge of any Borrower by virtue of any payment, court order or any federal or state law.

Section 12.11. Maximum Liability of Each Borrower.

Notwithstanding anything contained in this Agreement or any of the Loan Documents to the contrary, if the obligations of any Borrower under this Agreement or any of the other Loan Documents or any Security Instruments granted by any Borrower are determined to exceed the reasonably equivalent value received by such Borrower in exchange for such obligations or grant of such Security Instruments under any Fraudulent Transfer Law (as hereinafter defined), then such liability of such Borrower shall be limited to a maximum aggregate amount equal to the largest amount that would not render its obligations under this Agreement or all the Other Loan Documents subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any applicable provisions of comparable state law (collectively, the "**Fraudulent Transfer Laws**"), in each case after giving effect to all other liabilities of such Borrower, contingent or otherwise, that are relevant under the Fraudulent Transfer

Laws (specifically excluding, however, any liabilities of such Borrower in respect of Indebtedness to any Other Borrower or any other Person that is an Affiliate of the Other Borrower to the extent that such Indebtedness would be discharged in an amount equal to the amount paid by such Borrower in respect of the Obligations) and after giving effect (as assets) to the value (as determined under the applicable provisions of the Fraudulent Transfer Laws) of any rights to subrogation, reimbursement, indemnification or contribution of such Borrower pursuant to Applicable Law or pursuant to the terms of any agreement including the Contribution Agreement.

Section 12.12. Liability Cumulative.

The liability of each Borrower under this Article 12 is in addition to and shall be cumulative with all liabilities of such Borrower to Fannie Mae under this Agreement and all the

other Loan Documents to which such Borrower is a party or in respect of any Obligations of any Other Borrower.

ARTICLE 13
MISCELLANEOUS PROVISIONS

Section 13.01. Counterparts.

To facilitate execution, this Agreement may be executed in any number of counterparts. It shall not be necessary that the signatures of, or on behalf of, each party, or that the signatures of all persons required to bind any party, appear on each counterpart, but it shall be sufficient that the signature of, or on behalf of, each party, appear on one (1) or more counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than the number of counterparts containing the respective signatures of, or on behalf of, all of the parties hereto.

Section 13.02. Amendments, Changes and Modifications.

This Agreement may be amended, changed, modified, altered or terminated only by written instrument or written instruments signed by all of the parties hereto.

Section 13.03. Payment of Costs, Fees and Expenses.

The applicable Collateral Pool Borrower shall pay, on demand, all reasonable third-party out-of-pocket fees, costs, charges or expenses (including the reasonable fees and expenses of attorneys, accountants and other experts) incurred by Fannie Mae in connection with:

(a) Any amendment, consent, review or waiver to or requested under this Agreement or any of the Loan Documents and the Guaranty (whether or not any such amendments, consents or waivers are entered into) for such Collateral Pool.

(b) Defending or participating in any litigation arising from actions by third parties and brought against or involving Fannie Mae with respect to (i) any Mortgaged Property in such Collateral Pool, (ii) any event, act, condition or circumstance in connection with any Mortgaged Property in such Collateral Pool, or (iii) the relationship between Fannie Mae and such Borrower and Guarantor in connection with this Agreement or any of the transactions contemplated by this Agreement.

(c) The administration or enforcement of, or preservation of rights or remedies under, this Agreement or any other Loan Documents and the Guaranty or in connection with the foreclosure upon, sale of or other disposition of any Collateral granted pursuant to the Loan Documents and the Guaranty.

The applicable Collateral Pool Borrower shall also pay, on demand, any transfer taxes, documentary taxes, assessments or charges made by any Governmental Authority by reason of the execution, delivery, filing, recordation, performance or enforcement of any of the Loan Documents and the Guaranty or the Loans. However, such Borrower will not be obligated to pay

any franchise, excise, estate, inheritance, income, excess profits or similar tax on Fannie Mae. Any attorneys' fees and expenses payable by such Borrower pursuant to this Section 13.03 shall be recoverable separately from and in addition to any other amount included in such judgment, and such obligation is intended to be severable from the other provisions of this Agreement and to survive and not be merged into any such judgment. Any amounts payable by Borrower pursuant to this Section 13.03, with interest thereon if not paid when due, shall become additional Indebtedness of such Borrower secured by the Loan Documents evidencing the Loan secured by Borrower's Mortgaged Property. Such amounts shall bear interest from the date such amounts are due until paid in full at the weighted average, as determined by Fannie Mae, of the interest rates in effect from time to time for each Loan unless collection from such Borrower of interest at such rate would be contrary to Applicable Law, in which event such amounts shall bear interest at the highest rate which may be collected from such Borrower under Applicable Law. The provisions of this Section 13.03 are cumulative with, and do not exclude the application and benefit to Fannie Mae of, any provision of any other Loan Document relating to any of the matters covered by this Section 13.03.

Section 13.04. Payment Procedure.

All payments to be made to Fannie Mae pursuant to this Agreement or any of the Loan Documents and the Guaranty shall be made in lawful currency of the United States of America and in immediately available funds by wire transfer to an account designated by Fannie Mae before 1:00 p.m. (Eastern Standard Time or Eastern Daylight Time, as applicable) on the date when due.

Section 13.05. Payments on Business Days.

In any case in which the date of payment to Fannie Mae or the expiration of any time period hereunder occurs on a day which is not a Business Day, then, unless expressly otherwise provided, such payment or expiration of such time period need not occur on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the day of maturity or expiration of such period, except that interest shall continue to accrue for the period after such date to the next Business Day.

Section 13.06. Choice of Law; Consent to Jurisdiction; Waiver of Jury Trial.

NOTWITHSTANDING ANYTHING IN THE NOTES, THE SECURITY DOCUMENTS OR ANY OF THE OTHER LOAN DOCUMENTS AND THE GUARANTY TO THE CONTRARY, EACH OF THE TERMS AND PROVISIONS, AND RIGHTS AND OBLIGATIONS OF BORROWER UNDER THIS AGREEMENT

AND THE NOTES, GUARANTOR UNDER THE GUARANTY, AND BORROWER AND GUARANTOR UNDER THE OTHER LOAN DOCUMENTS AND THE GUARANTY, SHALL BE GOVERNED BY, INTERPRETED, CONSTRUED AND ENFORCED PURSUANT TO AND IN ACCORDANCE WITH THE LAWS OF THE DISTRICT OF COLUMBIA (EXCLUDING THE LAW APPLICABLE TO CONFLICTS OR CHOICE OF LAW) EXCEPT TO THE EXTENT OF PROCEDURAL AND SUBSTANTIVE MATTERS RELATING ONLY TO (i) THE CREATION, PERFECTION AND FORECLOSURE OF LIENS AND SECURITY

INTERESTS, AND ENFORCEMENT OF THE RIGHTS AND REMEDIES, AGAINST THE MORTGAGED PROPERTIES, WHICH MATTERS SHALL BE GOVERNED BY THE LAWS OF THE JURISDICTION IN WHICH THE MORTGAGED PROPERTY IS LOCATED, (ii) THE PERFECTION, THE EFFECT OF PERFECTION AND NON-PERFECTION AND FORECLOSURE OF SECURITY INTERESTS ON PERSONAL PROPERTY (OTHER THAN DEPOSIT ACCOUNTS), WHICH MATTERS SHALL BE GOVERNED BY THE LAWS OF THE JURISDICTION DETERMINED BY THE CHOICE OF LAW PROVISIONS OF THE UNIFORM COMMERCIAL CODE IN EFFECT FOR THE JURISDICTION IN WHICH THE MORTGAGED PROPERTY IS LOCATED AND (iii) THE PERFECTION, THE EFFECT OF PERFECTION AND NON-PERFECTION AND FORECLOSURE OF DEPOSIT ACCOUNTS, WHICH MATTERS SHALL BE GOVERNED BY THE LAWS OF THE JURISDICTION IN WHICH THE DEPOSIT ACCOUNT IS LOCATED. BORROWER AND GUARANTOR AGREE THAT ANY CONTROVERSY ARISING UNDER OR IN RELATION TO THE NOTES, THE SECURITY DOCUMENTS (OTHER THAN THE SECURITY INSTRUMENTS) OR ANY OTHER LOAN DOCUMENT SHALL BE, EXCEPT AS OTHERWISE PROVIDED HEREIN, LITIGATED IN DISTRICT OF COLUMBIA. THE LOCAL AND FEDERAL COURTS AND AUTHORITIES WITH JURISDICTION IN DISTRICT OF COLUMBIA SHALL, EXCEPT AS OTHERWISE PROVIDED HEREIN, HAVE JURISDICTION OVER ALL CONTROVERSIES WHICH MAY ARISE UNDER OR IN RELATION TO THE LOAN DOCUMENTS AND THE GUARANTY, INCLUDING THOSE CONTROVERSIES RELATING TO THE EXECUTION, JURISDICTION, BREACH, ENFORCEMENT OR COMPLIANCE WITH THE NOTES, THE SECURITY DOCUMENTS (OTHER THAN THE SECURITY INSTRUMENTS) OR ANY OTHER ISSUE ARISING UNDER, RELATING TO, OR IN CONNECTION WITH ANY OF THE LOAN DOCUMENTS AND THE GUARANTY. BORROWER AND GUARANTOR IRREVOCABLY CONSENT TO SERVICE, JURISDICTION, AND VENUE OF SUCH COURTS FOR ANY LITIGATION ARISING FROM THE NOTES, THE SECURITY DOCUMENTS OR ANY OF THE OTHER LOAN DOCUMENTS AND THE GUARANTY, AND WAIVES ANY OTHER VENUE TO WHICH IT MIGHT BE ENTITLED BY VIRTUE OF DOMICILE, HABITUAL RESIDENCE OR OTHERWISE. NOTHING CONTAINED HEREIN, HOWEVER, SHALL PREVENT LENDER FROM BRINGING ANY SUIT, ACTION OR PROCEEDING OR EXERCISING ANY RIGHTS AGAINST BORROWER AND GUARANTOR AND AGAINST THE COLLATERAL IN ANY OTHER JURISDICTION IN WHICH ANY MORTGAGED PROPERTY IS LOCATED. INITIATING SUCH SUIT, ACTION OR PROCEEDING OR TAKING SUCH ACTION IN ANY OTHER PERMITTED JURISDICTION SHALL IN NO EVENT CONSTITUTE A WAIVER OF THE AGREEMENT CONTAINED HEREIN THAT THE LAWS OF DISTRICT OF COLUMBIA SHALL GOVERN THE RIGHTS AND OBLIGATIONS OF BORROWER AND GUARANTOR AND LENDER AS PROVIDED HEREIN OR THE SUBMISSION HEREIN BY BORROWER AND GUARANTOR TO PERSONAL JURISDICTION WITHIN THE DISTRICT OF COLUMBIA. BORROWER, GUARANTOR AND LENDER (A) COVENANT AND AGREE NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING UNDER ANY OF THE LOAN DOCUMENTS AND THE GUARANTY TRIABLE BY A JURY AND (B) WAIVE ANY RIGHT TO TRIAL BY JURY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST. THIS WAIVER IS INTENDED TO ENCOMPASS

INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A JURY TRIAL WOULD OTHERWISE ACCRUE. FURTHER, BORROWER AND GUARANTOR HEREBY CERTIFY THAT NO REPRESENTATIVE OR AGENT OF LENDER (INCLUDING, BUT NOT LIMITED TO, LENDER'S COUNSEL) HAS REPRESENTED, EXPRESSLY OR OTHERWISE, TO BORROWER OR GUARANTOR THAT LENDER WILL NOT SEEK TO ENFORCE THE PROVISIONS OF THIS SECTION 13.06. THE FOREGOING PROVISIONS WERE KNOWINGLY, WILLINGLY AND VOLUNTARILY AGREED TO BY BORROWER AND GUARANTOR UPON CONSULTATION WITH INDEPENDENT LEGAL COUNSEL SELECTED BY BORROWER'S AND GUARANTOR'S FREE WILL.

Section 13.07. Severability.

In the event any provision of this Agreement or in any other Loan Document shall be held invalid, illegal or unenforceable in any jurisdiction, such provision will be severable from the remainder hereof as to such jurisdiction and the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired in any jurisdiction.

Section 13.08. Notices.

(a) Manner of Giving Notice. Each notice, direction, certificate or other communication hereunder (in this Section 13.08 referred to collectively as "**notices**" and singly as a "**notice**") which any party is required or permitted to give to the other party pursuant to this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if:

(i) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have been received at the time so delivered);

(ii) sent by Federal Express (or other similar reputable overnight courier) designating morning delivery (any notice so delivered shall be deemed to have been received on the Business Day it is delivered by the courier);

(iii) sent by telecopier or facsimile machine which automatically generates a transmission report that states the date and time of the transmission, the length of the document transmitted, and the telephone number of the recipient's telecopier or facsimile machine (to be confirmed with a copy thereof sent in accordance with paragraphs (i) or (ii) above within two (2) Business Days) (any notice so delivered shall be deemed to have been received (A) on the date of transmission, if so transmitted before 5:00 p.m. (local time of the recipient) on a Business Day, or (B) on the next Business Day, if so transmitted on or after 5:00 p.m. (local time of the recipient) on a Business Day or if transmitted on a day other than a Business Day);

addressed to the parties as follows:

As to each Borrower: AvalonBay Communities, Inc.
1499 Post Road
Fairfield, CT 06824
Attention: Joanne M. Lockridge
Telecopy: (203) 926-9733

with a copy to: AvalonBay Communities, Inc.
Ballston Tower
671 N. Glebe Road, Suite 800
Arlington, VA 22203.
Attention: General Counsel
Telecopy: (703) 329-4830

And with a copy to: Womble Carlyle Sandridge & Rice, LLP
1200 19th Street, NW, Suite 500
Washington, DC 20036
Attention: Pamela V. Rothenberg, Esq.
Telecopy: (202) 261-0022

As to Servicer: Wells Fargo Multifamily Capital, Inc.
375 Park Avenue
Mail Code NY 4060
New York, New York 10152
Attention: David S. Kaplan
Telecopy: (212) 214-8461

As to Fannie Mae: Fannie Mae
3900 Wisconsin Avenue, N.W.
Washington, D.C. 20016-2899
Attention: Vice President for Multifamily Asset Management
Telecopy No.: (301) 280 2064

with a copy to: Arent Fox LLP

1675 Broadway
New York, NY 10019
Attention: David L. Dubrow, Esq.
Telephone: (212) 484-3957
Facsimile.: (212) 484-3990

(b) Change of Notice Address. Any party may, by notice given pursuant to this Section 13.08, change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses, for its notices, but notice of a change of address shall only be effective upon receipt. Each party agrees that it shall not refuse or reject delivery of any notice given hereunder, that it shall acknowledge, in writing, receipt of the same upon request by the other party and that any notice rejected or refused by it shall be deemed for all purposes of this Agreement to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service, the courier service or facsimile.

Section 13.09. Further Assurances and Corrective Instruments.

(a) Further Assurances. To the extent permitted by law, the parties hereto agree that they shall, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as Fannie Mae, Borrower may reasonably request and as may be required in the opinion of Fannie Mae or its counsel to effectuate the intention of or facilitate the performance of this Agreement or any Loan Document.

(b) Further Documentation. Without limiting the generality of subsection (a), in the event any further documentation or information is required by Fannie Mae to correct patent mistakes in the Loan Documents and the Guaranty, materials relating to the Title Insurance Policies or the funding of the Loans, Borrower shall provide, or cause to be provided to Fannie Mae, at its cost and expense, such documentation or information. Borrower shall execute and deliver to Fannie Mae such documentation, including any amendments, corrections, deletions or additions to the Notes, the Security Instruments or the other Loan Documents and the Guaranty as is reasonably required by Fannie Mae.

Section 13.10. Term of this Agreement.

This Agreement shall continue in effect until the Facility Termination Date.

Section 13.11. Assignments; Third-Party Rights.

No Borrower shall assign this Agreement, or delegate any of its obligations hereunder, without the prior written consent of Fannie Mae. Fannie Mae may assign its rights and obligations under this Agreement separately or together, without Borrower's consent.

