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): **May 6, 2019**

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)

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

(Former Name or Former Address, if Changed Since Last Report)

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

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))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 or Rule 12b-2 of the Securities Exchange Act of 1934.

Emerging growth company o

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. o

Title of each class	**Trading symbol**	**Name of each exchange on which registered**
Common Stock, par value $0.01 per share	AVB	New York Stock Exchange

Item 1.01 Entry into a Material Definitive Agreement.

On May 6, 2019, AvalonBay Communities, Inc. (the "Company") entered into 13 separate sales agency financing agreements, each dated May 6, 2019 (individually, a "Sales Agency Financing Agreement" and collectively, the "Sales Agency Financing Agreements") with each of J.P. Morgan Securities LLC, Barclays Capital Inc., BTIG, LLC, Citigroup Global Markets Inc., Deutsche Bank Securities Inc., Goldman Sachs & Co. LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Morgan Stanley & Co. LLC, Jefferies LLC, RBC Capital Markets, LLC, SunTrust Robinson Humphrey, Inc., TD Securities (USA) LLC and Wells Fargo Securities, LLC (and, in certain cases, their respective affiliates) (when acting in this capacity, individually, a "Sales Agent" and collectively, the "Sales Agents") as sales agents relating to issuances, offers and sales of shares of the Company's common stock, par value $0.01 per share (the "Common Stock").

The Company entered into the new Sales Agency Financing Agreements in order to modify and expand the group of Sales Agents through which sales may be made and to resize the offering amount to the $1,000,000,000 offered under the prior sales agency financing agreements entered into in December 2015.

In accordance with the terms of the Sales Agency Financing Agreements, the Company may offer and sell up to $1,000,000,000 of its Common Stock (together with shares of Common Stock that may be sold pursuant to the forward sale agreements described below, the "Shares") from time to time through any of the Sales Agents (acting in their capacity as Sales Agents or as Forward Sellers, as described below), as its agents for the offer and sale of the Shares. The Shares offered for sale under the Sales Agency Financing Agreements will be offered at market prices prevailing at the time of sale.

Concurrently with entry into the Sales Agency Financing Agreements, the Company entered into ten separate master confirmations (collectively, the "Master Forward Sale Confirmations") between the Company and each of JPMorgan Chase Bank, National Association, Barclays Bank PLC, Citibank, N.A., Deutsche Bank AG, London Branch, Goldman Sachs & Co. LLC, Bank of America, N.A., Morgan Stanley & Co. LLC, Jefferies LLC, Royal Bank of Canada and Wells Fargo Bank, National Association (when acting in this capacity, individually, a "Forward Purchaser" and collectively, the "Forward Purchasers").

The Sales Agency Financing Agreements provide that, in addition to the issuance and sale of the Shares by the Company through the Sales Agents, the Company also may enter into forward sale agreements under the Master Forward Sale Confirmations. In connection with any particular forward sale agreement, the relevant Forward Purchaser will, at the Company's request, borrow from third parties and, through the relevant Sales Agent, sell a number of Shares equal to the number of Shares underlying the particular forward sale agreement (the Sales Agents, when acting as agents for Forward Purchasers, are referred to in this Current Report as the "Forward Sellers"). In no event will the aggregate number of Shares sold through the Sales Agents, whether as an agent for the Company or as a Forward Seller, under the Sales Agency Financing Agreements and under any forward sale agreements, have an aggregate sales price in excess of $1,000,000,000.

The Company will not initially receive any proceeds from the sale of borrowed shares of Common Stock by a Forward Seller. The Company expects to fully physically settle each particular forward sale agreement with the relevant Forward Purchaser on one or more dates specified by the Company on or prior to the maturity date of that particular forward sale agreement, in which case the Company will expect to receive aggregate net cash proceeds at settlement equal to the number of shares underlying

the particular forward sale agreement multiplied by the relevant forward sale price. However, the Company may also elect to cash settle or net share settle a particular forward sale agreement, in which case the Company may not receive any proceeds (in the case of cash settlement) or will not receive any proceeds (in the case of net share settlement), and the Company may owe cash (in the case of cash settlement) or shares of Common Stock (in the case of net share settlement) to the relevant Forward Purchaser.

The Sales Agents will offer the Shares at market prices prevailing at the time of sale. The Company will pay each Sales Agent a commission at a mutually agreed rate that will not exceed, but may be lower than, 1.50% of the sales price of all of the Shares issued by the Company and sold through the relevant Sales Agent as the Company's sales agent under the relevant Sales Agency Financing Agreement. In connection with each forward sale agreement, the Company will pay the relevant Forward Seller, in the form of a reduced initial forward sale price under the related forward sale agreement with the related Forward Purchaser, commissions at a mutually agreed rate that will not exceed, but may be lower than, 1.50% of the sales prices of all borrowed shares of Common Stock sold during the applicable forward hedge selling period by it as a Forward Seller. If any Sales Agent and/or Forward Seller, as applicable, engages in special selling efforts, as that term is used in Regulation M under the Securities Exchange Act of 1934, as amended, such Sales Agent and/or Forward Seller, as applicable, will receive from the Company a commission to be agreed upon at the time of sale.

The foregoing description of the Sales Agency Financing Agreements and the Master Forward Sale Confirmations does not purport to be complete and is qualified in its entirety by reference to the terms and conditions of the forms of Sales Agency Financing Agreement and Master Forward Sale Confirmations which are filed as Exhibits 1.1 and 1.2, respectively, to this Current Report and are incorporated herein by reference. The Shares will be issued pursuant to the Prospectus Supplement and the Company's automatic shelf registration statement on Form S-3 (File No. 333-223183) filed on February 23, 2018 with the Securities and Exchange Commission. This Current Report shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state.

ITEM 9.01 Financial Statements and Exhibits

(d) Exhibits.

Exhibit No.	Description
1.1	Form of Sales Agency Financing Agreement
1.2	Form of Master Forward Sale Confirmation
5.1	Opinion of Goodwin Procter LLP regarding the legality of the shares offered
23.1	Consent of Goodwin Procter LLP (included in Exhibit 5.1)

* Filed herewith.

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.

May 6, 2019

By: /s/ Kevin P. O'Shea
Name: Kevin P. O'Shea
Title: Chief Financial Officer

Exhibit 1.1

SALES AGENCY FINANCING AGREEMENT

This Sales Agency Financing Agreement (this "Agreement"), is dated as of [ ] [·], 2019, by and between AVALONBAY COMMUNITIES, INC., a Maryland corporation (the "Company"), and [ ], a registered broker-dealer organized under the laws of [ ] (in its capacity as agent for the Company in connection with the offering and sale of any Issuance Shares hereunder, "Sales Agent," and, to the extent applicable, in its capacity as agent for any Forward Purchaser in connection with the offering and sale of any Forward Hedge Shares hereunder, "Forward Seller," and, to the extent applicable, in its capacity as purchaser under any Forward Contract, "Forward Purchaser").

THE PARTIES HERETO ENTER INTO THIS AGREEMENT ON THE BASIS OF THE FOLLOWING FACTS, UNDERSTANDINGS AND INTENTIONS:

A. The Company has authorized and proposes to issue and sell, in the manner contemplated by this Agreement, Shares (as defined herein) with an aggregate Sales Price of up to $1,000,000,000 (the "Program") upon the terms and subject to the conditions contained herein.

B. Sales Agent has been appointed by the Company as its agent to sell the Issuance Shares and agrees to use commercially reasonable efforts to sell the Issuance Shares offered by the Company upon the terms and subject to the conditions contained herein.

C. The Forward Seller has been appointed by the Company and the Forward Purchaser as its agent to sell the Forward Hedge Shares and agrees with the Company and the Forward Purchaser to use commercially reasonable efforts to sell the Forward Hedge Shares to be borrowed by the Forward Purchaser and offered by the Company upon the terms and subject to the conditions contained herein.

D. The Company has also entered into sales agency financing agreements (each, an "Alternative Sales Agency Agreement"), each dated of even date herewith, with each of [ ], [ ], [ ], [ ], [ ], [ ] and [ ] (or its respective agents or affiliates) (each in its capacity as sales agent and, to the extent applicable, forward seller and forward purchaser thereunder, an "Alternative Sales Agent"), for the issuance (in the case of the Issuance Shares) or borrowing (in the case of Forward Hedge Shares) and sale from time to time through the applicable Alternative Sales Agents of Shares on the terms set forth in the applicable Alternative Sales Agency Agreements, including under any Master Forward Confirmation between the Company and an Alternative Sales Agent (or its agent or affiliate acting as forward purchaser under any Master Forward Confirmation). This Agreement, any Master Forward Confirmation and the Alternative Sales Agency Agreements are collectively referred to herein as the "Sales Agency Agreements." The aggregate number of Shares to be sold pursuant to the Sales Agency Agreements shall not exceed the Maximum Program Amount (as defined herein).

NOW THEREFORE, in consideration of the premises, representations, warranties, covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, intending to be legally bound hereby, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

Section 1.01 Certain Definitions. For purposes of this Agreement, capitalized terms used herein and not otherwise defined shall have the following respective meanings:

"Accountants" has the meaning set forth in Section 3.07.

"Actual Sold Forward Amount" means, for any Forward Hedge Selling Period for any Forward, the number of Forward Hedge Shares that the Forward Seller has sold during such Forward Hedge Selling Period.

"Actual Sold Issuance Amount" means, for any Issuance Selling Period for any Issuance, the number of Issuance Shares that Sales Agent has sold during such Issuance Selling Period.

"Affiliate" of a Person means another Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first- mentioned Person. The term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Agreement" has the meaning set forth in the introductory paragraph of this agreement.

"Alternative Sales Agency Agreement" has the meaning set forth in the Recitals.

"Alternative Sales Agent" has the meaning set forth in the Recitals.

"Applicable Time" means the time of sale of any Shares pursuant to this Agreement.

"Bylaws" has the meaning set forth in Section 3.05.

"Capped Number" with respect to any Forward Contract has the meaning set forth in such Forward Contract.

"CERCLA" means the Comprehensive Environment Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.).

"Charter" has the meaning set forth in Section 3.05.

"Closing" has the meaning set forth in Section 2.02.

"Closing Date" means the date on which the Closing occurs.

"Code" means the Internal Revenue Code of 1986, as amended.

"Comfort Letter Request Date" has the meaning set forth in Section 4.08.

"Commission" means the United States Securities and Exchange Commission.

"Commitment Period" means the period commencing on the date of this Agreement and expiring on the earlier to occur of (x) the date on which Sales Agent and the Alternative Sales Agents in the aggregate shall have sold the Maximum Program Amount pursuant to the Sales Agency Agreements or (y) the date this Agreement is terminated pursuant to Article VII.

"Common Stock" shall mean the Company's Common Stock, $0.01 par value per share.

"Communities" has the meaning set forth in Section 3.16.

"Company" has the meaning set forth in the introductory paragraph of this Agreement.

"Contracts" has the meaning set forth in Section 3.17.

"Controlling Persons" has the meaning set forth in Section 6.01.

"DWAC" has the meaning set forth in Section 2.04.

"Environmental Laws" has the meaning set forth in Section 3.27.

"ERISA" has the meaning set forth in Section 3.32.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"FCPA" has the meaning set forth in Section 3.26.

"FINRA" means the Financial Industry Regulatory Authority, Inc.

"Floor Price" means the minimum price per share set by the Company in the Transaction Notice below which Sales Agent (in the case of an Issuance) or the Forward Seller (in the case of a Forward) shall not sell Issuance Shares or Forward Hedge Shares, as the case may be, during the relevant Selling Period, which may be adjusted by the Company at any time during the Selling Period and which in no event shall be less than $1.00.

"Forward" means the transaction resulting from each occasion on which the Company elects to exercise its right to deliver a Transaction Notice specifying that it relates to a "Forward" and requiring the Forward Seller to use commercially reasonable efforts to sell the Forward Hedge Shares as specified in such Transaction Notice, subject to the terms and conditions of this Agreement. Where the context requires, the term "Forward" as used herein shall include the definition of the same under the Alternative Sales Agency Agreements.

"Forward Contract" means, for each Forward, the contract evidencing such Forward between the Company and the Forward Purchaser, which shall be comprised of the Master Forward Confirmation and the related "Supplemental Confirmation" (as defined in the Master Forward Confirmation) for such Forward. Where the context requires, the term "Forward Contract" as used herein shall include the definition of the same under the Alternative Sales Agency Agreements.

"Forward Date" means any Trading Day during the Commitment Period that a Transaction Notice specifying that it relates to a "Forward" is deemed delivered pursuant to Section 2.03(b) hereof.

"Forward Hedge Amount" means the aggregate Sales Price of the Forward Hedge Shares to be sold by the Forward Seller with respect to any Forward as specified in the Transaction Notice for such Forward, which may not exceed $150,000,000 without the prior written consent of the Forward Seller, which consent may be withheld in the Forward Seller's sole discretion.

"Forward Hedge Price" means, for any Forward Contract, the product of (x) an amount equal to one (1) minus the Forward Hedge Selling Commission Rate for such Forward Contract; and (y) the "Volume-Weighted Hedge Price" (as defined in the Master Forward Confirmation) for such Forward Contract.

"Forward Hedge Selling Commission" means, for any Forward Contract, the product of (x) the Forward Hedge Selling Commission Rate for such Forward Contract and (y) the "Volume-Weighted Hedge Price" (as defined in the Master Forward Confirmation) for such Forward Contract.

"Forward Hedge Selling Commission Rate" means, for any Forward Contract, a rate mutually agreed to between the Company and the Forward Seller, not to exceed 1.50%.

"Forward Hedge Selling Period" means the period of one to 20 consecutive Trading Days (as determined by the Company in the Company's sole discretion and specified in the applicable Transaction Notice specifying that it relates to a "Forward") following the Trading Day on which such Transaction Notice is delivered or deemed to be delivered pursuant to Section 2.03(b) hereof; *provided* that if, prior to the scheduled end of any Forward Hedge Selling Period (x) any event occurs that would permit the Forward Purchaser to designate a "Scheduled Trading Day" as an "Early Valuation Date" (as each such term is defined in the Master Forward Confirmation) under, and pursuant to the provisions opposite the caption "Early Valuation" in Section 3 of, the Master Forward Confirmation or (y) a "Bankruptcy Termination Event" (as such term is defined in the Master Forward Confirmation) occurs, then the Forward Hedge Selling Period shall immediately terminate as of the first such occurrence.

"Forward Hedge Settlement Date" means one Settlement Cycle immediately following the sale of any Forward Hedge Shares pursuant to this Agreement.

"Forward Hedge Shares" means all Common Stock borrowed by the Forward Purchaser and offered and sold by the Forward Seller in connection with any Forward that has occurred or may occur in accordance with the terms and conditions of this Agreement. Where the context requires, the term "Forward Hedge Shares" as used herein shall include the definition of the same under the Alternative Sales Agency Agreements.

"Forward Purchaser" has the meaning set forth in the introductory paragraph of this Agreement. Where the context requires, the term "Forward Purchaser" as used herein shall include the definition of the same under the Alternative Sales Agency Agreements.

"Forward Seller" has the meaning set forth in the introductory paragraph of this Agreement. Where the context requires, the term "Forward Seller" as used herein shall include the definition of the same under the Alternative Sales Agency Agreements, to the extent applicable.

"General Disclosure Package" has the meaning set forth in Section 3.02.

"Hazardous Materials" has the meaning set forth in Section 3.28.

"Incorporated Documents" has the meaning set forth in Section 3.03.

"Indemnified Party" has the meaning set forth in Section 6.03.

"Indemnifying Party" has the meaning set forth in Section 6.03.

"Investment Company Act" means the Investment Company Act of 1940, as amended, and the rules and regulations of the Commission thereunder.

"Issuance" means each occasion the Company elects to exercise its right to deliver a Transaction Notice that does not involve a Forward and that specifies that it relates to an "Issuance" and requires Sales Agent to use commercially reasonable efforts, consistent with its normal trading and sales practices, to sell the Issuance Shares as specified in such Transaction Notice, subject to the terms and conditions of this Agreement.

"Issuance Amount" means the aggregate Sales Price of the Issuance Shares to be sold by Sales Agent with respect to any Issuance as specified in the Transaction Notice for such Issuance, which may not exceed $150,000,000 without the prior written consent of Sales Agent, which may be withheld in Sales Agent's sole discretion.

"Issuance Date" means any Trading Day during the Commitment Period that a Transaction Notice specifying that it relates to an "Issuance" is delivered or deemed delivered pursuant to Section 2.03(b) hereof.

"Issuance Price" means the Sales Price less the Issuance Selling Commission.

"Issuance Selling Commission" means a mutually agreed rate, not to exceed 1.50% of the Sales Price of Issuance Shares sold during a Selling Period.

"Issuance Selling Period" means the period of one to 20 consecutive Trading Days (as determined by the Company in the Company's sole discretion and specified in the applicable Transaction Notice specifying that it relates to an "Issuance") following the Trading Day on which a Transaction Notice specifying that it relates to an "Issuance" is delivered or deemed to be delivered pursuant to Section 2.03(b) hereof, which period may be shortened by the Company pursuant to a Transaction Notice, in its sole discretion, in accordance with and subject to the provisions of Section 2.03(a)(ii).

"Issuance Settlement Date" means, unless the Company and Sales Agent shall otherwise agree, one Settlement Cycle following each Trading Day during the applicable Issuance Selling

Period, when the Company shall deliver to Sales Agent the amount of Issuance Shares sold on such Trading Day and Sales Agent shall deliver to the Company the Issuance Price received on such sales.

"Issuance Shares" means all shares of Common Stock issued or issuable pursuant to an Issuance that has occurred or may occur in accordance with the terms and conditions of this Agreement. Where the context requires, the term "Issuance Shares" as used herein, shall include the definition of the same under the Alternative Sales Agency Agreements.

"Issuer Free Writing Prospectus" has the meaning set forth in Section 2.05.

"Master Forward Confirmation" means any Master Confirmation for Issuer Share Forward Sale Transactions, dated as of the date hereof, by and between the Company and the Forward Purchaser, including all provisions incorporated by reference therein.

"Material Adverse Effect" means a material adverse effect on the business, assets, operations, properties, prospects or condition (financial or otherwise) of the Company and its subsidiaries, taken as a whole, or any material adverse effect on the Company's ability to consummate the transactions contemplated by, or to execute, deliver and perform its obligations under, this Agreement.

"Maximum Program Amount" means Shares with an aggregate Sales Price of $1,000,000,000 (or, if less, the aggregate amount of Shares registered under the Registration Statement).

"Money Laundering Laws" has the meaning set forth in Section 3.41.

"OFAC" has the meaning set forth in Section 3.42.

"Officer's Certificate Request Date" has the meaning set forth in Section 4.09.

"Opinion Request Date" has the meaning set forth in Section 4.07.

"Original Registration Statement" has the meaning set forth in Section 3.01.

"Partnership" has the meaning set forth in Section 3.28.

"Person" means an individual or a corporation, partnership, limited liability company, trust, incorporated or unincorporated association, joint venture, joint stock company, governmental authority or other entity of any kind.

"Pricing Supplement" has the meaning set forth in Section 3.01.

"Principal Market" means the New York Stock Exchange.

"Prospectus" has the meaning set forth in Section 3.01.

"Prospectus Supplement" has the meaning set forth in Section 5.01(k).

"Registration Statement" has the meaning set forth in Section 3.01.

"Registration Statement Amendment Date" has the meaning set forth in Section 4.07.

"REIT" has the meaning set forth in Section 3.31.

"Remaining Number of Shares" has the meaning set forth in Section 4.09.

"Request Date" means each Comfort Letter Request Date, each Officer's Certificate Request Date and each Opinion Request Date.

"Rule 102" has the meaning set forth in Section 4.11.

"Sales Agency Agreements" has the meaning set forth in the Recitals.

"Sales Agent" has the meaning set forth in the introductory paragraph of this Agreement.

"Sales Price" means, for each Forward or each Issuance hereunder, the actual sale execution price of each Forward Hedge Share or Issuance Share, as the case may be, sold by Sales Agent or the Forward Seller on the Principal Market hereunder in the case of ordinary brokers' transactions, or as otherwise agreed by the parties in other methods of sale. Where the context requires, the term "Sales Price" as used herein shall include the definition of the same under the Alternative Sales Agency Agreements.

"Sarbanes-Oxley Act" means the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith.

"Securities Act" means the Securities Act of 1933, as amended.

"Selling Period" means any Forward Hedge Selling Period or any Issuance Selling Period.

"Settlement Cycle" means two (2) business days.

"Settlement Date" means, unless the Company and Sales Agent shall otherwise agree, any Forward Hedge Settlement Date or any Issuance Settlement Date, as applicable.

"Shares" means Issuance Shares and Forward Hedge Shares, as applicable. Where the context requires, the term "Shares" as used herein shall include the definition of the same under the Alternative Sales Agency Agreements.

"Stand Off Period" has the meaning set forth in Section 4.10.

"Trading Day" means any day which is a trading day on the New York Stock Exchange, other than a day on which trading is scheduled to close prior to its regular weekday closing time.

"Transaction" means any Issuance or any Forward.

"Transaction Date" means any Issuance Date or any Forward Date.

"Transaction Notice" means a written notice to Sales Agent or the Forward Seller delivered in accordance with this Agreement in the form attached hereto as Exhibit A.

"Voting Stock" of any Person as of any date means the capital stock of such Person that is at the time entitled to vote in the election of the board of directors of such Person.

ARTICLE II
ISSUANCES AND FORWARDS

Section 2.01 Transactions.(a) (i) Upon the terms and subject to the conditions of this Agreement, the Company may issue Issuance Shares through Sales Agent, and Sales Agent shall use commercially reasonable efforts, consistent with its normal trading and sales practices, to sell Issuance Shares, with an aggregate Sales Price of up to the Maximum Program Amount, less the aggregate Sales Price for any Forward Hedge Shares previously sold under the Sales Agency Agreements, based on and in accordance with such number of Transaction Notices, each specifying that it relates to an "Issuance," as the Company in its sole discretion shall choose to deliver during the Commitment Period until the aggregate Sales Price of the Issuance Shares sold under the Sales Agency Agreements, *plus* the aggregate Sales Prices for any Forward Hedge Shares previously sold under the Sales Agency Agreements, equals the Maximum Program Amount, or this Agreement is otherwise terminated. Subject to the foregoing and the other terms and conditions of this Agreement, upon the delivery of a Transaction Notice specifying that it relates to an "Issuance," and unless the sale of the Issuance Shares described therein has been suspended, cancelled or otherwise terminated in accordance with the terms of this Agreement, Sales Agent will use commercially reasonable efforts consistent with its normal trading and sales practices to sell such Issuance Shares up to the amount specified into the Principal Market, and otherwise in accordance with the terms of such Transaction Notice. Sales Agent will use commercially reasonable efforts to provide written confirmation to the Company not later than 5:00 p.m. Eastern Time on the Issuance Date, and will in no event provide such confirmation later than the opening of the Trading Day next following the Trading Day on which it has made sales of Issuance Shares hereunder. Such written confirmation will set forth the portion of the Actual Sold Issuance Amount for such Trading Day, the corresponding Sales Price and the Issuance Price payable to the Company in respect thereof. Sales Agent may sell Issuance Shares in the manner described in Section 2.01(b) herein. The Company acknowledges and agrees that (i) there can be no assurance that Sales Agent will be successful in selling Issuance Shares and (ii) Sales Agent will incur no liability or obligation to the Company or any other Person if it does not sell Issuance Shares for any reason other than a failure by Sales Agent to use commercially reasonable efforts consistent with its normal trading and sales practices to sell such Issuance Shares as required under this Section 2.01. In acting hereunder, Sales Agent will be acting as agent for the Company and not as principal.

(ii) In addition, upon the terms and subject to the conditions of this Agreement and the Master Forward Confirmation, the Forward Purchaser may borrow, offer and sell Forward Hedge Shares through the Forward Seller to hedge each Forward, and the Forward Seller shall use commercially reasonable efforts to sell Forward Hedge Shares with an aggregate Sales Price of up to the Maximum Program Amount, less the aggregate Sales Price for any Issuance Shares previously sold under the Sales Agency Agreements, based on and in accordance with such number of Transaction Notices, each specifying

that it relates to a "Forward," as the Company in its sole discretion shall choose to deliver during the Commitment Period until the aggregate Sales Price of the Forward Hedge Shares sold under the Sales Agency Agreements, plus the aggregate Sales Prices for any Issuance Shares previously sold under the Sales Agency Agreements, equals the Maximum Program Amount or this Agreement is otherwise terminated. Subject to the foregoing and the other terms and conditions of this Agreement and the Master Forward Confirmation, upon the delivery of a Transaction Notice specifying that it relates to a "Forward," and unless the sale of the Forward Hedge Shares described therein has been suspended or otherwise terminated in accordance with the terms of this Agreement or the Master Forward Confirmation (including without limitation as a result of any event described in clause (x) or (y) of the proviso contained in the definition of Forward Hedge Selling Period), the Forward Purchaser will use commercially reasonable efforts to borrow Forward Hedge Shares up to the amount specified and the Forward Seller will use commercially reasonable efforts consistent with its normal trading and sales practices to sell such Forward Hedge Shares into the Principal Market, and otherwise in accordance with the terms of such Transaction Notice.

(iii) The Forward Seller will provide written confirmation to the Company and the Forward Purchaser no later than the opening of the Trading Day next following each Trading Day on which it has made sales of Forward Hedge Shares hereunder setting forth the number of Forward Hedge Shares sold on such Trading Day, the corresponding Sales Price and the Forward Hedge Price payable to the Forward Purchaser in respect thereof. Each of the Company and the Forward Purchaser acknowledges and agrees that: (A) there can be no assurance that the Forward Purchaser will be successful in borrowing or that the Forward Seller will be successful in selling Forward Hedge Shares; (B) the Forward Seller will incur no liability or obligation to the Company, the Forward Purchasers, or any other Person if it does not sell Forward Hedge Shares borrowed by the Forward Purchaser for any reason other than a failure by the Forward Seller to use commercially reasonable efforts consistent with its normal trading and sales practices to sell such Forward Hedge Shares as required under this Section 2.01 and (C) the Forward Purchaser will incur no liability or obligation to the Company, the Forward Seller, or any other Person if it does not borrow Forward Hedge Shares for any reason other than a failure by the Forward Purchaser to use commercially reasonable efforts to borrow such Forward Hedge Shares as required under this Section 2.01. In acting hereunder, the Forward Seller will be acting as agent for the Forward Purchaser and not as principal.

(iv) No later than the opening of the Trading Day next following the last Trading Day of each Forward Hedge Selling Period (or, if earlier, the date on which any Forward Hedge Selling Period is suspended or terminated pursuant to Section 5.03), the Forward Purchaser shall execute and deliver to the Company a "Supplemental Confirmation" in respect of the Forward for such Forward Hedge Selling Period, which "Supplemental Confirmation" shall set forth the "Trade Date" for such Forward (which shall, subject to the terms of the Master Forward Confirmation, be the last Trading Day of such Forward Hedge Selling Period), the "Effective Date" for such Forward (which shall, subject to the terms of the Master Forward Confirmation, be the date one Settlement Cycle immediately following the last Trading Day of such Forward Hedge Selling Period), the initial "Number of Shares" for such Forward (which shall be the

Actual Sold Forward Amount for such Forward Hedge Selling Period), the "Maturity Date" for such Forward (which shall, subject to the terms of the Master Forward Confirmation, be the date that follows the last Trading Day of such Forward Hedge Selling Period by the number of days or months set forth opposite the caption "Term" in the Transaction Notice for such Forward, which number of days or months shall in no event be less than one month nor more than two years), the "Initial Forward Price" for such Forward, the "Spread" for such Forward, the "Volume-Weighted Hedge Price" for such Forward, the "Threshold Price" for such Forward, the "Initial Stock Loan Rate" for such Forward, the "Maximum Stock Loan Rate" for such Forward, the "Forward Price Reduction Dates" for such Forward (which shall be each of the dates set forth below the caption "Forward Price Reduction Dates" in the Transaction Notice for such Forward) and the "Forward Price Reduction Amounts" corresponding to such Forward Price Reduction Dates (which shall be each amount set forth opposite each "Forward Price Reduction Date" and below the caption "Forward Price Reduction Amounts" in the Transaction Notice for such Forward) and the "Regular Dividend Amounts" for such Forward (which shall be each of the amount(s) set forth below the caption "Regular Dividend Amounts" in the Transaction Notice for such Forward).

(v) Notwithstanding anything herein to the contrary, the Forward Purchaser's obligation to use commercially reasonable efforts to borrow all or any portion of the Forward Hedge Shares (and the Forward Seller's obligation to use commercially reasonable efforts to sell such portion of the Forward Hedge Shares) for any Forward hereunder shall be subject in all respects to the last paragraph of Section 3 of the Master Forward Confirmation.

(b) Method of Offer and Sale. The Shares may be offered and sold in (1) privately negotiated transactions (if and only if the parties hereto have so agreed in writing), or (2) by any other method or payment permitted by law deemed to be an "at the market" offering as defined in Rule 415 of the Securities Act, including sales made directly on the Principal Market or sales made to or through a market maker or through an electronic communications network. Nothing in this Agreement shall be deemed to require any party to agree to the method of offer and sale specified in clause (1) above, and any party may withhold its consent thereto in such party's sole discretion.

(c) Transactions. Upon the terms and subject to the conditions set forth herein, on any Trading Day as provided in Section 2.03(b) hereof during the Commitment Period on which (x) the conditions set forth in Section 5.01 and Section 5.02 hereof have been satisfied and (y) no event described in clause (x) or clause (y) of the proviso contained in the definition of Forward Hedge Selling Period shall have occurred, the Company may exercise an Issuance by the delivery of a Transaction Notice specifying that it relates to an "Issuance," executed by the Chief Executive Officer, the President, the Chief Financial Officer, the Senior Vice President-Finance or the Treasurer of the Company, to Sales Agent. The number of Issuance Shares that Sales Agent shall use commercially reasonable efforts to sell pursuant to such Issuance shall have an aggregate Sales Price equal to the Issuance Amount. Each Issuance will be settled on the applicable Settlement Date following the Issuance Date.

Upon the terms and subject to the conditions set forth herein, on any Trading Day as provided in Section 2.03(b) during the Commitment Period on which the conditions set forth in Sections 5.01 and 5.02 have been satisfied, the Company may exercise its right to call for a Forward by the delivery of a Transaction Notice specifying that it relates to a "Forward," executed by the Chief Executive Officer, the President, the Chief Financial Officer, the Senior Vice President-Finance or the Treasurer of the Company, to the Forward Seller and the Forward Purchaser. The number of Forward Hedge Shares that the Forward Purchaser shall use commercially reasonable efforts to borrow and that the Forward Seller shall use commercially reasonable efforts to sell pursuant to such Forward shall have an aggregate Sales Price equal to the Forward Hedge Amount. Each sale of Forward Hedge Shares will be settled as between the Forward Seller and the Forward Purchaser on each applicable Forward Hedge Settlement Date following the relevant Forward Date.

Section 2.02 Effectiveness. The effectiveness of this Agreement (the "Closing") shall be deemed to take place concurrently with the execution and delivery of this Agreement by the parties hereto and the completion of the closing transactions set forth in the immediately following sentence. At the Closing, the following closing transactions shall take place, each of which shall be deemed to occur simultaneously with the Closing: (i) the Company shall deliver to Sales Agent and the Forward Seller a certificate executed by the Secretary of the Company, signing in such capacity, dated the date of the Closing (A) certifying that attached thereto are true and complete copies of the resolutions duly adopted by the Board of Directors of the Company authorizing the execution and delivery of this Agreement, the Master Forward Confirmation and the consummation of the transactions contemplated hereby and thereby, which authorization shall be in full force and effect on and as of the date of such certificate and (B) certifying and attesting to the office, incumbency, due authority and specimen signatures of each Person who executed the Agreement and the Master Forward Confirmation for or on behalf of the Company; (ii) the Company shall deliver to Sales Agent and the Forward Seller a certificate executed by the Chief Executive Officer, the President or any Senior Vice-President of the Company and by the Chief Financial Officer of the Company, signing in such capacity, dated the date of the Closing, confirming that the representations and warranties of the Company contained in this Agreement and the Master Forward Confirmation are true and correct and that the Company has performed all of its obligations hereunder to be performed on or prior to the Closing Date and as to the matters set forth in Section 5.01(a) hereof; (iii) Goodwin Procter LLP, counsel to the Company, shall deliver to Sales Agent, the Alternative Sales Agents and the Forward Seller opinions and a negative assurance letter, dated the date of the Closing and addressed to Sales Agent and the Forward Seller, substantially in the forms of Exhibit B-1, Exhibit B-2, Exhibit C and Exhibit D attached hereto; (iv) O'Melveny & Myers LLP, counsel to Sales Agent and the Alternative Sales Agents, shall deliver to Sales Agent, the Alternative Sales Agents and the Forward Seller an opinion, dated the date of the Closing and addressed to Sales Agent, the Alternative Sales Agents and the Forward Seller, substantially in the form of Exhibit E attached hereto; (v) Ernst & Young LLP shall deliver to Sales Agent and the Forward Seller a letter, dated the Closing Date, in form and substance satisfactory to Sales Agent; and (vi) the Company shall pay the expenses set forth in Section 9.02(ii), (iv) and (viii) hereof by wire transfer to the account designated by Sales Agent in writing prior to the Closing.

Section 2.03 Mechanics of Issuances.

(a) Transaction Notice. On any Trading Day during the Commitment Period, the Company may deliver a Transaction Notice to Sales Agent (in the case of an Issuance) or the Forward Seller and the Forward Purchaser (in the case of a Forward), subject to the satisfaction of the conditions set forth in Sections 5.01 and 5.02; *provided*, *however*, that (1) the Issuance Amount or Forward Hedge Amount, as the case may be, for each Transaction as designated by the Company in the applicable Transaction Notice shall in no event exceed $150,000,000 for any Issuance or Forward, as the case may be, without the prior written consent of Sales Agent or the Forward Seller, as applicable, which may be withheld in Sales Agent's or the Forward Seller's sole discretion and (2) notwithstanding anything in this Agreement or the Master Forward Confirmation to the contrary, none of the Forward Purchaser, Sales Agent or the Forward Seller shall have any further obligations with respect to any Transaction Notice if and to the extent the aggregate Sales Price of the Shares sold pursuant thereto, together with the aggregate Sales Price of the Shares previously sold under the Sales Agency Agreements, shall exceed the Maximum Program Amount. The Company shall have the right, in its sole discretion, to amend at any time and from time to time any Transaction Notice subject to compliance with the limitations set forth in this Agreement; *provided, however*, that (i) the Company may not amend the Issuance Amount or Forward Hedge Amount, as the case may be, if such amended Issuance Amount or Forward Hedge Amount, as applicable, is less than the Actual Sold Issuance Amount or Actual Sold Forward Amount, as the case may be, as of the date of such amendment; (ii) the Company may not amend the "Number of Days in the Issuance Selling Period" or "Number of Days in the Forward Hedge Selling Period," as the case may be, if such amended "Number of Days in the Issuance Selling Period" or "Number of Days in the Forward Hedge Selling Period," as applicable, is less than the number of days that have previously transpired (in whole or on part) in such Selling Period as of the date of such amendment; (iii) the Company shall not have the right to amend a Transaction Notice initially specifying that it relates to a "Forward" to be a Transaction Notice specifying that it relates to an "Issuance"; (iv) the Company shall not have the right to amend a Transaction Notice initially specifying that it relates to an "Issuance" to be a Transaction Notice specifying that it relates to a "Forward"; and (v) no change in the Floor Price shall cause any sales of Shares executed pursuant to such Transaction Notice prior to the date of receipt of such amendment to be a breach of the terms hereof.

(b) Delivery of Transaction Notice. A Transaction Notice shall be deemed delivered on the Trading Day that it is received by e-mail (and the Company confirms such delivery by e-mail notice or by telephone (including voicemail message)) by Sales Agent (in the case of a Transaction Notice specifying that it relates to an "Issuance") or by the Forward Seller and the Forward Purchaser (in the case of a Transaction Notice specifying that it relates to a "Forward"); *provided* that the Company may not deliver a Transaction Notice (i) other than on a Trading Day during the Commitment Period or (ii) during an Issuance Selling Period or Forward Hedge Selling Period specified in a previously delivered Transaction Notice; *provided further* that notwithstanding the foregoing, the Company may deliver a Transaction Notice during an Issuance Selling Period or Forward Hedge Selling Period if (x) the Company (in its sole discretion) has terminated such prior Issuance Selling Period or Forward Hedge Selling Period (and the Company confirms such termination by e-mail notice to the Sales Agent or, to the Forward Seller and Forward Purchaser, as the case may be), or (y) the Sales Agent or Forward Seller has fully sold the Forward Hedge Amount or Issuance Amount (and such Sales Agent or

the Forward Seller and Forward Purchaser, as the case may be, confirms such sales by e-mail notice to the Company). No Transaction Notice specifying that it relates to a "Forward" may be delivered if either (A) an ex-dividend date or ex-date, as applicable, for any dividend or distribution payable by the Company on the Common Stock is scheduled to occur during the period from, and including, the first scheduled Trading Day of the related Forward Hedge Selling Period to, and including, the last scheduled Trading Day of such Forward Hedge Selling Period or (B) such Transaction Notice, together with all prior Transaction Notices delivered by the Company relating to a "Forward" hereunder and under any other Alternative Sales Agency Agreements, would result in the aggregate Capped Number under all Forward Contracts entered into or to be entered into between the Company and the Forward Purchaser and any Forward Contracts entered into between the Company and any other Alternative Sales Agent exceeding 19.99% of the number of shares of Common Stock outstanding as of the date of this Agreement.

(c) Floor Price. Neither Sales Agent nor the Forward Seller shall sell Issuance Shares or Forward Hedge Shares, as the case may be, below the Floor Price during any Selling Period, and, subject to clause (iii) of the proviso to the last sentence of Section 2.03(a), such Floor Price may be adjusted by the Company at any time during any Selling Period upon written notice to Sales Agent or the Forward Seller, as the case may be, and confirmation to the Company by Sales Agent or the Forward Seller, as the case may be.

(d) Trading Guidelines. The Company consents to Sales Agent trading in the Company's Common Stock for Sales Agent's own account and the Forward Seller trading in the Company's Common Stock for the Forward Purchaser's own account and, in each case, for the account of its respective clients at the same time as sales of Shares occur pursuant to this Agreement; *provided*, *however*, that such consent is expressly limited to trading activity that complies with applicable federal and state laws, rules and regulations.

Section 2.04 Settlements. (a) Subject to the provisions of Article V, on or before each Issuance Settlement Date, the Company will, or will cause its transfer agent to, electronically transfer the Issuance Shares being sold by crediting Sales Agent or its designee's account at The Depository Trust Company through its Deposit/Withdrawal At Custodian System ("DWAC"), or by such other means of delivery as may be mutually agreed upon by the parties hereto and, upon receipt of such Issuance Shares, which in all cases shall be freely tradable, transferable, registered shares in good deliverable form, Sales Agent will deliver the related Issuance Price in same day funds delivered to an account designated by the Company prior to the Issuance Settlement Date. If the Company defaults in its obligation to deliver Issuance Shares on an Issuance Settlement Date, the Company agrees that it will (i) hold Sales Agent harmless against any loss, claim, damage or expense (including, without limitation, penalties, interest and reasonable legal fees and expenses), as incurred, arising out of or in connection with such default by the Company, and (ii) pay to Sales Agent any Issuance Selling Commission to which it would otherwise have been entitled absent such default. The parties acknowledge and agree that, in performing its obligations under this Agreement, Sales Agent may borrow shares of Common Stock from stock lenders, and may use the Issuance Shares to settle or close out such borrowings.

(b) Subject to the provisions of Article V, on or before each Forward Hedge Settlement Date, the Forward Purchaser shall, or shall cause its transfer agent to, electronically transfer the Forward Hedge Shares being sold by crediting the Forward Seller or its designee's

account at The Depository Trust Company through DWAC, or by such other means of delivery as may be mutually agreed upon by the Forward Seller and the Forward Purchaser and, upon receipt of such Forward Hedge Shares, which in all cases shall be freely tradable and transferable, the Forward Seller shall deliver the related aggregate Forward Hedge Price to the Forward Purchaser in same day funds to an account designated by the Forward Purchaser prior to the relevant Forward Hedge Settlement Date.

Section 2.05 Use of Free Writing Prospectus. None of the Company, Sales Agent, the Forward Purchaser or the Forward Seller has prepared, used, referred to or distributed, or will prepare, use, refer to or distribute, without the other party's prior written consent, which consent shall not be unreasonably withheld, any "written communication" which constitutes a "free writing prospectus" as such terms are defined in Rule 405 under the Securities Act with respect to the offering of Shares contemplated by this Agreement (any such free writing prospectus being referred to herein as an "Issuer Free Writing Prospectus").

Section 2.06 Alternative Sales Agents. The Company agrees that any offer to sell, any solicitation of an offer to buy, or any sales of Shares or any other equity security of the Company shall only be effected by or through only one of Sales Agent or the Forward Seller, as the case may be, or the respective Alternative Sales Agents on any single given day, but in no event by more than one, and the Company shall in no event request that Sales Agent or the Forward Seller, as the case may be, and any other Alternative Sales Agent sell Shares on the same day.

Section 2.07 Exemption from Regulation M. If any party believes that the exemptive provisions set forth in Rule 101(c)(1) of Regulation M under the Exchange Act applicable to securities with an average daily trading volume of $1,000,000 that are issued by an issuer whose common equity securities have a public float value of at least $150,000,000 are not satisfied with respect to the Company or the Common Stock, it shall promptly notify the other parties and sales of Common Stock under the Sales Agency Agreements shall be suspended until that or other exemptive provisions have been satisfied in the reasonable judgment of all parties.

Section 2.08 Distributions under Regulation M. Notwithstanding any other provision of this Agreement or the Master Forward Confirmation, in the event the Company engages Sales Agent or the Forward Seller for a sale of Shares that would constitute a "distribution" within the meaning of Rule 100 of Regulation M under the Exchange Act, the Company and Sales Agent or the Forward Seller, as the case may be, will agree to compensation that is customary for Sales Agent or the Forward Seller, as the case may be, with respect to such transactions.

Section 2.09 Material Non-Public Information. Notwithstanding any other provision of this Agreement, Sales Agent and the Forward Seller shall not be obligated to sell, and the Forward Purchaser shall not be obligated to borrow and deliver to the Forward Seller, any Shares hereunder during (a) any period in which it reasonably believes that the Company is, or could be deemed to be, in possession of material non-public information or (b) any period beginning five (5) Trading Days prior to any public announcement or release disclosing the Company's results of operations or financial condition for a completed quarterly or annual fiscal period and ending on (x) the next business day after the date on which the Company files a Form 10-K or Form 10-Q, as applicable, for the period covered by such earnings announcement or (y) such other date as may be mutually agreed to between the Company and the Sales Agent.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to, and agrees with, Sales Agent, the Forward Seller and the Forward Purchaser, that as of the Closing Date, each Transaction Date, each Settlement Date, each Registration Statement Amendment Date (as defined in Section 4.07), each Request Date and each Applicable Time:

Section 3.01 Registration. The Common Stock is registered pursuant to Section 12(b) of the Exchange Act and is currently listed and quoted on the Principal Market under the trading symbol "AVB," and the Shares have been listed on the Principal Market prior to delivery of the first Transaction Notice hereunder. The Company (i) meets the requirements for the use of Form S-3 under the Securities Act and the rules and regulations thereunder for the registration of the transactions contemplated by this Agreement and the Master Forward Confirmation and (ii) has been subject to the requirements of Section 12 of the Exchange Act and has timely filed all the material required to be filed pursuant to Section 13 and 14 of the Exchange Act for a period of more than 12 calendar months. The Company has filed with the Commission a registration statement on Form S-3 (File No. 333- 223183; the "Original Registration Statement"), to be used in connection with, among other securities, the public offering and sale of Common Stock, including the Shares of the Company. Such registration statement (and any further registration statements that may be filed by the Company for the purpose of continuing the offering of the Shares upon expiration of the effectiveness of the Original Registration Statement after the third anniversary of its original effective date or for the purpose of registering additional Shares to be sold pursuant to this Agreement), and the prospectus constituting a part of such registration statement, together with the Prospectus Supplement (as defined in Section 5.01(k)) and any pricing supplement relating to the Shares (each, a "Pricing Supplement"), including all documents incorporated or deemed to be incorporated therein by reference pursuant to Item 12 of Form S-3 under the Securities Act, in each case, as from time to time amended or supplemented, are referred to herein as the "Registration Statement" and the "Prospectus," respectively, except that if any revised prospectus is provided to Sales Agent or the Forward Seller by the Company for use in connection with the offering of the Shares that is not required to be filed by the Company pursuant to Rule 424(b) promulgated by the Commission under the Securities Act, the term "Prospectus" shall refer to such revised prospectus from and after the time it is first provided to Sales Agent or the Forward Seller for such use. Promptly after the execution and delivery of this Agreement, the Company will prepare and file the Prospectus Supplement relating to the Shares pursuant to Rule 424(b) promulgated by the Commission under the Securities Act, as contemplated by Section 5.01(k) of this Agreement. As used in this Agreement, the terms "amendment" or "supplement" when applied to the Registration Statement or the Prospectus shall be deemed to include the filing by the Company with the Commission of any document under the Exchange Act after the date hereof that is or is deemed to be incorporated therein by reference.

Section 3.02 Registration Statement and Prospectus. The Registration Statement is an "automatic effective registration statement" as defined under Rule 405 of the Securities Act that has been filed with the Commission not earlier than three (3) years prior to the date hereof; and no notice of objection of the Commission to the use of the Registration Statement or any post-effective amendment thereto pursuant to Rule 401(g)(2) under the Securities Act has been

received by the Company. No order suspending the effectiveness of the Registration Statement has been issued by the Commission and no proceeding for that purpose or pursuant to Section 8A of the Securities Act against the Company or related to the offering has been initiated or threatened by the Commission; as of the applicable effective date of the Registration Statement and any amendment thereto, the Registration Statement complied and will comply in all material respects with the Securities Act, and did not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein not misleading; and as of the date of the Prospectus (and any amendment or supplement thereto) and the applicable Issuer Free Writing Prospectus(es), if any, issued at or prior to the Applicable Time, taken together (collectively, and, with respect to any Shares, together with the public offering price of such Shares, the "General Disclosure Package") as of each Applicable Time and the Closing Date, as the case may be, will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided* that the Company makes no representation and warranty with respect to any statements or omissions made in reliance upon and in conformity with information relating to Sales Agent, the Forward Seller and the Forward Purchaser furnished to the Company in writing by Sales Agent, the Forward Seller or the Forward Purchaser expressly for use in the Registration Statement, the Prospectus and the General Disclosure Package and any amendment or supplement thereto.

Section 3.03 Incorporated Documents. The documents incorporated by reference in the Registration Statement, the Prospectus or the General Disclosure Package (the "Incorporated Documents"), when they became effective or were filed with the Commission, as the case may be, conformed in all material respects to the requirements of the Securities Act or the Exchange Act, as applicable, and none of such documents contained any untrue statement of a material fact or, taken together, omitted to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; and any further documents so filed and incorporated by reference in the Registration Statement, the Prospectus or the General Disclosure Package, when such documents become effective or are filed with the Commission, as the case may be, will conform in all material respects to the requirements of the Securities Act or the Exchange Act, as applicable, and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

Section 3.04 Organization, Power and Authority of Company. The Company has been duly organized and is validly existing as a corporation in good standing under the laws of the State of Maryland with the power and authority to conduct all the activities conducted by it, to own or lease all the assets owned or leased by it and otherwise to conduct its business as described in the Registration Statement and Prospectus. The Company is duly licensed or qualified to do business and in good standing in each jurisdiction in which the nature of the activities conducted by it or the character of the assets owned or leased by it makes such licensing or qualification necessary, except where the failure to be so qualified, considering all such cases in the aggregate, will not have a Material Adverse Effect on the business, properties, business prospects, condition (financial or otherwise) or results of operations of the Company and its subsidiaries taken as a whole.

Section 3.05 Organization, Power and Authority and Capitalization of Subsidiaries. As of the date of this Agreement, the Company does not have any "significant subsidiaries" (as defined in Rule 12b-2 under the Exchange Act). Each of the Company's subsidiaries is an entity duly organized or formed, as the case may be, and, in the case of each such subsidiary that is a corporation, limited partnership or limited liability company, is validly existing and in good standing under the laws of its respective jurisdiction of organization or incorporation, and each of the Company's subsidiaries has full power and authority to conduct all the activities conducted by it, to own or lease all the assets owned or leased by it and otherwise to conduct its business as described in the Registration Statement and the Prospectus, except in each case where any such failure, considering all such cases in the aggregate, will not have a Material Adverse Effect. Each of the Company's subsidiaries is duly licensed or qualified to do business in good standing as a corporation, limited partnership or limited liability company, as the case may be, in all jurisdictions in which the nature of the activities conducted by it or the character of the assets owned or leased by it makes such licensing or qualification necessary except where the failure to be so qualified, considering all such cases in the aggregate, will not have a Material Adverse Effect. Except for the stock or other interests in the subsidiaries or as disclosed in the Registration Statement or the Prospectus, the Company does not own, directly or indirectly, or have any direct or indirect ownership interest in any shares of stock or any other equity or long-term debt securities of any corporation or have any equity interest in any firm, partnership, joint venture, trust, association or other entity where such interest is individually material to the Company. Complete and correct copies of the charter of the Company, as amended through the date hereof (collectively, the "Charter"), and the bylaws of the Company, as amended through the date hereof (the "Bylaws"), have been delivered to counsel for Sales Agent and counsel for the Forward Seller. Except as otherwise described in the Registration Statement or the Prospectus, all of the outstanding shares of capital stock or other equity interests of each subsidiary of the Company have been duly and validly authorized and issued, are fully paid and non-assessable and are owned directly or indirectly by the Company, free and clear of any lien, charge, encumbrance, security interest, restriction on voting or transfer or any other claim of any third party, other than such liens, charges, encumbrances, security interests, restrictions or claims that are described in the Prospectus and would not have, individually or in the aggregate, a Material Adverse Effect.

Section 3.06 Capitalization. The Company has an authorized capitalization as set forth in the Registration Statement and the Prospectus; all the outstanding shares of capital stock of the Company have been duly and validly authorized and issued and are fully paid and non-assessable and are not subject to any pre-emptive or similar rights; except as described in or expressly contemplated by the Prospectus and the General Disclosure Package and except for shares of Common Stock to be issued to certain employees in connection with the deferment of income, shares of Common Stock issuable pursuant to awards granted or to be granted under the Company's Second Amended and Restated 2009 Equity Incentive Plan or the Company's 1994 Stock Incentive Plan, as amended and restated, shares of Common Stock issuable under the Company's 1996 Non-Qualified Employee Stock Purchase Plan, shares of Common Stock issuable under the Company's Dividend Reinvestment and Stock Purchase Plan and shares of Common Stock issuable upon redemption or conversion of units of limited partnership interests, there are no outstanding rights (including, without limitation, pre-emptive rights), warrants or options to acquire, or instruments convertible into or exchangeable for, any shares of capital stock or other equity interest in the Company or any of its subsidiaries, or any contract,

commitment, agreement, understanding or arrangement of any kind relating to the issuance of any capital stock of the Company or any such subsidiary, any such convertible or exchangeable securities or any such rights, warrants or options; the capital stock of the Company conforms in all material respects to the description thereof contained in the Registration Statement, the Prospectus and the General Disclosure Package.

Section 3.07 Financial Statements. Except as otherwise stated therein and except, in the case of interim periods, for the notes thereto and normal year-end adjustment, (i) the financial statements and the related notes thereto of the Company and its consolidated subsidiaries included or incorporated by reference in the Registration Statement, the Prospectus and the General Disclosure Package comply in all material respects with the applicable requirements of the Securities Act and the Exchange Act, as applicable, and present fairly the financial position of the Company and its subsidiaries as of the dates indicated and the results of their operations and the changes in their cash flows for the periods specified; (ii) such financial statements have been prepared in conformity with generally accepted accounting principles applied on a consistent basis throughout the periods covered thereby, and the supporting schedules included or incorporated by reference in the Registration Statement present fairly the information required to be stated therein; and (iii) the other financial information included or incorporated by reference in the Registration Statement, the Prospectus and the General Disclosure Package has been derived from the accounting records of the Company and its subsidiaries and presents fairly the information shown thereby. No other financial statements (or schedules) of the Company or any predecessor of the Company are required by the Securities Act to be included in the Registration Statement, the Prospectus or the General Disclosure Package. Ernst & Young LLP (together with any other nationally recognized accounting firm that the Company may from time to time engage, the "Accountants"), who have reported on the financial statements and schedules which are audited, are independent registered public accountants with respect to the Company and its subsidiaries within the applicable rules and regulations adopted by the Commission and the Public Company Accounting Oversight Board (United States) and as required by the Securities Act. The statements included in the Registration Statement with respect to the Accountants pursuant to Item 509 of Regulation S-K of the Securities Act are true and correct in all material respects.

Section 3.08 Disclosure Controls. The Company and its subsidiaries maintain an effective system of "disclosure controls and procedures" (as defined in Rule 13a-15(e) of the Exchange Act) that complies with the requirements of the Exchange Act and is designed to ensure that information required to be disclosed by the Company in reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Commission's rules and forms, including, but not limited to, controls and procedures designed to ensure that such information is accumulated and communicated to the Company's management as appropriate to allow timely decisions regarding required disclosure. The Company and its subsidiaries have carried out evaluations of the effectiveness of their disclosure controls and procedures as required by Rule 13a-15 of the Exchange Act, and these evaluations deemed such disclosure controls and procedures effective.

Section 3.09 Accounting Controls. The Company and its subsidiaries maintain systems of "internal control over financial reporting" (as defined in Rule 13a-15(f) of the Exchange Act) that comply with the requirements of the Exchange Act. Except as disclosed in the Registration

Statement, the Prospectus or the General Disclosure Package, since the end of the Company's most recently completed fiscal year, there has been no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting. Except as disclosed in the Registration Statement, the Prospectus and the General Disclosure Package, the Company is not aware of any material weaknesses in the Company's internal controls.

Section 3.10 Shares. The Shares have been duly authorized and, when issued and delivered in accordance with the terms of this Agreement or the Master Forward Confirmation, as the case may be, will be validly issued, fully paid and non-assessable, and the issuance of such Shares will not be subject to any preemptive rights under the Charter or Bylaws of the Company or the Maryland General Corporation Law. Upon issuance, the Shares will conform in all material respects to the statements relating thereto contained in the Prospectus and the General Disclosure Package. Upon payment of the purchase price and delivery of the Shares in accordance with this Agreement and the Master Forward Confirmation (which may include net share settlement or combination settlement), as the case may be, each of the purchasers thereof will receive good, valid and marketable title to such Shares, free and clear of all liens, charges and encumbrances.

Section 3.11 Sale of Shares. Immediately after any sale of Shares by the Company or the Forward Seller hereunder, the aggregate amount of Common Stock that has been issued and sold by the Company and offered and sold by the Forward Seller, in each case, hereunder will not exceed the aggregate amount of Common Stock registered under the Registration Statement or the Maximum Program Amount (in this regard, the Company acknowledges and agrees that neither Sales Agent nor the Forward Seller shall have responsibility for maintaining records with respect to the aggregate amount of Shares sold, or of otherwise monitoring the availability of Common Stock for sale, under the Registration Statement, which shall be the sole responsibility of the Company).

Section 3.12 The Agreements. The Company has the corporate power and authority to enter into each of this Agreement, the Master Forward Confirmation and any "Supplemental Confirmation" and to issue the Shares; and all action required to be taken for the due and proper authorization, execution and delivery by the Company of this Agreement, the Master Forward Confirmation and any "Supplemental Confirmation" and the consummation by it of the transactions contemplated hereby has been duly and validly taken. Each of this Agreement and the Master Forward Confirmation has been duly authorized, executed and delivered by the Company and constitutes a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms. Any "Supplemental Confirmation" will be duly authorized, executed and delivered by the Company and will constitute a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms. Neither the execution, delivery and performance of this Agreement, the Master Forward Confirmation and each "Supplemental Confirmation" under the Master Forward Confirmation nor the consummation of the transactions contemplated hereby and thereby constitutes a breach or violation of, or a default under, or conflict with, or give any other party a right to terminate any of its obligations under, or result in the acceleration of any obligation under, or result in the creation or imposition of any lien, charge or encumbrance upon the Communities (as defined below) or any of the other assets of the Company or any of its subsidiaries pursuant to the terms

or provisions of, the Charter or Bylaws of the Company, the articles or certificate of incorporation or bylaws or partnership agreement or operating agreement of any of the Company's subsidiaries or any material contract, lease or other instrument to which the Company or any of its subsidiaries is a party or by which any of their property may be bound or any judgment, ruling, decree, order, law, statute, rule or regulation of any court or other governmental agency or body applicable to the Communities or the business or properties of the Company or any of its subsidiaries, except as disclosed in the Prospectus.