Section 13.12. Headings.

Article and Section headings used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

Section 13.13. General Interpretive Principles.

For purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, (i) the terms defined in Appendix I and elsewhere in this Agreement have the meanings assigned to them in this Agreement and include the plural as well as the singular, and the use of any gender herein shall be deemed to include the other genders; (ii) accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP; (iii) references herein to "Articles," "Sections," "subsections," "paragraphs" and other subdivisions without reference to a document are to designated Articles, Sections, subsections, paragraphs and other

subdivisions of this Agreement; (iv) a reference to a subsection without further reference to a Section is a reference to such subsection as contained in the same Section in which the reference appears, and this rule shall also apply to paragraphs and other subdivisions; (v) a reference to an Exhibit or a Schedule without a further reference to the

document to which the Exhibit or Schedule is attached is a reference to an Exhibit or Schedule to this Agreement; (vi) the words "herein," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular provision; and (vii) the word "including" means "including, but not limited to."

Section 13.14. Interpretation.

The parties hereto acknowledge that each party and their respective counsel have participated in the drafting and revision of this Agreement and the Loan Documents and the Guaranty. Accordingly, the parties agree that any rule of construction which disfavors the drafting party shall not apply in the interpretation of this Agreement and the Loan Documents and the Guaranty or any amendment or supplement or exhibit hereto or thereto.

Section 13.15. Standards for Decisions, Etc.

Unless otherwise provided herein, if Fannie Mae's approval is required for any matter hereunder, such approval may be granted or withheld in Fannie Mae's sole and absolute discretion. Unless otherwise provided herein, if Fannie Mae's designation, determination, selection, estimate, action or decision is required, permitted or contemplated hereunder, such designation, determination, selection, estimate, action or decision shall be made in Fannie Mae's sole and absolute discretion.

Section 13.16. Decisions in Writing.

Any approval, designation, determination, selection, action or decision of Fannie Mae or Borrower must be in writing to be effective.

Section 13.17. Supersedes Original Agreement.

This Agreement amends and restates the Original Agreement in its entirety as it relates to the Loans. The Other Loans are governed by a separate Master Credit Facility Agreement of even date herewith, which agreement amends and restates the Original Agreement in its entirety as it relates to the Other Loans. The Original Agreement is of no further force and effect.

Section 13.18. USA Patriot Act.

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

Section 13.19. All Asset Filings.

If Fannie Mae believes that an "all-asset" collateral description, as contemplated by Section 9-504(2) of the UCC, is appropriate as to any Collateral under any Loan Document, Fannie Mae is irrevocably authorized to use such a collateral description, whether in one or more

separate filings or as part of the collateral description in a filing that particularly describes the Collateral.

Section 13.20. Ratification; Conflict.

Except as expressly terminated or amended by the provisions of this Agreement or any other documents executed in connection with this Agreement, and except for the Original Agreement (which is amended and restated in its entirety by this Agreement as relates to the Loans), all of the Loan Documents (as defined in the Original Agreement) relating to the Loans or the Collateral Pools secured by the Loans remain in full force and effect. If any provision of this Agreement is in conflict with any provision of any other Loan Document, the provision contained in this Agreement shall control and such conflicting provision or provisions of such other Loan Document shall be deemed to be amended hereby to the extent necessary to make such other provision consistent with this Agreement in all respects; provided, however, that the following provisions of the Security Instrument shall control in the event any of them conflicts with a provision of this Agreement: Section 4(e), 4(f), 4(g), 13, 17(a), 19(g) and 20(c).

Section 13.21. Special Provisions Regarding Payment of Interest on Imposition Deposits.

Notwithstanding anything in the Loan Documents to the contrary, including but not limited to Section 7(b) of each Security Instrument, Fannie Mae shall be required to pay Borrower any interest, earnings or profits on the Imposition Deposits at a rate per annum equal to the prevailing Federal Funds Target Rate less one-quarter of one percent (0.25%) and not the Federal Funds Effective Rate, as otherwise set forth in the Security Instruments. "**Federal Funds Target Rate**" shall mean, for any day, the rate per annum announced by the Federal Reserve Board as the "Federal Funds Target Rate."

[Remainder of page intentionally left blank.]

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

BORROWER:

COLLATERAL POOL 2 BORROWER:

ASN LOS FELIZ LLC, a Delaware limited liability company

By: AVB Legacy DownREIT, LLC, a Delaware limited liability company, its sole member

By: AvalonBay Communities, Inc., a Maryland corporation, its manager

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

COURTHOUSE HILL LLC, a Delaware limited liability company

By: AVB Legacy DownREIT, LLC, a Delaware limited liability company, its sole member

By: AvalonBay Communities, Inc., a Maryland corporation, its manager

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

ASN SAN JOSE LLC, a Delaware limited liability company

By: AVB Legacy DownREIT, LLC, a Delaware limited liability company, its sole member

By: AvalonBay Communities, Inc., a Maryland corporation, its manager

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

ASN WOODLAND HILLS EAST LLC, a Delaware limited liability company

By: AVB Legacy DownREIT, LLC, a Delaware limited liability company, its sole member

By: AvalonBay Communities, Inc., a Maryland corporation, its manager

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

ASN MEADOWS AT RUSSETT I LLC, a Delaware limited liability company

By: AVB Legacy DownREIT, LLC, a Delaware limited liability company, its sole member

By: AvalonBay Communities, Inc., a Maryland corporation, its manager

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

ASN MEADOWS AT RUSSETT II LLC, a Delaware limited liability company

By: AVB Legacy DownREIT, LLC, a Delaware limited liability company, its sole member

By: AvalonBay Communities, Inc., a Maryland corporation, its manager

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

ARCHSTONE OLD TOWN PASADENA LLC, a Delaware limited liability company

By: AVB Legacy DownREIT, LLC, a Delaware limited liability company, its sole member

By: AvalonBay Communities, Inc., a Maryland corporation, its manager

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

ARCHSTONE THOUSAND OAKS LLC, a Delaware limited liability company

By: AVB Legacy DownREIT, LLC, a Delaware limited liability company, its sole member

By: AvalonBay Communities, Inc., a Maryland corporation, its manager

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

ASN LA JOLLA COLONY LLC, a Delaware limited liability company

By: AVB Legacy DownREIT, LLC, a Delaware limited liability company, its sole member

By: AvalonBay Communities, Inc., a Maryland corporation, its manager

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

ASN WALNUT RIDGE LLC, a Delaware limited liability company

By: AVB Legacy DownREIT, LLC, a Delaware limited liability company, its sole member

By: AvalonBay Communities, Inc., a Maryland corporation, its manager

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

ARCHSTONE DEL MAR STATION LLC, a Delaware limited liability company

By: AVB Legacy DownREIT, LLC, a Delaware limited liability company, its sole member

By: AvalonBay Communities, Inc., a Maryland corporation, its manager

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

ARCHSTONE OAK CREEK I LLC, a Delaware limited liability company

By: AVB Legacy DownREIT, LLC, a Delaware limited liability company, its sole member

By: AvalonBay Communities, Inc., a Maryland corporation, its manager

By: /s/ Joanne M. Lockridge

Name: Joanne M. Lockridge

Title: Senior Vice President,
Finance

ARCHSTONE OAK CREEK II LLC, a Delaware limited liability company

By: AVB Legacy DownREIT, LLC, a Delaware limited liability company, its sole member

By: AvalonBay Communities, Inc., a Maryland corporation, its manager

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

ASN PASADENA LLC, a Delaware limited liability company

By: AVB Legacy DownREIT, LLC, a Delaware limited liability company, its sole member

By: AvalonBay Communities, Inc., a Maryland corporation, its manager

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

COLLATERAL POOL 6 BORROWER:

AVB TUNLAW GARDENS, LLC, a Delaware limited liability company

By: AvalonBay Communities, Inc., a Maryland corporation, its sole member

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

AVB GLOVER PARK, LLC, a Delaware limited liability company

By: AvalonBay Communities, Inc., a Maryland corporation, its sole member

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

ASN MOUNTAIN VIEW LLC, a Delaware limited liability company

By: AvalonBay Communities, Inc., a Maryland corporation, its sole member

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

ASN LONG BEACH LLC, a Delaware limited liability company

By: AvalonBay Communities, Inc., a Maryland corporation, its sole member

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

ARCHSTONE OAKWOOD TOLUCA HILLS LLC, a Delaware limited liability company

By: AvalonBay Communities, Inc., a Maryland corporation, its sole member

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

ARCHSTONE OAKWOOD ARLINGTON LLC, a Delaware limited liability company

By: AvalonBay Communities, Inc., a Maryland corporation, its sole member

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

ARCHSTONE OAKWOOD PHILADELPHIA LLC, a Delaware limited liability company

By: AVB Pennsylvania Realty Trust, a Maryland business trust, its sole member

By: AvalonBay Communities, Inc., a Maryland corporation, its sole member

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

ASN THOUSAND OAKS PLAZA LLC, a Delaware limited liability company

By: AvalonBay Communities, Inc., a Maryland corporation, its sole member

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

ASN QUINCY LLC, a Delaware limited liability company

By: AvalonBay Communities, Inc., a Maryland corporation, its sole member

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

LENDER:

FANNIE MAE, the corporation duly organized under the Federal National Mortgage Association Charter Act, as amended, 12 U.S.C. §1716 et seq. and duly organized and existing under the laws of the United States

By: /s/ Manuel Menendez, Jr.
Name: Manuel Menendez, Jr.
Title: Senior Vice President

SCHEDULE I

BORROWERS

POOL 2

ASN La Jolla Colony LLC

ASN Los Feliz LLC

Archstone Old Town Pasadena LLC

Archstone Thousand Oaks LLC

ASN Walnut Ridge LLC

Archstone Del Mar Station LLC

Archstone Oak Creek I LLC

Archstone Oak Creek II LLC

Courthouse Hill LLC

ASN Pasadena LLC

ASN San Jose LLC

ASN Woodland Hills East LLC

ASN Meadows at Russett I LLC

ASN Meadows at Russett II LLC

POOL 6

ASN Thousand Oaks Plaza LLC

AVB Tunlaw Gardens, LLC

AVB Glover Park, LLC

ASN Mountain View LLC

Archstone Oakwood Arlington LLC

Archstone Oakwood Philadelphia LLC

Archstone Oakwood Toluca Hills LLC

ASN Long Beach LLC

ASN Quincy LLC

EXHIBIT A TO MASTER CREDIT FACILITY AGREEMENT (TERM LOAN)

SCHEDULE OF COLLATERAL POOL BORROWERS, INITIAL MORTGAGED PROPERTIES, COLLATERAL POOLS, INITIAL LOANS AND INITIAL VALUATIONS

Property Number	Borrower Name	Mortgaged Property	Property Address	Initial Valuation
COLLATERAL POOL 2: $692,191,792 Loan to such Collateral Pool (UPB as of Effective Date)				
	ASN Los Feliz LLC	Archstone Los Feliz	3100 Riverside Drive Los Angeles, CA	$ 65,514,822
	Courthouse Hill LLC	Arlington Courthouse Place	1320 N. Veitch Street Arlington, VA	$ 212,534,700
	ASN San Jose LLC	Oakwood San Jose South	700 S. Saratoga Avenue San Jose, CA	$ 125,835,960
	ASN Woodland Hills East LLC	Oakwood Woodland Hills	22122 Victory Boulevard Woodland Hills, CA	$ 158,560,044
	ASN Meadows at Russett I LLC and ASN Meadows at Russett II LLC	Archstone Russett	8185 Scenic Meadows Drive Laurel, MD	$ 60,538,327
	Archstone Old Town Pasadena LLC	Archstone Old Town Pasadena	350 Del Mar Boulevard Pasadena, CA	$ 23,731,267
	Archstone Thousand Oaks LLC	Archstone Thousand Oaks	351 Hodencamp Road Thousand Oaks, CA	$ 41,513,600
	ASN La Jolla Colony LLC	Archstone La Jolla Colony	7205 Charmant Drive San Diego, CA	$ 41,158,038
	ASN Walnut Ridge LLC	Archstone Walnut Ridge	2992 Santos Lane Walnut Creek, CA	$ 31,431,453
	Archstone Del Mar Station LLC	Del Mar Station	265 Arroyo Parkway, Pasadena, CA	$ 115,816,311
	Oak Creek	Archstone Oak Creek I LLC and Archstone Oak Creek II LLC	29128 Oak Creek Lane, Agoura Hills, CA	$ 129,169,644
	Pasadena	ASN Pasadena LLC	25 South Oak Knoll Avenue, Pasadena, CA	$ 42,526,622
COLLATERAL POOL 6: $497,923,403 Loan to such Collateral Pool (UPB as of Effective Date)				
	AVB Glover Park, LLC	Archstone Glover Park	3850 Tunlaw Road, NW Washington, DC	$ 35,096,781
	AVB Tunlaw Gardens, LLC	Tunlaw Gardens	3903 Davis Place, NW Washington, DC	$ 42,431,352
	ASN Mountain View LLC	Oakwood Mountain View	555 W. Middlefield Road Mountain View, CA	$ 106,465,360
	ASN Long Beach LLC	Oakwood Long Beach Marina	333 First Street Seal Beach, CA	$ 126,756,622

Archstone Oakwood Toluca Hills LLC	Oakwood Toluca Hills	3600-3720 Barham Blvd. Los Angeles, CA	$	246,539,844
Archstone Oakwood Arlington LLC	Oakwood Arlington	1550 Clarendon Boulevard Arlington, VA	$	62,818,840
Archstone Oakwood Philadelphia LLC	Oakwood Philadelphia	110-116 S. 16th Street Philadelphia, PA	$	15,338,661
Thousand Oaks Plaza	ASN Thousand Oaks Plaza LLC	235 N. Conejo School Road, Thousand Oaks, CA	$	42,281,422
ASN Quincy LLC	Quincy	95 W. Squantum Street, Quincy, MA	$	54,741,200

EXHIBIT B TO MASTER CREDIT FACILITY AGREEMENT (TERM LOAN)

[RESERVED]

EXHIBIT C TO MASTER CREDIT FACILITY AGREEMENT (TERM LOAN)

[RESERVED]

EXHIBIT D TO MASTER CREDIT FACILITY AGREEMENT (TERM LOAN)

[RESERVED]

EXHIBIT E TO MASTER CREDIT FACILITY AGREEMENT (TERM LOAN)

[JOINDER TO AND] CONFIRMATION OF GUARANTY
(Collateral Pool)

THIS [JOINDER TO AND] CONFIRMATION OF GUARANTY (the "**Confirmation**") is made as of the day of , 20 , by , a Delaware limited partnership ("**Guarantor**", **[and (vii) ("Additional Guarantor")]**, for the benefit of **FANNIE MAE**, the corporation duly organized under the Federal National Mortgage Association Charter Act, as amended, 12 U.S.C. §1716 et seq. and duly organized and existing under the laws of the United States ("**Fannie Mae**").

A. Guarantor entered into or joined into that certain Guaranty (Collateral Pool) dated as of February [ ], 2013, for the benefit of Fannie Mae (the "**Guaranty**") to guaranty the Guaranteed Obligations (as defined in the Guaranty) under that certain Master Credit Facility Agreement, dated as of February [ ], 2013 (the "**Master Agreement**") by and among the borrowers set forth therein (individually and collectively, the "**Borrower**"), Fannie Mae and other borrowers signatory thereto. All capitalized terms used but not defined in this Confirmation shall have the meanings ascribed to such terms in the Guaranty. All references to Loan Documents herein shall be with respect to Collateral Pool (the "**Collateral Pool**") as further defined in the Master Agreement.

B. **[**Borrower and Fannie Mae have modified the credit facility under the Master Agreement**] OR [Additional Borrower has joined into the Master Agreement as a Borrower under Collateral Pool]** and made certain other changes to the terms and conditions of the Master Agreement pursuant to that certain **[ ]** Amendment to Master Agreement dated as of even date herewith (the "**[ ] Amendment**").**] OR [**Additional Guarantor owns, directly or indirectly, an ownership interest in Borrower and has agreed to join into the Guaranty as a Guarantor thereunder.**]**

C. **[**As a condition to entering into the **[ ]** Amendment**] OR [**Pursuant to the terms of the Master Agreement, Additional Guarantor is required to join into the Guaranty and**]** Guarantor is required to confirm its obligations under the Guaranty.