Section 3.13 No Material Adverse Change. Since the date of the most recent financial statements of the Company included or incorporated by reference in the Registration Statement, the Prospectus and the General Disclosure Package, (i) there has not been any change in the capital stock or long-term debt of the Company or its subsidiaries taken as a whole, or (except for regular quarterly dividends on the Company's Common Stock and except as disclosed in the Registration Statement, the Prospectus and the General Disclosure Package) any dividend or distribution of any kind declared, set aside for payment, paid or made by the Company on any class of capital stock, or any change, or any development involving a prospective change, in or affecting the business, properties, business prospects, condition (financial or otherwise) or results of operations of the Company and its subsidiaries taken as a whole; (ii) neither the Company nor any of its subsidiaries has entered into any transaction or agreement or incurred any liability or obligation, direct or contingent; and (iii) neither the Company nor any of its subsidiaries has sustained any loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor disturbance or dispute or any action, order or decree of any court or arbitrator or governmental or regulatory authority, except in each case as otherwise disclosed in the Registration Statement, the Prospectus and the General Disclosure Package; except, in the case of each of clauses (i), (ii) or (iii), such as would not have a Material Adverse Effect.

Section 3.14 Company Not an Investment Company. The Company is not and, after giving effect to the offering and sale of the Shares and the application of the proceeds thereof as described in the Registration Statement and the Prospectus and the consummation of the transactions contemplated by the Master Forward Confirmation and each "Supplemental Confirmation" executed in connection with the Master Forward Confirmation, will not be required to register as an "investment company" or an entity "controlled" by an "investment company" within the meaning of the Investment Company Act.

Section 3.15 Use of Proceeds. The Company will use the net proceeds from the offering of Shares and the consummation of the transactions contemplated by the Master Forward Confirmation and each "Supplemental Confirmation" executed in connection with the Master Forward Confirmation in the manner specified in the Prospectus under "Use of Proceeds."

Section 3.16 No Material Actions or Proceedings. Except as set forth in the Registration Statement, the Prospectus and the General Disclosure Package, there is no pending or, to the knowledge of the Company, threatened investigation, action, suit or proceeding against or affecting the Company or any of its subsidiaries or any of their respective directors, partners or officers in their capacity as such or any of the "Current Communities," the "Development Communities" or the "Redevelopment Communities" (each as defined in the Prospectus and

collectively, the "Communities") before or by any federal or state court, commission, regulatory body, administrative agency or other governmental body, domestic or foreign, wherein an unfavorable ruling, decision or finding might, individually or in the aggregate, have a Material Adverse Effect or materially and adversely affect the ability of the Company to perform its obligations under this Agreement and the Master Forward Confirmation; and there are no statutes or regulations or current, pending or, to the Company's knowledge, threatened, legal, governmental or regulatory actions, suits or proceedings that are required under the Securities Act to be described in the Registration Statement that are not so described in the Registration Statement, the Prospectus and the General Disclosure Package.

Section 3.17 Filing and Enforceability of Contracts. There are no contracts or documents of a character required under the Securities Act to be described in the Registration Statement or to be filed as exhibits to the Registration Statement that are not so described in the Registration Statement, the Prospectus and the General Disclosure Package or filed as exhibits to the Registration Statement (the "Contracts"). All Contracts executed and delivered on or before the date hereof to which the Company or any subsidiary of the Company is a party have been duly authorized, executed and delivered by the Company or such subsidiary and, assuming due authorization, execution and delivery thereof by the other parties thereto, constitute valid and binding agreements of the other parties thereto, enforceable against such parties in accordance with the terms thereof, subject, as to enforcement, to (i) applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, (ii) general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or law), (iii) the discretion of the court before which any proceeding therefor may be brought, (iv) requirements that a claim payable in a foreign or composite currency (or a foreign or composite currency judgment in respect of such claim) be converted into U.S. dollars at a rate of exchange prevailing on a date determined pursuant to applicable law and (v) governmental authority to limit, delay or prohibit the making of payments outside the United States.

Section 3.18 Compliance With Law. Each of the Company and its subsidiaries has complied in all material respects with all laws, regulations and orders applicable to it or their respective businesses and properties where the failure to comply would, individually or in the aggregate, have a Material Adverse Effect; neither the Company nor any of its subsidiaries is, and upon consummation of the transactions contemplated under this Agreement and the Master Forward Confirmation and each "Supplemental Confirmation" executed in connection with the Master Forward Confirmation, none of them will be, in default under any contract to which the Company or any of its subsidiaries is a party the violation of which would, individually or in the aggregate, have a Material Adverse Effect, and no other party under any such contract is, to the knowledge of the Company, in default in any material respect thereunder; the Company is not in violation of its Charter or Bylaws; except as disclosed in the Registration Statement, the Prospectus and the General Disclosure Package, the Company and each of its subsidiaries have, or upon the Closing Date will have, all governmental licenses (including, without limitation, a California real estate brokerage license and/or a California general contractor's license, if applicable), permits, consents, orders, approvals and other authorizations, and have made all declarations and filings with the appropriate federal, state, local or foreign governmental or regulatory authorities that are, necessary for the ownership or lease of their respective properties or required to carry on their respective business as contemplated in the Registration Statement, the Prospectus and the General Disclosure Package, and none of them has received any notice of

proceedings relating to the revocation or modification of any such governmental license, permit, consent, order, approval or other authorization or has any reason to believe that any such governmental license, permit, consent, order, approval or other authorization will not be renewed in the ordinary course which, individually or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would have a Material Adverse Effect.

Section 3.19 No Further Consents Required. No consent, approval, authorization or order of, or filing with, any court or arbitrator or governmental agency or body is required for the consummation of the transactions contemplated by this Agreement, the Master Forward Confirmation and each "Supplemental Confirmation" executed in connection with the Master Forward Confirmation, in connection with the issuance or sale of the Shares by the Company or in connection with the offer and sale of Shares by the Forward Seller, except such as may be required by the federal securities laws or the securities or Blue Sky laws of the various states in connection with the transactions contemplated hereby or thereby, or for such as have been obtained and delivered to the Representatives, counsel for Sales Agent and counsel for the Forward Seller as of the date of this Agreement.

Section 3.20 Title to Properties. The Company, or its subsidiaries, as applicable, has good and marketable title to the Communities, and the Communities are not subject to any liens or encumbrances except for monetary liens as set forth in the Prospectus or the Registration Statement, non-delinquent property taxes, utility easements and other immaterial non-monetary liens or encumbrances of record. All liens, charges, encumbrances, claims or restrictions on or affecting the Communities which are required to be disclosed in the Prospectus are disclosed therein. Except as is disclosed in the Registration Statement or the Prospectus and except as would not, in the aggregate, have a Material Adverse Effect, (i) each of the Company and each of its subsidiaries has valid, subsisting and enforceable leases with its tenants for the properties described in the Prospectus as leased by it, (ii) no tenant under any of the leases pursuant to which the Company or any subsidiary leases its properties has an option or right of first refusal to purchase the premises demised under such lease, (iii) the use and occupancy of each of the properties of the Company and its subsidiaries complies with all applicable codes and zoning laws and regulations, (iv) the Company has no knowledge of any pending or threatened condemnation or zoning change that will affect the size of, use of, improvements of, construction on, or access to any of the properties of the Company or its subsidiaries, and (v) the Company has no knowledge of any pending or threatened proceeding or action that will in any manner affect the size of, use of, improvements on, construction on, or access to any of the properties of the Company or its subsidiaries.

Section 3.21 Mortgages; Community Matters. Except as disclosed in the Registration Statement and the Prospectus, the mortgages and deeds of trust encumbering the Communities are not convertible nor will the Company or any of its subsidiaries hold a participating interest therein and such mortgages and deeds of trust are not cross-defaulted or cross-collateralized to any property not to be owned directly or indirectly by the Company. To the knowledge of the Company and except as disclosed in the Registration Statement and the Prospectus, (i) the present use and occupancy of each of the Communities complies with all applicable codes and zoning laws and regulations, if any, except for such failures to comply which would not individually or in the aggregate have a Material Adverse Effect, and (ii) there is no pending or, to the Company's knowledge, threatened condemnation, zoning change, environmental or other

proceeding or action that will affect the size of, use of, improvements on, construction on, or access to the Communities, except for such proceedings or actions that would not individually or in the aggregate have a Material Adverse Effect.

Section 3.22 Title Insurance. Title insurance in favor of the mortgagee, the Company or its subsidiaries is maintained with respect to each of the Communities, in an amount at least equal to the greater of (i) the cost of acquisition of such property and (ii) the cost of construction by the Company and its subsidiaries of the improvements located on such property (measured at the time of such construction), except, in each case, where the failure to maintain such title insurance would not have a Material Adverse Effect.

Section 3.23 Accuracy of Company's Statements. No statement, representation, warranty or covenant made by the Company in this Agreement or the Master Forward Confirmation or made in any certificate or document required by this Agreement or the Master Forward Confirmation to be delivered to Sales Agent, the Forward Seller and/or the Forward Purchaser, as the case may be, was or will be, when made, inaccurate, untrue or incorrect.

Section 3.24 No Price Stabilization or Manipulation. Except as stated in the Prospectus, neither the Company nor any affiliated purchaser of the Company has taken, nor will it take, directly or indirectly, any action designed to or that might reasonably be expected to cause or result in stabilization or manipulation of the price of the Common Stock to facilitate the sale or resale of the Common Stock.

Section 3.25 No Labor Disputes. No labor dispute with or disturbance by the employees of the Company or any of its subsidiaries exists or, to the knowledge of the Company after due inquiry and investigation, is contemplated or threatened, which, in either case, would have a Material Adverse Effect.

Section 3.26 No Unlawful Contributions. Neither the Company nor any of its subsidiaries nor, to the Company's knowledge, any director, officer, agent, employee or other person associated with or acting on behalf of the Company or any of its subsidiaries has (i) made any payment of funds of the Company or any subsidiary or received or retained any funds in violation of any law, rule or regulation or of a character required to be disclosed in the Prospectus which has not been so disclosed; (ii) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (iii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; (iv) violated or is in violation of any provision of the Foreign Corrupt Practices Act of 1977, as amended (the "FCPA"), and the rules and regulations thereunder, including, without limitation, by making use of the mails or any means or instrumentality of U.S. interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the giving of anything of value to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office in contravention of the FCPA or any other applicable anti-bribery or anti-corruption law; or (v) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment.

Section 3.27 Compliance With Environmental Laws. As of the Closing Date, and any Transaction Date or Settlement Date, as the case may be, the Company and each of its subsidiaries (i) will be in compliance with applicable federal, state and local laws and regulations relating to the protection of human health and safety, the Hazardous Materials (as defined below) or hazardous or toxic wastes, pollutants or contaminants (the "Environmental Laws"); (ii) will have received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses; and (iii) will be in compliance with all terms and conditions of any such permit, license or approval, except where such noncompliance with Environmental Laws, failure to receive required permits, licenses or other approvals or failure to comply with the terms and conditions of such permits, licenses or approvals are otherwise disclosed in the Prospectus or would not, individually or in the aggregate, have a Material Adverse Effect.

Section 3.28 Hazardous Materials.

(a) None of the Company or any partnership or other subsidiary that owns a Community (each a "Partnership" and collectively, the "Partnerships") has at any time and, to the best knowledge of the Company after due inquiry and investigation, no other party has at any time handled, buried, stored, retained, refined, transported, processed, manufactured, generated, produced, spilled, allowed to seep, leak, escape or leach, or be pumped, poured, emitted, emptied, discharged, released, injected, dumped, transferred or otherwise disposed of or dealt with, Hazardous Materials (as hereinafter defined) on, to, above under, in, into or from the Communities, except as referred to in the Prospectus or such as would not, individually or in the aggregate, have a Material Adverse Effect. Neither the Company nor its subsidiaries intends to use the Communities or any subsequently acquired properties described in the Prospectus for the purpose of handling, burying, storing, retaining, refining, transporting, processing, manufacturing, generating, producing, spilling, seeping, leaking, escaping, leaching, pumping, pouring, emitting, emptying, discharging, releasing, injecting, dumping, transferring or otherwise disposing of or dealing with Hazardous Materials, except for the use, storage and transportation of small quantities of substances that are regularly used as office supplies, household cleaning supplies, gardening supplies or pool maintenance supplies in compliance with applicable Environmental Laws and in accordance with prudent business practices and good hazardous materials storage and handling practices.

(b) None of the Company or the Partnerships, to the best knowledge of the Company after due inquiry and investigation, knows of any seepage, leak, escape, leach, discharge, injection, release, emission, spill, pumping, pouring, emptying or dumping of Hazardous Materials into waters on, under or adjacent to the Communities or onto lands from which such hazardous or toxic waste or substances might seep, flow or drain into such waters, except as referred to in the Prospectus or such as would not, individually or in the aggregate, have a Material Adverse Effect.

(c) None of the Company or the Partnerships to the best knowledge of the Company after due inquiry and investigation, has received notice of, or has knowledge of any occurrence or circumstance which, with notice or passage of time or both, would give rise to, any claim under or pursuant to any Environmental Law pertaining to Hazardous Materials, hazardous or toxic waste or substances on or originating from the Communities arising out of the conduct

of any such party, including, without limitation, pursuant to any Environmental Law, except as referred to in the Prospectus or such as would not, individually or in the aggregate, have a Material Adverse Effect.

As used herein, "Hazardous Material" shall include, without limitation, any flammable materials or explosives, petroleum or petroleum-based products, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials, asbestos or any material as defined by any federal, state or local environmental law, ordinance, rule or regulation, including, without limitation, Environmental Laws, CERCLA, the Hazardous Materials Transportation Act, as amended (49 U.S.C. Section 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 9601, et seq.), and in the regulations adopted and publications promulgated pursuant to each of the foregoing or by any federal, state or local governmental authority having or claiming jurisdiction over the Communities as described in the Prospectus.

Section 3.29 Periodic Review of Costs of Environmental Compliance. In the ordinary course of its business, each of the Company and the Partnerships conducts a periodic review of the effect of Environmental Laws on its business, operations and properties in the course of which it identifies and evaluates associated costs and liabilities (including, without limitation, any capital or operating expenditures required for investigation, clean-up, closure of properties or compliance with Environmental Laws or any permit, license or approval, any related constraints on operating activities and any potential liabilities to third parties). On the basis of such review and on the basis of the reviews conducted by the Company in connection with the Communities, the Company has reasonably concluded that such associated costs and liabilities would not, individually or in the aggregate, have a Material Adverse Effect.

Section 3.30 Property and Casualty Insurance. The Company and its subsidiaries have insurance as described in the Prospectus covering their respective properties, operations, personnel and businesses, which insurance (other than earthquake insurance) is in amounts and insures against such losses and risks as are prudent and customary to protect the Company and its subsidiaries and their respective businesses; and neither the Company nor any of its subsidiaries has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage at reasonable cost from similar insurers as may be necessary to continue its business. The Company maintains earthquake insurance on the Communities to the extent described in the Prospectus. Neither the Company nor any subsidiary has received from any insurance company notice of any material defects or deficiencies affecting the insurability of any of the Communities (other than with respect to seismic activities).

Section 3.31 REIT Status. The Company has elected to be taxed as a "real estate investment trust" (a "REIT") under the Code and will use its best efforts to continue to be organized and will continue to operate in a manner so as to qualify as a REIT under Sections 856 through 860 of the Code, unless the Board of Directors of the Company determines that it is no longer in the best interest of the Company to continue to be so qualified.

Section 3.32 No Plan Assets. Neither the assets of the Company nor its subsidiaries constitute, nor will such assets as of the Closing Date, and any Transaction Date or Settlement

Date, as the case may be, constitute, "plan assets" under the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

Section 3.33 Distribution of Offering Materials. The Company has not distributed and, prior to the later to occur of (i) the Closing Date and (ii) completion of the distribution of the Shares, will not distribute any offering material (including, but not limited to, any Issuer Free Writing Prospectus) in connection with the offering and sale of the Shares other than the Registration Statement and the Prospectus approved by Sales Agent or the Forward Seller, as the case may be, or other materials, if any, permitted by the Securities Act.

Section 3.34 Form S-3 Eligibility. The Company satisfies all conditions and requirements for the use of a Registration Statement on Form S-3 under the Securities Act.

Section 3.35 Insider Trading Policy. Under the Company's insider trading policy, officers and directors of the Company may not sell or otherwise dispose of securities of the Company without pre-approval from the Company.

Section 3.36 Title to Personal Property. The Company and its subsidiaries have good and marketable title to, or have valid rights to lease or otherwise use, all items of personal property that are material to the respective businesses of the Company and its subsidiaries, in each case free and clear of all liens, encumbrances, claims and defects and imperfections of title except those that (i) do not materially interfere with the use made and proposed to be made of such property by the Company and its subsidiaries or (ii) could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

Section 3.37 Title to Intellectual Property. The Company and its subsidiaries own or possess adequate rights to use all material trademarks, service marks, trade names, trademark registrations, service mark registrations, copyrights, licenses and know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures) necessary for the conduct of their respective businesses; and the conduct of their respective businesses will not conflict in any material respect with any such rights of others, and the Company and its subsidiaries have not received any notice of any claim of infringement or conflict with any such rights of others.

Section 3.38 No Undisclosed Relationships. No relationship, direct or indirect, exists between or among the Company or any of its subsidiaries, on the one hand, and the directors, officers, stockholders, customers or suppliers of the Company or any of its subsidiaries, on the other, that is required by the Securities Act to be described in the Registration Statement and the Prospectus and that is not so described in such documents and in the General Disclosure Package.

Section 3.39 Taxes. The Company and its subsidiaries have paid all federal, state, local and foreign taxes and filed all tax returns required to be paid or filed through the date hereof and, except as otherwise disclosed in the Registration Statement, the Prospectus and the General Disclosure Package, there is no tax deficiency that has been, or could reasonably be expected to be, asserted against the Company or any of its subsidiaries or any of their respective properties or assets, except in all cases as would not have a Material Adverse Effect.

Section 3.40 Compliance With ERISA. Each employee benefit plan, within the meaning of Section 3(3) of ERISA, that is maintained, administered or contributed to by the Company or any of its affiliates for employees or former employees of the Company and its affiliates has been maintained in compliance with its terms and the requirements of any applicable statutes, orders, rules and regulations, including, but not limited to, ERISA and the Code; no prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code, has occurred with respect to any such plan, excluding transactions effected pursuant to a statutory or administrative exemption; and for each such plan that is subject to the funding rules of Section 412 of the Code or Section 302 of ERISA, no "accumulated funding deficiency" as defined in Section 412 of the Code has been incurred, whether or not waived, and the fair market value of the assets of each such plan (excluding for these purposes accrued but unpaid contributions) exceeds the present value of all benefits accrued under such plan determined using reasonable actuarial assumptions.

Section 3.41 Compliance with Money Laundering Laws. The operations of the Company and its subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all jurisdictions in which the Company and its subsidiaries conduct business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines issued, administered or enforced by any governmental agency (collectively, the "Money Laundering Laws") and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the best knowledge of the Company, threatened, except in all cases as would not have a Material Adverse Effect.

Section 3.42 Compliance with OFAC. None of the Company, any of its subsidiaries, directors or officers or, to the knowledge of the Company, any agent, employee or affiliate of the Company or any of its subsidiaries is currently the subject or the target of any sanctions administered or enforced by the U.S. government (including, without limitation, the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC") or the U.S. Department of State and including, without limitation, the designation as a "specially designated national" or "blocked person"), the United Nations Security Council ("UNSC"), the European Union, Her Majesty's Treasury ("HMT") or other relevant sanctions authority (collectively, "Sanctions"), nor is the Company or any of its subsidiaries located, organized or resident in a country or territory that is the subject or target of Sanctions, including, without limitation, Crimea, Cuba, Iran, North Korea, and Syria (each, a "Sanctioned Country"); and the Company will not directly or indirectly use the proceeds from the sale of the Shares hereunder, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity (i) to fund or facilitate any activities of or business with any person, or in any country or territory that, at the time of such funding or facilitation, is the subject or target of any Sanctions, (ii) to fund or finance any activities of or business in any Sanctioned Country, or (iii) in any other manner that will result in a violation by any person (including any person participating in the transaction, whether as agent, underwriter, advisor, investor or otherwise) of Sanctions. For the past five years, the Company and its subsidiaries have not knowingly engaged in and are not now knowingly engaged in any dealings or transactions with any person that at the

time of the dealing or transaction is or was the subject or the target of Sanctions or with any Sanctioned Country.

Section 3.43 No Restrictions on Subsidiaries. No subsidiary of the Company is currently prohibited, directly or indirectly, under any agreement or other instrument to which it is a party or is subject, from paying any dividends to the Company, from making any other distribution on such subsidiary's capital stock, from repaying to the Company any loans or advances to such subsidiary from the Company or from transferring any of such subsidiary's properties or assets to the Company or any other subsidiary of the Company, except in all cases as would not have a Material Adverse Effect.

Section 3.44 No Broker's Fees. Neither the Company nor any of its subsidiaries is a party to any contract, agreement or understanding with any person (other than this Agreement) that would give rise to a valid claim against the Company or any of its subsidiaries, Sales Agent or the Forward Seller for a brokerage commission, finder's fee or like payment in connection with the transactions contemplated hereby.

Section 3.45 No Registration Rights. No person has the right to require the Company or any of its subsidiaries to register any securities for sale under the Securities Act by reason of the filing of the Registration Statement with the Commission or the issuance or sale of the Shares.

Section 3.46 Margin Rules. Neither the issuance, sale or delivery of the Shares nor the application of the proceeds thereof by the Company as described in the Registration Statement, the Prospectus and the General Disclosure Package will violate Regulation T, U or X of the Board of Governors of the Federal Reserve System or any other regulation of such Board of Governors.

Section 3.47 Forward-Looking Statements. No forward-looking statement (within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act) contained in the Registration Statement, the Prospectus and the General Disclosure Package has been made or reaffirmed without a reasonable basis or has been disclosed other than in good faith.

Section 3.48 Statistical and Market Data. Nothing has come to the attention of the Company that has caused the Company to believe that the statistical and market-related data included in the Registration Statement, the Prospectus and the General Disclosure Package is not based on or derived from sources that are reliable and accurate in all material respects.

Section 3.49 Sarbanes-Oxley Act. There is and has been no failure on the part of the Company or any of the Company's directors or officers, in their capacities as such, to comply in all material respects with any applicable provision of the Sarbanes-Oxley Act, including Section 402 related to loans and Sections 302 and 906 related to certifications.

Section 3.50 Status under the Securities Act. The Company is not an ineligible issuer and is a well-known seasoned issuer, in each case as defined under the Securities Act and at the times specified in the Securities Act in connection with the transactions contemplated hereby. The Company has paid the registration fee for this offering pursuant to Rule 456(b)(1) under the

Securities Act or will pay such fees within the time period required by such rule (without giving effect to the proviso therein) and in any event prior to the Closing Date.

Section 3.51 Officer's Certificate. Any certificate signed by any officer of the Company and delivered to Sales Agent, the Forward Seller and the Forward Purchaser, counsel for Sales Agent or counsel for the Forward Seller in connection with a Transaction shall be deemed a representation and warranty by the Company to Sales Agent, the Forward Seller and the Forward Purchaser, as the case may be, as to the matters covered thereby on the date of such certificate.

Section 3.52 Non-Affiliated Market Capitalization. As of the Effective Date, the aggregate market value of the Voting Stock held by non-affiliates of the Company (computed using the price at which the Common Stock was last sold as of a date within sixty (60) days prior to such date) exceeds $150 million.

Section 3.53 No Association with FINRA. Neither the Company nor any of its affiliates, directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, or is a person associated with, any member firm of FINRA.

Section 3.54 Actively-Traded Security. Except under circumstances where the Company has provided parties with the notice required pursuant to Section 2.07 of this Agreement, the Common Stock are an "actively-traded security" exempted from the requirements of Rule 101 of Regulation M under the Exchange Act by subsection (c)(1) of such rule.

Section 3.55 Cybersecurity; Data Protection. Except as disclosed in the Registration Statement, the Prospectus or the General Disclosure Package or as would not reasonably be expected to have a Material Adverse Effect, to the knowledge of the Company, (i) there have been no breaches or violations of (or unauthorized access to) the Company or its subsidiaries' information technology assets and equipment, computers, systems, networks, hardware, software, websites, applications and databases ("IT Systems") or any personal, personally identifiable, sensitive, confidential or regulated data ("Personal Data") processed or stored by or on behalf of the Company or its subsidiaries, nor are there any pending internal investigations relating to the same, (ii) the Company and its subsidiaries have implemented and maintained commercially reasonable controls, policies, procedures and safeguards to maintain and protect their material confidential information and the integrity, continuous operation, redundancy and security of all IT Systems and data (including Personal Data) and (iii) the Company and its subsidiaries are presently in compliance in all material respects with all applicable laws, statutes and regulations and contractual obligations relating to the privacy and security of IT Systems and Personal Data.

ARTICLE IV
COVENANTS

The Company covenants and agrees during the term of this Agreement and the Master Forward Confirmation (including the term of each "Supplemental Confirmation" executed in

connection with the Master Forward Confirmation) with Sales Agent, the Forward Seller and the Forward Purchaser as follows:

Section 4.01 Registration Statement and Prospectus.

(a) To make no amendment or supplement to the Registration Statement or the Prospectus (other than (x) an amendment or supplement relating solely to the issuance or offering of securities other than the Shares or (y) by means of a Current Report on Form 8-K filed with the Commission under the Exchange Act and incorporated or deemed incorporated by reference in the Registration Statement or the Prospectus; *provided*, that the Company will give prior written notice to Sales Agent, the Forward Seller and the Forward Purchaser of the intention to file such report and describing the subject matter to be included in such report as soon as reasonably practicable prior to the filing of such report) after the date of delivery of a Transaction Notice and prior to the related Settlement Date that is reasonably disapproved by Sales Agent, the Forward Seller or the Forward Purchaser promptly after reasonable notice thereof;

(b) to prepare, with respect to any Shares to be sold pursuant to this Agreement and the Master Forward Confirmation and each "Supplemental Confirmation" executed in connection with the Master Forward Confirmation, a Pricing Supplement with respect to such Shares in a form previously approved by Sales Agent and to file such Pricing Supplement pursuant to Rule 424(b) promulgated by the Commission under the Securities Act within the time period required thereby and to deliver such number of copies of each Pricing Supplement as may be required to each exchange or market on which such sales were effected, in each case to the extent that delivery and filing of such a Pricing Supplement is required by applicable law, by the rules and regulations of the Commission or by the rules of such exchange or market;

(c) to make no amendment or supplement to the Registration Statement or the Prospectus (other than (x) an amendment or supplement relating solely to the issuance or offering of securities other than the Shares or (y) by means of an Annual Report on Form 10-K, a Quarterly Report on Form 10-Q, a Current Report on Form 8-K or a Registration Statement on Form 8A or any amendments to any of the foregoing filed with the Commission under the Exchange Act and incorporated or deemed incorporated by reference into the Registration Statement or the Prospectus except to the extent required by Section 4.01(a)) at any time prior to having afforded Sales Agent, the Forward Seller and the Forward Purchaser a reasonable opportunity to review and comment thereon;

(d) to file within the time periods required by the Exchange Act all reports and any definitive proxy or information statements required to be filed by the Company with the Commission pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act for so long as the delivery of a prospectus is required under the Securities Act or under the blue sky or securities laws of any jurisdiction in connection with the offering or sale of the Shares, and during such same period to advise Sales Agent, the Forward Seller and the Forward Purchaser, promptly after the Company receives notice thereof, of the time when any amendment to the Registration Statement has been filed or has become effective or any supplement to the Prospectus or any amended Prospectus has been filed with the Commission, of the issuance by the Commission of

any stop order or of any order preventing or suspending the use of any prospectus relating to the Shares, of the suspension of the qualification of the Shares for offering or sale in any jurisdiction, of the initiation or threatening of any proceeding for any such purpose, of any request by the Commission for the amendment or supplement of the Registration Statement or the Prospectus or for additional information, or the receipt of any comments from the Commission with respect to Registration Statement or the Prospectus (including, without limitation, any Incorporated Documents); and

(e) in the event of the issuance of any such stop order or of any such order preventing or suspending the use of any such prospectus or suspending any such qualification during a Selling Period, to use promptly commercially reasonable efforts to obtain its withdrawal; in the event any such stop order or such other order is issued outside a Selling Period, the Company will promptly advise Sales Agent, the Forward Seller and the Forward Purchaser as to the issuance thereof and as to whether the Company intends to seek to obtain its withdrawal.

If, immediately prior to the third anniversary of the filing of the Original Registration Statement, any of the Shares remain unsold hereunder, the Company will, prior to such third anniversary, advise Sales Agent, the Forward Seller and the Forward Purchaser as to whether it intends to file (unless it has already done so) a new automatic shelf registration statement or shelf registration statement, as applicable, relating to the Shares.

Section 4.02 Blue Sky. To use commercially reasonable efforts to cause the Shares to be listed on the Principal Market and promptly from time to time to take such action as Sales Agent, the Forward Seller or the Forward Purchaser may reasonably request; to cooperate with Sales Agent or the Forward Seller in the qualification of the Shares for offering and sale under the blue sky or securities laws of such jurisdictions within the United States of America and its territories as Sales Agent, the Forward Seller or the Forward Purchaser may reasonably request; and to use commercially reasonable efforts to comply with such laws so as to permit the continuance of sales and dealings therein for as long as may be necessary to complete the sale of the Shares; *provided*, *however*, that in connection therewith the Company shall not be required to qualify as a foreign corporation, to file a general consent to service of process or to subject itself to taxation in respect of doing business in any jurisdiction.

Section 4.03 Copies of Registration Statement and Prospectus. Except where such reports, communications, financial statements or other information is available on the Commission's Electronic Data Gathering Analysis and Retrieval system, to furnish Sales Agent with copies (which may be electronic copies) of the Registration Statement and each amendment thereto, and with copies of the Prospectus and each amendment or supplement thereto in the form in which it is filed with the Commission pursuant to the Securities Act or Rule 424(b) promulgated by the Commission under the Securities Act, both in such quantities as Sales Agent, the Forward Seller and the Forward Purchaser may reasonably request from time to time; and, if the delivery of a prospectus is required under the Securities Act or under the blue sky or securities laws of any jurisdiction at any time on or prior to the applicable Settlement Date for any Selling Period in connection with the offering or sale of the Shares and if at such time any event has occurred as a result of which the Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state any material fact necessary in order

to make the statements therein, in the light of the circumstances under which they were made when such Prospectus is delivered, not misleading, or, if for any other reason it is necessary during such same period to amend or supplement the Prospectus or to file under the Exchange Act any document incorporated by reference in the Prospectus in order to comply with the Securities Act or the Exchange Act, to notify Sales Agent, the Forward Seller and the Forward Purchaser and request Sales Agent and the Forward Seller to suspend offers to sell Shares (and, if so notified, Sales Agent and the Forward Seller shall cease such offers as soon as practicable); and if the Company decides to amend or supplement the Registration Statement or the Prospectus as then amended or supplemented, to advise Sales Agent, the Forward Seller and the Forward Purchaser promptly by telephone (with confirmation in writing) and to prepare and cause to be filed promptly with the Commission an amendment or supplement to the Registration Statement or the Prospectus as then amended or supplemented that will correct such statement or omission or effect such compliance; *provided*, *however*, that if during such same period Sales Agent or the Forward Seller is required to deliver a prospectus in respect of transactions in the Shares, the Company shall promptly prepare and file with the Commission such an amendment or supplement.

Section 4.04 Rule 158. To make generally available to its holders of the Shares as soon as practicable, but in any event not later than eighteen months after the effective date of the Registration Statement (as defined in Rule 158(c) promulgated by the Commission under the Securities Act), an earnings statement of the Company and its subsidiaries (which need not be audited) complying with Section 11(a) of the Securities Act and the rules and regulations of the Commission promulgated thereunder (including the option of the Company to file periodic reports in order to make generally available such earnings statement, to the extent that it is required to file such reports under Section 13 or Section 15(d) of the Exchange Act, pursuant to Rule 158 promulgated by the Commission under the Securities Act).

Section 4.05 Information. To file, on a timely basis, with the Commission all reports and documents required to be filed under the Exchange Act in the manner and within the time periods required by the Exchange Act and to furnish to Sales Agent, the Forward Seller and the Forward Purchaser (in paper or electronic format) copies of all publicly available reports or other communications (financial or other) furnished generally to stockholders and filed with the Commission pursuant to the Exchange Act, and deliver to Sales Agent, the Forward Seller and the Forward Purchaser (in paper or electronic format) (i) promptly after they are available, copies of any publicly available reports and financial statements furnished to or filed with the Commission or any national securities exchange on which any class of securities of the Company is listed; (ii) such additional publicly available information concerning the business and financial condition of the Company as Sales Agent, the Forward Seller or the Forward Purchaser may from time to time reasonably request (such financial statements to be on a consolidated basis to the extent the accounts of the Company and its subsidiaries are consolidated in reports furnished to its stockholders generally or to the Commission); and (iii) such additional information as Sales Agent, the Forward Seller or the Forward Purchaser may reasonably request in order to evidence the accuracy and completeness of any of the representations or warranties, or the fulfillment of the conditions, herein contained.

Section 4.06 Representations and Warranties. At each Applicable Time, each delivery of a Transaction Notice, each Settlement Date, each Registration Statement Amendment Date (as

defined in Section 4.07) and each Request Date, (i) the Company shall be deemed to have affirmed that each representation, warranty, covenant and other agreement contained in this Agreement and the Master Forward Confirmation is true and correct, as though made at and as of each such date, except as may be disclosed in the Prospectus (including any documents incorporated by reference therein and supplements thereto), and (ii) the Company will undertake to advise Sales Agent, the Forward Seller and the Forward Purchaser if any of such representations and warranties will not be true and correct as of each such date, as though made at and as of each such date (except that such representations and warranties shall be deemed to relate to the Registration Statement and the Prospectus as amended and supplemented relating to such Shares).

Section 4.07 Opinions of Counsel. (i) That each time the Registration Statement or the Prospectus is amended or supplemented (other than by means of (x) an amendment or supplement relating solely to the offering of securities other than the Shares, (y) a Pricing Supplement or (z) a Current Report on Form 8-K, unless, in the case of (y) or (z) reasonably requested by Sales Agent, the Forward Seller or the Forward Purchaser within five days of the filing thereof with the Commission), including by means of an Annual Report on Form 10-K or a Quarterly Report on Form 10-Q filed with the Commission under the Exchange Act and incorporated or deemed to be incorporated by reference into the Prospectus (each such date, a "Registration Statement Amendment Date") or (ii) otherwise after each reasonable request by Sales Agent, the Forward Seller or the Forward Purchaser, as the case may be (each date of any such request by Sales Agent, the Forward Seller or the Forward Purchaser, an "Opinion Request Date"), the Company shall as soon as practicable thereafter furnish or cause to be furnished within two business days to Sales Agent, the Forward Seller and the Forward Purchaser written opinions and negative assurance letters of Goodwin Procter LLP, counsel for the Company, dated the date of such amendment, supplement or incorporation and in form reasonably satisfactory to Sales Agent, the Forward Seller and the Forward Purchaser, and of O'Melveny & Myers LLP, counsel for Sales Agent and the Alternative Sales Agents, dated the date of such amendment, supplement or incorporation and in form reasonably satisfactory to Sales Agent, the Forward Seller and the Forward Purchaser, (a) if such counsel has previously furnished opinions and negative assurance letters to the effect set forth in Exhibits B, C, D and E hereto, to the effect that Sales Agent, the Forward Seller and the Forward Purchaser may rely on such previously furnished opinions and negative assurance letters of such counsel to the same extent as though they were dated the date of such letter authorizing reliance (except that the statements in such last opinions and negative assurance letters shall be deemed to relate to the Registration Statement and the Prospectus as amended and supplemented to such date) or (b) if such counsel has not previously furnished opinions and negative assurance letters to the effect set forth in Exhibits B, C, D and E hereto, of the same tenor as such opinions and negative assurance letters of such counsel but modified to relate to the Registration Statement, the Prospectus and the General Disclosure Package (other than the offering price of any shares of Common Stock) as amended and supplemented to such date; *provided*, *however*, that the Company shall have the right in its sole discretion to suspend the delivery of all such opinions and negative assurance letters otherwise required by this Section 4.07 if the Company does not expect to deliver a Transaction Notice with respect to the Shares; *provided further*, that the delivery of each such opinion and negative assurance letter (dated as of the date on which the most recent Form 10-Q or Form 10-K or, if applicable, Form 8-K was filed by the Company with the Commission) shall

be a condition precedent to the delivery by the Company of a Transaction Notice with respect to the Shares.

Section 4.08 Comfort Letters. (i) That each time the Registration Statement or the Prospectus is amended or supplemented, including by means of an Annual Report on Form 10-K, a Quarterly Report on Form 10-Q or a Current Report on Form 8-K (but only a Current Report on Form 8-K that contains financial statements of the Company filed with the Commission under the Exchange Act and incorporated or deemed to be incorporated by reference into the Prospectus), other than by an amendment or supplement relating solely to the offering of securities other than the Shares, in any case to set forth financial information included in or derived from the Company's financial statements or accounting records or (ii) otherwise after each reasonable request by Sales Agent, the Forward Seller or the Forward Purchaser, as the case may be (each date of any such request by Sales Agent, the Forward Seller or the Forward Purchaser, a "Comfort Letter Request Date"), the Company shall as soon as practicable thereafter cause the independent registered public accounting firm who has audited the financial statements of the Company included or incorporated by reference in the Registration Statement to furnish as promptly as practicable thereafter to Sales Agent, the Forward Seller and the Forward Purchaser a letter, dated the date of such amendment, supplement or incorporation, as the case may be, in form reasonably satisfactory to Sales Agent, the Forward Seller and the Forward Purchaser, of the same tenor as the letter referred to in Section 5.01(g) hereof but modified to relate to the Registration Statement, the Prospectus and, to the extent applicable, the General Disclosure Package (other than the offering price of any shares of Common Stock) as amended or supplemented to the date of such letter, with such changes as may be necessary to reflect changes in the financial statements and other information derived from the accounting records of the Company, to the extent such financial statements and other information are available as of a date not more than five business days prior to the date of such letter; *provided*, *however*, that, with respect to any financial information or other matters, such letter may reconfirm as true and correct at such date as though made at and as of such date, rather than repeat, statements with respect to such financial information or other matters made in the letter referred to in Section 5.01(g) hereof that was last furnished to Sales Agent, the Forward Seller and the Forward Purchaser; *provided*, *however*, that the Company shall have the right in its sole discretion to suspend the delivery of any such letter otherwise required by this Section 4.08 if the Company does not expect to deliver a Transaction Notice with respect to the Shares; *provided further*, that the delivery of each such letter (dated as of the date on which the most recent Form 10-Q or Form 10-K or, if applicable, Form 8-K was filed by the Company with the Commission) required by this Section 4.08 shall be a condition precedent to the delivery by the Company of a Transaction Notice with respect to the Shares.

Section 4.09 Officer's Certificate. (i) That each time the Registration Statement or the Prospectus is amended or supplemented (other than by an amendment or supplement relating solely to the offering of securities other than the Shares, a Pricing Supplement or a Current Report on Form 8-K, unless reasonably requested by Sales Agent, the Forward Seller or the Forward Purchaser within five days of the filing thereof with the Commission), including by means of an Annual Report on Form 10-K or a Quarterly Report on Form 10-Q filed with the Commission under the Exchange Act and incorporated or deemed to be incorporated by reference into the Prospectus or (ii) otherwise after each reasonable request by Sales Agent, the Forward Seller or the Forward Purchaser, as the case may be (each date of any such request by

Sales Agent, the Forward Seller or the Forward Purchaser, an "Officer's Certificate Request Date"), the Company shall as soon as practicable thereafter furnish or cause to be furnished as promptly as practicable thereafter to Sales Agent, the Forward Seller and the Forward Purchaser a certificate, dated the date of such supplement, amendment or incorporation, as the case may be, in such form and executed by such officers of the Company as is reasonably satisfactory to Sales Agent, the Forward Seller and the Forward Purchaser, of the same tenor as the certificate referred to in Section 2.02(ii) but modified to (x) relate to the Registration Statement, the Prospectus and the General Disclosure Package (other than the offering price of any shares of Common Stock) as amended and supplemented to such date and (y) include a statement setting forth the number of shares of Common Stock reserved for issuance by the Company and listed, subject to notice of issuance, on the New York Stock Exchange in connection with the Transactions less (1) any shares of Common Stock issued in connection with an Issuance hereunder or under the Alternative Sales Agency Agreements and (2) the aggregate Capped Number under all Forward Contracts entered into between the Company and the Forward Purchaser and any Forward Contracts entered into between the Company and any other Alternative Sales Agent (such number, as updated from time to time immediately following any Issuance or Forward, the "Remaining Number of Shares"); *provided*, *however*, that the Company shall have the right in its sole discretion to suspend the delivery of any such certificate otherwise required by this Section 4.09 if the Company does not expect to deliver a Transaction Notice with respect to the Shares; *provided further*, that the delivery of each such certificate (dated as of the date on which the most recent Form 10-Q or Form 10-K or if applicable, Form 8-K was filed by the Company with the Commission) required by this Section 4.09 shall be a condition precedent to the delivery by the Company of a Transaction Notice with respect to the Shares.

Section 4.10 Stand Off Agreement. Without the written consent of Sales Agent, the Forward Seller and the Forward Purchaser, the Company will not, directly or indirectly, offer to sell, sell, contract to sell, grant any option to sell or otherwise dispose of any shares of Common Stock or securities convertible into or exchangeable for Common Stock (other than Shares hereunder), warrants or any rights to purchase or acquire, Common Stock during the period beginning on the first (1st) Trading Day immediately prior to the date on which any Transaction Notice is delivered to Sales Agent or the Forward Seller and the Forward Purchaser, as the case may be, hereunder and ending on the first (1st) Trading Day immediately following the Settlement Date with respect to Shares sold pursuant to such Transaction Notice (each a "Stand Off Period"); *provided*, *however*, that such restriction will not be required in connection with the Company's issuance or sale of (i) Issuance Shares pursuant to any Transaction Notice (or the sale of Forward Hedge Shares by the Forward Seller pursuant to any Transaction Notice, if applicable), (ii) Common Stock, options to purchase shares of Common Stock or Common Stock issuable upon the exercise of options pursuant to any current or future employee or director stock option, incentive or benefit plan, employee stock purchase, long-term incentive plan, deferred compensation plan or ownership plan or dividend reinvestment plan (but not shares subject to a waiver to exceed plan limits in its stock purchase plan) of the Company, (iii) Common Stock issuable upon conversion of securities or the exercise of warrants, options or other rights disclosed in the Company's Commission filings, (iv) Common Stock issuable as consideration in connection with acquisitions of business, assets or securities of other Persons and (v) Common Stock issuable by the Company upon settlement of any Forward Contract. For the avoidance of doubt, this Section 4.10 shall not prohibit the sale of Common Stock by the Forward Seller or the Forward Purchaser. The settlement of Shares which have been sold pursuant to the Alternative

Sales Agency Agreements are permitted pursuant to this Section 4.10 without the consent of Sales Agent.

Section 4.11 Market Activities. The Company will not, directly or indirectly, (i) take any action designed to cause or result in, or that constitutes or might reasonably be expected to cause or result in, the stabilization or manipulation of the price of any security of the Company or any reference security, whether to facilitate the sale or resale of the Shares or otherwise or (ii) during any Stand Off Period sell, bid for or purchase the Shares, or pay anyone any compensation for soliciting purchases of the Shares other than Sales Agent, the Forward Seller or the Forward Purchaser (as permitted in the Master Forward Confirmation), and shall cause each of its affiliated purchasers to, comply with all applicable provisions of Regulation M, *provided*, *however*, that this Section 4.11 shall not prohibit the Company from electing to net share settle, combination settle or cash settle any Forward Contract. If the limitations of Rule 102 of Regulation M ("Rule 102") do not apply with respect to the Shares or any other reference security pursuant to any exception set forth in Section (d) of Rule 102, then promptly upon notice from Sales Agent, the Forward Seller or the Forward Purchaser (or, if later, at the time stated in the notice), the Company will and shall, cause each of its affiliated purchasers to, comply with Rule 102 as though such exception was not available but the other provisions of Rule 102 (as interpreted by the Commission) did apply.

Section 4.12 Prospectus Supplement Filing; Periodic Reports. Promptly following the end of each quarterly period, the Company shall be required to file a prospectus supplement with the Commission, disclosing the number of Shares sold through Sales Agent, the Alternative Sales Agents and the Forward Seller, as the case may be, under the Sales Agency Agreements and any Master Forward Confirmation and the net proceeds received by the Company with respect to sales of the Shares pursuant to the Sales Agency Agreements and the Master Forward Confirmation and each "Supplemental Confirmation" executed in connection with the Master Forward Confirmation and any other master forward confirmations and related "supplemental confirmations" entered into with the Alternative Sales Agents relating to such quarter, together with any other information that the Company reasonably believes is required to comply with the Securities Act or any rules or regulations thereunder. In the alternative, to the extent permitted by the rules and regulations of the Commission, the Company in its sole discretion may make the disclosures contemplated by the preceding sentence by including such disclosures in its Annual Report on Form 10-K or Quarterly Report on Form 10-Q filed by the Company for any quarter in which sales of Shares were made by or through Sales Agent, the Alternative Sales Agents and the Forward Seller, as the case may be, under the Sales Agency Agreements and any Master Forward Confirmation and any "Supplemental Confirmation" executed in connection with any Master Forward Confirmation and any other master forward confirmations and related "supplemental confirmations" entered into with the Alternative Sales Agents.

Section 4.13 Maximum Program Amount. The Company will promptly notify Sales Agent, the Alternative Sales Agents, the Forward Seller and the Forward Purchaser in writing when the Maximum Program Amount has been sold pursuant to the Sales Agency Agreements. Prior to receipt of such written notice, each of Sales Agent, the Forward Seller and the Forward Purchaser shall be entitled to assume for all purposes under the Agreement that the Maximum Program Amount has not been sold pursuant to the Sales Agency Agreements. Monitoring the status of the Maximum Program Amount shall be the Company's sole responsibility.

Section 4.14 Due Diligence. The Company shall promptly reply to due diligence inquiries from Sales Agent, the Forward Seller, the Forward Purchaser and their respective representatives, including, without limitation, furnishing requested materials and making senior management and representatives of the Company's registered independent accounting firm available for due diligence conference calls, upon the reasonable request of Sales Agent, the Forward Seller or the Forward Purchaser.

Section 4.15 Investment Limitation. The Company shall not invest or otherwise use the proceeds received by the Company from its sale of any Issuance Shares or settlement of any Forward Contract in such a manner as would require the Company or any of its subsidiaries to register as an investment company under the Investment Company Act. The Company will conduct its business in a manner so that it will not become subject to the Investment Company Act.

Section 4.16 Listing; Reservation of Shares; Transfer Agent. The Company shall (a) list, subject to notice of issuance, the Shares on the New York Stock Exchange; (b) use its best efforts to maintain the listing of the Shares on the New York Stock Exchange; (c) reserve and keep available at all times, free of pre-emptive rights, Shares for the purpose of enabling the Company to satisfy its obligations under this Agreement and the Master Forward Confirmation (including with respect to each "Supplemental Confirmation" executed in connection with the Master Forward Confirmation); and (d) engage and maintain, at its expense, a registrar and transfer agent for the Shares.

Section 4.17 No Dividends. The Company shall not declare any dividend, or cause there to be any distribution, on the Common Stock if the ex-dividend date or ex-date, as applicable, for such dividend or distribution will occur during the period from, and including, the first Trading Day of any Forward Hedge Selling Period to, and including, the last Trading Day of such Forward Hedge Selling Period.

ARTICLE V
CONDITIONS TO DELIVERY OF TRANSACTION NOTICES AND TO SETTLEMENT

Section 5.01 Conditions Precedent to the Right of the Company to Deliver a Transaction Notice and the Obligation of Sales Agent and the Forward Seller to Sell Shares During the Selling Period(s). The right of the Company to deliver a Transaction Notice hereunder, and the obligations of each Sales Agent to sell Issuance Shares and the Forward Seller to sell and the Forward Purchaser to borrow the Forward Hedge Shares during the applicable Selling Period, is subject to the satisfaction, on the date of delivery of such Transaction Notice or the applicable Transaction Date and Settlement Date, as applicable, of each of the following conditions:

(a) Effective Registration Statement and Authorizations. The Registration Statement shall remain effective and sales of all of the Shares (including all of the Shares issued with respect to all prior Issuances and Forwards and all of the Shares expected to be issued in connection with the Issuance or Forward specified by any outstanding Transaction Notice) may be made by Sales Agent or the Forward Seller thereunder, and (i) no stop order suspending the

effectiveness of the Registration Statement shall have been issued and no proceeding for that purpose shall have been initiated or, to the Company's knowledge, threatened by the Commission; (ii) no other suspension of the use or withdrawal of the effectiveness of the Registration Statement or Prospectus shall exist; (iii) all requests for additional information on the part of the Commission shall have been complied with to the reasonable satisfaction of Sales Agent, the Forward Seller and the Forward Purchaser and (iv) no event specified in Section 4.03 hereof shall have occurred and be continuing without the Company amending or supplementing the Registration Statement or the Prospectus as provided in Section 4.03. The authorizations referred to in Section 3.12 of this Agreement and in the Master Forward Confirmation shall have been issued and shall be in full force and effect, and such authorizations shall not be the subject of any pending or, to the Company's knowledge, threatened application for rehearing or petition for modification, and are sufficient to authorize the issuance and sale of the Shares.

(b) Accuracy of the Company's Representations and Warranties. The representations and warranties of the Company contained herein and in the Master Forward Confirmation shall be true and correct as of each Applicable Time, as of the Closing Date, as of the applicable date referred to in Section 4.09 that is prior to such Transaction Date and the related Settlement Date, as the case may be, and as of each such Transaction Date and the related Settlement Date as though made at such time.

(c) Performance by the Company. The Company shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by this Agreement and the Master Forward Confirmation to be performed, satisfied or complied with by the Company at or prior to such date.

(d) No Injunction. No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or governmental authority of competent jurisdiction or any self-regulatory organization having authority over the matters contemplated hereby that prohibits or directly and materially adversely affects any of the transactions contemplated by this Agreement or the Master Forward Confirmation (and, in the case of a Forward, the applicable Forward Contract), and no proceeding shall have been commenced that may have the effect of prohibiting or materially adversely affecting any of the transactions contemplated by this Agreement or the Master Forward Confirmation (and, in the case of a Forward, the applicable Forward Contract).

(e) Material Adverse Changes. Since the date of this Agreement, no event that had or is reasonably likely to have a Material Adverse Effect shall have occurred that has not been disclosed in the Registration Statement, the Prospectus or the General Disclosure Package (including the documents incorporated by reference therein and any supplements thereto).

(f) No Suspension of Trading In or Delisting of Common Stock; Other Events. The trading of the Common Stock (including without limitation the Shares) shall not have been suspended by the Commission, the Principal Market or FINRA since the immediately preceding Settlement Date or, if there has been no Settlement Date, the Closing Date, and the Shares shall have been approved for listing or quotation on and shall not have been delisted from the Principal Market. There shall not have occurred (and be continuing in the case of occurrences under clauses (i) and (ii) below) any of the following: (i) if trading generally on the

New York Stock Exchange, The Nasdaq Stock Market or NYSE Amex has been suspended or materially limited, or minimum and maximum prices for trading have been fixed, or maximum ranges for prices have been required, by any of said exchanges or by such system or by order of the Commission, FINRA or any other governmental authority, or a material disruption has occurred in commercial banking or securities settlement or clearance services in the United States; (ii) a general moratorium on commercial banking activities in New York declared by either federal or New York state authorities; or (iii) any outbreak or escalation of hostilities or other calamity or crisis involving the United States or the declaration by the United States of war or any material adverse change in national or international political, financial or economic conditions, if the effect of any such event specified in this clause (iii) in the sole judgment of Sales Agent, the Forward Seller or the Forward Purchaser makes it impracticable or inadvisable to proceed with the sale of Shares of the Company.

(g) Comfort Letter. On the Closing Date and on each applicable date referred to in Section 4.08 hereof that is on or prior to such Transaction Date and related Settlement Date, as the case may be, the independent registered public accounting firm who has audited the financial statements of the Company included or incorporated by reference in the Registration Statement shall have furnished to Sales Agent, the Forward Seller and the Forward Purchaser a letter, dated the Closing Date or such applicable date, as the case may be, in form and substance satisfactory to Sales Agent, the Forward Seller and the Forward Purchaser to the effect required by Section 4.08.

(h) No Defaults. The execution and delivery of this Agreement, the Master Forward Confirmation and each "Supplemental Confirmation" under the Master Forward Confirmation, and the issuance or sale of the Shares and the compliance by the Company with all of the provisions hereof and thereof will not result in the Company being in default of (whether upon the passage of time, the giving of notice or both) its organizational and other governing documents, or any provision of any security issued by the Company, or of any agreement, instrument or other undertaking to which the Company is a party or by which it or any of its property or assets is bound, or the applicable provisions of any law, statute, rule, regulation, order, writ, injunction, judgment or decree of any court or governmental authority to or by which the Company or any of its property or assets is bound, in each case which default, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(i) Trading Cushion. The Selling Period for any previous Transaction Notice (hereunder or under any Alternative Sales Agency Agreement) shall have expired.

(j) Maximum Issuance Amount. In no event may the Company issue a Transaction Notice to sell an Issuance Amount or a Forward Hedge Amount, as the case may be, to the extent that the sum of (x) the Sales Price of the requested Issuance Amount or Forward Hedge Amount, as applicable, plus (y) the aggregate Sales Price of all Shares issued under all previous Issuances and Forwards effected pursuant to this Agreement, together with the aggregate Sales Price of Shares sold under the Alternative Sales Agency Agreements, would exceed the Maximum Program Amount.

(k) Prospectus Supplement and Pricing Supplement.

(1) A supplement or supplements to the prospectus included in the Registration Statement (the "Prospectus Supplement"), in form and substance to be agreed upon by the parties hereto, setting forth information regarding this Agreement and the Master Forward Confirmation including, without limitation, the Maximum Program Amount, shall have been filed with the Commission pursuant to Rule 424(b) promulgated by the Commission under the Securities Act within the time period required thereby and sufficient copies thereof delivered to Sales Agent, the Forward Seller and the Forward Purchaser on or prior to the date of sale of the Issuance Shares or Forward Hedge Shares, as applicable.

(2) To the extent required by Section 4.01(b), a Pricing Supplement, in form and substance to be agreed upon by the parties, shall have been filed with the Commission pursuant to Rule 424(b) promulgated by the Commission under the Securities Act within the time period required thereby and sufficient copies thereof delivered to Sales Agent, the Forward Seller and the Forward Purchaser on or prior to the date of sale of the Issuance Shares or Forward Hedge Shares, as applicable.

(l) Counsel Letters. The counsel specified in Section 4.07, or other counsel selected by the Company and reasonably satisfactory to Sales Agent, the Forward Seller and the Forward Purchaser, shall have furnished to Sales Agent, the Forward Seller and the Forward Purchaser their written opinions, dated the Closing Date and each applicable date referred to in Section 4.07 hereof that is on or prior to such Transaction Date or related Settlement Date, as the case may be, to the effect required by Section 4.07.

(m) Officers' Certificate. The Company shall have furnished or caused to be furnished to Sales Agent, the Forward Seller and the Forward Purchaser an officers' certificate executed by the Chief Executive Officer, the President or any Senior Vice President of the Company and by the Chief Financial Officer of the Company, signing in their respective capacities, dated the Closing Date and each applicable date referred to in Section 4.09 hereof that is on or prior to such Transaction Date or related Settlement Date, as the case may be, as to the matters specified in Section 2.02(ii).

(n) Other Documents. On the Closing Date and prior to each Transaction Date and Settlement Date, Sales Agent, the Forward Seller and the Forward Purchaser and their respective counsel shall have been furnished with such documents as they may reasonably require in order to evidence the accuracy and completeness of any of the representations or warranties, or the fulfillment of the conditions, herein contained; and all proceedings taken by the Company in connection with the issuance and sale of the Shares as herein contemplated shall be satisfactory in form and substance to Sales Agent, the Forward Seller and the Forward Purchaser and their respective counsel.

(o) Remaining Number of Shares. In no event may the Company issue a Transaction Notice that relates to an "Issuance" unless the number of Issuance Shares specified in such Transaction Notice is less than the Remaining Number of Shares as of the date of delivery of such Transaction Notice, and in no event may the Company issue a Transaction

Notice that relates to a "Forward" unless the Capped Number set forth in the Forward Contract to be entered into in connection with such Transaction Notice is less than the Remaining Number of Shares as of the date of delivery of such Transaction Notice.

Section 5.02 Documents Required to be Delivered on each Transaction Date. Sales Agent's and the Forward Seller's obligation to use commercially reasonable efforts to sell Shares pursuant to an Issuance or Forward hereunder, and the Forward Purchaser's obligation to use commercially reasonable efforts to borrow and deliver Shares to the Forward Seller hereunder, shall additionally be conditioned upon the delivery to Sales Agent and the Forward Seller on or before the Transaction Date of a certificate in form and substance reasonably satisfactory to Sales Agent and the Forward Seller, executed by the Chief Executive Officer, the President or the Chief Financial Officer of the Company, to the effect that all conditions to the delivery of such Transaction Notice shall have been satisfied as at the date of such certificate (which certificate shall not be required if the foregoing representations shall be set forth in the Transaction Notice).