NOW, THEREFORE, the parties hereto, in consideration of the mutual promises and agreements contained in this Confirmation and the Guaranty, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby agree as follows:

Section 1. Guarantor hereby **[**(i) acknowledges and consents to **[the addition of the Additional Borrower]|[the joinder of the Additional Guarantor in the Guaranty] under the Master Agreement]**, (ii) the other changes and the terms and conditions of the Master Agreement all as set forth in the **[ ]** Amendment, and (iii)**]** confirms to Fannie Mae that the terms and provisions (including the representations, warranties and covenants) of the Guaranty remain in full force and effect.

Section 2. **[FOR JOINDER OF ADDITIONAL GUARANTORS —** Additional Guarantor hereby joins into the Guaranty as if it were an original Guarantor thereunder and hereby agrees that all references in the Guaranty and the Loan Documents to any Guarantor shall include the Additional Guarantor, including but not limited to, the Master Agreement and the Guarantor. Further, any references in any Security Instrument to "Key Principal" shall be deemed to include Additional Guarantor.**]**

Section 3. **[FOR JOINDER OF ADDITIONAL GUARANTORS —** The provisions of Section 25 of the Guaranty (entitled "**Exculpation**") are hereby incorporated into this Confirmation by this reference to the fullest extent as if such text of such provisions was set forth in their entirety herein.**]**

Section 4. Guarantor hereby confirms and ratifies the Loan Documents it has previously executed in connection with the Master Agreement.

Section 5. This Confirmation may be executed in counterparts by the parties hereto, and each such counterpart shall be considered an original and all such counterparts shall constitute one and the same instrument.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, Guarantor **[and Additional Guarantor] [has/have]** signed and delivered this Confirmation of Guaranty under seal or has caused this Confirmation of Guaranty to be signed and delivered under seal by **[its/their]** duly authorized representative (which representative shall have no personal liability hereunder) as of the day and year first above written.

Dated as of , 20

GUARANTOR:

[INSERT GUARANTOR SIGNATURE BLOCKS]

[ADDITIONAL GUARANTOR:

INSERT ADDITIONAL GUARANTOR SIGNATURE BLOCK]

EXHIBIT F TO MASTER CREDIT FACILITY AGREEMENT (TERM LOAN)

COMPLIANCE CERTIFICATE
(Collateral Pool)

The undersigned ("**Borrower**") hereby certifies to **FANNIE MAE**, the corporation duly organized under the Federal National Mortgage Association Charter Act, as amended, 12 U.S.C. §1716 et seq. and duly organized and existing under the laws of the United States ("**Fannie Mae**"), as follows:

Section 1. **Master Agreement**. Borrower is a party to that certain Master Credit Facility Agreement (Term Loan), dated as of February [ ], 2013, by and among Borrower, Fannie Mae and other borrowers signatory thereto (as amended, restated, supplemented or modified from time to time, the "**Master Agreement**"). This Certificate is issued pursuant to the terms of the Master Agreement.

Section 2. **Borrower Agent**. Pursuant to the provisions of Section 12.03 of the Master Agreement, Borrower has irrevocably designated Equity Residential as Borrower Agent under the Loan Documents.

Section 3. **Satisfaction of Conditions**. Borrower hereby represents, warrants and covenants to Fannie Mae that all conditions to the Request with respect to which this Certificate is issued have been satisfied.

Section 4. **Capitalized Terms**. All capitalized terms used but not defined in this Certificate shall have the meanings ascribed to such terms in the Master Agreement.

Section 5. **Limits on Personal Liability.** The provisions of Article 12 of the Master Agreement (entitled "Limits on Personal Liability") are hereby incorporated into this Certificate by this reference to the fullest extent as if the text of such Article were set forth in its entirety herein.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, Borrower has signed this Certificate under seal or has caused this Certificate to be signed and delivered under seal by its duly authorized representative (which representative shall have no personal liability hereunder).

Dated: ,

BORROWER:

[ADD EACH BORROWER FOR SUCH COLLATERAL POOL]

EXHIBIT G-1 TO MASTER CREDIT FACILITY AGREEMENT (TERM LOAN)

ORGANIZATIONAL CERTIFICATE

(Collateral Pool)

(Borrower)

I, the undersigned, **[insert Secretary or Officer not signing the Loan Documents]** hereby certify as follows:

Section 1. **Position**. I am an Officer of , a (collectively, "**Borrower**"), and I am authorized to deliver this Certificate on behalf of Borrower.

Section 2. **Master Agreement**. Borrower entered into that certain Master Credit Facility Agreement (Term Loan), dated as of February [ ], 2013, by and among (x) Borrower and other borrowers signatory thereto, (y) **FANNIE MAE**, the corporation duly organized under the Federal National Mortgage Association Charter Act, as amended, 12 U.S.C. §1716 et seq. and duly organized and existing under the laws of the United States ("**Fannie Mae**"), and (z) other borrowers signatory thereto (as amended, restated or otherwise modified from time to time, the "**Master Agreement**"). This Certificate is issued pursuant to the terms of the Master Agreement and the signatory hereto shall have no personal liability in connection with the execution and delivery of this Certificate.

Section 3. **Due Authorization of Request**. I hereby certify that no action by the members of Borrower is necessary to duly authorize the execution and delivery of, and the consummation of the transaction contemplated by the Request with respect to which this Certificate is delivered, or, if necessary, that attached as Exhibit A to this Certificate is a true copy of resolutions duly adopted by the board of directors, partners or members, as the case may be, that authorize the action. Any such resolutions are in full force and effect and are unmodified as of the date of this Certificate.

Section 4. **No Changes**. Since the date of the most recent Organizational Certificate delivered to Fannie Mae, or, if there are none, since the date of the Master Agreement, there have been no changes in any of the Organizational Documents of Borrower, except as set forth in Exhibit B to this Certificate, and Borrower remains duly qualified in the jurisdictions in which it is required to be qualified under the terms of the Master Agreement.

Section 5. **Incumbency Certificate**. One or more of the persons authorized to execute and deliver any documents required to be delivered in connection with the Request are as follows:

Name Office

Section 6. **Capitalized Terms**. All capitalized terms used but not defined in this Certificate shall have the meanings ascribed to such terms in the Master Agreement.

Section 7. **Limits on Personal Liability.** The provisions of Article 12 of the Master Agreement (entitled "Limits on Personal Liability") are hereby incorporated into this Certificate by this reference to the fullest extent as if the text of such Article were set forth in its entirety herein.

[Remainder of page intentionally left blank.]

Dated: _____

By: _____

Name: _____

Title: **[Secretary/Officer]**

Exhibit A

Resolutions

Exhibit B

Changes to Organizational Documents

None.

EXHIBIT G-2 TO MASTER CREDIT FACILITY AGREEMENT (TERM LOAN)

ORGANIZATIONAL CERTIFICATE

(Collateral Pool)
(Guarantor)

I, the undersigned, **[insert Secretary or Officer not signing the Loan Documents]**, hereby certify as follows:

Section 1. **Position**. I am an Officer of AvalonBay Communities, Inc., a Maryland corporation ("**Guarantor**"), and I am authorized to deliver this Certificate on behalf of Guarantor.

Section 2. **Guaranty**. Pursuant to that certain Master Credit Facility Agreement (Term Loan) dated February [ ], 2013 (the "**Master Agreement**"), Guarantor entered into that certain Guaranty, dated as of February [ ], 2013, for the benefit of **FANNIE MAE**, the corporation duly organized under the Federal National Mortgage Association Charter Act, as amended, 12 U.S.C. §1716 et seq. and duly organized and existing under the laws of the United States ("**Fannie Mae**") (as amended, restated or otherwise modified from time to time, the "**Guaranty**"). This Certificate is issued pursuant to the terms of the Guaranty. The signatory hereto shall have no personal liability in connection with the execution and delivery of this Certificate.

Section 3. **Due Authorization of Request**. I hereby certify that no action by the officers, board of directors or shareholders, as the case may be, of Guarantor is necessary to duly authorize the execution and delivery of, and the consummation of the transaction contemplated by the Request with respect to which this Certificate is delivered, or, if necessary, that attached as Exhibit A to this Certificate is a true copy of resolutions duly adopted by the officers, board of directors or shareholders, as the case may be, that authorize the action. Any such resolutions are in full force and effect and are unmodified as of the date of this Certificate.

Section 4. **No Changes**. Since the date of the most recent Organizational Certificate delivered to Fannie Mae, or, if there are none, since the date of the Guaranty, there have been no changes in any of the Organizational Documents of Guarantor, except as set forth in Exhibit B to this Certificate, and Guarantor remains in existence and is duly qualified in the jurisdictions in which it is required to be qualified under the terms of the Guaranty.

Section 5. **Incumbency Certificate**. One or more of the persons authorized to execute and deliver any documents required to be delivered by Guarantor in connection with the Request are as follows:

Name Office

Section 6. **Capitalized Terms**. All capitalized terms used but not defined in this Certificate shall have the meanings ascribed to such terms in the Master Agreement.

Section 7. **Limits on Personal Liability.** The provisions of Article 12 of the Master Agreement (entitled "Limits on Personal Liability") are hereby incorporated into this Certificate by this reference to the fullest extent as if the text of such Article were set forth in its entirety herein.

[Remainder of page intentionally left blank.]

Dated: _____

By: _____
Name: _____
Title: **[Secretary/Officer]**

Exhibit A

Resolutions

Exhibit B

Changes to Organizational Documents

None.

EXHIBIT H TO MASTER CREDIT FACILITY AGREEMENT (TERM LOAN)

ANNUAL CERTIFICATION
(Borrower)

Credit Facility:
Property Names:

The undersigned (individually and collectively, "**Borrower**") certifies to FANNIE MAE the following:

1. Capitalized terms used and not specifically defined in this Annual Certification (the "**Certificate**") have the meanings given to such terms in the Master Credit Facility Agreement between Borrower, Fannie Mae and others, dated February 27, 2013 (as the same may be amended, restated or otherwise modified from time to time, the "**Master Agreement**").

2. All statements made in this Certificate and all statements and information set forth in the attachments to this Certificate are true, complete, and accurate to the best of the Borrower's knowledge.

3. Attached to this Certificate are the following with respect to calendar year :

(a) a statement of income and expenses for Borrower, dated , ; and

(b) a statement of cash flows of Borrower, dated , ;

(c) a Rent Roll, dated , ;

[DRAFTING NOTE: BORROWER TO PROVIDE THE ADDITIONAL ITEMS LISTED BELOW WHICH HAVE BEEN REQUESTED IN WRITING BY FANNIE MAE.]

(d) a balance sheet showing all assets and liabilities of Borrower (including a statement of all contingent liabilities) as of the end of such calendar year, dated , ;

(e) a property management or leasing report for the Mortgaged Property, showing for the period requested by Fannie Mae (i) the number of rental applications received from tenants or prospective tenants, (ii) the amount of all deposits received from tenants or prospective tenants for such period, and (iii) any other information requested by Fannie Mae, dated , ;

(f) a statement of income and expenses for Borrower's operation of the Mortgaged Property on a year-to-date basis as of the end of each month for such period as requested by Fannie Mae, which statement shall be delivered within thirty (30) days after the end of such month requested by Fannie Mae;

(g) a statement of real estate owned by Borrower for such period as requested by Fannie Mae, which statement shall be delivered within thirty (30) days after the end of such month requested by Fannie Mae; and

(h) such other statement as set forth below and for the period indicated:

(i) ;

(ii) ; and

(iii) .

4. Borrower certifies as of the date hereof:

	YES	**NO**	
(a)	o	o	Borrower has taken no action in violation of Section 6.22 of the Master Agreement;
(b)	o	o	Borrower has received no notice of any building code violation;

IF NO,

o Borrower has received notice of a building code violation which has not been remediated and plans for remediation are attached hereto as Schedule 1;

OR

o Borrower has received notice of a building code violation and such notice and evidence of remediation are attached hereto as Schedule 1;

	YES	**NO**	
(c)	o	o	Borrower has made no application for rezoning and has not received any notice that any Mortgaged Property has been or is being rezoned;
(d)	o	o	Borrower has taken no action and has no knowledge of any action that would violate the provisions of violate the provisions of Section 6.13 or Section 6.14 regarding liens encumbering the Mortgaged Property;
(e)	o	o	there has been no change since the later of the delivery of the last Certificate and the Effective Date that would materially adversely affect any Mortgaged Property or the validity, enforceability or the ability of Borrower to

perform its obligations under the Master Agreement or any other Loan Document.

[If "NO" is checked on any of the above questions, attach additional explanations as Schedule 1.]

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, Borrower has signed and delivered this Certificate or has caused this Certificate to be signed and delivered by its duly authorized representatives under seal (where applicable).

Date: _____

BORROWER:

[INSERT BORROWER SIGNATURE BLOCK(S)]

By: _____ (SEAL)
Name: _____
Title: _____

SCHEDULE 1

If applicable, complete an explanation of any relevant matters involving this Certification.

EXHIBIT I TO MASTER CREDIT FACILITY AGREEMENT (TERM LOAN)

ANNUAL CERTIFICATION
(Guarantor)

Credit Facility:
Property Names:

The undersigned, , a ("**Guarantor**") certifies to FANNIE MAE the following:

5. Capitalized terms used and not specifically defined in this Annual Certification (the "**Certificate**") have the meanings given to such terms in the Master Credit Facility Agreement between Borrower, Fannie Mae and others, dated February 27, 2013 (as the same may be amended, restated or otherwise modified from time to time, the "**Master Agreement**").

6. All statements made in this Certificate and all statements and information set forth in the attachments to this Certificate are true, complete, and accurate to the best of the undersigned's knowledge.

7. Attached to this Certificate are the following with respect to calendar year :

(a) Reserved;

(b) a statement of Income and Expenses for Guarantor, dated , ; and

(c) if Guarantor is an entity, Statement of Cash Flows of Guarantor, dated , ;

[DRAFTING NOTE: GUARANTOR TO PROVIDE THE ADDITIONAL ITEMS LISTED BELOW WHICH HAVE BEEN REQUESTED IN WRITING BY FANNIE MAE.]

(d) a balance sheet showing all assets and liabilities of Guarantor (including a statement of all contingent liabilities) as of the end of such calendar year, dated , ;

(e) such other statement as set forth below and for the period indicated:

(i) ;

(ii) ; and

(iii) .

8. **YES** **NO**

o o There has been no change since the later of the delivery of the last Certificate and the Effective Date that would materially adversely affect any Mortgaged Property or the validity, enforceability or the ability of Guarantor to perform its obligations under the Guaranty or any other Loan Document.

[Any additional explanations are attached hereto as Schedule 1.]

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, Guarantor has signed and delivered this Certificate or has caused this Certificate to be signed and delivered by its duly authorized representatives under seal (where applicable).

Date: _____

GUARANTOR:

[INSERT GUARANTOR SIGNATURE BLOCK(S)]

By: _____ (SEAL)
Name: _____
Title: _____

SCHEDULE 1

If applicable, complete an explanation of any relevant matters involving this Certification.

EXHIBIT J TO MASTER CREDIT FACILITY AGREEMENT (TERM LOAN)

REQUEST
(Collateral Pool)

(Release/Substitution)

,

Wells Fargo Multifamily Capital, Inc.
375 Park Avenue
Mail Code NY 4060
New York, New York 10152
("**Servicer**" on behalf of Fannie Mae ("**Fannie Mae**"))

[Note: Subject to change in the event Servicer or its address changes]

Re: REQUEST issued pursuant to Master Credit Facility Agreement, dated as of February [ ], 2013, by and between the undersigned ("**Borrower**"), Fannie Mae and others (as amended from time to time, the "**Master Agreement**")

Ladies and Gentlemen:

This constitutes **[a Release] [a Substitution]** Request pursuant to the terms of the above-referenced Master Agreement with respect to Collateral Pool .