Section 5.03 Suspension of Sales. The Company, Sales Agent the Forward Seller or the Forward Purchaser may, upon notice to the other parties in writing or by telephone (confirmed immediately by verifiable facsimile transmission), suspend any sale of Shares, and the applicable Selling Period shall immediately terminate; *provided*, *however*, that such suspension and termination shall not affect or impair any party's obligations with respect to any Shares sold hereunder prior to the receipt of such notice (and, in the case of any Forward Hedge Shares, the resulting Forward Contract). The Company agrees that no such notice shall be effective against Sales Agent, the Forward Seller or the Forward Purchaser unless it is made to one of the individuals named on Schedule 1 hereto, as such Schedule may be amended from time to time. Each of Sales Agent, the Forward Seller and the Forward Purchaser agrees that no such notice shall be effective against the Company unless it is made to one of the individuals named on Schedule 1 annexed hereto, as such Schedule may be amended from time to time; *provided* that the failure by Sales Agent, the Forward Seller or the Forward Purchaser to deliver such notice shall in no way effect such party's right to suspend the sale of Shares hereunder.

ARTICLE VI
INDEMNIFICATION AND CONTRIBUTION

Section 6.01 Indemnification by the Company. The Company agrees to indemnify and hold harmless each of Sales Agent, Forward Seller and the Forward Purchaser, each of their respective affiliates, officers and directors, and each Person, if any, who controls Sales Agent, the Forward Seller or the Forward Purchaser within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, together with each such Person's respective officers and directors (collectively, the "Controlling Persons"), from and against any and all losses, claims, damages or liabilities, and any action or proceeding in respect thereof, to which Sales Agent, the Forward Seller or the Forward Purchaser, as the case may be, and each of their officers and directors, and any such Controlling Person may become subject under the Securities Act, the Exchange Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions or proceedings in respect thereof) arise out of, or are based upon, any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, the Prospectus or any other prospectus relating to the Shares, or any amendment or supplement thereto, any

preliminary prospectus, any Issuer Free Writing Prospectus, any "issuer information" filed or required to be filed pursuant to Rule 433(d) under the Securities Act or any road show as defined in Rule 433(h) under the Securities Act (a "road show"), or arise out of, or are based upon, any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of the Prospectus or any amendment or supplement thereto, or any preliminary prospectus, or any Issuer Free Writing Prospectus in light of the circumstances in which they were made) not misleading, except insofar as the same are made in reliance upon and in conformity with information related to Sales Agent, the Forward Seller or the Forward Purchaser furnished in writing to the Company by Sales Agent, the Forward Seller or the Forward Purchaser, as the case may be, expressly for use in the Registration Statement, the Prospectus or any other prospectus relating to the Shares, or any amendment or supplement thereto, any preliminary prospectus, any Issuer Free Writing Prospectus or any road show, and the Company shall reimburse Sales Agent, the Forward Seller or the Forward Purchaser, as the case may be, their officers and directors, and each Controlling Person for any reasonable legal and other expenses incurred thereby in investigating or defending or preparing to defend against any such losses, claims, damages or liabilities, or actions or proceedings in respect thereof, as such expenses are incurred.

Section 6.02 Indemnification by Sales Agent and the Forward Seller. Each of Sales Agent and the Forward Seller agrees to indemnify and hold harmless the Company, the Company's affiliates, officers and directors, and each Person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, together with each such Person's respective officers and directors, from and against any losses, claims, damages or liabilities, and any action or proceeding in respect thereof, to which the Company, the Company's officers or directors, any such controlling Person and any officer or director of such controlling Person may become subject under the Securities Act, the Exchange Act or otherwise, insofar as losses, claims, damages or liabilities (or action or proceeding in respect thereof) arise out of, or are based upon, any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, the Prospectus or any other prospectus relating to the Shares, or any amendment or supplement thereto, any preliminary prospectus, any Issuer Free Writing Prospectus or any road show, or arise out of, or are based upon, any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of the Prospectus or any other prospectus relating to the Shares, or any amendment or supplement thereto, any preliminary prospectus or any Issuer Free Writing Prospectus in light of the circumstances in which they were made) not misleading in each case to the extent, but only to the extent that such untrue statement or alleged untrue statement or omission or alleged omission was made therein in reliance upon and in conformity with written information related to Sales Agent and the Forward Seller furnished to the Company by or on behalf of Sales Agent and the Forward Seller, as the case may be, expressly for use in the Registration Statement, the Prospectus or any other prospectus relating to the Shares, or any amendment or supplement thereto, any preliminary prospectus, any Issuer Free Writing Prospectus or any road show, and Sales Agent and the Forward Seller shall reimburse the Company, the Company's officers and directors, and each Controlling Person of the Company, for any reasonable legal and other expenses incurred thereby in investigating or defending or preparing to defend against any such losses, claims, damages or liabilities, or actions or proceedings in respect thereof.

Section 6.03 Conduct of Indemnification Proceedings. Promptly after receipt by any Person (an "Indemnified Party") of notice of any claim or the commencement of any action in respect of which indemnity may be sought pursuant to Section 6.01 or Section 6.02, the Indemnified Party shall, if a claim in respect thereof is to be made against the Person against whom such indemnity may be sought (an "Indemnifying Party"), notify the Indemnifying Party in writing of the claim or the commencement of such action. In the event an Indemnified Party shall fail to give such notice as provided in this Section 6.03 and the Indemnifying Party to whom notice was not given was unaware of the proceeding to which such notice would have related and was materially prejudiced (through the forfeiture of substantive rights and defenses) by the failure to give such notice, the indemnification provided for in Section 6.01 or Section 6.02 shall be reduced to the extent of any actual prejudice resulting from such failure to so notify the Indemnifying Party; *provided*, that the failure to notify the Indemnifying Party shall not relieve it from any liability that it may have to an Indemnified Party otherwise than under Section 6.01 or Section 6.02. If any such claim or action shall be brought against an Indemnified Party, the Indemnifying Party shall be entitled to participate therein, and, to the extent that it wishes, jointly with any other similarly notified Indemnifying Party, to assume the defense thereof with counsel reasonably satisfactory to the Indemnified Party. After notice from the Indemnifying Party to the Indemnified Party of its election to assume the defense of such claim or action, the Indemnifying Party shall not be liable to the Indemnified Party for any legal or other expenses subsequently incurred by the Indemnified Party in connection with the defense thereof other than reasonable costs of investigation; *provided* that the Indemnified Party shall have the right to employ separate counsel to represent the Indemnified Party, but the fees and expenses of such counsel shall be for the account of such Indemnified Party unless (i) the Indemnifying Party and the Indemnified Party shall have mutually agreed to the retention of such counsel or (ii) such Indemnified Party reasonably concludes that representation of both parties by the same counsel would be inappropriate due to actual or potential conflicts of interest with the Company, it being understood, however, that the Indemnifying Party shall not, in connection with any one such claim or action or separate but substantially similar or related claims or actions in the same jurisdiction arising out of the same general allegations or circumstances, be liable for the fees and expenses of more than one separate firm of attorneys (together with appropriate local counsel) at any time for all Indemnified Parties or for fees and expenses that are not reasonable. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, effect any settlement of any claim or pending or threatened proceeding in respect of which the Indemnified Party is or could have been a party and indemnification could have been sought hereunder by such Indemnified Party unless such settlement includes an unconditional release of each such Indemnified Party from all losses, claims, damages or liabilities arising out of such claim or proceeding and such settlement does not admit or constitute an admission of fault, guilt, failure to act or culpability on the part of any such Indemnified Party. Whether or not the defense of any claim or action is assumed by an Indemnifying Party, such Indemnifying Party will not be subject to any liability for any settlement made without its prior written consent, which consent will not be unreasonably withheld, but if settled with such consent or if there be a final judgment for the plaintiff, the Indemnifying Party agrees to indemnify the Indemnified Party from and against any loss or liability by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an Indemnified Party shall have requested an Indemnifying Party to reimburse the Indemnified Party for fees and expenses of counsel as contemplated by this Section 6.03, the

Indemnifying Party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 45 days after receipt by such Indemnifying Party of the aforesaid request and (ii) such Indemnifying Party shall not have reimbursed the Indemnified Party in accordance with such request prior to the date of such settlement.

Section 6.04 Contribution. If for any reason the indemnification provided for in this Article VI is unavailable to the Indemnified Parties in respect of any losses, claims, damages or liabilities referred to herein, then each Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such losses, claims, damages or liabilities among the Company, on the one hand, and Sales Agent, the Forward Seller and the Forward Purchaser, on the other hand, in such proportion as is appropriate to reflect the relative benefits received by the Company, on the one hand, and Sales Agent, the Forward Seller and the Forward Purchaser, on the other hand from the offering of the Shares to which such losses, claims, damages or liabilities relate. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law, then each Indemnifying Party shall contribute to such amount paid or payable by such Indemnifying Party in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of each of the Company, Sales Agent, the Forward Seller and the Forward Purchaser in connection with such statements or omissions, as well as any other relevant equitable considerations. The relative benefits received by each of the Company, Sales Agent, the Forward Seller and the Forward Purchaser, shall be deemed to be in the same respective proportions as (a) in the case of the Company, (x) the Actual Sold Forward Amount for each Forward under this Agreement, multiplied by the Forward Hedge Price for such Forward, or (y) the Actual Sold Issuance Amount for each Issuance under this Agreement, multiplied by the Issuance Price for such Issuance, as applicable, (b) in the case of Sales Agent, the Actual Sold Issuance Amount for each Issuance under this Agreement, multiplied by the Issuance Selling Commission for such Issuance, (c) in the case of the Forward Seller, the Actual Sold Forward Amount for each Forward under this Agreement, multiplied by the Forward Hedge Selling Commission for such Forward, and (d) in the case of the Forward Purchaser, the net Spread (as such term is defined in the Master Forward Confirmation and net of any related stock borrow costs or other costs or expenses actually incurred) for all Forward Contracts executed in connection with this Agreement. The relative fault of the Company, on the one hand, and Sales Agent, the Forward Seller and the Forward Purchaser, on the other hand, 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 each such party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

Each of the Company, Sales Agent, the Forward Seller and the Forward Purchaser agrees that it would not be just and equitable if contribution pursuant to this Section 6.04 were determined by pro rata allocation or by any other method of allocation that does not take account of the equitable considerations referred to in the immediately preceding paragraph. The amount paid or payable by an Indemnified Party as a result of the losses, claims, damages or liabilities referred to in the immediately preceding paragraph shall be deemed to include, subject to the limitations set forth above, any reasonable legal or other expenses reasonably incurred by such Indemnified Party in connection with investigating or defending any such action or claim.

Notwithstanding the provisions of this Section 6.04, (i) neither Sales Agent nor the Forward Seller shall in any event be required to contribute any amount in excess of the aggregate Issuance Selling Commissions or the aggregate Forward Hedge Selling Commissions, as the case may be, received by it under this Agreement and (ii) the Forward Purchaser shall in no event be required to contribute any amount in excess of the net Spread (as such term is defined in the Master Forward Confirmation and net of any related stock borrow costs or other costs or expenses actually incurred) for all Forward Contracts entered into pursuant to this Agreement. 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. For purposes of this Section 6.04, each officer and director of Sales Agent, the Forward Seller or the Forward Purchaser, and each Controlling Person of each, shall have the same rights to contribution as Sales Agent, the Forward Seller or the Forward Purchaser, as the case may be, and each director of the Company, each officer of the Company who signed the Registration Statement, and each Person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act shall have the same rights to contribution as the Company. The obligations of the Company, Sales Agent, the Forward Seller and the Forward Purchaser under this Article VI shall be in addition to any liability that each may otherwise have.

ARTICLE VII
TERMINATION

Section 7.01 Term. Subject to the provisions of this Article VII, the term of this Agreement shall run until the end of the Commitment Period.

Section 7.02 Termination by Sales Agent, the Forward Seller or the Forward Purchaser. Each of Sales Agent, the Forward Seller or the Forward Purchaser may, in its sole discretion at any time, terminate the right of the Company to effect any Issuances or Forwards under this Agreement.

Section 7.03 Termination by the Company. The Company may, in its sole discretion at any time, terminate this Agreement.

Section 7.04 Liability; Provisions that Survive Termination. If this Agreement is terminated pursuant to this Article VII, such termination shall be without liability of any party hereto to any other party hereto except as provided in Section 9.02 and for the Company's, Sales Agent's, the Forward Seller's and the Forward Purchaser's respective obligations in respect of all prior Transaction Notices, and *provided further* that in any case the provisions of Article VI, Article VII, Article VIII and Article IX shall survive termination of this Agreement without limitation.

ARTICLE VIII
REPRESENTATIONS AND WARRANTIES TO SURVIVE DELIVERY

All representations and warranties of the Company herein or in certificates delivered pursuant hereto shall remain operative and in full force and effect regardless of (i) any investigation made by or on behalf of Sales Agent, the Forward Seller or the Forward Purchaser

or any of their respective officers, directors, employees and agents and any Controlling Persons, (ii) delivery and acceptance of the Shares and payment therefor, (iii) the settlement of any Forward Contract or (iv) any termination of this Agreement or the Master Forward Confirmation and any "Supplemental Confirmation" executed in connection with the Master Forward Confirmation.

ARTICLE IX
MISCELLANEOUS

Section 9.01 Press Releases and Disclosure. The Company may issue a press release describing the material terms of the transactions contemplated hereby as soon as practicable following the Closing Date, and may file with the Commission a Current Report on Form 8-K describing the material terms of the transactions contemplated hereby, and the Company shall consult with Sales Agent, the Forward Seller and the Forward Purchaser prior to making such disclosures, and the parties shall use all commercially reasonable efforts, acting in good faith, to agree upon a text for such disclosures that is reasonably satisfactory to all parties. No party hereto shall issue thereafter any press release or like public statement (including, without limitation, any disclosure required in reports filed with the Commission pursuant to the Exchange Act) related to this Agreement or the Master Forward Confirmation or any of the transactions contemplated hereby or thereby that includes information related to this Agreement or the Master Forward Confirmation or transactions contemplated hereby or thereby that has not previously been disclosed without the prior written approval of the other party hereto, except as may be necessary or appropriate in the opinion of the party seeking to make disclosure to comply with the requirements of applicable law or stock exchange rules. If any such press release or like public statement is so required, the party making such disclosure shall consult with the other party prior to making such disclosure, and the parties shall use all commercially reasonable efforts, acting in good faith, to agree upon a text for such disclosure that is reasonably satisfactory to all parties.

Section 9.02 Expenses.

(a) The Company covenants and agrees with the Sales Agent, the Forward Seller and the Forward Purchaser that the Company shall pay or cause to be paid the following, to the extent incurred in connection with the Program: (i) the reasonable documented out-of-pocket fees, disbursements and expenses of the Company's counsel and accountants in connection with the preparation, printing and filing of the Registration Statement, the Prospectus and any Pricing Supplements and all other amendments and supplements thereto and the mailing and delivering of copies thereof to the Sales Agent and the Forward Seller and the Principal Market; (ii) the reasonable documented out-of-pocket costs (other than the costs described in Section 9.02(b)) of printing, preparing or reproducing this Agreement and the Master Forward Confirmation and any other documents in connection with the offering, purchase, sale and delivery of the Shares; (iii) reasonable documented out-of-pocket filing fees and expenses (other than the fees and expenses described in Section 9.02(b)) in connection with the qualification of the Shares for offering and sale under state securities laws as provided in Section 4.02 hereof; (iv) the reasonable documented out-of-pocket cost of preparing the Shares; (v) the reasonable documented out-of-pocket fees and expenses of any transfer agent of the Company; (vi) the reasonable documented out-of-pocket cost of providing any CUSIP or other identification numbers for the Shares; (vii) the reasonable documented out-of-pocket fees and expenses incurred in connection with the listing or qualification of the Shares on the Principal Market and any filing fees incident to any required review by FINRA of the terms of the sale of the Shares in connection with this Agreement and the Master Forward Confirmation and the Registration Statement, and (viii) other reasonable documented out-of-pocket costs and expenses incident to the performance of the Company's obligations hereunder that are not otherwise specifically provided for in this Section 9.02.

(b) If Shares having an aggregate gross sales price of at least $75,000,000 have not been offered and sold under this Agreement by the Sales Agent prior to May 6, 2021 (or such earlier date on which the Company terminates this Agreement), then the Company covenants and agrees with the Sales Agent, the Forward Seller and the Forward Purchaser that the Company shall at that time reimburse their reasonable out-of-pocket expenses incurred in connection with establishing the Program, including the reasonable fees, disbursements and expenses of O'Melveny & Myers LLP, counsel to the Sales Agent and Davis Polk & Wardwell LLP, counsel to the Forward Seller and the Forward Purchaser, up to a maximum aggregate reimbursement of $200,000, which amount shall include any fees, disbursements and expenses paid under Section 9.02(b) of the Alternate Sales Agency Agreements ; provided that, the obligation of the Company to reimburse the Sales Agent, the Forward Seller and the Forward Purchaser for fees, disbursements and expenses pursuant to this Section 9.02(b) shall not apply if the Sales Agent, the Forward Seller or the Forward Purchaser terminates this Agreement for any reason prior to May 6, 2021, other than as a result of the failure by the Company to satisfy any of its obligations hereunder. The Sales Agent, the Forward Seller and the Forward Purchaser shall be solely responsible for allocating any reimbursements received pursuant to this Section 9.02(b) among themselves.

(c) During the term of this Agreement, the Sales Agent, the Forward Seller and the Forward Purchaser shall bear all expenses incurred by any of them after the establishment of the Program (including but not limited to the fees and disbursements of their counsel for their quarterly due diligence review in connection with this Agreement and the offering, purchase, sale and delivery of Shares) hereunder.

Section 9.03 Notices. All notices, demands, requests, consents, approvals or other communications required or permitted to be given hereunder or that are given with respect to this Agreement shall be in writing and shall be personally served or deposited in the mail, registered or certified, return receipt requested, postage prepaid or delivered by reputable air courier service with charges prepaid, or transmitted by hand delivery, telegram, telex or facsimile, addressed as set forth below, or to such other address as such party shall have specified most recently by written notice: (i) if to the Company to: AvalonBay Communities, Inc., Ballston Tower, 671 N. Glebe Road, Suite 800, Arlington, Virginia 22203, Attention: Legal Department, Facsimile No.: (703) 329-4830, with a copy (which shall not constitute notice) to: Goodwin Procter LLP, 100 Northern Avenue, Boston, MA 02210, Attention Gilbert G. Menna, Esq. and John O. Newell, Esq., Facsimile No.: (617) 523-1231; (ii) if to Sales Agent to: [ ], Attention: [ ], with a copy (which shall not constitute notice) to: O'Melveny & Myers LLP, Two Embarcadero Center, 28th Floor, San Francisco, CA 94111, Attention: Peter T. Healy, Esq., Facsimile No.: (415) 984-8701 and (iii) if to the Forward Seller: Goldman, Sachs & Co., 200 West Street, New York, New York, 10282-2198, Attention: Registration Department with a

copy (which shall not constitute notice) to: Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attention: Mark M. Mendez. Except as set forth in Section 5.03, notice shall be deemed given on the date of service or transmission if personally served or transmitted by confirmed e-mail. Notice otherwise sent as provided herein shall be deemed given on the third business day following the date mailed or on the next business day following delivery of such notice to a reputable air courier service for next day delivery.

Section 9.04 Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, representations, understandings, negotiations and discussions between the parties, whether oral or written, with respect to the subject matter hereof.

Section 9.05 Amendment and Waiver. This Agreement may not be amended, modified, supplemented, restated or waived except by a writing executed by the party against which such amendment, modification, supplement, restatement or waiver is sought to be enforced. Waivers may be made in advance or after the right waived has arisen or the breach or default waived has occurred. Any waiver may be conditional. No waiver of any breach of any agreement or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof nor of any other agreement or provision herein contained. No waiver or extension of time for performance of any obligations or acts shall be deemed a waiver or extension of the time for performance of any other obligations or acts.

Section 9.06 No Assignment; No Third Party Beneficiaries. This Agreement and the rights, duties and obligations hereunder may not be assigned or delegated by the Company, Sales Agent, the Forward Seller or the Forward Purchaser. Any purported assignment or delegation of rights, duties or obligations hereunder shall be void and of no effect. This Agreement and the provisions hereof shall be binding upon and shall inure to the benefit of each of the parties and their respective successors and, to the extent provided in Article VI, the controlling persons, officers and directors referred to in Article VI. This Agreement is not intended to confer any rights or benefits on any Persons other than as set forth in Article VI or elsewhere in this Agreement.

Section 9.07 Severability. This Agreement shall be deemed severable, and the invalidity or unenforceability of any term or provision hereof shall not affect the validity or enforceability of this Agreement or of any other term or provision hereof. Furthermore, in lieu of any such invalid or unenforceable term or provision, the parties hereto intend that there shall be added as a part of this Agreement a provision as similar in terms to such invalid or unenforceable provision as may be possible and be valid and enforceable.

Section 9.08 Further Assurances. Each party hereto, upon the request of any other party hereto, shall do all such further acts and execute, acknowledge and deliver all such further instruments and documents as may be necessary or desirable to carry out the transactions contemplated by this Agreement.

Section 9.09 Titles and Headings. Titles, captions and headings of the sections of this Agreement are for convenience of reference only and shall not affect the construction of any provision of this Agreement.

Section 9.10 Governing Law; Jurisdiction. THIS AGREEMENT AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS AGREEMENT SHALL BE GOVERNED BY, INTERPRETED UNDER AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED WITHIN THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAWS THEREOF. Any action, suit or proceeding 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 federal court located in the Southern District of the State of New York or any New York state court located in the Borough of Manhattan, and the Company agrees to the exclusive jurisdiction of such courts (and of the appropriate appellate courts therefrom) and each party waives (to the full extent permitted by law) any objection it may have to the laying of venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding has been brought in an inconvenient forum.

Section 9.11 Waiver of Jury Trial. Each of the Company, Sales Agent, the Forward Seller and the Forward Purchaser hereby irrevocably waives any right it may have to a trial by jury in respect of any claim based upon or arising out of this Agreement or the Master Forward Confirmation or any transaction contemplated hereby or thereby.

Section 9.12 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument. Delivery of an executed Agreement by one party to the other may be made by facsimile transmission.

Section 9.13 Adjustments for Stock Splits, etc. The parties acknowledge and agree that share related numbers contained in this Agreement (including the minimum Floor Price) shall be equitably adjusted by Sales Agent to reflect stock splits, stock dividends, reverse stock splits, combinations and similar events.

Section 9.14 No Fiduciary Duty. The Company acknowledges and agrees that each of Sales Agent, the Forward Seller and the Forward Purchaser is acting solely in the capacity of an arm's length contractual counterparty to the Company with respect to the offering of Shares contemplated hereby (including in connection with determining the terms of the transactions contemplated hereby or by the Master Forward Confirmation) and not as a financial advisor or a fiduciary to, or an agent of, the Company or any other person and will not claim that Sales Agent, the Forward Seller or the Forward Purchaser is acting in such capacity in connection with the transactions contemplated hereby. None of Sales Agent, the Forward Seller or the Forward Purchase and their respective Affiliates shall have obligations to the Company with respect to the transactions contemplated hereby except the obligations expressly set forth in this Agreement and the Master Forward Confirmation, and each of Sales Agent, the Forward Seller and the Forward Purchaser and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Company. Additionally, none of Sales Agent, the Forward Seller or the Forward Purchaser is advising the Company or any other person as to any legal, tax, investment, accounting or regulatory matters in any jurisdiction with respect to the transactions contemplated hereby. In addition, each of the parties hereto acknowledges that it is a sophisticated business person who was adequately represented by

counsel during negotiations regarding the provisions hereof, including, without limitation, the indemnification and contribution provisions of Article VI, and is fully informed regarding such provisions. The Company shall consult with its own advisors concerning such matters and shall be responsible for making their own independent investigation and appraisal of the transactions contemplated hereby, and none of Sales Agent, the Forward Seller or the Forward Purchaser and their respective Affiliates shall have responsibility or liability to the Company with respect thereto. Any review by Sales Agent, the Forward Seller or the Forward Purchaser of the Company, the transactions contemplated hereby or other matters relating to such transactions will be performed solely for the benefit of Sales Agent, the Forward Seller or the Forward Purchaser, as the case may be and shall not be on behalf of the Company.

Section 9.15 Recognition of the U.S. Special Resolution Regimes.

(a) In the event that any Sales Agent that is a Covered Entity becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer from such Sales Agent of this Agreement, and any interest and obligation in or under this Agreement will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement, and any such interest and obligation, were governed by the laws of the United States or a state of the United States.

(b) In the event that any Sales Agent that is a Covered Entity or a BHC Act Affiliate of such Sales Agent becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under this Agreement that may be exercised against such Sales Agent are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States.

As used in this Section 9.15:

"BHC Act Affiliate" has the meaning assigned to the term "affiliate" in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k).

"Covered Entity" means any of the following:

(i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. §252.82(b);

(ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R §47.3(b); or

(iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. §382.2(b).

"Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"U.S. Special Resolution Regime" means each of (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder and (ii) Title II of the Dodd-

Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

Section 9.16 Compliance with USA Patriot Act. In accordance with the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), the Sales Agent is required to obtain, verify and record information that identifies its clients, including the Company, which information may include the name and address of its clients, as well as other information that will allow the Sales Agent to properly identify its clients.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by the undersigned, thereunto duly authorized, as of the date first set forth above.

AVALONBAY COMMUNITIES, INC., as Company

By: _____
Name:
Title:

[*Signature Page to Sales Agency Financing Agreement*]

[ ], as Sales Agent

By: _____
Name:
Title:

[*Signature Page to Sales Agency Financing Agreement*]

[ ], as Forward Seller

By: _____
Name:
Title:

[ ], as Forward Purchaser

By: _____
Name:
Title:

[*Signature Page to Sales Agency Financing Agreement*]

EXHIBIT A

TRANSACTION NOTICE

, 20

[ ]
[ ]
[ ]

Attention: Registration Department

E-mail: [ ]

Reference is made to the Sales Agency Financing Agreement among AvalonBay Communities, Inc. (the "Company"), [ ] (in its capacity as agent for the Company in connection with the offering and sale of any Issuance Shares thereunder, "Sales Agent," and in its capacity as agent for the Forward Purchaser in connection with the offering and sale of any Forward Hedge Shares thereunder, the "Forward Seller"), and [ ]., as counterparty under any Forward Contract (the "Forward Purchaser"), dated as of [·], 2019 (the "Sales Agency Financing Agreement"). Capitalized terms used in this Transaction Notice without definition shall have the respective definitions ascribed to them in the Sales Agency Financing Agreement. This Transaction Notice relates to [an "Issuance"](1) [a "Forward"](2). The Company confirms that all conditions to the delivery of this Transaction Notice are satisfied as of the date hereof.

[The Company confirms that it has not declared and will not declare any dividend, or caused or cause there to be any distribution, on the Common Stock if the ex-dividend date or ex-date, as applicable, for such dividend or distribution will occur during the period from, and including, the first Trading Day of the Forward Hedge Selling Period to, and including, the last Trading Day of the Forward Hedge Selling Period.](3)

The Company represents and warrants that each representation, warranty, covenant and other agreement of the Company contained in the Sales Agency Financing Agreement is true and correct on the date hereof, and that the Prospectus and the General Disclosure Package, including

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(1) Insert for a Transaction Notice that relates to an "Issuance."

(2) Insert for a Transaction Notice that relates to a "Forward."

(3) Insert for a Transaction Notice that relates to a "Forward."

the documents incorporated by reference therein, as of the date hereof, do not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

Effective Date of Delivery of Transaction Notice (determined pursuant to Section 2.03(b) of the Sales Agency Financing Agreement):

Number of Days in [Issuance](4) [Forward Hedge](5) Selling Period:

First Date of [Issuance](6) [Forward Hedge](7) Selling Period:

[Issuance](8) [Forward Hedge](9) Amount: $

[Forward Hedge Selling Commission Rate: %

Forward Price Reduction Dates	Forward Price Reduction Amounts
	$
	$

Regular Dividend Amounts:

For any calendar quarter ending on or prior to [December 31, 20[ ]]:	$[ ]
For any calendar quarter ending after [December 31, 20[ ]]:	$[ ](10)

[Term: [Days][Months]](11):

Floor Price (Adjustable by Company during the [Issuance](12) [Forward Hedge](13) Selling Period, and in no event less than $1.00 per share): $ per share

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(4) Insert for a Transaction Notice that relates to an "Issuance."

(5) Insert for a Transaction Notice that relates to a "Forward."

(6) Insert for a Transaction Notice that relates to an "Issuance."

(7) Insert for a Transaction Notice that relates to a "Forward."

(8) Insert for a Transaction Notice that relates to an "Issuance."

(9) Insert for a Transaction Notice that relates to a "Forward."

(10) Insert for a Transaction Notice that relates to a "Forward."

(11) Insert for a Transaction Notice that relates to a "Forward."

Comments:

AVALONBAY COMMUNITIES, INC.

By: _____
Name:
Title: [CEO, President, Chief Financial Officer, Senior Vice President-Finance or Treasurer]

(continued….)

(12) Insert for a Transaction Notice that relates to an "Issuance."

(13) Insert for a Transaction Notice that relates to a "Forward."

EXHIBIT B-1

Form of Corporate Opinion of Goodwin Procter LLP, Counsel for the Company

See attached.

[FORM OF GOODWIN CORPORATE OPINION]

, 20[·]

[Bank Name]
[Bank Address]

Re: AvalonBay Communities, Inc.

Ladies and Gentlemen:

We have acted as counsel for AvalonBay Communities, Inc., a Maryland corporation (the "Company"), in connection with the preparation and filing with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "1933 Act"), of a Registration Statement on Form S-3 (File No. 333-223183), and a prospectus supplement dated May , 2019, which supplements the prospectus dated February 23, 2018 included in such Registration Statement (as filed with the Commission pursuant to Rule 424(b), the "Prospectus Supplement"), relating to the offering of up to an aggregate of $1,000,000,000 of shares (the "Shares") of the Company's common stock, par value $0.01 per share (the "Common Stock") by the Company pursuant to (1) a Sales Agency Financing Agreement dated May , 2019 (the [Bank Name] SAFA Agreement") [between][among] the Company and [Bank Name], as agent ("Bank Name") and (2) a Master Confirmation for Issuer Share Forward Sale Transactions, dated May , 2019, between the Company and [Forward Bank Name], as Forward Purchaser, including all provisions incorporated by reference therein (the "[Forward Bank Name] Master Forward Sale Agreement"). [Bank Name] and the Alternative Sales Agents are sometimes referred to individually below as an "Agent" and collectively as the "Agents." The [Bank Name] SAFA Agreement and the [Forward Bank Name] Master Forward Sale Agreement are sometimes referred to individually as an "Agreement" and collectively as the "Agreements," and the [Bank Name] SAFA Agreement and each Alternative Sales Agency Agreement between the Company and each of the Alternative Sales Agents are sometimes referred to individually as a "SAFA Agreement" and collectively as the "SAFA Agreements." We refer to the Registration Statement on Form S-3 as the "Registration Statement," and the prospectus included in the Registration Statement, as supplemented by the Prospectus Supplement, as the "Prospectus."

This opinion letter is being furnished to you pursuant to Section 4.07 of the [Bank Name] SAFA Agreement. Capitalized terms used but not defined herein shall have their respective meanings set forth in the [Bank Name] SAFA Agreement.

We have reviewed the agreements listed in Exhibit A to this opinion letter (the "Contracts") and made such investigation of law as we have deemed appropriate to give the opinions below. We have relied, without independent verification, on certificates of public officials and, as to matters of fact material to the opinions set forth below, on representations made in the Agreements and certificates and other inquiries of officers of the Company.

In our examination of the Agreements and other documents relevant to the opinions set forth below, we have assumed, without independent verification, (i) the genuineness of all signatures other than those of officers of the Company, (ii) the legal capacity of all natural persons, (iii) the authenticity and completeness of any Agreements submitted to us as originals, (iv) the conformity to originals of any Agreements submitted to us as copies, by facsimile, by other means of electronic transmission or made available to us from sites on the Internet and (v) the truth, accuracy and completeness of information, representations and warranties contained in the Agreements. We have also assumed the validity and constitutionality of each relevant statute, rule, regulation and action by governmental agencies covered by this opinion letter, unless a reported decision of a court in the relevant jurisdiction has established otherwise.

The opinions set forth below are limited to the following, as currently in effect, subject to the exclusions and limitations set forth elsewhere in this opinion letter (collectively, the "Scope Limitations"): (i) as to the opinions expressed in numbered opinion paragraphs 1 and 2, the 1933 Act and the rules and regulations promulgated by the Commission thereunder; (ii) as to the opinions expressed in numbered opinion paragraph 5, the General Corporation Law of the State of Maryland (the "MGCL"); (iii) as to the opinions expressed in numbered opinion paragraph 6, the MGCL and internal substantive statutes, rules and regulations of the State of New York, as applied by courts located in New York without regard to choice-of-law rules; (iv) as to the opinions expressed in numbered opinion paragraphs 3, 7 and 8, the MGCL, such statutes of the State of New York, or rules and regulations thereunder, as applied by courts located in New York without regard to choice-of-law rules, in each case to the extent that a lawyer practicing in the State of New York exercising customary professional diligence would reasonably be expected to recognize such statutes, rules or regulations as being applicable to an entity, transaction or agreement to which such opinions relate ("Applicable New York Law"), and United States federal statutes, or rules and regulations thereunder (excluding (X) those specifically listed in clause (v) below, (Y) the 1933 Act and the rules and regulations promulgated by the Commission thereunder and (Z) the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated by the Commission thereunder) ("Applicable Federal Law"); and (v) as to the opinion expressed in numbered opinion paragraph 4, the Investment Company Act of 1940, as amended (the "Investment Company Act"), and the rules and regulations promulgated by the Commission thereunder).

In rendering the opinion expressed in numbered opinion paragraph 5 below as to the valid existence and good standing of the Company in Maryland, we have relied solely upon a certificate from the Department of Assessments and Taxation of the State of Maryland certifying that the Company is a corporation duly incorporated and existing under and by virtue of the laws of the State of Maryland, and is in good standing and duly authorized to transact business in the State of Maryland. A copy of such certificate has been made available to your counsel. In rendering the opinion expressed in numbered opinion paragraph 9 below, we have relied exclusively on the supplemental listing application dated May , 2019, countersigned on behalf

of the New York Stock Exchange (the "NYSE"), a copy of which has been made available to your counsel.

Based on and subject to the foregoing, we are of the opinion that:

1. [The Registration Statement has become effective under the 1933 Act, and, based solely upon our review of the Commission's "Stop Orders" web page (https://sec.gov/litigation/stoporders.shtml) on the date hereof, no stop order suspending the effectiveness of the Registration Statement has been issued under the 1933 Act.]

2. The Registration Statement, as of its most recent effective date, and the Prospectus, as of the date of the Prospectus, appeared to us on their face to respond in all material respects to the requirements of the form on which the registration statement was filed, as well as the applicable requirements of Regulation C under the 1933 Act, except that the foregoing statement does not address any requirement relating to financial statements and related notes, financial statement schedules or financial or accounting data contained in the Registration Statement or the Prospectus. Each of the documents incorporated by reference in the Registration Statement and the Prospectus that would be required to be incorporated by reference in order to satisfy the requirements of Form S-3 as of the date hereof, when such document was filed with the Commission or became effective, as the case may be, appeared to us on its face to respond in all material respects to the requirements of the form on which it was filed, except for requirements relating to financial statements and related notes, financial statement schedules or financial or accounting data contained therein or omitted therefrom.

3. The descriptions in the Registration Statement and the Prospectus of the Company's charter, as amended, and legal matters under the captions "Description of Debt Securities," "Description of Preferred Stock," "Description of Common Stock," "Limits on Ownership of Stock," and "Risk Factors — The ability of our stockholders to control our policies and effect a change of control of our company is limited by certain provisions of our charter and bylaws and by Maryland law," insofar as such statements contain descriptions of laws, rules or regulations or the Company's charter, are accurate in all material respects.

4. The Company is not and, after giving effect to the offering and sale of the Shares and the application of the proceeds therefrom as described in the Prospectus and the consummation of the transactions contemplated by the Agreements, will not be an "investment company" as such term is defined in the Investment Company Act.

5. The Company is a corporation validly existing and in good standing under the laws of the State of Maryland with corporate power under its organizational documents and the applicable statutory law necessary to conduct its business as described in the Registration Statement and the Prospectus.

6. The Shares have been duly authorized and, when issued delivered and paid for in accordance with the [Bank Name] SAFA Agreement, will be validly issued, fully paid and nonassessable. The issuance and sale of the Shares is not subject to any preemptive right under (a) the MGCL or (b) the Company's charter or its bylaws, in both cases as amended through the date hereof.

7. The Company has corporate power and authority to execute and deliver each of the Agreements and to perform its obligations thereunder, and each of the Agreements has been duly authorized, executed and delivered by the Company. Each of the Agreements constitutes the Company's valid and binding obligations enforceable against the Company in accordance with its respective terms. The execution, delivery and performance of each of the Agreements and the issuance and sale of the Shares on the terms contemplated in the Agreements will not (alone or with the giving of notice or the passage of time or both) (A) result in the creation of any lien upon any of the assets of the Company or any "Significant Subsidiary" (as such term is defined in Rule 405 under the 1933 Act), pursuant to the terms or provisions of any Contract or (B) result in a breach or violation of any of the terms or provisions of, or constitute a default or result in the acceleration of any obligation under, (i) the charter or bylaws of the Company, in each case amended through the date hereof (ii) the articles or certificate of incorporation, bylaws, limited partnership agreements or other organizational documents of any Significant Subsidiary, (iii) any Contract, (iv) the MGCL, Applicable New York Law or Applicable Federal Law or (v) any judgment, ruling, decree or order, known to us, of any Maryland, New York or United States federal court or other governmental agency or body applicable to the business or properties of the Company or any Significant Subsidiary, in the case of clauses (iii), (iv) or (v), where such violation or default, individually or in the aggregate, might have a material adverse effect on the business, properties, business prospects, condition (financial or otherwise) or results of operations of the Company and its subsidiaries taken as a whole and as would not materially and adversely affect the ability of the Company to perform its obligations under the Agreements.

8. No consent, approval, authorization or order of, or filing, by the Company with any governmental authority pursuant to the MGCL or with any, New York or United States federal governmental authority is required in connection with the sale of the Shares by the Company, except such as have been obtained under the 1933 Act or the Securities Exchange Act of 1934, as amended, in connection with the issuance and sale of the Shares by the Company through the Agents.

9. [ ] shares of Common Stock have been duly approved for listing by the NYSE, subject to notice of issuance, in connection with the offering described in the Prospectus Supplement.

Our opinions above are subject to the following additional qualifications:

Our opinions are subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar laws of general application affecting the rights and remedies of

creditors and to general principles of equity, regardless of whether considered in a proceeding in equity or law, and the possible unavailability of specific performance or injunctive relief. In addition, we express no opinion as to the validity, binding effect and enforceability of provisions in the Agreements relating to arbitration and the choice of forum for resolving disputes or to indemnification or contribution for liabilities arising under securities laws.

We express no opinion on any provision of any of the Agreements relating to: (i) non-reliance, exculpation, disclaimer, limitation of liability, indemnification, contribution, waiver, limitation or exclusion of remedies, or any other provision having a similar effect; (ii) the statute of limitations; (iii) concepts of materiality, reasonableness, good faith, fair dealing or unconscionability; (iv) liquidated damages, forfeitures, default interest, late charges, payment of attorneys' fees, or other economic remedies to the extent they constitute a penalty or are otherwise contrary to public policy; (v) consents to, or restrictions upon, governing law (except for the validity under the laws of the State of New York as discussed in the following paragraph); (vi) the waiver of the right to trial by jury or of usury, stay, extension and similar laws to the extent that such waiver may be held to be unenforceable or in violation of public policy; (viii) rights or remedies not being exclusive, not preventing the concurrent assertion of any other right or remedy, being cumulative and exercisable in addition to any other right and remedy, or any delay or omission to exercise any right or remedy not impairing any right or remedy or not constituting a waiver thereof; (ix) any obligation or agreement to use best efforts, reasonable best efforts or commercially reasonable efforts; (x) the requirement that a party take further action or enter into further agreements or instruments or provide further assurances; (xi) the requirement that amendments or waivers be in writing insofar as they suggest that oral or other modifications, amendments or waivers could not be effectively agreed upon by the parties or that the doctrine of promissory estoppel might not apply; and (xii) the severability, if invalid, of provisions to the foregoing effect.

To the extent that any opinion set forth herein relates to the enforceability of the choice of New York law, choice of New York forum or exclusive jurisdiction provisions in any of the Agreements, such opinion is rendered solely in reliance upon N.Y. Gen. Oblig. Law §§ 5-1401, 5-1402 (McKinney 2010) and N.Y. CPLR 327(b) (McKinney 2010) and is subject to the qualifications that such enforceability may be limited by public policy or other considerations of any jurisdiction, other than the State of New York, in which enforcement of such provisions, or of a judgment upon an agreement containing such provisions, is sought and by constitutional limitations.

We express no opinion as to any provision of the Agreements that purports to vest in any person the rights of a third-party beneficiary with respect to any other Agreement or other agreement where such person is not also named a third-party beneficiary of such other Agreement or other agreement in such Agreement or other agreement.

We express no opinion as to any provision of the Agreements permitting service of process by any method not provided for under applicable statute or court rule, or the validity, binding effect and enforceability of provisions in the Agreements relating to arbitration.

Except to the extent expressly identified in the Scope Limitations or in any of the numbered opinion paragraphs above, we express no opinion as to: (i) any law, statute, rule or regulation or (ii) any state or United States federal laws applicable to the transactions covered by this opinion letter because of the nature or extent of the business of any parties to the [Bank Name] Master Forward Agreement other than the Company. The opinions set forth above do not cover, without limitation, the following: (i) state securities or "Blue Sky" laws; (ii) United States federal securities laws except to the extent expressly identified in the Scope Limitations or in numbered opinion paragraphs 1, 2 and 4; (iii) state or United States federal banking, tax, antitrust, trade regulation, anti-fraud or unfair competition laws; (iv) state or United States federal insolvency or fraudulent transfer laws; (v) compliance with state or United States federal laws relating to fiduciary duty requirements; (vi) state or United States federal laws relating to pension or employee benefits; (vii) state or United States federal usury laws; (viii) state or United States federal environmental or energy laws; (ix) margin regulations; (x) FINRA rules; (xi) stock exchange rules except to the extent expressly stated in numbered opinion paragraph 9; (xii) state or United States federal laws relating to consumer protection; (xiii) state or United States federal laws relating to regulation of utilities; (xiv) state or United States federal laws relating to foreign trade, national security, anti-terrorism and anti-money laundering; (xv) state or United States federal laws regulating derivatives, investment and brokerage services; or (xvi) any statutes, rules or regulations of any political subdivision below the state level.

With your consent, we have assumed that: (i) any party other than the Company has been duly organized, is validly existing and in good standing under the laws of its jurisdiction of organization and has full right, power and authority to execute, deliver and perform its obligations under each Agreement to which it is a party; (ii) the Agreements have been duly authorized, executed and delivered by the parties thereto, other than the Company; (iii) the Agreements constitute valid and binding obligations of the parties thereto other than the Company, enforceable against each of them in accordance with their respective terms; and (iv) the status of the Agreements as legally valid and binding obligations of the parties is not affected by (A) breaches of, or defaults under, agreements or instruments, (B) violations of statutes, rules, regulations or court or governmental orders, or (C) failures to obtain required consents, approvals or authorizations from, or make required registrations, declarations or filings with, governmental authorities, provided that we make no such assumption to the extent that such matters with respect to the Company are covered by the opinions expressed in numbered opinion paragraph 7 above.

Our opinion set forth in numbered opinion paragraph 7 above does not cover: (i) any breach or default under a Contract that would occur only upon the happening of a contingency; or (ii) any financial covenant or other provision in any agreement or instrument that would require us to perform a mathematical calculation or to make a financial or accounting determination.

This opinion letter is furnished by us as counsel for the Company to you as Agent and is solely for your benefit in connection with the offering and sale of the Shares through you in your capacity as Agent pursuant to the [Bank Name] SAFA Agreement, and neither it nor the opinions it contains may be relied on for any other purpose or by anyone else.

Very truly yours,

GOODWIN PROCTER LLP

Exhibit A

CONTRACTS

1. Indenture for Senior Debt Securities, dated as of January 16, 1998, between the Company and US Bank, National Association (as successor to State Street Bank and Trust Company) (the "Trustee"), as Trustee.

2. Amended and Restated Third Supplemental Indenture, dated as of July 10, 2000 between the Company and the Trustee, including forms of Floating Rate Note and Fixed Rate Note.

3. Fourth Supplemental Indenture, dated as of September 18, 2006, between the Company and the Trustee.

4. Fifth Supplemental Indenture, dated as of November 21, 2014, between the Company and the Trustee.

5. Indenture for Senior Debt Securities, dated as of February 23, 2018, between the Company and The Bank of New York Mellon, as Trustee.

6. First Supplemental Indenture, dated as of March 26, 2018, between the Company and The Bank of New York Mellon, as Trustee.

7. Second Supplemental Indenture, dated as of May 29, 2018, between the Company and The Bank of New York Mellon, as Trustee.

8. Amended and Restated Limited Partnership Agreement of AvalonBay Value Added Fund, L.P., dated as of March 16, 2005.

9. Master Credit Facility Agreement, dated February 27, 2013, by and among Federal National Mortgage Association and the parties named therein.

10. Amended and Restated Term Loan Agreement, dated as of February 28, 2019, among the Company, as Borrower, PNC Bank, National Association, as Administrative Agent and a bank, The Bank of New York Mellon, as a Syndication Agent and a bank, SunTrust Bank, as a Syndication agent and a bank, and a syndicate of other financial institutions, serving as banks.

11. Fifth Amended and Restated Revolving Loan Agreement, dated as of February 28, 2019, among the Company, as Borrower, Bank of America, N.A., as administrative agent, an issuing bank and a bank, JPMorgan Chase Bank, N.A., as an issuing bank, a bank and as a syndication agent, Wells Fargo Bank, N.A., as an issuing bank, a bank and a syndication agent, Barclays Bank PLC, Deutsche Bank Securities, Inc., Goldman Sachs Bank USA, Morgan Stanley Senior Funding, Inc. and Citibank, N.A. as documentation agents, PNC Bank, National Association and SunTrust Bank as senior managing agents, TD Bank, N.A., Royal Bank of Canada and U.S. Bank National Association as managing agents, Branch Banking and Trust Company and The Bank of Nova Scotia as co-agents, each (or its affiliate) as a bank, and the other bank parties signatory thereto.

EXHIBIT B-2

Form of Forward Opinion of Goodwin Procter LLP, Counsel for the Company

See attached.

[FORM OF GOODWIN FORWARD OPINION]

, 20[·]

]Forward Bank Name]
[Forward Bank Address]

Re: AvalonBay Communities, Inc.

Ladies and Gentlemen:

We have acted as counsel for AvalonBay Communities, Inc., a Maryland corporation (the "Company"), in connection with the preparation and filing with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "1933 Act"), of a Registration Statement on Form S-3 (File No. 333-223183), and a prospectus supplement dated May , 2019, which supplements the prospectus dated February 23, 2018 included in such Registration Statement (as filed with the Commission pursuant to Rule 424(b), the "Prospectus Supplement"), relating to the offering of up to an aggregate of $1,000,000,000 of shares (the "Shares") of the Company's common stock, par value $0.01 per share (the "Common Stock") by the Company pursuant to (1) a Sales Agency Financing Agreement dated May , 2019 [between][among] the Company and [Bank Name] (the "[Bank Name] SAFA Agreement") and (2) a Master Confirmation for Issuer Share Forward Sale Transactions, dated May , 2019 between the Company and [Forward Bank Name], as Forward Purchaser, including all provisions incorporated by reference therein (the "[Forward Bank Name] Master Forward Sale Agreement"). [Bank Name] and the Alternative Sales Agents are sometimes referred to individually below as an "Agent" and collectively as the "Agents." The [Bank Name] SAFA Agreement and the [Forward Bank Name] Master Forward Sale Agreement are sometimes referred to individually as an "Agreement" and collectively as the "Agreements." We refer to the Registration Statement on Form S-3 as the "Registration Statement," and the prospectus included in the Registration Statement, as supplemented by the Prospectus Supplement, as the "Prospectus."

This opinion letter is being furnished to you as Forward Counterparty pursuant to Section 3(g) of the [Forward Bank Name] Master Forward Sale Agreement. Capitalized terms used but not defined herein shall have their respective meanings set forth in the [Bank Name] SAFA Agreement or the [Forward Bank Name] Master Forward Sale Agreement, as appropriate.

We have reviewed the agreements listed in Exhibit A to this opinion letter (the "Contracts") and made such investigation of law as we have deemed appropriate to give the opinions below. We have relied, without independent verification, on certificates of public officials and, as to matters of fact material to the opinions set forth below, on representations made in the Agreements, and certificates and other inquiries of officers of the Company.

In our examination of the Agreements and other documents relevant to the opinions set forth below, we have assumed, without independent verification, (i) the genuineness of all signatures other than those of officers of the Company, (ii) the legal capacity of all natural persons, (iii) the authenticity and completeness of any Agreements submitted to us as originals, (iv) the conformity to originals of any Agreements submitted to us as copies, by facsimile, by other means of electronic transmission or made available to us from sites on the Internet and (v) the truth, accuracy and completeness of information, representations and warranties contained in the Agreements. We have also assumed the validity and constitutionality of each relevant statute, rule, regulation and action by governmental agencies covered by this opinion letter, unless a reported decision of a court in the relevant jurisdiction has established otherwise.

The opinions set forth below are limited to the following, as currently in effect, subject to the exclusions and limitations set forth elsewhere in this opinion letter (collectively, the "Scope Limitations"): (i) as to the opinions expressed in numbered opinion paragraph 1, the General Corporation Law of the State of Maryland (the "MGCL"); (ii) as to the opinions expressed in numbered opinion paragraph 2, the MGCL and internal substantive statutes, rules and regulations of the State of New York, as applied by courts located in New York without regard to choice-of-law rules; (iii) as to the opinions expressed in numbered opinion paragraphs 3 and 4, the MGCL, such statutes of the State of New York, or rules and regulations thereunder, as applied by courts located in New York without regard to choice-of-law rules, in each case to the extent that a lawyer practicing in the State of New York exercising customary professional diligence would reasonably be expected to recognize such statutes, rules or regulations as being applicable to an entity, transaction or agreement to which such opinions relate ("Applicable New York Law"), and United States federal statutes, or rules and regulations thereunder (excluding (X) the Investment Company Act of 1940, as amended, and the rules and regulations promulgated by the Commission thereunder, (Y) the 1933 Act and the rules and regulations promulgated by the Commission thereunder and (Z) the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated by the Commission thereunder) ("Applicable Federal Law").

In rendering the opinion expressed in numbered opinion paragraph 1 below as to the valid existence and good standing of the Company in Maryland, we have relied solely upon a certificate from the Department of Assessments and Taxation of the State of Maryland certifying that the Company is a corporation duly incorporated and existing under and by virtue of the laws of the State of Maryland, and is in good standing and duly authorized to transact business in the State of Maryland. A copy of such certificate has been made available to your counsel. In rendering the opinion expressed in numbered opinion paragraph 5 below, we have relied exclusively on the supplemental listing application dated May , 2019, countersigned on behalf of the New York Stock Exchange (the "NYSE"), a copy of which has been made available to your counsel.

Based on and subject to the foregoing, we are of the opinion that:

1. The Company is a corporation validly existing and in good standing under the laws of the State of Maryland with corporate power under its organizational documents and the applicable statutory law necessary to conduct its business as described in the Registration Statement and the Prospectus.

2. A number of shares of Common Stock equal to the aggregate Capped Number (as used herein, as defined for all transactions under the [Forward Bank Name] Master Forward Sale Agreement) have been duly authorized and, when issued, delivered and paid for in accordance with the [Forward Bank Name] Master Forward Sale Agreement, will be validly issued, fully paid and nonassessable. The issuance and sale of such aggregate Capped Number of shares of Common Stock is not subject to any preemptive right under (a) the MGCL or (b) the Company's charter or its by-laws, in both cases as amended through the date hereof.

3. The Company has corporate power and authority to execute and deliver each of the Agreements and to perform its obligations thereunder, and each of the Agreements has been duly authorized, executed and delivered by the Company. Each of the Agreements constitutes the Company's valid and binding obligations enforceable against the Company in accordance with its respective terms. The execution, delivery and performance of each of the Agreements and the issuance and sale of the Shares on the terms contemplated in the Agreements will not (alone or with the giving of notice or the passage of time or both) (A) result in the creation of any lien upon any of the assets of the Company or any "Significant Subsidiary" (as such term is defined in Rule 405 under the 1933 Act), pursuant to the terms or provisions of any Contract or (B) result in a breach or violation of any of the terms or provisions of, or constitute a default or result in the acceleration of any obligation under, (i) the charter or bylaws of the Company, in each case amended through the date hereof (ii) the articles or certificate of incorporation, bylaws, limited partnership agreements or other organizational documents of any Significant Subsidiary, (iii) any Contract, (iv) the MGCL, Applicable New York Law or Applicable Federal Law or (v) any judgment, ruling, decree or order, known to us, of any Maryland, New York or United States federal court or other governmental agency or body applicable to the business or properties of the Company or any Significant Subsidiary, in the case of clauses (iii), (iv) or (v), where such violation or default, individually or in the aggregate, might have a material adverse effect on the business, properties, business prospects, condition (financial or otherwise) or results of operations of the Company and its subsidiaries taken as a whole and as would not materially and adversely affect the ability of the Company to perform its obligations under the Agreements.

4. No consent, approval, authorization or order of, or filing, by the Company with any governmental authority pursuant to the MGCL or with any New York or United States federal governmental authority is required in connection with the sale of the Shares by the Company, except such as have been obtained under the 1933 Act or the Securities Exchange Act of 1934, as amended, in connection with the Company entering into and performing its obligations under the [Bank Name] Master Forward Sale Agreement.

5. [ ] shares of Common Stock have been duly approved for listing by the NYSE, subject to notice of issuance, in connection with the offering described in the Prospectus Supplement.

Our opinions above are subject to the following additional qualifications:

Our opinions are subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar laws of general application affecting the rights and remedies of creditors and to general principles of equity, regardless of whether considered in a proceeding in equity or law, and the possible unavailability of specific performance or injunctive relief. In addition, we express no opinion as to the validity, binding effect and enforceability of provisions in the Agreements relating to arbitration and the choice of forum for resolving disputes or to indemnification or contribution for liabilities arising under securities laws.

We express no opinion on any provision of any of the Agreements relating to: (i) non-reliance, exculpation, disclaimer, limitation of liability, indemnification, contribution, waiver, limitation or exclusion of remedies, or any other provision having a similar effect; (ii) the statute of limitations; (iii) concepts of materiality, reasonableness, good faith, fair dealing or unconscionability; (iv) liquidated damages, forfeitures, default interest, late charges, make-whole premiums, payment of attorneys' fees, collection upon acceleration of amounts that might be determined to constitute unearned interest thereon, or other economic remedies to the extent they constitute a penalty or are otherwise contrary to public policy; (v) consents to, or restrictions upon, governing law (except for the validity under the laws of the State of New York as discussed in the following paragraph); (vi) the waiver of the right to trial by jury or of usury, stay, extension and similar laws to the extent that such waiver may be held to be unenforceable or in violation of public policy; (viii) rights or remedies not being exclusive, not preventing the concurrent assertion of any other right or remedy, being cumulative and exercisable in addition to any other right and remedy, or any delay or omission to exercise any right or remedy not impairing any right or remedy or not constituting a waiver thereof; (ix) any obligation or agreement to use best efforts, reasonable best efforts or commercially reasonable efforts; (x) the requirement that a party take further action or enter into further agreements or instruments or provide further assurances; (xi) the requirement that amendments or waivers be in writing insofar as they suggest that oral or other modifications, amendments or waivers could not be effectively agreed upon by the parties or that the doctrine of promissory estoppel might not apply; and (xii) the severability, if invalid, of provisions to the foregoing effect.

To the extent that any opinion set forth herein relates to the enforceability of the choice of New York law, choice of New York forum or exclusive jurisdiction provisions in any of the Agreements, such opinion is rendered solely in reliance upon N.Y. Gen. Oblig. Law §§ 5-1401, 5-1402 (McKinney 2010) and N.Y. CPLR 327(b) (McKinney 2010) and is subject to the qualifications that such enforceability may be limited by public policy or other considerations of any jurisdiction, other than the State of New York, in which enforcement of such provisions, or

of a judgment upon an agreement containing such provisions, is sought and by constitutional limitations.

We express no opinion as to any provision of the Agreements that purports to vest in any person the rights of a third-party beneficiary with respect to any other Agreement or other agreement where such person is not also named a third-party beneficiary of such other Agreement or other agreement in such Agreement or other agreement.

We express no opinion as to any provision of the Agreements permitting service of process by any method not provided for under applicable statute or court rule, or the validity, binding effect and enforceability of provisions in the Agreements relating to arbitration.