[SELECT APPROPRIATE SECTIONS]

Section 1. **Substitution Request.** Borrower hereby requests that the Multifamily Residential Property described in this Request be added to the Collateral Pool in connection with a substitution of Collateral in accordance with the terms of the Master Agreement. Following is the information required by the Master Agreement with respect to this Request:

(a) Property Description Package. Attached to this Request is the information and documents relating to the proposed Substitute Mortgaged Property required to be delivered to Fannie Mae pursuant to the terms of the Master Agreement;

(b) Due Diligence Fees. Enclosed with this Request is a check in payment of a deposit for all Additional Due Diligence Fees required to be submitted with this Request pursuant to Section 8.03 of the Master Agreement; and

(c) Accompanying Documents. All reports, certificates and documents required to be delivered pursuant to the conditions contained in Sections 4.01 and 4.05 of the Master Agreement will be delivered on or before the Closing Date.

Section 2. **Fees**. If Fannie Mae consents to the addition of the proposed Substitute Mortgaged Property to the Collateral Pool, and Borrower elects to add the Substitute Mortgaged

Property to the Collateral Pool, Borrower shall pay the Substitution Fee **[and Re-Underwriting Fee]** to Fannie Mae, pursuant to the terms of the Master Agreement, as one of the conditions to the closing of the Substitute Mortgaged Property.

AND/OR

Section 1. **Release Request.** Borrower hereby requests that the Release Property described in this Request be released from the Collateral Pool in accordance with the terms of the Master Agreement. Following is the information required by the Master Agreement with respect to this Request:

(a) Description of Release Property. The name, address and location (county and state) of the Mortgaged Property, or other designation of the proposed Release Property is as follows:

Name:
Address:

Location:

(b) Accompanying Documents. All documents, instruments and certificates required to be delivered pursuant to the conditions contained in Sections 4.01 and 4.04 of the Master Agreement will be delivered on or before the Closing Date.

Section 2. **Release Price.** Borrower shall pay the Release Price, if applicable, as a condition to the closing of the release of the Release Property from the Collateral Pool.

Section 3. **Fees**. If Fannie Mae consents to the release of the proposed Release Mortgaged Property from the Collateral Pool, and Borrower elects to release the Release Mortgaged Property from the Collateral Pool, Borrower shall pay the Release Fee and Re-Underwriting Fee to Fannie Mae as one of the conditions to the closing of the Release Mortgaged Property.

Section 4. **Limits on Personal Liability.** The provisions of Article 12 of the Master Agreement (entitled "Limits on Personal Liability") are hereby incorporated into this Request by this reference to the fullest extent as if the text of such Article were set forth in its entirety herein.

[Remainder of page intentionally left blank.]

This Request is being executed by an authorized representative of Borrower and such authorized representative shall have no personal liability hereunder.

Sincerely,

[ADD EACH BORROWER FOR SUCH COLLATERAL POOL]

EXHIBIT K TO MASTER CREDIT FACILITY AGREEMENT (TERM LOAN)

CONFIRMATION OF OBLIGATIONS
(Collateral Pool)

THIS CONFIRMATION OF OBLIGATIONS (the "**Confirmation of Obligations**") is made as of the day of , , by and among , a (individually and collectively, "**Borrower**"), for the benefit of **FANNIE MAE**, the corporation duly organized under the Federal National Mortgage Association Charter Act, as amended, 12 U.S.C. §1716 et seq. and duly organized and existing under the laws of the United States ("**Fannie Mae**").

RECITALS

A. Borrower, Fannie Mae and others are parties to that certain Master Credit Facility Agreement (Term Loan), dated as of February [ ], 2013 (as amended from time to time, the "**Master Agreement**"). All references to Loan Documents and Security Documents herein shall be with respect to Collateral Pool (the "**Collateral Pool**") as further identified in the Master Agreement.

B. Fannie Mae has designated Wells Fargo Multifamily Capital, Inc. as the servicer of the Loan contemplated by the Master Agreement.

C. Borrower has delivered to Fannie Mae a Release Request pursuant to the Master Agreement to release a Release Property from the Collateral Pool.

D. Fannie Mae has consented to the Release Request.

E. The parties are executing this Confirmation of Obligations pursuant to the Master Agreement to confirm that each remains liable for all of its obligations, except with respect to the Release Property, under the Master Agreement and the other Loan Documents notwithstanding the release of the Release Property from the Collateral Pool.

NOW, THEREFORE, Borrower, in consideration of Fannie Mae's consent to the release of the Release Property from the Collateral Pool and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby agree as follows:

Section 1. **Confirmation of Obligations.** Borrower confirms that, except with respect to the Release Property, none of its respective obligations under the Master Agreement and the Loan Documents is affected by the release of the Release Property from the Collateral Pool, and each of its respective obligations under the Master Agreement and the Loan Documents shall remain in full force and effect, and it shall be fully liable for the observance of all such obligations, notwithstanding the release of the Release Property from the Collateral Pool.

Section 2. **Beneficiaries.** This Confirmation of Obligations is made for the express benefit of Fannie Mae.

Section 3. **Capitalized Terms.** All capitalized terms used in this Confirmation of Obligations which are not specifically defined herein shall have the respective meanings set forth in the Master Agreement.

Section 4. **Counterparts.** This Confirmation of Obligations may be executed in counterparts by the parties hereto, and each such counterpart shall be considered an original and all such counterparts shall constitute one and the same instrument.

Section 5. **Limits on Personal Liability.** The provisions of Article 12 of the Master Agreement (entitled "Limits on Personal Liability") are hereby incorporated into this Confirmation of Obligations by this reference to the fullest extent as if the text of such Article were set forth in its entirety herein.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Borrower has signed this Confirmation under seal or has caused this Confirmation of Obligations to be signed and delivered under seal by its duly authorized representative (which representative shall have no personal liability hereunder).

BORROWER:

[ADD EACH BORROWER FOR SUCH COLLATERAL POOL]

EXHIBIT L TO MASTER CREDIT FACILITY AGREEMENT (TERM LOAN)

CERTIFICATE OF BORROWER
(Collateral Pool)

All Capitalized Terms used in this Certificate of Borrower have the meanings given to those terms in that certain Master Credit Facility Agreement (Term Loan) dated as of February 27, 2013 (as amended from time to time, the "**Master Agreement**") or elsewhere in this Certificate of Borrower unless the context or use clearly indicates a different meaning. All references to Loan Documents and Security Documents herein shall be with respect to Collateral Pool (the "**Collateral Pool**") as further defined in the Master Agreement.

In addition to all other representations, warranties and covenants made by the Borrowers identified on **Schedule 1** attached hereto (individually and collectively, "**Borrower**" or "**Collateral Pool 2 Borrower**") in connection with:

(a) the Master Agreement; and

(b) the securing of the Obligations of Borrower under the Master Agreement and the other Loan Documents by the Security Instruments and any other Security Documents (all references to Loan Documents and Security Documents herein shall be with respect to the Collateral Pool as further identified in the Master Agreement).

Borrower hereby represents, warrants and covenants to Lender, as of the [ ] day of , with respect to themselves, as follows:

Section 1. **Review of Documents**. Borrower has reviewed the Note, the Security Instruments, the Master Agreement, and each of the other Loan Documents and Security Documents.

Section 2. **Intentionally Deleted**.

Section 3. **Due Organization; Qualification**.

(a) Each Borrower is qualified to transact business and is in good standing in the state in which each is organized and in each other jurisdiction in which such qualification and/or standing is necessary to the conduct of its business with respect to the Mortgaged Properties and where the failure to be so qualified would adversely affect the validity of, the enforceability of, or the ability of Borrower to perform the Obligations under the Master Agreement and the other Loan Documents. Borrower is qualified to transact business and is in good standing in each State in which it owns a Mortgaged Property.

(b) Borrower's principal place of business, principal office and office where it keeps its books and records as to the Collateral is located at the address set out in Section 13.10 of the Master Agreement.

Section 4. **Power and Authority**. Each Borrower has the requisite power and authority (a) to own its properties and to carry on its business as now conducted and as

contemplated to be conducted in connection with the performance of the Obligations under the Master Agreement and under the other Loan Documents to which it is a party and (b) to execute and deliver the Master Agreement and the other Loan Documents and to carry out the transactions contemplated by the Master Agreement and the other Loan Documents to which it is a party.

Section 5. **Due Authorization**. The execution, delivery and performance of the Master Agreement and the other Loan Documents to which it is a party by each Borrower have been duly authorized by all necessary action and proceedings by or on behalf of each Borrower, and no further approvals or filings of any kind, including any approval of or filing with any Governmental Authority, are required by or on behalf of each Borrower as a condition to the valid execution, delivery and performance by each Borrower of the Master Agreement or any of the other Loan Documents to which it is a party, except filings required to perfect and maintain the Liens to be granted under the Loan Documents and routine filings to maintain good standing and Permits.

Section 6. **Valid and Binding Obligations**. The Master Agreement and the other Loan Documents to which it is a party have been duly authorized, executed and delivered by each Borrower and constitute the legal, valid and binding obligations of each Borrower, enforceable against each Borrower in accordance with their respective terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting the enforcement of creditors' rights generally or by equitable principles or by the exercise of discretion by any court.

Section 7. **Single-Purpose Status**. Except as otherwise expressly approved by Lender in writing, each Borrower and the general partner of each Borrower that is a limited partnership is a Single-Purpose entity and does not own any real property or assets other than the Mortgaged Properties and does not operate any business other than the management and operation of the Mortgaged Properties.

Section 8. **No Default**. The execution, delivery and performance of the Obligations imposed on any Borrower under the Loan Documents to which it is a party and the Security Documents will not cause such Borrower to be in default under the provisions of any fully-executed agreement, judgment beyond right of appeal or order beyond right of appeal to which such Borrower is a party or by which such Borrower is bound.

Section 9. **Financial Statements**. The Borrower has furnished to Lender all of the financial information required by and in accordance with the standards set forth in the Master Agreement.

Section 10. **Financial Condition**. No adverse change in the financial condition of any Borrower has occurred between the respective dates of the most recent financial statements which were furnished to Lender relating to such entities or persons and the date hereof which has had or would reasonably be expected to have a Material Adverse Effect.

Section 11. **No Insolvency or Judgment**. No Borrower is currently (a) the subject of or a party as debtor to any completed or pending bankruptcy, reorganization or insolvency

proceeding; or (b) the subject of any judgment in an amount in excess of $250,000 individually and/or $500,000 in the aggregate which is unpaid, unstayed on appeal, undischarged, unbonded, not fully insured or undismissed for a period of ninety (90) days.

Section 12. **Taxes Paid**. Subject to Borrower's right to contest as set forth in any of the Loan Documents, Borrower has filed all federal, state, county and municipal tax returns required to have been filed by Borrower, and has paid all taxes which have become due pursuant to such returns or to any notice of assessment received by Borrower, and Borrower has no knowledge of any basis for additional assessment with respect to such taxes, provided that Borrower, at its own expense, may contest by appropriate legal proceedings, conducted diligently and in good faith, the amount or validity of any taxes, if (1) Borrower notifies Lender of the commencement or expected commencement of such proceedings, (2) Borrower deposits with Lender reserves sufficient to pay the contested taxes, if requested by Lender, and (3) Borrower furnishes whatever additional security is required in the proceedings or is reasonably requested by Lender, which may include the delivery to Lender of the reserves established by Borrower to pay the contested taxes. To the best of Borrower's knowledge, there are not presently pending any special assessments against any Mortgaged Property or any part thereof.

Section 13. **Insolvency**. No Borrower is presently insolvent, and the proposed Loan will not render any Borrower insolvent.

Section 14. **Working Capital**. After the Loan is made, each Borrower will have sufficient working capital, including cash flow from the respective Borrower's Mortgaged Property or other sources, not only to adequately maintain the Mortgaged Property, but also to pay all of Borrower's day-to-day debts as incurred in the ordinary course of business, such as trade payables.

Section 15. **ERISA**. Each Borrower is in compliance in all material respects with all applicable provisions of ERISA and has not incurred any liability to the PBGC on a Plan under Title IV of ERISA, other than violations which do not have, and are not reasonably expected to have, a Material Adverse Effect. None of the assets of Borrower constitute plan assets (within the meaning of Department of Labor Regulation § 2510.3-101) of any employee benefit plan subject to Title I of ERISA.

Section 16. **Governmental Approvals; Governmental Orders**. No Governmental Approval not already obtained or made is required for the execution and delivery of the Master Agreement or any other Loan Document or the performance of the terms and provisions thereof by Borrower. Borrower is not presently under any cease or desist order or other orders of a similar nature, temporary or permanent, of any Governmental Authority which would have the effect of preventing or hindering performance of the terms and provisions of the Master Agreement or any other Loan Document, nor are there any proceedings presently in progress or to its knowledge contemplated which would, if successful, lead to the issuance of any such order.

Section 17. **Impositions**. Subject to Borrower's right to contest as set forth in any Loan Document, Borrower has paid all of the following items which have become due and payable have been paid or will be paid in the ordinary course of business (or, with the approval of Lender, an escrow fund sufficient to pay them has been established): taxes, government

assessments; insurance premiums; water, sewer and municipal charges; leasehold payments; ground rents; and any other charges affecting the Mortgaged property; all parties furnishing labor and materials and, except for such liens or claims insured against by the policy of title insurance to be issued in connection with the Master Agreement, there are no mechanics', laborers' or materialmen's liens or claims outstanding for work, labor or materials affecting any Mortgaged Property, whether prior to, equal with or subordinate to the lien of any Security Instrument; and any other charges affecting any Mortgaged Property, except for liens securing unpaid taxes and statutory liens for amounts not yet due and payable or being contested in good faith.

Section 18. **Compliance with Applicable Laws**.

(a) Borrower represents that, except as alleged in the Litigation, each Mortgaged Property complies in all material respects with all Applicable Laws affecting such Mortgaged Property (including the FHA and ADA) except to the extent that such failure to comply would not reasonably be expected to have a Material Adverse Effect. Without limiting the foregoing, all material Permits, including certificates of occupancy, to the extent issued by the relevant jurisdiction, have been issued and are in full force and effect except to the extent that the lack of such permits would not reasonably be expected to have a Material Adverse Effect. Neither Borrower nor, to the knowledge of Borrower, any former owner of any Mortgaged Property, has received any written notification of any actions or proceedings regarding the noncompliance or nonconformity of any Mortgaged Property with any Applicable Laws or Permits, nor is Borrower otherwise aware of any such pending actions or proceedings.

Section 19. **Leases**.

(a) Borrower has delivered to Lender a true and correct copy of the form apartment lease for each Mortgaged Property (and, with respect to leases executed prior to the date on which Borrower first owned the Mortgaged Property, the form apartment lease used for such leases), and each Lease with respect to such Mortgaged Property is in the form thereof, with no material modifications thereto, except as previously disclosed in writing to Lender. Except as set forth in a Rent Roll, no Lease (other than any Master Lease, if applicable) for any unit in any Mortgaged Property (i) is for a term in excess of fifteen (15) months, including any renewal or extension period unless such renewal or extension period is subject to termination by the Borrower upon not more than thirty (30) days' written notice, (ii) provides for prepayment of more than two (2) months' rent, or (iii) was entered into in other than the ordinary course of business.

(b) Except for any assignment of leases and rents which is a Permitted Lien, Borrower is the owner and holder of the landlord's interest under each of the Leases and there are no prior outstanding assignments of any such Lease, or any portion of the rents, additional rents, charges, issues or profits due and payable or to become due and payable thereunder.

(c) Each Lease constitutes the legal, valid and binding obligation of Borrower and, to the knowledge of Borrower, of each of the other parties thereto, enforceable in accordance with its terms, subject only to bankruptcy, insolvency, reorganization or other similar laws relating to creditors' rights generally, and equitable principles, and except as disclosed in writing to Lender, no notice of any default by Borrower which remains uncured beyond any

applicable cure periods under the subject Lease has been sent by any tenant under any such Lease, other than defaults which do not have, and are not reasonably expected to have, a Material Adverse Effect on the Mortgaged Property subject to the Lease.