Except to the extent expressly identified in the Scope Limitations or in any of the numbered opinion paragraphs above, we express no opinion as to: (i) any law, statute, rule or regulation or (ii) any state or United States federal laws applicable to the transactions covered by this opinion letter because of the nature or extent of the business of any parties to the [Forward Bank Name] Master Forward Agreement other than the Company. The opinions set forth above do not cover, without limitation, the following: (i) state securities or "Blue Sky" laws; (ii) United States federal securities laws except to the extent expressly identified in the Scope Limitations; (iii) state or United States federal banking, tax, antitrust, trade regulation, anti-fraud or unfair competition laws; (iv) state or United States federal insolvency or fraudulent transfer laws; (v) compliance with state or United States federal laws relating to fiduciary duty requirements; (vi) state or United States federal laws relating to pension or employee benefits; (vii) state or United States federal usury laws; (viii) state or United States federal environmental or energy laws; (ix) margin regulations; (x) FINRA rules; (xi) stock exchange rules; (xii) state or United States federal laws relating to consumer protection; (xiii) state or United States federal laws relating to regulation of utilities; (xiv) state or United States federal laws relating to foreign trade, national security, anti-terrorism and anti-money laundering; (xv) state or United States federal laws regulating derivatives, investment and brokerage services; or (xvi) any statutes, rules or regulations of any political subdivision below the state level.

With your consent, we have assumed that: (i) any party other than the Company has been duly organized, is validly existing and in good standing under the laws of its jurisdiction of organization and has full right, power and authority to execute, deliver and perform its obligations under each Agreement to which it is a party; (ii) the Agreements have been duly authorized, executed and delivered by the parties thereto, other than the Company; (iii) the Agreements constitute valid and binding obligations of the parties thereto other than the Company, enforceable against each of them in accordance with their respective terms; and (iv) the status of the Agreements as legally valid and binding obligations of the parties is not affected by (A) breaches of, or defaults under, agreements or instruments, (B) violations of statutes, rules, regulations or court or governmental orders, or (C) failures to obtain required consents, approvals or authorizations from, or make required registrations, declarations or filings with, governmental authorities, provided that we make no such assumption to the extent that such

matters with respect to the Company are covered by the opinions expressed in numbered opinion paragraph 3 above.

Our opinion set forth in numbered opinion paragraph 3 above does not cover: (i) any breach or default under a Contract that would occur only upon the happening of a contingency; or (ii) any financial covenant or other provision in any agreement or instrument that would require us to perform a mathematical calculation or to make a financial or accounting determination.

This opinion letter is furnished by us as counsel for the Company to the Forward Counterparty and is solely for your benefit as Forward Counterparty in connection with the issuance, if any, of a number of shares of Common Stock equal to the Capped Number, and neither it nor the opinions it contains may be relied on for any other purpose or by anyone else.

Very truly yours,

GOODWIN PROCTER LLP

Exhibit A

CONTRACTS

1. Indenture for Senior Debt Securities, dated as of January 16, 1998, between the Company and US Bank, National Association (as successor to State Street Bank and Trust Company) (the "Trustee"), as Trustee.

2. Amended and Restated Third Supplemental Indenture, dated as of July 10, 2000 between the Company and the Trustee, including forms of Floating Rate Note and Fixed Rate Note.

3. Fourth Supplemental Indenture, dated as of September 18, 2006, between the Company and the Trustee.

4. Fifth Supplemental Indenture, dated as of November 21, 2014, between the Company and the Trustee.

5. Indenture for Senior Debt Securities, dated as of February 23, 2018, between the Company and The Bank of New York Mellon, as Trustee.

6. First Supplemental Indenture, dated as of March 26, 2018, between the Company and The Bank of New York Mellon, as Trustee.

7. Second Supplemental Indenture, dated as of May 29, 2018, between the Company and The Bank of New York Mellon, as Trustee.

8. Amended and Restated Limited Partnership Agreement of AvalonBay Value Added Fund, L.P., dated as of March 16, 2005.

9. Master Credit Facility Agreement, dated February 27, 2013, by and among Federal National Mortgage Association and the parties named therein.

10. Amended and Restated Term Loan Agreement, dated as of February 28, 2019, among the Company, as Borrower, PNC Bank, National Association, as Administrative Agent and a bank, The Bank of New York Mellon, as a Syndication Agent and a bank, SunTrust Bank, as a Syndication agent and a bank, and a syndicate of other financial institutions, serving as banks.

11. Fifth Amended and Restated Revolving Loan Agreement, dated as of February 28, 2019, among the Company, as Borrower, Bank of America, N.A., as administrative agent, an issuing bank and a bank, JPMorgan Chase Bank, N.A., as an issuing bank, a bank and as a syndication agent, Wells Fargo Bank, N.A., as an issuing bank, a bank and a syndication agent, Barclays Bank PLC, Deutsche Bank Securities, Inc., Goldman Sachs Bank USA, Morgan Stanley Senior Funding, Inc.. and Citibank, N.A. as documentation agents, PNC Bank, National Association and SunTrust Bank as senior managing agents, TD Bank, N.A., Royal Bank of Canada and U.S. Bank National Association as managing agents, Branch Banking and Trust Company and The Bank of Nova Scotia as co-agents, each (or its affiliate) as a bank, and the other bank parties signatory thereto.

EXHIBIT C

Form of Tax Opinion of Goodwin Procter LLP, Counsel for the Company

See attached.

[FORM OF GOODWIN TAX OPINION]

As of , 20[·]

[Addressee]
[Address]

Re: AvalonBay Communities, Inc.

Ladies and Gentlemen:

We have acted as counsel for AvalonBay Communities, Inc., a Maryland corporation (the "Company"), in connection with the preparation and filing with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "1933 Act"), of a Registration Statement on Form S-3 (File No. 333-223183) (the "Registration Statement") and a prospectus supplement dated May , 2019 (the "prospectus supplement"), which supplements the prospectus dated February 23, 2018 (the "base prospectus") included in such Registration Statement (as filed with the Commission pursuant to Rule 424(b)), relating to the offering and sale of up to an aggregate of $1,000,000,000 of shares (the "Shares") of the Company's common stock, par value $0.01 per share, by the Company pursuant to (1) a Sales Agency Financing Agreement dated May , 2019 (the "SAFA Agreement") between the Company and [Bank Name] ("[Bank Name]"), as agent ("Agent"), and (2) a Master Confirmation for Issuer Share Forward Sale Transactions, dated May , 2019, by and between the Company and [Forward Bank Name] as Forward Purchaser.

This opinion letter relates to the Company's qualification for federal income tax purposes as a real estate investment trust (a "REIT") under the Internal Revenue Code of 1986, as amended (the "Code"), for taxable years commencing with the Company's taxable year ended December 31, 1994, and the accuracy of certain matters discussed in the base prospectus under the heading "Federal Income Tax Considerations and Consequences of Your Investment," as amended and supplemented by the discussion under the heading "Federal Income Tax Law Changes and Updates" in the Company's Annual Report on Form 10-K as filed with the Commission on February 22, 2019 (the "Form 10-K"). This opinion letter is being furnished to you pursuant to Section 2.02 of the SAFA Agreement. Capitalized terms used but not defined herein shall have their respective meanings set forth in the SAFA Agreement.

In rendering the following opinions, we have reviewed and relied upon the Company's Articles of Incorporation, as amended, and the Company's bylaws, as amended (the

"Organizational Documents"). For purposes of our opinions, we have assumed (i) the genuineness of all signatures on documents we have examined, (ii) the authenticity of all documents submitted to us as originals, (iii) the conformity to the original documents of all documents submitted to us as copies, (iv) the conformity, to the extent relevant to our opinions, of final documents to all documents submitted to us as drafts, (v) the authority and capacity of the individual or individuals who executed any such documents on behalf of any person, (vi) due execution and delivery of all such documents by all the parties thereto, (vii) the compliance of each party with all material provisions of such documents, and (viii) the accuracy and completeness of all records made available to us.

We also have reviewed and relied upon the representations, statements and covenants of the Company contained in a letter that it provided to us in connection with the preparation of this opinion letter (the "REIT Certificate") regarding the formation, organization and operation of the Company and other matters affecting the Company's ability to qualify as a REIT. We assume that each such representation, statement and covenant has been, is, and will be true, correct and complete, that the Company and any subsidiaries have been and will be owned and operated in accordance with the REIT Certificate and that all representations, statements and covenants that speak to the best of the knowledge and belief (or mere belief and/or knowledge) of any person(s) or party(ies), or are subject to similar qualification, have been, are and will continue to be true, correct and complete as if made without such qualification. To the extent that the REIT Certificate speaks to the intended or future organization, ownership or operations of the Company, we assume that the Company will in fact be organized, owned and operated in accordance with such stated intent.

The opinions set forth below are based upon the Code, the Income Tax Regulations and Procedure and Administration Regulations promulgated thereunder and existing administrative and judicial interpretations thereof, all as of the date of this letter (or to the extent different and relevant for a prior taxable year or other period, as in effect for the applicable taxable year or period). All of the foregoing statutes, regulations and interpretations are subject to change, in some circumstances with retroactive effect. Any changes to the foregoing authorities may result in federal income tax treatment of the Company and/or the holders of its securities that is materially and adversely different from that described herein or in the base prospectus or prospectus supplement.

Based upon the foregoing and subject to the limitations set forth herein, we are of the opinion that (i) commencing with the Company's taxable year ended December 31, 1994, the form of organization of the Company and its prior, current and proposed ownership and operations, as described in the REIT Certificate, are such as to enable the Company to have qualified and continue to qualify as a REIT under the applicable provisions of the Code and (ii) the statements set forth under the heading "Federal Income Tax Considerations and Consequences of Your Investment" in the base prospectus, as amended and supplemented by the discussion under the heading "Federal Income Tax Law Changes and Updates" in the Form 10-

K, insofar as such statements describe applicable United States federal income tax laws, are correct in all material respects.

We express no opinion other than the opinions expressly set forth herein. Our opinions are not binding on the Internal Revenue Service or a court, and the Internal Revenue Service or a court may disagree with the opinions contained herein. Although we believe that our opinions will be sustained if challenged, there can be no assurances to this effect. Furthermore, for purposes of our opinions we have relied solely on the Organizational Documents, the REIT Certificate and the assumptions set forth herein. The Company's actual qualification as a REIT depends on the Company meeting and having met, in its actual ownership and operations, the applicable asset composition, source of income, shareholder diversification, distribution, record keeping and other requirements of the Code necessary for a corporation to qualify as a REIT. We have not verified and will not verify the Company's compliance with those requirements, and no assurance can be given that the actual ownership and operations of the Company and its affiliates have satisfied or will satisfy those requirements or the representations made to us with respect thereto.

Our opinions do not preclude the possibility that the Company may need to utilize one or more of the various "savings provisions" under the Code and the regulations thereunder that would permit the Company to cure certain violations of the requirements for qualification and taxation as a REIT. Utilizing such savings provisions could require the Company to pay significant penalty or excise taxes and/or interest charges and/or make additional distributions to shareholders that the Company otherwise would not make.

This opinion letter is furnished by us as counsel for the Company to you as Agent and is solely for your benefit in connection with the offering and sale of the Shares through you in your capacity as Agent pursuant to the SAFA Agreement, and may not be relied on by you for any other purpose, or furnished to, quoted or otherwise referred to, or relied on by, in whole or in part, any other person, firm or corporation for any purpose, without our prior written consent. This opinion letter speaks only as of the date hereof. We undertake no obligation to update this opinion letter or to notify any person of any changes in facts, circumstances or applicable law (including without limitation any discovery of any facts that are inconsistent with the REIT Certificate or our assumptions).

Very truly yours,

Goodwin Procter LLP

EXHIBIT D

Form of Negative Assurance Letter of Goodwin Procter LLP, Counsel for the Company

See attached.

[FORM OF GOODWIN NEGATIVE ASSURANCE LETTER]

, 20[·]

[Bank Name]
[Bank Address]

Re: AvalonBay Communities, Inc.

Ladies and Gentlemen:

Reference is made to (1) the registration statement on Form S-3 (File No. 333-223183) filed by AvalonBay Communities, Inc. (the "Company") with the Securities and Exchange Commission (the "Commission") on February 23, 2018 under the Securities Act of 1933, as amended (the "Securities Act") (such registration statement, as of the date on which it was originally filed and became effective pursuant to Rule 462(e) under the Securities Act (including the documents incorporated by reference therein as of such date), being hereinafter referred to as the "Registration Statement") and (2) the prospectus supplement, as filed pursuant to Rule 424(b) of the Securities Act and dated May , 2019 (the "Prospectus Supplement"), relating to the offer and sale of up to $1,000,000,000 of shares (the "Shares") of the Company's common stock, par value $0.01 per share, which supplements the prospectus included in the Registration Statement. The form of prospectus included in the Registration Statement when the Registration Statement became effective, as supplemented by the Prospectus Supplement (including the documents incorporated by reference therein) are hereinafter referred to as the "Prospectus."

This letter is provided to you pursuant to Section 5.01(l) of a Sales Agency Financing Agreement dated May , 2019 [between][among] the Company and "[Bank Name] (the "[Bank Name] SAFA Agreement"). "[Bank Name] and the Alternative Sales Agents are sometimes referred to individually below as an "Agent" and collectively as the "Agents." The "[Bank Name] SAFA Agreement and each Alternative Sales Agency Agreement between the Company and each of the Alternative Sales Agents are sometimes referred to individually as an "Agreement" and collectively as the "Agreements." Capitalized terms used but not defined herein shall have their respective meanings set forth in the "[Bank Name] SAFA Agreement.

Certain information was omitted in reliance upon Rule 430B under the Securities Act from (1) the form of prospectus included in the Registration Statement at the time the Registration Statement became effective and (2) the Prospectus Supplement as of its date and as of the date of its filing pursuant to Rule 424(b).

As counsel to the Company, we reviewed the Registration Statement and the Prospectus, and participated in discussions with your representatives, representatives of counsel to the Agents, and representatives of the Company and its independent public accountants, at which the contents of the Registration Statement and the Prospectus were discussed. In addition, we have reviewed certain certificates of officers of the Company and public officials and letters from the

Company's independent public accountants delivered to each of you today pursuant to Sections 5.01(g) and (m) of the respective Agreements.

The purpose of our engagement was not to establish or to confirm factual matters set forth in the Registration Statement and the Prospectus, and we have not undertaken any obligation to verify independently any of the factual matters set forth in the Registration Statement and Prospectus. Moreover, many of the determinations required to be made in the preparation of the Registration Statement and the Prospectus involve matters of a non-legal nature.

Subject to the foregoing, we confirm to you that on the basis of the information that we gained in the course of performing the services referred to in the second paragraph above, nothing came to our attention that caused us to believe that (1) the Registration Statement (a) as of its original effective date and (b) as of the date and time of delivery of this letter contained an untrue statement of a material fact or, other than information permitted to be omitted therefrom pursuant to Rule 430B under the Securities Act, omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading or (2) the Prospectus (a) as of the date of its filing pursuant to Rule 424(b) and (b) as of the date and time of delivery of this letter contained any untrue statement of a material fact or, other than information permitted to be omitted therefrom pursuant to Rule 430B under the Securities Act, omitted to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; *provided, however*, that we do not assume any responsibility for the accuracy, completeness or fairness of the statements contained in the Registration Statement and the Prospectus, except as set forth in (x) paragraph number (3) of our opinion letter with respect to certain corporate and securities matters and (y) the sixth paragraph of our opinion with respect to certain United States federal income tax matters, both addressed you and dated as of the date hereof, and we do not express any belief as to (A) the information omitted from the Registration Statement and the Prospectus in reliance on Rule 430B or (B) the financial statements and related notes, financial statement schedules or financial or accounting data contained in the Registration Statement and the Prospectus. In addition, we express no opinion or belief as to the conveyance of the Prospectus or the information contained therein to investors.

We are not representing the Company in any pending litigation in which it is a named defendant that challenges the validity or enforceability of, or seeks to enjoin the performance of, any of the Agreements.

This letter is being furnished by us to the Agents solely for their respective benefit as Agents in connection with sales of the Shares pursuant to each of the Agents' respective Agreement with the Company, and it may not be relied on for any other purpose by any of the Agents or anyone else.

Very truly yours,

GOODWIN PROCTER LLP

EXHIBIT E

Form of Opinion and Negative Assurance Letter of O'Melveny & Myers LLP

See attached.

SCHEDULE 1

Sales Agent

[____]

Attention: [ ]

E-mail: [ ]

Address: [ ]
[ ]

Forward Seller

[____]

Attention: [ ]

E-mail: [ ]

Address: [ ]
[ ]

Forward Purchaser

[____]

Attention: [ ]

E-mail: [ ]

Address: [ ]
[ ]

AVALONBAY COMMUNITIES, INC.(14)

Kevin P. O'Shea

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E-mail:	Kevin_oshea@avalonbay.com
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Joanne M. Lockridge

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E-mail:	joannel@avalonbay.com
Address:	1000 Bridgeport Avenue, Suite 258 Shelton, CT 06484

(14) **NTD:** To be confirmed.

Exhibit 1.2

[Dealer Logo]

[·], 2019

To: **AvalonBay Communities, Inc.**
671 N. Glebe Rd, Suite 800
Arlington, Virginia 22203

From: **[Forward Purchaser]**
[ ]
[ ]

From: **[Forward Seller]**
[ ]
[ ]

Dear Sirs,

The purpose of this communication (this "**Master Confirmation**") is to set forth the terms and conditions of the transactions to be entered into from time to time between [ ] ("**Dealer**") and AvalonBay Communities, Inc. ("**Counterparty**") in accordance with the terms of the [Sales Agency Financing Agreement], dated as of [ ], 2019 (the "**Sales Agreement**"), [between][among] Dealer, as [forward purchaser], [ ], as [forward seller] [, [ ]][and] Counterparty on the Trade Dates specified herein (collectively, the "**Transactions**" and each, a "**Transaction**"). This communication constitutes a "Confirmation" as referred to in the Agreement specified below. Each Transaction will be evidenced by a supplemental confirmation (each, a "**Supplemental Confirmation**", and each such Supplemental Confirmation, together with this Master Confirmation, a "**Confirmation**" for purposes of the Agreement specified below) substantially in the form of Exhibit A hereto. Each Confirmation will be a confirmation for purposes of Rule 10b-10 promulgated under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**").

1. Each Confirmation is subject to, and incorporates, the 2002 ISDA Equity Derivatives Definitions (the "**Equity Definitions**"), as published by the International Swaps and Derivatives Association, Inc. ("**ISDA**"). For purposes of the Equity Definitions, each Transaction will be deemed to be a Share Forward Transaction.

Each Confirmation shall supplement, form a part of and be subject to an agreement (the "**Agreement**") in the form of the 1992 ISDA Master Agreement (Multicurrency—Cross Border) (the "**ISDA Form**"), as published by ISDA, as if Dealer and Counterparty had executed the ISDA Form on the date hereof (but without any Schedule except for (i) the election of Loss and Second Method, New York law (without regard to New York's choice of laws doctrine other than Title 14 of Article 5 of the New York General Obligations Law (the "**General Obligations Law**")) as the governing law and US Dollars ("**USD**") as the Termination Currency, (ii) the replacement of the word "third" in the last line of Section 5(a)(i) with the word "first" and (iii) the election that the "Cross Default" provisions of Section 5(a)(vi) shall apply to Dealer and Counterparty with a "Threshold Amount" in respect of Dealer of 3% of the stockholders' equity of [*Dealer/Dealer's Parent*] [("**Dealer Parent**")] and a "Threshold Amount" in respect of Counterparty of USD200 million; *provided* that (x) the words ", or becoming capable at such time of being declared," shall be deleted from clause (1) thereof, (y) "Specified Indebtedness" had the meaning specified in Section 14 of the Agreement, except that such term shall not include obligations in respect of deposits received in the ordinary course of Dealer's banking business and (z) the following language shall be added to the end of such Section 5(a)(vi): "Notwithstanding the foregoing, a default under subsection (2) hereof shall not constitute an Event of Default if (X) the default was caused solely by error or omission of an administrative or operational nature; (Y) funds were available to enable the party to make the payment when due; and (Z) the payment is made within two Local Business Days of such party's receipt of written notice of its failure to pay;").

All provisions contained in the Agreement are incorporated into and shall govern each Confirmation except as expressly modified below. Each Confirmation evidences a complete and binding agreement between Dealer and Counterparty as to the terms of the relevant Transaction and replaces any previous agreement between the parties with respect to the subject matter hereof.

The Transactions hereunder shall be the sole Transactions under the Agreement. If there exists any ISDA Master Agreement between Dealer or any of its Affiliates and Counterparty or any confirmation or other agreement between Dealer or any of its Affiliates and Counterparty pursuant to which an ISDA Master Agreement is deemed to exist between Dealer or any of its Affiliates and Counterparty, then notwithstanding anything to the contrary in such ISDA Master Agreement, such confirmation or agreement or any other agreement to which Dealer or such other Affiliates and Counterparty are parties, the Transactions shall not be considered Transactions under, or otherwise governed by, such existing or deemed ISDA Master Agreement. In the event of any inconsistency among the Agreement, this Master Confirmation, any Supplemental Confirmation and the Equity Definitions, the following will prevail in the order of precedence indicated: (i) such Supplemental Confirmation; (ii) this Master Confirmation; (iii) the Equity Definitions; and (iv) the Agreement.

2. The terms of the particular Transactions to which this Master Confirmation relates are as follows:

General Terms:

Trade Date:	For each Transaction, as specified in the Supplemental Confirmation for such Transaction, to be, subject to the provisions opposite the caption "Early Valuation" below, the last Trading Day (as defined in the Sales Agreement) of the Forward Hedge Selling Period (as defined in the Sales Agreement) for such Transaction.
Effective Date:	For each Transaction, as specified in the Supplemental Confirmation for such Transaction, to be the date that is one Settlement Cycle following the Trade Date for such Transaction, or such later date on which the conditions set forth in Section 3 of this Master Confirmation shall have been satisfied.
Buyer:	Dealer
Seller:	Counterparty
Maturity Date:	For each Transaction, as specified in the Supplemental Confirmation for such Transaction, to be the date that follows the Trade Date for such Transaction by the number of days or months set forth in the Transaction Notice (as defined in the Sales Agreement) for such Transaction (or, if such date is not a Scheduled Trading Day, the next following Scheduled Trading Day).
Shares:	The shares of common stock, par value $0.01 per Share, of Counterparty (Ticker: "AVB")
Number of Shares:	For each Transaction, initially, as specified in the Supplemental Confirmation for such Transaction, to be the number of Shares equal to the Actual Sold Forward Amount (as defined in the Sales Agreement) for the Forward Hedge Selling Period for such Transaction, as reduced on each Relevant Settlement Date (as defined under "Settlement Terms" below) by the number of Settlement Shares to which the related Valuation Date relates.
Settlement Currency:	USD
Exchange:	The New York Stock Exchange
Related Exchange:	All Exchanges

Prepayment:	Not Applicable
Variable Obligation:	Not Applicable
Forward Price:	For each Transaction, on the Effective Date for such Transaction, the Initial Forward Price for such Transaction, and on any day thereafter, the product of the Forward Price for such Transaction on the immediately preceding calendar day and 1 + the Daily Rate * (1/365); *provided* that the Forward Price for such Transaction on each Forward Price Reduction Date for such Transaction shall be the Forward Price for such Transaction otherwise in effect on such date *minus* the Forward Price Reduction Amount for such Forward Price Reduction Date.
Initial Forward Price:	For each Transaction, as specified in the Supplemental Confirmation for such Transaction, to be the product of (i) an amount equal to 1 *minus* the Forward Hedge Selling Commission Rate (as defined in the Sales Agreement) applicable to such Transaction; and (ii) the Volume-Weighted Hedge Price, subject to adjustment in accordance with the last paragraph of Section 3 hereof.
Volume-Weighted Hedge Price:	For each Transaction, as specified in the Supplemental Confirmation for such Transaction, to be the volume-weighted average of the Sales Prices (as defined in the Sales Agreement) per share of Forward Hedge Shares (as defined in the Sales Agreement) sold on each Trading Day of the Forward Hedge Selling Period for such Transaction, as determined by the Calculation Agent; *provided* that, solely for the purposes of calculating the Initial Forward Price, each such Sales Price (other than the Sales Price for the last day of the relevant Forward Hedge Selling Period) shall be subject to adjustment by the Calculation Agent in the same manner as the Forward Price pursuant to the definition thereof during the period from, and including, the date one Settlement Cycle immediately following the first Trading Day of the relevant Forward Hedge Selling Period on which the Forward Hedge Shares related to such Sales Price are sold to, and including, the Effective Date of such Transaction.
Daily Rate:	For any day, the Overnight Bank Funding Rate *minus* the Spread.
Spread:	For each Transaction, as specified in the Supplemental Confirmation for such Transaction.
Overnight Bank Funding Rate:	For any day, the rate set forth for such day opposite the caption "Overnight Bank Funding Rate" as displayed on the page "OBFR01<Index> <GO>" on the BLOOMBERG Professional Service, or any successor page; *provided* that if no such rate appears for such day on such page, Overnight Bank Funding Rate for such day shall be such rate for the immediately preceding day for which such a rate appears.
Forward Price Reduction Dates:	For each Transaction, as specified in Schedule I to the Supplemental Confirmation for such Transaction, to be each date set forth under the

	heading "Forward Price Reduction Date" in the Transaction Notice for such Transaction.
Forward Price Reduction Amount:	For each Forward Price Reduction Date, the Forward Price Reduction Amount set forth opposite such date on Schedule I to the Supplemental Confirmation for such Transaction.
Valuation:	
Valuation Date:	For any Settlement (as defined below) with respect to any Transaction, if Physical Settlement is applicable, as designated in the relevant Settlement Notice (as defined below); or if Cash Settlement or Net Share Settlement is applicable, the last Unwind Date for such Settlement. Section 6.6 of the Equity Definitions shall not apply to any Valuation Date.
Unwind Dates:	For any Cash Settlement or Net Share Settlement with respect to any Settlement of any Transaction, each day on which Dealer (or its agent or affiliate) purchases Shares in the market in connection with unwinding its commercially reasonable hedge position in connection with such Settlement, starting on the First Unwind Date for such Settlement.
First Unwind Date:	For any Cash Settlement or Net Share Settlement with respect to any Settlement of any Transaction, as designated in the relevant Settlement Notice.
Unwind Period:	For any Cash Settlement or Net Share Settlement with respect to any Settlement of any Transaction, the period starting on the First Unwind Date for such Settlement and ending on the Valuation Date for such Settlement.
Cash Settlement Valuation Disruption:	If Cash Settlement is applicable with respect to any Transaction and any Unwind Date during the related Unwind Period is a Disrupted Day, the Calculation Agent shall determine whether (i) such Disrupted Day is a Disrupted Day in full, in which case the 10b-18 VWAP for such Disrupted Day shall not be included in the calculation of the Settlement Price, or (ii) such Disrupted Day is a Disrupted Day only in part, in which case the 10b-18 VWAP for such Disrupted Day shall be determined by the Calculation Agent based on Rule 10b-18 eligible transactions (as defined below) in the Shares on such Disrupted Day, taking into account the nature and duration of the relevant Market Disruption Event, and the weightings of the 10b-18 VWAP for each Unwind Date during such Unwind Period shall be adjusted in good faith and in a commercially reasonable manner by the Calculation Agent for purposes of determining the Settlement Price to account for the occurrence of such partially Disrupted Day, with such adjustments based on, among other factors, the duration of any Market Disruption Event and the volume, historical trading patterns and price of the Shares.
Market Disruption Event:	The definition of "Market Disruption Event" in Section 6.3(a) of the Equity Definitions is hereby amended by deleting the words "at any time during the one-hour period that ends at the relevant Valuation Time, Latest Exercise Time, Knock-in Valuation Time or Knock-out Valuation Time, as the case may be" and inserting the words "at any

time on any Exchange Business Day during the Valuation Period" after the word "material," in the third line thereof.

Section 6.3(d) of the Equity Definitions is hereby amended by deleting the remainder of the provision following the term "Scheduled Closing Time" in the fourth line thereof.