(d) All premises demised to tenants under Leases except for non-residential leases permitted by the Loan Documents or otherwise approved by Lender, in Lender's sole discretion, are occupied by such tenants (or subtenants) for residential purposes. No Lease contains any option or right to purchase, right of first refusal or any other similar provisions.

(e) No Mortgaged Property is entitled to low-income housing tax credits.

(f) No Mortgaged Property is subject to a HAP Contract, provided that certain tenants may be entitled to "Section 8 sticky vouchers" or participate in the Landlord Assistance Program.

Section 20. **Non-Residential Leases**.

(a) Except for non-residential leases permitted by the Loan Documents or otherwise approved by Lender, in Lender's sole discretion or except as previously disclosed to Lender, not more than twenty percent (20%) of the net rentable space of any Mortgaged Property is being used for non-residential purposes and copies of all commercial leases, if any, have been delivered to Lender. Except as previously disclosed to Lender, as of the date hereof, the effective gross commercial income from the Mortgaged Property does not exceed twenty percent (20%) of the total effective gross income from the Mortgaged Property (i.e., total commercial income from the Mortgaged Property plus residential income from the Mortgaged Property) and the total effective gross income from the Mortgaged Property does not exceed one hundred twenty-five percent (125%) of the sum of effective gross residential income.

(b) Neither Borrower, nor any general partner of Borrower, nor any Guarantor, nor any individual having a ten percent (10%) or greater interest in Borrower is an affiliate or otherwise related to (i) the lessee under any leases for laundry equipment or (ii) the lessee or provider of any telecommunications, television or similar systems or services on or about any Mortgaged Property.

(c) Borrower further certifies that any future leases of laundry space at any Property (or any renewals of the current lease) shall either include language, reasonably acceptable to Lender, subordinating the interest of the lessee thereunder to the lien of the Security Instrument or shall be at or above market rent and contain provisions for termination for cause.

Section 21. **Condition of the Mortgaged Properties**. Except as disclosed in any third party report delivered to Lender prior to the date of the Master Agreement (or, if later, prior to the date on which any Mortgaged Property is added to the Collateral Pool), or otherwise disclosed in writing by Borrower to Lender prior to such date, each Mortgaged Property is in good condition, order and repair, subject to ordinary wear and tear, there exist no structural or other material defects in such Mortgaged Property (whether patent or, to the knowledge of Borrower, latent or otherwise) and Borrower has not received notice from any insurance company or bonding company of any defects or inadequacies in such Mortgaged Property, or

any part of it, which would adversely affect the insurability of such Mortgaged Property or cause the imposition of extraordinary premiums or charges for insurance or of any termination or threatened termination of any policy of insurance or bond, other than such matters described in the foregoing that would not have, or reasonably be expected to have, a Material Adverse Effect on the Mortgaged Properties then in the Collateral Pool taken as a whole. To the Borrower's knowledge, no claims have been made against any contractor, architect or other party with respect to the condition of any Mortgaged Property or the existence of any structural or other material defect therein which has not been satisfied, other than claims which would not have, or reasonably be expected to have, a Material Adverse Effect on the Mortgaged Properties then in the Collateral Pool, taken as a whole. No Mortgaged Property has been materially damaged by casualty which has not been fully repaired or for which insurance proceeds have not been received or are not expected to be received except as previously disclosed in writing to Lender. There are no proceedings pending for partial or total condemnation of any Mortgaged Property except as disclosed in writing to Lender.

Section 22. **Operations and Maintenance Plan**. Borrower agrees that it has adopted any operations and maintenance plan for asbestos, lead-based paint, mold or other environmental concern that Lender has required in writing.

Section 23. **Representations and Warranties True**. In the event that any representation or warranty contained herein becomes untrue, in whole or in part, after the date hereof, Borrower promptly will so advise Lender in writing.

Section 24. **Ratification**. Borrower covenants that it shall, promptly upon the request of Lender ratify and affirm this Certificate of Borrower in writing, as of such date or dates as Lender shall specify.

Section 25. **Survival**. The representations, warranties and covenants set forth in this Certificate of Borrower shall survive the execution and delivery of the Loan Documents, regardless of any investigation made by Lender.

Section 26. **OFAC Requirements**.

(a) Representations and Warranties. Borrower, any general partner of Borrower or any managing member of Borrower, as applicable, Mortgaged Property manager (if applicable) and, to Borrower's knowledge, after having made reasonable inquiry, each Person owning a direct or indirect interest of twenty percent (20%) or more in Borrower (excluding Equity Residential, a Maryland real estate investment trust or any of its subsidiaries), any general partner of Borrower or any managing member of Borrower, the Mortgaged Property manager (if the Mortgaged Property manager is an affiliate of Borrower), and (b) each commercial tenant at the Mortgaged Property: (i) is not currently identified on OFAC List, and (ii) is not a Person with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States. Borrower shall confirm this representation and warranty in writing upon request by Lender, which request shall not be made more than once per year.

(b) Compliance with Anti-Terrorism, Embargo, Sanctions and Anti-Money Laundering Laws. Each Borrower shall comply with all Requirements of Law relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect. Without limiting the foregoing, no Borrower shall take any action, or permit any action to be taken, that would cause any Borrower's representations and warranties, as set forth in subsection (a) above, to become untrue or inaccurate at any time during the term of the Loan. Each Borrower shall notify Lender promptly of Borrower's actual knowledge that such representations and warranties may no longer be accurate or that any other violation of the foregoing Requirements of Law has occurred or is being investigated by Governmental Authorities. In connection with such an event, each Borrower shall comply with all Requirements of Law and directives of Governmental Authorities and, at Lender's request, provide to Lender copies of all notices, reports and other communications exchanged with, or received from, Governmental Authorities relating to such event. Each Borrower shall also reimburse Lender for any expense incurred by Lender in evaluating the effect of such an event on the Loan and Lender's interest in the collateral for the Loan, in obtaining any necessary license from Governmental Authorities as may be necessary for Lender to enforce its rights under the Loan Documents, and in complying with all Requirements of Law applicable to Lender as the result of the existence of such an event and for any penalties or fines imposed upon Lender as a result thereof.

(c) Definitions. As used in this Section 26, certain defined terms shall have the following meanings:

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

(2) "**OFAC List**" means the list of specially designated nationals and blocked persons subject to financial sanctions that is maintained by the U.S. Treasury Department, Office of Foreign Assets Control and any other similar list maintained by the U.S. Treasury Department, Office of Foreign Assets Control pursuant to any Requirements of Law, including, without limitation, trade embargo, economic sanctions, or other prohibitions imposed by Executive Order of the President of the United States. The OFAC List is currently accessible through the internet website http://www.treasury.gov/ofac/downloads/t11sdn.pdf.

(3) "**Person**" means an individual, partnership, limited partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature.

(4) "**Requirements of Law**" means (a) the organizational documents of an entity, and (b) any law, regulation, ordinance, code, decree, treaty, ruling or determination of an arbitrator, court or other Governmental Authority, or any Executive Order issued by the President of the United States, in each case applicable to or binding upon such Person or to which such Person, any of its property or the conduct of its business is subject including, without limitation, laws, ordinances and regulations pertaining to the zoning, occupancy and subdivision of real property.

Section 27. The provisions of Article 12 of the Master Agreement (entitled "Limits on Personal Liability") are hereby incorporated into this Certificate by this reference to the fullest extent as if the text of such Article were set forth in its entirety herein.

Section 28. The provisions of Section 13.06 of the Master Agreement are hereby incorporated into this Certificate by this reference to the fullest extent as if the text of such Article were set forth in its entirety herein.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, Borrower has signed this Certificate under seal or has caused this Certificate to be signed and delivered under seal by its duly authorized representative (which representative shall have no personal liability hereunder).

BORROWER:

[ADD EACH BORROWER FOR SUCH COLLATERAL POOL]

SCHEDULE I

BORROWERS

EXHIBIT M TO MASTER CREDIT FACILITY AGREEMENT (TERM LOAN)

LIST OF MASTER LEASES

Property Name	Property Address
Oakwood Arlington	1550 Clarendon Boulevard, Arlington, VA
Oakwood Toluca Hills	3600-3720 Barham Boulevard, Los Angeles, CA
Oakwood Philadelphia	110-116 South 16th Street, Philadelphia, CA

EXHIBIT N TO AMENDED AND RESTATED MASTER CREDIT FACILITY AGREEMENT

[RESERVED]

EXHIBIT O TO AMENDED AND RESTATED MASTER CREDIT FACILITY AGREEMENT

[RESERVED]

EXHIBIT P TO MASTER CREDIT FACILITY AGREEMENT (TERM LOAN)

FORM OF LETTER OF CREDIT

[LETTER OF CREDIT ISSUER'S LETTER OF CREDIT FORM]

IRREVOCABLE LETTER OF CREDIT NO.
(Collateral Pool)

, 20

Fannie Mae
Drawer AM
Multifamily Operations — Asset Management
3900 Wisconsin Avenue, N.W.
Washington, DC 20016

Re: **[Archstone Credit Facility — Collateral Pool]**

Dear Sir or Madam:

For the account of **[*Insert name of account party/customer*]**, we hereby open in your favor our Irrevocable Letter of Credit No. ("**Credit**") for an amount not exceeding a total of U.S. $, effective immediately and expiring on , 20 , or if such day is not a business day, the next following business day ("**Expiration Date**").

Funds under this Credit are available to you against a sight draft on us completed by you or Wells Fargo, N.A. on your behalf, completed in substantially the form attached as Attachment I, for all **[or any part of]** of this Credit.

We will promptly honor [your draft/all drafts] drawn in compliance with the terms of this Credit if received on or before 5:00 p.m. **[Eastern][Central][Mountain][Pacific]** time on the Expiration Date at **[*Insert Letter of Credit Issuer's address*].**

Drafts presented at our office at the address set forth above no later than 10:00 a.m. **[Eastern][Central][Mountain][Pacific]** time on any business day shall be honored on the date of presentation, by payment in accordance with your payment instructions that accompany each such draft. If requested by you, payment under this Credit may be made by wire transfer of immediately available funds to your account as specified in the draft [(whether executed by you or Wells Fargo, N.A.)], or by deposit of same day funds in your designated account that you maintain with us.

This Credit shall be governed by and subject to the Uniform Customs and Practice for Documentary Credits (2007 revision), International Chamber of Commerce Publication No. 600

("**UCP 600**"), and to the extent not inconsistent with the UCP 600, laws of the State of .

Sincerely,

[*Insert Letter of Credit Issuer's name*]

By: _____

Name: _____
Title: _____

ATTACHMENT I
TO
LETTER OF CREDIT

SIGHT DRAFT

[*Insert Letter of Credit Issuer's name and address*]

, 20

Pay on demand to Fannie Mae the sum of U.S. $ in immediately available funds to:

ABA Number:
Telegraphic Abbreviation:
Account Number:
Note:

This draft is drawn under your Irrevocable Letter of Credit No. .

FANNIE MAE

By: _____
Name: _____
Title: _____

EXHIBIT Q TO MASTER CREDIT FACILITY AGREEMENT (TERM LOAN)

Certain Non-Residential Leases and CCRs

CCRs (estoppels requested)

Property	CCR/Lease
Del Mar Station	Reciprocal Easement and Operating Agreement and Declaration of Covenants, Conditions and Restrictions, including Environmental Restrictions, by and among The Los Angeles to Pasadena Metro Blue Line Construction Authority and Del Mar Station, L.L.C., dated as of September 21, 2001
La Jolla Colony	Declaration of Covenants, Conditions and Restrictions
Russett	Declaration of Covenants for Russett Commercial Property, dated June 9, 1989, as amended

Non-Residential Leases (SNDAs requested)

Property	CCR/Lease
Courthouse Place	Courthouse Gourmet Market
Courthouse Place	Courthouse Valet
Del Mar Station	LGO Hospitality
Del Mar Station	Pasadena Police Substation

Del Mar Station	Kimargure Japanese Restaurant
Del Mar Station	Stone Brewing Company
Pasadena	Beatrice Haddad, DDS, Inc.
Pasadena	US Bank National Association
West Valley	Worldwide Corporate Housing, L.P. (OCH Agreement)
Woodland Hills	Worldwide Corporate Housing, L.P. (OCH Agreement)
Mountain View at Middlefield	Worldwide Corporate Housing, L.P. (OCH Agreement)
Oakwood Philadelphia	OCH Agreement
Oakwood Philadelphia	Honey Grow
Oakwood Toluca Hills	Judy Lee Surtees
Oakwood Toluca Hills	Sam and Sarah Hong
Oakwood Toluca Hills	Franklin Center
Seal Beach	Worldwide Corporate Housing, L.P. (OCH Agreement)

APPENDIX I

DEFINITIONS

For all purposes of the Agreement, the following terms shall have the respective meanings set forth below:

"Acquiring Person" means a "person" or "group of persons" within the meaning of Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended.

"Additional Borrower" means the owner of a Substitute Mortgaged Property, which entity shall be a Single-Purpose Delaware limited liability company or Delaware limited partnership that is not a Prohibited Person, and (i) either (a) has as its managing member or managing general partner either Guarantor or a Delaware limited liability company, a Delaware limited partnership or a Delaware corporation at least ninety-nine percent (99%) owned (exclusive of preferred unit interests existing on the Effective Date), directly or indirectly, by Guarantor and (in the case of a limited liability company) managed by Guarantor, or (b) is not owned, directly or indirectly, by a Prohibited Person, and has been approved by Fannie Mae, and (ii) becomes a Borrower under the Agreement and the applicable Loan Documents.

"Additional Due Diligence Fees" means the due diligence fees paid by the applicable Collateral Pool Borrower to Fannie Mae with respect to each Substitute Mortgaged Property, as set forth in (b).

"Additional Guarantor" shall mean any entity which entity is not a Prohibited Person, nor owned, directly or indirectly, by a Prohibited Person, and which entity enters into a confirmation and joinder agreement as provided in the Guaranty and, with regard to any concurrent transfer, such transfer shall not cause a Change of Control.

"Affiliate" or "Affiliated" means, when used with reference to a specified Person, (a) any Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, the specified Person, (b) any Person that is an officer of, partner in or trustee of, or serves in a similar capacity with respect to, the specified Person or of which the specified Person is an officer, partner or trustee, or with respect to which the specified Person serves in a similar capacity, (c) any Person that, directly or indirectly, is the beneficial owner of ten percent (10%) or more (or, solely if the specified Person is AvalonBay, twenty percent (20%) or more) of any class of equity securities of the specified Person, or otherwise has a substantial beneficial interest in the specified Person, or of which the specified Person is, directly or indirectly, the owner of ten percent (10%) or more of any class of equity securities or in which the specified Person has a substantial beneficial interest, and (d) for the specified Person, any of the individual's spouse, issue, parents, siblings and a trust for the benefit of the individual's spouse or issue, or both. For the purposes of this definition, "control" (including with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management (other than property management) and policies of that Person, whether through the ownership of voting securities, ownership interests or by contract or otherwise.

"Aggregate Debt Service Coverage Ratio" means, with respect to any Collateral Pool for any specified date, the ratio (expressed as a percentage) of—

(a) the aggregate of the Net Operating Income for the Mortgaged Properties in such Collateral Pool

to

(b) the Debt Service for such Collateral Pool on the specified date.

"Aggregate Loan to Value Ratio" means, with respect to any Collateral Pool for any specified date, the ratio (expressed as a percentage) of—

(a) the Loans Outstanding secured by the Mortgaged Properties in such Collateral Pool on the specified date,

to

(b) the aggregate of the Valuations most recently obtained prior to the specified date for all of the Mortgaged Properties in such Collateral Pool.

"Agreement" means this Master Credit Facility Agreement, as it may be amended, supplemented or otherwise modified from time to time, including all Recitals and Exhibits to the Agreement, each of which is hereby incorporated into the Agreement by this reference.

"Allocable Loan Amount" means the portion of the Loans secured by a Collateral Pool allocated to a particular Mortgaged Property by Fannie Mae in accordance with the Agreement.

"Alterations" shall have the meaning set forth in Section 6.09.

"Amortization Period" means the period of thirty (30) years.

"Applicable Law" means (a) all applicable provisions of all constitutions, statutes, rules, regulations and orders of all governmental bodies, all Governmental Approvals and all orders, judgments and decrees of all courts and arbitrators, (b) all zoning, building, environmental and other laws, ordinances, rules, regulations and restrictions of any Governmental Authority affecting the ownership, management, use, operation, maintenance or repair of any Mortgaged Property, including the Americans with Disabilities Act (if applicable), the Fair Housing Amendment Act of 1988 and Hazardous Materials Laws (as defined in the Security Instrument), (c) any building permits or any conditions, easements, rights-of-way, covenants, restrictions of record or any recorded or unrecorded agreement affecting or concerning any Mortgaged Property including planned development permits, condominium declarations, and reciprocal easement and regulatory agreements with any Governmental Authority, (d) all laws, ordinances, rules and regulations, whether in the form of rent control, rent stabilization or otherwise, that limit or impose conditions on the amount of rent that may be collected from the units of any Mortgaged Property, and (e) requirements of the Borrower's insurance companies or similar organizations, affecting the operation or use of any Mortgaged Property or the consummation of the

transactions to be effected by the Agreement or any of the other Loan Documents and the Guaranty.

"Appraisal" means an appraisal of Multifamily Residential Property conforming to the requirements of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended.

"Appraised Value" means the value set forth in an Appraisal.

"AvalonBay" means AvalonBay Communities, Inc., a Maryland corporation.

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy" as now and hereafter in effect, or any successor statute.

"Borrower" shall have the meaning given to such term in the preamble to this Agreement.

"Borrower Agent" shall have the meaning set forth in Section 12.03(a).

"Borrower Entity" means each direct or indirect owner of each Borrower other than the owners of Guarantor.

"Borrower Parties" means, with respect to any Collateral Pool, the applicable Collateral Pool Borrower, each Guarantor, and the general partner or managing member of each applicable Collateral Pool Borrower and each Guarantor.

"Borrower Party" shall mean any of the Borrower Parties, individually.

"Business Day" means a day on which Fannie Mae is open for business.

"Calendar Quarter" means, with respect to any year, any of the following three month periods: (a) January-February-March; (b) April-May-June; (c) July-August-September; and (d) October-November-December.

"Calendar Year" means the 12-month period from the first day of January to and including the last day of December, and each 12-month period thereafter.

"Cap Rate" means, for each Mortgaged Property, subject to Section 2.04(c) of the Agreement, a capitalization rate reasonably selected by Fannie Mae for use in determining the Valuations, as disclosed to Borrower from time to time.

"Cash Collateral Account" means the cash collateral account established pursuant to the Cash Collateral Agreement.

"Cash Collateral Agreement" means a cash collateral, security and custody agreement by and among Fannie Mae, Borrower and a collateral agent for Fannie Mae.

"Cash Equivalents" means Permitted Investments having maturities of not more than twelve (12) months from the date of acquisition of such Permitted Investments.

"Certificate of Borrower" means a certificate executed by the Borrower in the form attached hereto as Exhibit L.

"Change of Control" means the occurrence of any of the following events:

(a) Guarantor ceases to Control Borrower ;

(b) Guarantor ceases to Control any Person that directly or indirectly Controls each Borrower (provided that a Change of Control shall not occur or exist solely because Guarantor does not have exclusive Control over any of the Tax Protected Asset Borrower Owners, so long as (i) Guarantor exclusively controls the management and decisions of all Tax Protected Asset Borrower Owners as relates to any property that is a Mortgaged Property or is otherwise a part of the Collateral; and (ii) no Person other than Guarantor or ERP Operating Limited Partnership, an Illinois limited partnership, controls the management and decisions of any Tax Protected Asset Borrower Owner as relates to matters other than those referred to in the immediately preceding clause (i)).

(c) the Ownership Interests of Guarantor cease to be publicly traded;

(d) an Acquiring Person becomes (by acquisition, consolidation, merger or otherwise), directly or indirectly, the beneficial owner of more than forty percent (40%) of the total Ownership Interest of Guarantor; or

(e) the replacement (other than solely by reason of retirement at age sixty-two (62) or older, death or disability) of more than fifty percent (50%) (or such lesser percentage as is required for decision-making by the board of directors or an equivalent governing body) of the members of the board of directors (or an equivalent governing body) of Guarantor over a one-year period from the directors who constituted such board of directors at the beginning of such period and such replacement shall not have been approved by a vote of at least a majority of the board of directors of Guarantor then still in office who either were members of such board of directors at the beginning of such one-year period or whose election as members of the board of directors was previously so approved (it being understood and agreed that in the case of any entity governed by a

trustee, board of managers, or other similar governing body, the foregoing clause (b) shall apply thereto by substituting such governing body and the members thereof for the board of directors and members thereof, respectively).

"Closing Date" means each date after the Effective Date on which a transaction requested in a Request is required to take place.

"Collateral" means the Mortgaged Properties and other collateral from time to time or at any time encumbered by the Security Instruments, or any other property securing Borrower's obligations under the Loan Documents.

"Collateral Event" means a Request for an Extension, Release, or Substitution, an Event of Default or other event which may invalidate the outstanding Allocable Loan Amounts or other Collateral Pool determinations.

"Collateral Pool" means individually and collectively, all of the Collateral that secures a Loan. The Collateral Pools are identified on Exhibit A of the Agreement.

"Collateral Pool 6 Extension Fee" has the meaning set forth in Section 8.02.

"Collateral Pool Borrower" means individually and collectively, each Borrower that owns Collateral that is a part of such Collateral Pool (each of which may be referred to a "Collateral Pool (APPLICABLE POOL NUMBER) Borrower," *i.e.*, each Borrower that owns collateral that is part of Collateral Pool 2 may be referred to as a Collateral Pool 2 Borrower).

"Compliance Certificate" means a certificate of Borrower substantially in the form of Exhibit F to the Agreement.

"Confirmation of Guaranty" means a confirmation of the Guaranty executed by Guarantor in connection with any Request after the Initial Closing, substantially in the form of Exhibit E to the Agreement.

"Consent Decree" means that certain Consent Decree entered into and ordered by United States District Judge Andrew M. Davis on June 8, 2005 in connection with the ADA Litigation (as defined in Section 6.20).

"Contribution Agreement" means a Contribution Agreement by and among Borrower and any Additional Borrowers, as the same may be amended, modified or supplemented from time to time.

"Control" (or any variation of such term) of one entity (the "controlled entity") by another (the "controlling entity") means that the controlling entity has the power and authority, directly or indirectly, to direct or cause the direction of the management and policies of the controlled entity, by contract or otherwise.

"Coverage and LTV Tests" mean, for any Collateral Pool for any specified date, each of the following financial tests:

(1) [RESERVED].

(2) For any Collateral Pool that secures a Fixed Loan, (a) the Aggregate Debt Service Coverage Ratio is not less than, during the first three Loan Years, 0.95:1.0; during the fourth and fifth Loan Years, 1:0:1.0; during the sixth and seventh Loan Years, 1.05:1.0, and during the eighth through tenth Loan Years, 1:10:1.0; and (b) the Aggregate Loan to Value Ratio does not exceed sixty-five percent (65%).

"Credit Facility" means, collectively, the Fixed Loans outstanding under this Agreement.

"Debt Service" means, for any Collateral Pool, —

(a) [RESERVED]

(b) (1) For use in determining the Aggregate Debt Service Coverage Ratio, for purposes of determining compliance with the Coverage and LTV Tests, (2) for use in determining the Release Price pursuant to Section 3.02(c) of the Agreement and for any other determination to be made under Section 3.02 of the Agreement, (3) for use in determining compliance with the Substitution provisions in Section 3.03, (4) for other ongoing monitoring purposes pursuant to (b) of the Agreement, (5) for use in determining the percentage of Cash Flow Sweep pursuant to Section 1.07 of the Agreement, and (6) for all other monitoring and compliance purposes, as of any specified date, the sum of the amount of interest and principal amortization, during the twelve (12) month period immediately succeeding the specified date, with respect to the Loans Outstanding on the specified date, except that, for these purposes, each Fixed Loan shall require level monthly payments of principal and interest (at the interest rate set forth in the applicable Fixed Loan Note for such Fixed Loan) in an amount necessary to fully amortize the original principal amount of the Fixed Loan over the Amortization Period, with such amortization to commence on the first day of the twelve (12) month period.

(c) [RESERVED].

(d) [RESERVED].

"Debt Service Coverage Ratio" means, for any Mortgaged Property, for any specified date, the ratio (expressed as a percentage) of —

(a) the Net Operating Income utilizing expenses on a trailing twelve (12) month basis and income on a current basis, with such adjustments as Fannie Mae may make for similar loans anticipated to be purchased by Fannie Mae for the subject Mortgaged Property

to

(b) the Debt Service on the specified date, assuming, for the purpose of calculating the Debt Service for this definition, that Loans Outstanding shall be the Allocable Loan Amount for the subject Mortgaged Property.

"Effective Date" shall have the meaning set forth in the opening paragraph.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated thereunder.

"Event of Default" means any event defined to be an "Event of Default" under Article 9.

"Excess Cash Flow" means Gross Revenues derived from all Mortgaged Properties in the applicable Collateral Pool in excess of the sum of (i) amounts required from time to time to timely make all regular payments due under the applicable Note, (ii) any and all other indebtedness, obligations and liabilities of the applicable Collateral Pool Borrower permitted under the Loan Documents, (iii) reasonable and customary operating costs and expenses of the Mortgaged Property, (iv) reasonable reserves for working capital and future payment of taxes,

insurance and replacements with respect to the Mortgaged Properties and (v) reasonable capital expenditures.

"Exculpated Parties" shall have the meaning set forth in Section 12.01(a).

"Extension" shall mean any extension set forth in Section 1.05.

"Extension Notice" means written notice from the applicable Collateral Pool Borrower to Fannie Mae requesting an Extension.

"Facility Termination Date" means, at any time during which Loans are Outstanding, the latest maturity date for any Loan Outstanding.

"Fannie Mae" shall have the meaning set forth in the first paragraph of this Agreement.

"Fannie Mae Commitment" has the meaning set forth in Section 2.02.

"Fixed Loan" means a fixed-rate loan made to a Collateral Pool Borrower each of which is or shall be evidenced by a Fixed Loan Note.

"Fixed Loan Note" means a promissory note which was issued by the applicable Collateral Pool Borrower concurrently with the funding of each Fixed Loan to evidence such Collateral Pool Borrower's obligation to repay the Fixed Loan, each as amended, modified, supplemented, consolidated or restated from time to time.

"Fixtures" has the meaning set forth in the Security Instrument.

"Foreclosure Event" means:

(a) foreclosure under the Security Instrument;

(b) any other exercise by Fannie Mae of rights and remedies (whether under the Security Instrument or under Applicable Law, including Insolvency Laws) as holder of the Note and/or the Security Instrument, as a result of which Fannie Mae (or its designee or nominee) or a third party purchaser becomes owner of a Mortgaged Property;

(c) delivery by Borrower to Fannie Mae (or its designee or nominee) of a deed or other conveyance of Borrower's interest in a Mortgaged Property in lieu of any of the foregoing; or

(d) in Louisiana, any dation en paiement.

"Fraudulent Transfer Laws" shall have the meaning set forth in Section 12.11.

"GAAP" means generally accepted accounting principles in the United States in effect from time to time, consistently applied.

"General Conditions" shall have the meaning set forth in Article 4.

"Governmental Approval" means an authorization, permit, consent, approval, license, registration or exemption from registration or filing with, or report to, any Governmental Authority.

"Governmental Authority" means any court, board, agency, commission, office or authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

"Gross Revenues" means, for any specified period, with respect to any Multifamily Residential Property, all income in respect of such Multifamily Residential Property as reflected on the certified operating statement for such specified period as adjusted to exclude unusual income (e.g. temporary or nonrecurring income), income not allowed by Fannie Mae for similar loans anticipated to be purchased by Fannie Mae (e.g. interest income, furniture income, etc.), and the value of any unreflected concessions.

"Guarantor" means, individually and collectively, AvalonBay and any Additional Guarantor.

"Guaranty" means individually and collectively, (i) the Guaranty (Pool 2) and the Guaranty (Pool 6) (collectively, the "Pool Guaranties") executed and delivered by Guarantor as of the Effective Date, (ii) the Master Guaranty and Indemnity Agreement executed and delivered by Guarantor as of the Effective Date, and (iii) any other guaranties that may be executed and delivered by Guarantor in substantially the same form as the Pool Guaranties following the Effective Date.

"Hazardous Materials," with respect to any Mortgaged Property, shall have the meaning given that term in the Security Instrument encumbering the Mortgaged Property.

"Hazardous Materials Law," with respect to any Mortgaged Property, shall have the meaning given that term in the Security Instrument encumbering the Mortgaged Property.

"Hazardous Substance Activity" means, with respect to any Mortgaged Property, any storage, holding, existence, release, spill, leaking, pumping, pouring, injection, escaping, deposit, disposal, dispersal, leaching, migration, use, treatment, emission, discharge, generation, processing, abatement, removal, disposition, handling or transportation of any Hazardous Materials from, under, into or on such Mortgaged Property in violation of Hazardous Materials Laws, including the discharge of any Hazardous Materials emanating from such Mortgaged Property in violation of Hazardous Materials Laws through the air, soil, surface water, groundwater or property and also including the abandonment or disposal of any barrels, containers and other receptacles containing any Hazardous Materials from or on such Mortgaged Property in violation of Hazardous Materials Laws, in each case whether sudden or nonsudden, accidental or nonaccidental.

"Highest Rating Category" means, with respect to a Permitted Investment, that the Permitted Investment is rated by S&P or Moody's in the highest rating given by that rating agency for that general category of security.

"Impositions" and "Imposition Deposits" shall have the meaning set forth in the Security Instrument.

"Indebtedness" means, with respect to any Person, as of any specified date, without duplication, all:

(a) indebtedness of such Person for borrowed money or for the deferred purchase price of property or services (other than (i) current trade liabilities incurred in the ordinary course of business and payable in accordance with customary practices, and (ii) for construction of improvements to property, if such person has a non-contingent contract to purchase such property, or (iii) amounts to be paid by such Person, in performance stages or upon completion, pursuant to a written contract for the making of capital improvements to a Mortgaged Property permitted by this Agreement or the other Loan Documents);

(b) other indebtedness of such Person which is evidenced by a note, bond, debenture or similar instrument;

(c) obligations of such Person under any lease of property, real or personal, the obligations of the lessee in respect of which are required by GAAP to be capitalized on a balance sheet of the lessee or to be otherwise disclosed as such in a note to such balance sheet;

(d) obligations of such Person in respect of acceptances (as defined in Article 3 of the Uniform Commercial Code of the District of Columbia) issued or created for the account of such Person;

(e) liabilities secured by any Lien on any property owned by such Person even though such Person has not assumed or otherwise become liable for the payment of such liabilities; and

(f) as to any Person ("guaranteeing person"), any obligation of (a) the guaranteeing person or (b) another Person (including any bank under any letter of credit) to induce the creation of a primary obligation (as defined below) with respect to which the guaranteeing person has issued a reimbursement, counterindemnity or similar obligation, in either case guaranteeing, or in effect guaranteeing, any indebtedness, lease, dividend or other obligation ("primary obligations") of any third person ("primary obligor") in any manner, whether directly or indirectly, including any obligation of the guaranteeing person, whether or not contingent, to (1) purchase any such primary obligation or any property constituting direct or indirect security therefor, (2) advance or supply funds for the purchase or payment of any such primary obligation or to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (3) purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, or (4) otherwise assure or hold harmless the owner of any such primary obligation against loss in respect of the primary obligation, provided, however, that the term "Contingent Obligation" shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Contingent Obligation of any guaranteeing person shall be deemed to be the lesser of (i) an amount equal to the stated or determinable amount of the primary

obligation in respect of which such Contingent Obligation is made and (ii) the maximum amount for which such guaranteeing person may be liable pursuant to the terms of the instrument embodying such Contingent Obligation, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Contingent Obligation shall be such guaranteeing person's maximum reasonably anticipated liability in respect thereof as determined by Owner in good faith. Notwithstanding the foregoing, nothing in this Subsection (f) shall preclude the obligations with respect to any Borrower in connection with the Loans.

"Installment Fee" has the meaning set forth in Section 8.02.

"Initial Mortgaged Properties" means the Multifamily Residential Properties described on Exhibit A to the this Agreement and are part of a Collateral Pool as of the Effective Date.

"Initial Valuation" means, when used with reference to specified Collateral, the Valuation initially performed for the Collateral as of the date on which the Collateral was added to a Collateral Pool. The Initial Valuation for each of the Initial Mortgaged Properties is as set forth in Exhibit A to the Agreement.

"Insurance Policy" means, with respect to a Mortgaged Property, the insurance coverage and insurance certificates evidencing such insurance required to be maintained pursuant to the Security Instrument encumbering the Mortgaged Property.

"Internal Revenue Code" means the Internal Revenue Code of 1986, as amended. Each reference to the Internal Revenue Code shall be deemed to include (a) any successor internal revenue law and (b) the applicable regulations whether final or temporary.

"Issuer" shall have the meaning set forth in Section 4.08(a).

"Key Principal" means Guarantor and any person or entity who becomes a Key Principal after the date of this Instrument and is identified as such in an amendment or supplement to this Instrument.

"Lease" means any lease, any sublease or subsublease, license, concession or other agreement (whether written or oral and whether now or hereafter in effect) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of any space in any Mortgaged Property, and every modification, amendment or other agreement relating to such lease, sublease, subsublease or other agreement entered into in connection with such lease, sublease, subsublease or other agreement, and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto.

"Letter of Credit" means a letter of credit issued by an Issuer satisfactory to Fannie Mae, naming Fannie Mae as beneficiary in form and substance as attached hereto as Exhibit O or as otherwise reasonably and customarily acceptable to Fannie Mae.

"Lien" means any mortgage, deed of trust, deed to secure debt, security interest or other lien or encumbrance (including both consensual and non-consensual liens and encumbrances).

"Loan" means a Fixed Loan.

"Loan Amount" means, for any Loan, the outstanding principal amount of the Loan made to a Collateral Pool Borrower. The amount of the Loan to each Collateral Pool Borrower, as of the Effective Date, is shown on Exhibit A to the Agreement.

"Loan Document Taxes" shall have the meaning set forth in Section 6.10.

"Loan Documents" means with respect to any Collateral Pool, the Agreement, the Notes, the Security Documents, all documents executed by a Collateral Pool Borrower or Guarantor pursuant to the General Conditions set forth in Article 4 of the Agreement and any other documents executed by a Collateral Pool Borrower or Guarantor from time to time in connection with the Agreement or the transactions contemplated by the Agreement, except for the Guaranty.

"Loan to Value Ratio" means, for a Mortgaged Property, for any specified date, the ratio (expressed as a percentage) of —

(a) the Allocable Loan Amount of the subject Mortgaged Property on the specified date,

to

(b) the Valuation most recently obtained prior to the specified date for the subject Mortgaged Property.

"Loan Year" means the twelve (12) month period from the first day of the first calendar month after the Effective Date to and including the last day before the first anniversary of the Effective Date, and each twelve (12) month period thereafter.

"Master Lease" means, individually and collectively, any lease of an entire Mortgaged Property to a single tenant, which Master Lease and the tenant thereunder shall be satisfactory to Fannie Mae.

"Master Tenant" means the tenant of the Improvements under one or more Master Leases.

"Material Adverse Effect" means, with respect to any circumstance, act, condition or event of whatever nature (including any adverse determination in any litigation, arbitration, or governmental investigation or proceeding), whether singly or in conjunction with any other event or events, act or acts, condition or conditions, or circumstance or circumstances, whether or not related, a material adverse change in or a materially adverse effect upon any of (a) the business, operations, property or condition (financial or otherwise) of Borrower or Guarantor, (b) the present or future ability of Borrower or Guarantor to perform the Obligations for which it is liable, (c) the validity, priority, perfection or enforceability of the Agreement or any other Loan Document or the rights or remedies of Fannie Mae under any Loan Document, or (d) the value of, or Fannie Mae's ability to have recourse against, any Mortgaged Property.

"Material Commercial Lease" means any non-Residential Lease, including any master lease (which term "master lease" shall include any master lease to a single corporate tenant), other than:

(a) a non-Residential Lease that comprises less than five percent (5%) of total gross income of the Mortgaged Property on an annualized basis, so long as the lease is not a cell tower lease or a solar (power) lease;

(b) a cable television lease, so long as the lessee is not a Borrower Affiliate, Key Principal or Guarantor;

(c) garage spaces or storage units leased pursuant to any Residential Lease; or

(d) a laundry lease, so long as:

(1) the lessee is not a Borrower Affiliate, Key Principal or Guarantor;

(2) the rent payable is not below-market (as determined by Fannie Mae); and

(3) such laundry lease is terminable for cause by lessor.

"Moody's" means Moody's Investors Service, Inc., a corporation organized and existing under the laws of the State of Delaware, and its successors and assigns, if such successors and assigns shall continue to perform the functions of a securities rating agency.

"Mortgaged Properties" means, collectively, the Substitute Mortgaged Properties and the Initial Mortgaged Properties, but excluding each Release Mortgaged Property from and after the date of its release from a Collateral Pool.

"Multifamily Residential Property" means a residential property, located in the United States, containing five or more dwelling units in which not more than twenty percent (20%) of the net rentable area is or will be rented to non-residential tenants, and conforming to the requirements of Fannie Mae for similar loans anticipated to be purchased by Fannie Mae.

"Net Operating Income" means, for any specified period, with respect to any Multifamily Residential Property, the aggregate net income during such period equal to Gross Revenues during such period less the aggregate Operating Expenses during such period. If a Mortgaged Property is not owned by a Borrower or an Affiliate of a

Borrower for the entire specified period, the Net Operating Income for the Mortgaged Property for the time within the specified period during which the Mortgaged Property was owned by a Borrower or an Affiliate of a Borrower shall be the Mortgaged Property's net operating income determined by Fannie Mae in accordance with the underwriting procedures set forth by Fannie Mae for similar loans anticipated to be purchased by Fannie Mae.

"Note" means any Fixed Loan Note.

"Obligations" means the aggregate of the obligations of a Collateral Pool Borrower and Guarantor under the Agreement and the other Loan Documents and the Guaranty.

"Officer" means the Chief Financial Officer, Chief Accounting Officer or a Vice President in the accounting or finance divisions of Guarantor.

"One-Month LIBOR Rate" means the British Bankers Association fixing of the London Inter-Bank Offered Rate for 1-month U.S. Dollar-denominated deposits as reported by Telerate through electronic transmission. If the Index is no longer available, or is no longer posted through electronic transmission, Fannie Mae will choose a new index that is based upon comparable information and provide notice thereof to Borrower.

"Operating Expenses" means, for any period, with respect to any Multifamily Residential Property, all expenses in respect of the Multifamily Residential Property, as determined by Fannie Mae based on the certified operating statement for such specified period as adjusted to provide for the following: (i) all appropriate types of expenses, including a management fee and deposits to the Replacement Reserves (whether funded or not), are included in the total operating expense figure; (ii) upward adjustments to individual line item expenses to reflect market norms or actual costs and correct any unusually low expense items, which could not be replicated by a different owner or manager (e.g., a market rate management fee will be included regardless of whether or not a management fee is charged, market rate payroll will be included regardless of whether shared payroll provides for economies, etc.); and (iii) downward adjustments to individual line item expenses to reflect unique or aberrant costs (e.g., non-recurring capital costs, non-operating borrower expenses, etc.).

"Organizational Certificate" means, collectively, certificates from Borrower and Guarantor to Fannie Mae, in the form of Exhibit G-1 through G-3 to the Agreement, certifying as to certain organizational matters with respect to each Borrower and Guarantor.

"Organizational Documents" means all certificates, instruments and other documents pursuant to which an organization is organized or operates, including but not limited to, (i) with respect to a corporation, its articles of incorporation and bylaws, (ii) with respect to a limited partnership, its limited partnership certificate and partnership agreement, (iii) with respect to a general partnership or joint venture, its partnership or joint venture agreement and (iv) with respect to a limited liability company, its articles of organization and operating agreement.

"Other Borrower" shall have the meaning set forth in Section 12.09 of the Agreement.

"Other Borrower Secured Obligation" shall have the meaning set forth in Section 12.04.

"Outstanding" means, when used in connection with promissory notes, other debt instruments or Loans, for a specified date, promissory notes or other debt instruments which have been issued, or Loans which have been made, to the extent not repaid in full as of the specified date.

"Ownership Interests" means, with respect to any entity, any ownership interests in the entity and any economic rights (such as a right to distributions, net cash flow or net income) to which the owner of such ownership interests is entitled.

"Permits" means all permits, or similar licenses or approvals issued and/or required by an applicable Governmental Authority or any Applicable Law in connection with the ownership, use, occupancy, leasing, management, operation, repair, maintenance or rehabilitation of any Mortgaged Property or any Borrower's business.

"Permitted Investments" means one or more of the following:

(i) Cash;

(ii) Government or U.S. Treasury securities of any maturity rated in the Highest Rating Category;

(iii) Fannie Mae, Freddie Mac and Ginnie Mae agency mortgage-backed securities (single family or multifamily), provided that the value allocated to such securities will be discounted by three percent (3%);

(iv) Money market funds pre-approved in writing by Fannie Mae with an investment objective that is limited to government or U.S. Treasury securities rated in the Highest Rating Category; or

(v) Any other investment approved in writing by Fannie Mae.

"Permitted Liens" means, with respect to a Mortgaged Property:

(i) the exceptions to title to the Mortgaged Property set forth in the Title Insurance Policy for the Mortgaged Property which are approved by Fannie Mae;

(ii) Liens securing Obligations to Fannie Mae, including the Lien of the Security Instrument encumbering the Mortgaged Property;

(iii) Liens for taxes not yet delinquent;

(iv) Liens in respect of property imposed by law arising in the ordinary course of business such as materialmen's, mechanics', warehousemen's, carriers', landlords' and other nonconsensual statutory Liens which (A) are not yet due and payable or (B) are released of record, bonded over or otherwise remedied to Fannie Mae's satisfaction within sixty (60) days of the date of commencement of enforcement of any such Lien or before such earlier date on which Borrower's interest in the applicable property is subject to forfeiture by enforcement of any such Lien;

(v) Subject to (1) the provisions of Section 20 of the Security Instrument and (2) Borrower providing Fannie Mae with a copy of each document within sixty (60) days of the later of (x) the execution of such document, and (y) the date such document is recorded: easements, rights-of-way, restrictions (including zoning restrictions), matters of plat, minor defects or irregularities in title, licenses or lease agreements for laundry, cable television, telephone and other similar Liens which, in the aggregate, do not materially reduce the value of the Mortgaged

Property or materially interfere with the operation and use of, or the ordinary conduct of the business on, the Mortgaged Property (provided that any laundry or cable television licenses or leases shall not be a Permitted Lien if it does not comply with Fannie Mae's requirement for similar loans anticipated to be purchased by Fannie Mae). Notwithstanding the foregoing, to the extent any of the foregoing items could reasonably be deemed to adversely affect (on an aggregate basis) the value of the Mortgaged Property by more than the lesser of (A) $1,000,000 and (B) ten percent (10%) of the value of the Mortgaged Property, such item shall not be considered a Permitted Lien and shall require Fannie Mae's prior written consent.

(vi) any other Liens expressly permitted by the Loan Documents (including any delinquent tax Liens being contested in accordance with the terms of the Security Instrument); and

(vii) any other Liens approved by Fannie Mae.

"Person" means an individual, an estate, a trust, a corporation, a partnership, a limited liability company or any other organization or entity (whether governmental or private).

"Personalty" has the meaning set forth in the Security Instrument.

"Pool Termination Date" means, at any time during which the Loans are Outstanding with respect to a particular Collateral Pool, the latest maturity date for any Loan Outstanding.

"Potential Event of Default" means with respect to a particular Collateral Pool any event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default.

"Prohibited Person" means:

(a) any Person with whom Fannie Mae is prohibited from doing business pursuant to any law, rule, regulation, judicial proceeding or administrative directive; or

(b) any Person identified on the United States Department of Housing and Urban Development's "Limited Denial of Participation, HUD Funding Disqualifications and Voluntary Abstentions List," or on the General Services Administration's "Excluded Parties List System," each of which may be amended from time to time, and any successor or replacement thereof; or

(c) any Person that is determined by Fannie Mae to pose an unacceptable credit risk due to the aggregate amount of debt of such Person owned or held by Fannie Mae; or

(d) any Person that has caused any unsatisfactory experience of a material nature with Fannie Mae, such as a default, fraud, intentional misrepresentation, litigation, arbitration or other similar act.

"Property" means any estate or interest in any kind of property or asset, whether real, personal or mixed, and whether tangible or intangible.

"Property Delivery Deadline" shall have the meaning set forth in Section 3.03(d)(ii).

"Property Manager" means AvalonBay Communities, Inc., a Maryland corporation, or any other entity hired to operate and manage the Mortgaged Property, whose hiring is subject to the written approval and consent of Fannie Mae.

"Publicly-Held Corporation" means a corporation, the outstanding voting stock of which is registered under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934, as amended.

"Publicly-Held Trust" means a real estate investment trust, the outstanding voting shares or beneficial interests of which are registered under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934, as amended.

"Release" shall have the meaning set forth in Section 3.01.

"Release Documents" mean instruments releasing the applicable Security Instrument as a Lien on a Mortgaged Property, and UCC-3 Termination Statements terminating the UCC-1 Financing Statements, and such other documents and instruments to evidence the release of such Mortgaged Property from a Collateral Pool.

"Release Fee" means $10,000 for each Release Mortgaged Property.

"Release Mortgaged Property" means the Mortgaged Property to be released pursuant to Article 3.

"Release Price" shall have the meaning set forth in Section 3.02(c)(i).

"Release Request" means a written request, substantially in the form of Exhibit H to the Agreement, to obtain a release of Collateral from a Collateral Pool.

"Remaining Mortgaged Properties" shall have the meaning set forth in Section 4.04(h).

"Remaining Net Sale Proceeds" shall have the meaning set forth in Section 3.02(c)(iii).

"Rent Roll" means, with respect to any Multifamily Residential Property, a rent roll prepared and certified by the owner of the Multifamily Residential Property, on Fannie Mae Form 4243 or on another form approved by Fannie Mae and containing substantially the same information as Form 4243 requires.

"Replacement Reserve Agreement" means a Replacement Reserve and Security Agreement, reasonably required by Fannie Mae, and completed in accordance with requirements of Fannie Mae for similar loans anticipated to be purchased by Fannie Mae.

"Request" means a Substitution Request, a Release Request or a request for an Extension.

"Rescinded Payment" shall have the meaning set forth in Section 12.10.

"Resident Agreement" means, with respect to any Mortgaged Property that is subject to a Master Lease, a written agreement for occupancy of a portion of a Mortgaged Property by an individual resident.

"Residential Lease" means a leasehold interest in an individual dwelling unit and shall not include any master lease.

"Re-Underwriting Fee" shall have the meaning set forth in Section 8.01.

"S&P" shall mean Standard & Poor's Credit Markets Services, a division of The McGraw-Hill Companies, Inc., a New York corporation, and its successors and assigns, if such successors and assigns shall continue to perform the functions of a securities rating agency.

"Security" means a "security" as set forth in Section 2(1) of the Securities Act of 1933, as amended.

"Security Documents" means the Security Instruments, the Replacement Reserve Agreements in connection with Master Leases, and any other documents executed by the applicable Collateral Pool Borrower from time to time to secure any of such Collateral Pool Borrower's obligations under the Loan Documents.

"Security Instrument" means, for each Mortgaged Property, a Multifamily Mortgage, Deed of Trust or Deed to Secure Debt, Assignment of Leases and Rents and Security Agreement given by a Borrower to or for the benefit of Fannie Mae to secure the obligations of Collateral Pool Borrower under the Loan Documents. With respect to each Mortgaged Property owned by a Borrower, the Security Instrument shall be substantially in the form published by Fannie Mae from time to time for use in the state in which the Mortgaged Property is located. The amount secured by the Security Instrument shall be equal to the aggregate amount of Loans Outstanding for the applicable Collateral Pool in effect from time to time; provided, however, that Security Instruments recorded against a Mortgaged Property or where there is a material mortgage, recording or intangible tax applicable to the recordation of the Security Instrument, the amount secured by such Security Instrument shall be limited to a maximum secured principal amount equal to the product obtained by multiplying (i) the Valuation of such Mortgaged Property on the date is it added to the applicable Collateral Pool by (ii) one hundred fifteen percent (115%).

"Senior Management" means (a) the Chief Executive Officer, Co-Chairman of the Board, President, Chief Financial Officer and Chief Operating Officer of Guarantor, and (b) any other individuals with responsibility for any of the functions typically performed in a corporation by the officers described in clause (a).

"Servicer" means the loan servicer selected by Fannie Mae to which Fannie Mae may delegate all or any portion of its responsibilities under this Agreement and the other Loan Documents pursuant to a servicing agreement between Fannie Mae and Servicer. As of the Effective Date, Wells Fargo Multifamily Capital Inc. has been selected as Servicer of the Loans.

"Single-Purpose" means, with respect to a Person which is any form of partnership or corporation or limited liability company, that such Person at all times since the Effective Date of this Agreement:

(i) has been a duly formed and existing partnership, corporation or limited liability company, as the case may be;

(ii) has been duly qualified in each jurisdiction in which such qualification was at such time necessary for the conduct of its business;

(iii) has complied with the provisions of its organizational documents and the laws of its jurisdiction of formation in all respects;

(iv) has observed all customary formalities regarding its partnership or corporate existence, as the case may be;

(v) has accurately maintained its financial statements, accounting records and other partnership or corporate documents separate from those of any other Person;

(vi) has not commingled its assets or funds with those of any other Person;

(vii) has identified itself in all dealings with creditors (other than trade creditors in the ordinary course of business and creditors for the construction of improvements to property on which such Person has a non-contingent contract to purchase such property) under its own name and as a separate and distinct entity;

(viii) has been adequately capitalized in light of its contemplated business operations;

(ix) has not assumed, guaranteed or become obligated for the liabilities of any other Person (except in connection with a Collateral Pool or the endorsement of negotiable instruments in the ordinary course of business) or held out its credit as being available to satisfy the obligations of any other Person;

(x) has not acquired obligations or securities of any other Person;

(xi) in relation to a Borrower, except for loans made in the ordinary course of business to Affiliates, has not made loans or advances to any other Person;

(xii) if such Person is a Borrower Party, such Person has not entered into and were not a party to any transaction with any Affiliate of such Person, except in the ordinary course of business and on terms which are no less favorable to such Person than would be obtained in a comparable arm's-length transaction with an unrelated third-party;

(xiii) has paid the salaries of its own employees, if any;

(xiv) has allocated fairly and reasonably any overhead for shared office space;

(xv) has not engaged in a non-exempt prohibited transaction described in Section 406 of ERISA or Section 4975 of the Internal Revenue Code to the extent it is subject to ERISA;

(xvi) has complied with the requirements of Section 33 of the Security Instrument; and

(xvii) has paid its expenses and liabilities out of its own funds, including through the use of capital contributions.

"Subject Borrower" shall have the meaning set forth in Section 12.09.

"Subordinated Obligations" shall have the meaning set forth in Section 12.08.

"Substitute Cash Collateral" shall have the meaning set forth in Section 3.02(d)(ii).

"Substitute Mortgaged Property" means each Multifamily Residential Property owned by any Borrower or Additional Borrower (either in fee simple or as tenant under a ground lease meeting all of Fannie Mae's requirements for similar loans anticipated to be purchased by Fannie Mae) and added to a Collateral Pool after the Effective Date in connection with a substitution of Collateral as permitted by Section 3.03.

"Substitution" shall have the meaning set forth in Section 3.03.

"Substitution Deposit" shall have the meaning set forth in Section 3.03(e).

"Substitution Fee" means with respect to any Substitution effected in accordance with Section 3.03, a fee in the amount of $10,000 for each substitute property added to a Collateral Pool.

"Substitution Loan Documents" means the Security Instrument covering a Substitute Mortgaged Property and any other documents, instruments or certificates reasonably required by Fannie Mae in form and substance satisfactory to Fannie Mae and Borrower in connection with the addition of the Substitute Mortgaged Property to a Collateral Pool pursuant to Article 3. When possible, such Substitution Loan Documents shall be based substantially on the documents executed on the Effective Date or that otherwise have been executed as of the Effective Date with respect to the Loans, with changes (i) required to comply with the laws of the state where the Substitute Mortgaged Property is located and (ii) as may be required by Fannie Mae due to the character and quality of the Substitute Mortgaged Property based on Fannie Mae's Underwriting Requirements.

"Substitution Request" means a written request substantially in the form of Exhibit H to the Agreement for a Substitution made pursuant to Section 3.03.

"Surveys" means the as-built surveys of the Mortgaged Properties prepared in accordance with Fannie Mae's requirements for similar loans that are anticipated to be purchased by Fannie Mae.

"Taxes" means all taxes, assessments, vault rentals and other charges, if any, general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, will become a lien, on the Mortgaged Properties.

"Tax Protected Asset Borrower" means, individually or collectively, the following Borrowers: ASN Meadows at Russett I LLC, ASN Meadows at Russett II LLC, Courthouse Hill LLC, ASN Woodland Hills East LLC, ASN San Jose LLC, ASN Los Feliz LLC, ASN Walnut Ridge LLC, Archstone Thousand Oaks LLC, Archstone Old Town Pasadena LLC, ASN La Jolla Colony LLC, Archstone Del Mar Station LLC, Archstone Oak Creek I LLC, Archstone Oak Creek II LLC and ASN Pasadena LLC; provided, however, that a Borrower shall cease to be a Tax-Protected Asset Borrower at such time as the Ownership Interests in such Borrower are not owned by AVB Legacy DownREIT, LLC.

"Tax Protected Asset Borrower Owners" means AVB Legacy DownREIT, LLC, Legacy Holdings JV, LLC, Archstone Multifamily Series I Trust, Archstone Multifamily Series II LLC, Archstone Multifamily Series III LLC, Archstone Multifamily Series IV LLC, Archstone Smith Realty Company, Archstone Property Holdings GP LLC, Archstone Property Holdings LLC and Archstone.

"Term of this Agreement" shall be determined as provided in Section 13.10.

"Three-Month LIBOR" means the British Bankers Association fixing of the London Inter-Bank Offered Rate for 3-month U.S. Dollar-denominated deposits as reported by Telerate through electronic transmission. If the Index is no longer available, or is no longer posted through electronic transmission, Fannie Mae will choose a new index that is based upon comparable information and provide notice thereof to Borrower.

"Title Company" means First American Title Insurance Company or such other company(ies) approved by Fannie Mae, provided that the Title Company shall be the same for each Mortgaged Property in the same Collateral Pool.

"Title Insurance Policies" means the mortgagee's policies of title insurance issued by the Title Company from time to time relating to each of the Security Instruments, conforming to Fannie Mae's requirements for similar loans anticipated to be purchased by Fannie Mae, together with such endorsements, coinsurance, reinsurance and direct access agreements with respect to such policies as Fannie Mae may, from time to time, consider necessary or appropriate, including variable credit endorsements, if available,

and tie-in endorsements, if available, and with an aggregate limit of liability under the policy (subject to the limitations contained in sections of the Stipulations and Conditions of the policy relating to a Determination and Extent of Liability) equal to the aggregate amount of Loans Outstanding for the applicable Collateral Pool.

"Trailing 3 Month Period" means, for any specified date, the three (3) month period ending with the later of (i) the last day of the most recent Calendar Quarter or (ii) the month for which financial statements have been delivered by Borrower to Fannie Mae pursuant to Section 2.04 and Section 6.03.

"Trailing 12 Month Period" means, for any specified date, the twelve (12) month period ending with the later of (i) the last day of the most recent Calendar Quarter or (ii) the month for which financial statements have been delivered by Borrower to Fannie Mae pursuant to Section 2.04 and Section 6.03.

"Transfer" means:

(a) as used with respect to Ownership Interests in a Borrower Entity, (1) a sale, assignment, pledge, grant or creation of a lien, encumbrance or security interest, transfer or other disposition (whether voluntary, involuntary, or by operation of law) in any right, title or interest in any Ownership Interest in a Borrower Entity; or (2) the issuance or other creation of new Ownership Interests in a Borrower Entity; or (3) a merger or consolidation of Borrower Entity into another entity or of another entity into Borrower Entity; or (4) the reconstitution of a Borrower Entity from one type of entity to another type of entity; or (5) the amendment, modification or any other change in the governing instrument or instruments of Borrower Entity which has the effect of changing the relative powers, rights, privileges, voting rights or economic interests of the Ownership Interests in such Borrower Entity; or (6) the withdrawal, retirement, removal or involuntary resignation of any owner or manager of a legal entity.

(b) as used with respect to a Mortgaged Property, (1) a sale (except with respect to a Mortgaged Property for which a Release has been requested), assignment, lease (except as permitted by the terms of the Loan Documents), pledge, transfer or other disposition (whether voluntary or by operation of law) of, or (2) the granting or creating of a lien (other than a Permitted Encumbrance), encumbrance or security interest (whether voluntary, involuntary, or by operation of law) in, any estate, rights, title or interest in the Mortgaged Property, or any portion thereof. Transfer does not include a conveyance of the Mortgaged Property pursuant to a Foreclosure Event or the Mortgaged Property becoming part of a bankruptcy estate by operation of law under the Bankruptcy Code.

"Treasury Regulations" means Regulations, revenue rulings and other public interpretations of the Internal Revenue Code by the Internal Revenue Service, as such regulations, rulings and interpretations may be amended or otherwise revised from time to time.

"UCC Collateral" has the meaning set forth in the Security Instrument.

"Underwriting Requirements" means Fannie Mae's overall underwriting requirements for Multifamily Residential Properties in connection with loans anticipated to be purchased by Fannie Mae as such requirements may be amended, modified, updated, superseded, supplemented or replaced from time to time.

"Valuation" means, for any specified date, with respect to a Multifamily Residential Property, (a) if an Appraisal of the Multifamily Residential Property was more recently obtained than a Cap Rate for the Multifamily Residential Property, the Appraised Value of such Multifamily Residential Property, or (b) if a Cap Rate for the Multifamily Residential Property was more recently obtained than an Appraisal of the Multifamily Residential Property, the value derived by dividing—

(i) the Net Operating Income of such Multifamily Residential Property, by

(ii) the most recent Cap Rate determined by Fannie Mae or determined pursuant to Section 2.04.

Notwithstanding the foregoing, any Valuation for a Multifamily Residential Property calculated for a date occurring before the date twelve (12) months after the date on which the Multifamily Residential Property becomes a part of a Collateral Pool shall equal the Appraised Value of such Multifamily Residential Property, unless Fannie Mae determines that changed market or property conditions warrant that the value be determined as set forth in the preceding sentence.

"Voting Equity Capital" shall mean Securities of any class or classes, the holders of which are ordinarily, in the absence of contingencies, entitled to vote to elect a majority of the board of directors (or Persons performing similar functions).

"Waiving Borrower" shall have the meaning set forth in Section 12.04.

Exhibit 99.1

AvalonBay COMMUNITIES, INC.

PRESS RELEASE

Contact: Timothy J. Naughton
Chief Executive Officer and President
AvalonBay Communities, Inc.
703-317-4620

For Immediate Release

AVALONBAY COMPLETES ARCHSTONE ACQUISITION

Arlington, VA (February 27, 2013) — AvalonBay Communities, Inc. (NYSE: AVB) announced today that it and Equity Residential (NYSE: EQR) have completed their previously announced acquisition ("Archstone Acquisition") of the assets and liabilities of Archstone Enterprise LP ("Archstone") from Lehman Brothers Holdings, Inc., which consist principally of a portfolio of high quality apartment communities in major markets in the United States. AvalonBay acquired approximately 40% of Archstone's assets and liabilities and Equity Residential acquired approximately 60% of Archstone's assets and liabilities.

AvalonBay's portion of the completed transaction is valued at approximately $6.5 billion. In addition to assuming approximately $3.9 billion of consolidated and unconsolidated indebtedness, AvalonBay paid $669 million in cash and delivered 14,889,706 shares of AvalonBay common stock, valued at $1.9 billion as of the market's close on Wednesday, February 27, 2012.

As a part of the Archstone Acquisition, AvalonBay acquired 60 apartment communities, containing 20,089 apartment homes, of which 5 communities are under construction and are expected to contain 1,198 apartment homes upon completion; 5 parcels of land, which if developed as anticipated, are expected to contain a total of 1,414 apartment homes; interests in joint ventures (which may be acquired on a deferred closing basis) which own 12 apartment communities, containing 2,851 apartment homes; and a 40% ownership interest in a joint venture arrangement with Equity Residential that contains certain non-core assets and residual liabilities that will be jointly managed until disposition or resolution.

Commenting on the Acquisition, Tim Naughton, AvalonBay's CEO and President said, "Our acquisition of assets from Archstone represents a rare opportunity to expand our presence across our markets with a portfolio that is complementary on three important dimensions - market concentration, submarket positioning, and price point. In addition, this acquisition provides scale benefits in terms of brand penetration and G&A leverage, which we believe will strengthen our competitive position over time and create long-term value for shareholders."

The following table depicts the preliminary approximate allocation of AvalonBay's investment:

	Preliminary Approximate Acquisition Value (1) (Dollars in thousands)
Consolidated stabilized assets	$ 5,700,000
Development communities under construction	300,000
Land held for future development	100,000
Net equity in unconsolidated joint ventures plus allocable venture debt	400,000
Total	**$ 6,500,000**

(1) Value is based on the closing price of our common stock on February 27, 2013 and the debt to be assumed after a $200 million adjustment to the face value of debt to reflect debt at fair market value.

About AvalonBay Communities, Inc.

As of December 31, 2012, the Company owned or held an interest in 203 apartment communities containing 59,391 apartment homes in nine states and the District of Columbia, of which 23 communities were under construction and five communities were under reconstruction. AvalonBay is in the business of developing, redeveloping, acquiring, and managing apartment communities in high barrier-to-entry markets of the United States. More information on AvalonBay, an S&P 500 listed company, may be found on AvalonBay's website at http://www.avalonbay.com.

Forward-Looking Statements

This press release 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 press release, that predict or indicate future events and trends and that do not report historical matters.

Forward-looking statements or forecasts relating to the business, prospects, operating statistics or financial results that relate to or may be expected to result from the Archstone Acquisition are based on expectations, forecasts and assumptions that are inherently speculative and are subject to substantial risks and uncertainties, many of which we cannot predict with accuracy and some of which we may not have anticipated. As a result, the actual operating statistics and financial results that relate to or may be expected to result from the Archstone Acquisition may differ materially from the Company's forecasts. Risks, uncertainties and other factors related to the Archstone Acquisition that might cause such differences include, among other things, the following: we may not be able to integrate the assets and operations acquired in the Archstone Acquisition in a manner consistent with our assumptions and/or we may fail to achieve expected efficiencies and synergies; we may encounter liabilities related to the Archstone Acquisition for which

we may be responsible that were unknown to us at the time we agreed to the Archstone Acquisition or at the time of this press release; and our assumptions concerning risks relating to our lack of control of joint ventures and our ability to successfully dispose of certain assets may not be realized.

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 press release. 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, and which 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. In addition to the factors referred to above, you should carefully review the discussion in our Annual Report on Form 10-K for the year ended December 31, 2012, filed with the Securities and Exchange Commission on February 22, 2013, under Item 1a., "Risk Factors," and the other disclosures elsewhere in the Form 10-K and our subsequent reports on Form 10-Q and 8-K and other filings with the SEC for further discussion of additional risks and uncertainties associated with our business and these forward-looking statements.