Settlement Terms:

Settlement:	With respect to any Transaction, any Physical Settlement, Cash Settlement or Net Share Settlement of all or any portion of such Transaction.
Settlement Notice:	For any Transaction, subject to "Early Valuation" below, Counterparty may elect to effect a Settlement of all or any portion of such Transaction by designating one or more Scheduled Trading Days following the Effective Date for such Transaction and on or prior to the Maturity Date for such Transaction to be Valuation Dates (or, with respect to Cash Settlements or Net Share Settlements of such Transaction, First Unwind Dates, each of which First Unwind Dates shall occur no later than the 60th Scheduled Trading Day immediately preceding the Maturity Date for such Transaction) in a written notice to Dealer (a "**Settlement Notice**") delivered no later than the applicable Settlement Method Election Date for such Transaction, which notice shall also specify (i) the number of Shares (the "**Settlement Shares**") for such Settlement (not to exceed the number of Undesignated Shares for such Transaction as of the date of such Settlement Notice) and (ii) the Settlement Method applicable to such Settlement; *provided* that (A) Counterparty may not designate a First Unwind Date for a Cash Settlement or a Net Share Settlement of any Transaction if, as of the date of such Settlement Notice, any Shares have been designated as Settlement Shares for a Cash Settlement or a Net Share Settlement of such Transaction for which the related Relevant Settlement Date has not occurred; and (B) if the number of Undesignated Shares as of the Maturity Date for such Transaction is not zero, then the Maturity Date for such Transaction shall be a Valuation Date for a Physical Settlement of such Transaction and the number of Settlement Shares for such Settlement shall be the number of Undesignated Shares for such Transaction as of the Maturity Date for such Transaction (*provided* that if such Maturity Date occurs during the period from the time any Settlement Notice is given for a Cash Settlement or Net Share Settlement of such Transaction until the related Relevant Settlement Date, inclusive, then the provisions set forth below opposite "Early Valuation" shall apply to such Transaction as if the Maturity Date for such Transaction were the Early Valuation Date for such Transaction).
Undesignated Shares:	For any Transaction, as of any date, the Number of Shares for such Transaction *minus* the number of Shares designated as Settlement Shares for Settlements of such Transaction for which the related Relevant Settlement Date has not occurred.
Settlement Method Election:	For any Transaction, applicable; *provided* that: (i) Net Share Settlement shall be deemed to be included as an additional settlement method under Section 7.1 of the Equity Definitions;

(ii) Counterparty may elect Cash Settlement or Net Share Settlement for any Settlement of any Transaction only if Counterparty represents and warrants to Dealer in the Settlement Notice containing such election that, as of the date of such Settlement Notice, (A) Counterparty is not aware of any material nonpublic information concerning itself or the Shares, (B) Counterparty is electing the settlement method and designating the First Unwind Date specified in such Settlement Notice in good faith and not as part of a plan or scheme to evade compliance with Rule 10b-5 under the Exchange Act ("**Rule 10b-5**") or any other provision of the federal securities laws, (C) Counterparty is not "insolvent" (as such term is defined under Section 101(32) of the U.S. Bankruptcy Code (Title 11 of the United States Code) (the "**Bankruptcy Code**")), (D) Counterparty would be able to purchase a number of Shares equal to the greater of (x) the number of Settlement Shares designated in such Settlement Notice and (y) a number of Shares with a value as of the date of such Settlement Notice equal to the product of (I) such number of Settlement Shares and (II) the applicable Relevant Forward Price for such Cash Settlement or Net Share Settlement in compliance with the laws of Counterparty's jurisdiction of organization and (E) such election, and settlement in accordance therewith, does not and will not violate or conflict with any law or regulation applicable to Counterparty, or any order or judgment of any court or other agency of government applicable to it or any of its assets, and any governmental consents that are required to have been obtained by Counterparty with respect to such election or settlement have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

(iii) Notwithstanding any election to the contrary in any Settlement Notice, Physical Settlement shall be applicable for any Settlement of any Transaction:

(A) to all of the Settlement Shares designated in such Settlement Notice if, at any time from the date such Settlement Notice is received by Dealer until the related First Unwind Date, inclusive, (I) the trading price per Share on the Exchange (as determined by Dealer in good faith and in a commercially reasonable manner) is below the Threshold Price or (II) Dealer determines, in its good faith and commercially reasonable judgment, that it would, after using commercially reasonable efforts, be unable to purchase a number of Shares in the market sufficient to unwind a commercially reasonable hedge position in respect of the portion of the Transaction represented by such Settlement Shares and satisfy its delivery obligation hereunder, if any, by the Maturity Date (x) in a manner that (A) would, if Dealer were Counterparty or an affiliated purchaser of Counterparty, be subject to the safe harbor provided by Rule 10b-18(b) under the Exchange Act and (B) based on advice of counsel, would not raise material risks under applicable securities laws or (y) due to the lack of sufficient liquidity in the Shares (each, a "**Trading Condition**"); or

(B) to all or a portion of the Settlement Shares designated in such Settlement Notice if, on any day during the relevant Unwind Period, (I) the trading price per Share on the Exchange (as

	determined by Dealer in good faith and in a commercially reasonable manner) is below the Threshold Price for two or more Exchange Business Days or (II) Dealer determines, in its good faith and commercially reasonable judgment or based on advice of counsel, as applicable, that a Trading Condition has occurred with respect to such Transaction, in which case the provisions set forth below in the third paragraph opposite "Early Valuation" shall apply as if such day were the Early Valuation Date for such Transaction and (x) for purposes of clause (i) of such paragraph, such day shall be the last Unwind Date of such Unwind Period and the "Unwound Shares" shall be calculated to, and including, such day and (y) for purposes of clause (ii) of such paragraph, the "Remaining Shares" shall be equal to the number of Settlement Shares designated in such Settlement Notice *minus* the Unwound Shares determined in accordance with clause (x) of this sentence.
Threshold Price:	For each Transaction, as specified in the Supplemental Confirmation for such Transaction, to be 50% of the Initial Forward Price for such Transaction.
Electing Party:	Counterparty
Settlement Method Election Date:	With respect to any Settlement of any Transaction, the 3rd Scheduled Trading Day immediately preceding (x) the Valuation Date for such Transaction, in the case of Physical Settlement, or (y) the First Unwind Date for such Transaction, in the case of Cash Settlement or Net Share Settlement.
Default Settlement Method:	Physical Settlement
Physical Settlement:	Notwithstanding Section 9.2(a)(i) of the Equity Definitions, on the Settlement Date for any Settlement of any Transaction, Dealer shall pay to Counterparty an amount equal to the Forward Price for such Transaction on the relevant Valuation Date *multiplied by* the number of Settlement Shares for such Settlement, and Counterparty shall deliver to Dealer such Settlement Shares.
Settlement Date:	For any Settlement of any Transaction, the Valuation Date for such Settlement.
Net Share Settlement:	On the Net Share Settlement Date for any Settlement of any Transaction to which Net Share Settlement is applicable, if the Net Share Settlement Amount for such Settlement is greater than zero, Counterparty shall deliver a number of Shares equal to such Net Share Settlement Amount (rounded down to the nearest integer) to Dealer, and if such Net Share Settlement Amount is less than zero, Dealer shall deliver a number of Shares equal to the absolute value of such Net Share Settlement Amount (rounded down to the nearest integer) to Counterparty, in either case, in accordance with Section 9.4 of the Equity Definitions, with such Net Share Settlement Date deemed to be a "Settlement Date" for purposes of such Section 9.4, and, in either case, plus cash in lieu of any fractional Shares included in such Net Share Settlement Amount but not delivered due to rounding required hereby, valued at the relevant Settlement Price.

Net Share Settlement Date:	For any Settlement of any Transaction to which Net Share Settlement is applicable, the date that follows the Valuation Date for such Settlement by one Settlement Cycle.
Net Share Settlement Amount:	For any Settlement of any Transaction to which Net Share Settlement is applicable, an amount equal to the Forward Cash Settlement Amount for such Settlement *divided by* the Settlement Price for such Settlement.
Forward Cash Settlement Amount:	Notwithstanding Section 8.5(c) of the Equity Definitions, the Forward Cash Settlement Amount for any Cash Settlement or Net Share Settlement of any Transaction shall be equal to (i) the number of Settlement Shares for such Settlement *multiplied by* (ii) an amount equal to (A) the Settlement Price for such Settlement *minus* (B) the Relevant Forward Price for such Settlement.
Relevant Forward Price:	For any Cash Settlement of any Transaction, the arithmetic average of the Forward Prices for such Transaction on each Unwind Date relating to such Settlement. For any Net Share Settlement of any Transaction, the weighted average of the Forward Prices for such Transaction on each Unwind Date relating to such Settlement (weighted based on the number of Shares purchased by Dealer or its agent or affiliate on each such Unwind Date in connection with unwinding its commercially reasonable hedge position in connection with such Settlement, as determined by the Calculation Agent).
Settlement Price:	For any Cash Settlement of any Transaction, the arithmetic average of the 10b-18 VWAP on each Unwind Date relating to such Settlement, *plus* a commercially reasonable amount determined by the Calculation Agent in good faith that in no event will exceed USD [0.02]. For any Net Share Settlement of any Transaction, the weighted average price of the purchases of Shares made by Dealer (or its agent or affiliate) during the Unwind Period for such Settlement in connection with unwinding its commercially reasonable hedge position relating to such Settlement (weighted based on the number of Shares purchased by Dealer or its agent or affiliate on each Unwind Date in connection with unwinding its commercially reasonable hedge position in connection with such Settlement, as determined by the Calculation Agent), *plus* a commercially reasonable amount determined by the Calculation Agent in good faith that in no event will exceed USD [0.02].
10b-18 VWAP:	For any Exchange Business Day, as reasonably determined by the Calculation Agent based on the composite 10b-18 Volume Weighted Average Price per Share for the regular trading session (including any extensions thereof) of the Exchange on such Exchange Business Day (without regard to pre-open or after hours trading outside of such regular trading session for such Exchange Business Day), as published by Bloomberg at 4:15 p.m. New York time (or 15 minutes following the end of any extension of the regular trading session) on such Exchange Business Day, on Bloomberg page "AVB <Equity> AQR_SEC" (or any successor thereto), or if such price is not so reported on such Exchange Business Day for any reason or is, in the Calculation Agent's reasonable determination, erroneous, such 10b-18 VWAP shall be determined by the Calculation Agent in a good faith

	and commercially reasonable manner. For purposes of calculating the 10b-18 VWAP for such Exchange Business Day, the Calculation Agent will include only those trades that are reported during the period of time during which Counterparty could purchase its own shares under Rule 10b-18(b)(2) and are effected pursuant to the conditions of Rule 10b-18(b)(3), each under the Exchange Act (such trades, "**Rule 10b-18 eligible transactions**").
Unwind Activities:	The times and prices at which Dealer (or its agent or affiliate) purchases any Shares during any Unwind Period in connection with unwinding its commercially reasonable hedge position in respect of each Transaction shall be determined by Dealer in a commercially reasonable manner. Without limiting the generality of the foregoing, in the event that Dealer concludes, in its good faith, reasonable discretion based on advice of counsel, that it is appropriate with respect to any legal, regulatory or self-regulatory requirements or related policies and procedures (whether or not such requirements, policies or procedures are imposed by law or have been voluntarily adopted by Dealer) (a "**Regulatory Disruption**"), for it to refrain from purchasing Shares in connection with unwinding its commercially reasonable hedge position in respect of such Transaction on any Scheduled Trading Day that would have been an Unwind Date but for the occurrence of a Regulatory Disruption, Dealer shall notify Counterparty in writing that a Regulatory Disruption has occurred on such Scheduled Trading Day with respect to such Transaction, and Dealer shall, in its good faith, reasonable discretion based on advice of counsel and subject to applicable legal, regulatory and self-regulatory requirements and related policies and procedures of Dealer (in the case of policies and procedures, so long as such policies and procedures have been adopted by Dealer in good faith and are consistently applied in similar situations to transactions like the Transactions hereunder), specify the nature of such Regulatory Disruption. For the avoidance of doubt, such Scheduled Trading Day shall not be an Unwind Date for such Transaction and such Regulatory Disruption shall be deemed to be a Market Disruption Event; *provided* that Dealer may exercise its right to suspend under this sentence only in good faith and based on advice of counsel in relation to events or circumstances that are not the result of actions of it or any of its Affiliates that are taken with the intent to avoid its obligations under the Transactions.
Relevant Settlement Date:	For any Settlement of any Transaction, the Settlement Date, Cash Settlement Payment Date or Net Share Settlement Date for such Settlement, as the case may be.
Other Applicable Provisions:	To the extent Dealer is obligated to deliver Shares under any Transaction, the provisions of Sections 9.2 (last sentence only), 9.8, 9.9, 9.10, 9.11 and 9.12 of the Equity Definitions will be applicable as if "Physical Settlement" applied to such Transaction; *provided* that the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any representations therein relating to restrictions, obligations, limitations or requirements under applicable securities laws that exist as a result of the fact that Counterparty is the issuer of the Shares.

Share Adjustments:

Potential Adjustment Events:	An Extraordinary Dividend shall not constitute a Potential Adjustment Event. For the avoidance of doubt, a cash dividend on the Shares that differs from expected dividends as of the first Trading Day of the Forward Hedge Selling Period for such Transaction shall not be a Potential Adjustment Event under Section 11.2(e)(vii) of the Equity Definitions with respect to such Transaction.
Extraordinary Dividend:	For any Transaction, any dividend or distribution on the Shares with an ex-dividend date occurring on any day following the first Trading Day of the Forward Hedge Selling Period for such Transaction (other than (i) any dividend or distribution of the type described in Section 11.2(e)(i) or Section 11.2(e)(ii)(A) of the Equity Definitions or (ii) a regular, quarterly cash dividend in an amount equal to or less than the Regular Dividend Amount for such calendar quarter for such Transaction that has an ex-dividend date no earlier than the Forward Price Reduction Date occurring in the relevant quarter for such Transaction).
Regular Dividend Amount:	For each Transaction and for each calendar quarter, the amount set forth under the heading "Regular Dividend Amount" in the Transaction Notice for such Transaction and for such calendar quarter, as specified in Schedule I to the Supplemental Confirmation for such Transaction.
Method of Adjustment:	Calculation Agent Adjustment

Extraordinary Events:

Extraordinary Events:	The consequences that would otherwise apply under Article 12 of the Equity Definitions to any applicable Extraordinary Event (excluding any Failure to Deliver, Increased Cost of Hedging, Increased Cost of Stock Borrow or any Extraordinary Event that also constitutes a Bankruptcy Termination Event, but including, for the avoidance of doubt, any other applicable Additional Disruption Event) shall not apply.
Tender Offer:	Applicable; *provided* that Section 12.1(d) of the Equity Definitions shall be amended by replacing the reference therein to "10%" with a reference to "20%".
Delisting:	In addition to the provisions of Section 12.6(a)(iii) of the Equity Definitions, it shall also constitute a Delisting if the Exchange is located in the United States and the Shares are not immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors); if the Shares are immediately re-listed, re-traded or re-quoted on any such exchange or quotation system, such exchange or quotation system shall be deemed to be the Exchange.

Additional Disruption Events:

Change in Law:	Applicable; *provided* that (A) any determination as to whether (i) the adoption of or any change in any applicable law or regulation (including, without limitation, any tax law) or (ii) the promulgation of

	or any change in or public announcement of the formal or informal interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law or regulation (including any action taken by a taxing authority), in each case, constitutes a "Change in Law" shall be made without regard to Section 739 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 or any similar legal certainty provision in any legislation enacted, or rule or regulation promulgated, on or after the Trade Date, (B) Section 12.9(a)(ii) of the Equity Definitions is hereby amended (i) by adding the words "(including, for the avoidance of doubt and without limitation, adoption or promulgation of new regulations authorized or mandated by existing statute)" after the word "regulation" in the second line thereof and (ii) by replacing the words "the interpretation" with the words "or public announcement of any formal or informal interpretation" in the third line thereof and (C) the words ", unless the illegality is due to an act or omission of the party seeking to elect termination of the Transaction with the intent to avoid its obligations under the terms of the Transaction" are added immediately following the word "Transaction" in the fifth line thereof; and *provided further* that Section 12.9(a)(ii) of the Equity Definitions is hereby amended by adding the phrase "and/or Hedge Positions" after the word "Shares" in clause (X) thereof and (iii) by immediately following the word "Transaction" in clause (X) thereof, adding the phrase "in the manner contemplated by the Hedging Party on the Trade Date".
Failure to Deliver:	Applicable
Hedging Disruption:	Applicable
Increased Cost of Hedging:	Not Applicable
Increased Cost of Stock Borrow:	Applicable; provided that Section 12.9(b)(v) of the Equity Definitions shall be amended by (i) deleting clause (C) of the second sentence thereof and (ii) deleting the third, fourth and fifth sentences thereof. For the avoidance of doubt, upon the announcement of any event that, if consummated, would result in a Merger Event or Tender Offer, the term "rate to borrow Shares" as used in Section 12.9(a)(viii) of the Equity Definitions shall include any commercially reasonable cost borne or amount payable by the Hedging Party in respect of maintaining or reestablishing its commercially reasonable hedge position with respect to the relevant Transaction, including, but not limited to, any assessment or other amount payable by the Hedging Party to a lender of Shares in respect of any merger or tender offer premium, as applicable. For the avoidance of doubt, for each Transaction, Increased Cost of Stock Borrow shall apply from the beginning of the Forward Hedge Selling Period for such Transaction.
Initial Stock Loan Rate:	For each Transaction, as specified in the Supplemental Confirmation for such Transaction.
Loss of Stock Borrow:	Applicable; *provided* that Section 12.9(b)(iv) of the Equity Definitions shall be amended by (i) deleting clause (A) of the first sentence thereof in its entirety and (ii) deleting the words "neither the Non-Hedging Party nor the Lending Party lends Shares in the amount of the Hedging Shares or" in the second sentence thereof. For the avoidance of doubt,

	for each Transaction, Loss of Stock Borrow shall apply from the beginning of the Forward Hedge Selling Period for such Transaction.
Maximum Stock Loan Rate:	For each Transaction, as specified in the Supplemental Confirmation for such Transaction.
Hedging Party:	For all applicable Additional Disruption Events, Dealer
Determining Party:	For all applicable Extraordinary Events, Dealer
Early Valuation:	
Early Valuation:	For any Transaction, notwithstanding anything to the contrary herein, in the Agreement, in any Supplemental Confirmation or in the Equity Definitions, at any time (x) following the occurrence of a Hedging Event with respect to such Transaction, the declaration by Issuer of an Extraordinary Dividend, or an ISDA Event with respect to such Transaction or (y) if an Excess Section 13 Ownership Position, an Excess NYSE Ownership Position or an Excess Regulatory Ownership Position exists, Dealer (or, in the case of such an ISDA Event that is an Event of Default or Termination Event, the party entitled to designate an Early Termination Date in respect of such event pursuant to Section 6 of the Agreement) shall have the right to designate any Scheduled Trading Day to be the "Early Valuation Date" for such Transaction, in which case the provisions set forth in this "Early Valuation" section shall apply to such Transaction, in the case of an Event of Default or Termination Event, in lieu of Section 6 of the Agreement. For the avoidance of doubt, any amount calculated pursuant to this "Early Valuation" section as a result of an Extraordinary Dividend shall not be adjusted by the value associated with such Extraordinary Dividend. Dealer represents and warrants to and agrees with Counterparty that (i) based upon advice of counsel, Dealer (A) does not know of the existence on the first Trading Day of the relevant Forward Hedge Selling Period of an Excess Section 13 Ownership Position, an Excess NYSE Ownership Position or an Excess Regulatory Ownership Position and (B) based on reasonable internal inquiry in the ordinary course of Dealer's business does not know on the first Trading Day of the relevant Forward Hedge Selling Period of any event or circumstance that will cause the occurrence of an Excess Section 13 Ownership Position, an Excess NYSE Ownership Position or an Excess Regulatory Ownership Position on any day during the term of each Transaction; and (ii) Dealer will not knowingly cause the occurrence of an Excess Section 13 Ownership Position, an Excess NYSE Ownership Position or an Excess Regulatory Ownership Position on any day during the term of any Transaction for the purpose, in whole or in part, of causing the occurrence of an Early Valuation Date. If an Early Valuation Date for a Transaction occurs on a date that is not during an Unwind Period for such Transaction, then such Early Valuation Date shall be a Valuation Date for a Physical Settlement of such Transaction, and the number of Settlement Shares for such Settlement shall be the Number of Shares on such Early Valuation Date; *provided* that Dealer may in its sole discretion permit Counterparty to elect Cash Settlement or Net Share Settlement in respect of such Transaction. Notwithstanding anything to the contrary

	in this Master Confirmation, any Supplemental Confirmation, the Agreement or the Equity Definitions, if Dealer designates an Early Valuation Date with respect to a Transaction following the occurrence of an ISDA Event and such Early Valuation Date is to occur before the date that is one Settlement Cycle after the last day of the Forward Hedge Selling Period for such Transaction, then, for purposes of such Early Valuation Date, (i) a Supplemental Confirmation relating to such Transaction shall, notwithstanding the provisions under Section 3 below, be deemed to be effective; and (ii) the Forward Price shall be deemed to be the Initial Forward Price (calculated assuming that the last Trading Day of such Forward Hedge Selling Period were the day immediately following the date Dealer so notifies Counterparty of such designation of an Early Valuation Date for purposes of such Early Valuation Date). If an Early Valuation Date for a Transaction occurs during an Unwind Period for such Transaction, then (i) (A) the last Unwind Date of such Unwind Period shall be deemed to be such Early Valuation Date, (B) a Settlement shall occur in respect of such Unwind Period, and the Settlement Method elected by Counterparty in respect of such Settlement shall apply, and (C) the number of Settlement Shares for such Settlement shall be the number of Unwound Shares for such Unwind Period on such Early Valuation Date, and (ii) (A) such Early Valuation Date shall be a Valuation Date for an additional Physical Settlement of such Transaction (*provided* that Dealer may in its sole discretion elect that the Settlement Method elected by Counterparty for the Settlement described in clause (i) of this sentence shall apply) and (B) the number of Settlement Shares for such additional Settlement shall be the number of Remaining Shares on such Early Valuation Date. Notwithstanding the foregoing, in the case of a Nationalization or Merger Event, if at the time of the related Relevant Settlement Date the Shares have changed into cash or any other property or the right to receive cash or any other property, the Calculation Agent shall adjust the nature of the Shares as it determines appropriate to account for such change such that the nature of the Shares is consistent with what shareholders receive in such event.
ISDA Event:	(i) Any Event of Default or Termination Event, other than an Event of Default or Termination Event that also constitutes a Bankruptcy Termination Event, that gives rise to the right of either party to designate an Early Termination Date pursuant to Section 6 of the Agreement or (ii) the bona fide, public announcement of any event or transaction on or after the first Trading Day of the Forward Hedge Selling Period for such Transaction that, if consummated, would result in a Merger Event, Tender Offer, Nationalization, Delisting or Change in Law, in each case, as determined by the Calculation Agent.
Amendment to Merger Event:	Section 12.1(b) of the Equity Definitions is hereby amended by deleting the remainder of such Section beginning with the words “in each case if the Merger Date is on or before” in the fourth to last line thereof.
Hedging Event:	In respect of any Transaction, the occurrence of any of the following events on or following the first Trading Day of the Forward Hedge

	Selling Period: (i) (x) a Loss of Stock Borrow in connection with which Counterparty does not refer the Hedging Party to a Lending Party within the required time period as provided in Section 12.9(b)(iv) of the Equity Definitions or (y) a Hedging Disruption, (ii) an Increased Cost of Stock Borrow in connection with which Counterparty does not elect, and so notify the Hedging Party of its election, in each case, within the required time period to either amend such Transaction pursuant to Section 12.9(b)(v)(A) of the Equity Definitions or pay an amount determined by the Calculation Agent that corresponds to the relevant Price Adjustment pursuant to Section 12.9(b)(v)(B) of the Equity Definitions or (iii) the occurrence of a Market Disruption Event during an Unwind Period for such Transaction and the continuance of such Market Disruption Event for at least eight Scheduled Trading Days. In respect of any Transaction, if a Hedging Event occurs with respect to such Transaction on or after the first Trading Day of the Forward Hedge Selling Period (as each such term is defined in the Sales Agreement) for such Transaction and prior to the Trade Date for such Transaction, the Calculation Agent may reduce the Initial Forward Price to account for such Hedging Event and any costs or expenses incurred by Dealer as a result of such Hedging Event.
Remaining Shares:	For any Transaction, on any day, the Number of Shares for such Transaction as of such day (or, if such day occurs during an Unwind Period for such Transaction, the Number of Shares for such Transaction as of such day *minus* the Unwound Shares for such Transaction for such Unwind Period on such day).
Unwound Shares:	For any Transaction, for any Unwind Period in respect of such Transaction on any day, the aggregate number of Shares with respect to which Dealer has unwound its commercially reasonable hedge position in respect of such Transaction in connection with the related Settlement as of such day.
Acknowledgements:	
Non-Reliance:	Applicable
Agreements and Acknowledgements Regarding Hedging Activities:	Applicable
Additional Acknowledgements:	Applicable
Transfer:	Notwithstanding anything to the contrary in the Agreement, Dealer may assign, transfer and set over all rights, title and interest, powers, privileges and remedies of Dealer under any Transaction, in whole or in part, to an affiliate of Dealer whose obligation is guaranteed by [Dealer][Dealer Parent] without the consent of Counterparty; *provided* that, at all times, Dealer or any transferee or assignee or other recipient of rights, title and interest, powers, privileges and remedies shall be eligible to provide a U.S. Internal Revenue Service Form W-9 or W-8ECI with respect to any payments or deliveries under the Agreement; *provided further* that (x) Counterparty will neither (1) be required to pay, nor is there a material likelihood that it would be required to pay, an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) of the Agreement, nor (2) receive a payment, nor is there a material likelihood that it would receive a payment, from which an

	amount has been deducted or withheld for or on account of any Indemnifiable Tax in respect of which the other party is not required to pay an additional amount, in either case as a result of such transfer or assignment and (y) no Event of Default or Potential Event of Default shall have occurred with respect to either party solely as a result of such transfer and assignment.
Calculation Agent:	Dealer; *provided* that, following the occurrence of an Event of Default pursuant to Section 5(a)(vii) of the Agreement with respect to which Dealer is the sole Defaulting Party, Counterparty shall have the right to select a leading dealer in the market for U.S. corporate equity derivatives to replace Dealer as Calculation Agent, and the parties shall work in good faith to execute any appropriate documentation required by such replacement Calculation Agent. All calculations and determinations made by the Calculation Agent shall be made in good faith and in a commercially reasonable manner; *provided* that following any determination or calculation by the Calculation Agent hereunder, upon a written request by Counterparty, the Calculation Agent will, within a commercially reasonable period of time following such request, provide to Counterparty by e-mail to the e-mail address provided by Counterparty in such written request a report (in a commonly used file format for the storage and manipulation of financial data) displaying in reasonable detail the basis for such determination or calculation, as the case may be; *provided further,* that Dealer shall not be required to disclose any proprietary or confidential models of Dealer or any information that is proprietary or subject to contractual, legal or regulatory obligations to not disclose such information.
Counterparty Payment Instructions:	To be provided by Counterparty
Dealer Payment Instructions:	[ ] [ ] [ ] [ ]
Counterparty's Contact Details for Purpose of Giving Notice:	To be provided by Counterparty
Dealer's Contact Details for Purpose of Giving Notice:	[ ] [ ] [ ] Attention: [ ] Telephone: [ ] Facsimile: [ ] Email: [ ]@[ ].com

3. Effectiveness.

The effectiveness of each Supplemental Confirmation and the related Transaction on the Effective Date for such Supplemental Confirmation shall be subject to the following conditions:

(a) the representations and warranties of Counterparty contained in the Sales Agreement, and any certificate delivered pursuant thereto by Counterparty shall be true and correct on such Effective Date as if made as of such Effective Date;

(b) Counterparty shall have performed all of the obligations required to be performed by it under the Sales Agreement on or prior to such Effective Date;

(c) all of the conditions set forth in Section 5 of the Sales Agreement shall have been satisfied;

(d) the Forward Date (as defined in the Sales Agreement) shall have occurred as provided in the Sales Agreement;

(e) all of the representations and warranties of Counterparty hereunder and under the Agreement shall be true and correct on such Effective Date as if made as of such Effective Date;

(f) Counterparty shall have performed all of the obligations required to be performed by it hereunder and under the Agreement on or prior to such Effective Date, including without limitation its obligations under Section 6 hereof; and

(g) Counterparty shall have delivered to Dealer an opinion of counsel in form and substance reasonably satisfactory to Dealer, with respect to the matters set forth in Section 3(a) of the Agreement and that the maximum number of Shares initially issuable under such Transaction have been duly authorized and, upon issuance pursuant to the terms of such Transaction, will be validly issued, fully paid and nonassessable.

Notwithstanding the foregoing or any other provision of this Master Confirmation or any Supplemental Confirmation, if in respect of any Transaction (x) on or prior to 9:30 a.m., New York City time, on any Settlement Date (as defined in the Sales Agreement), in connection with establishing its commercially reasonable hedge position in respect of such Transaction, Dealer, in its sole commercially reasonable judgment, is unable, after using commercially reasonable efforts, to borrow and deliver for sale the full number of Shares to be borrowed and sold pursuant to the Sales Agreement on such Settlement Date or (y) in Dealer's commercially reasonable judgment, it would incur a stock loan cost of more than a rate equal to the Maximum Stock Loan Rate for such Transaction with respect to all or any portion of such full number of Shares, the effectiveness of the related Supplemental Confirmation and such Transaction shall be limited to the number of Shares Dealer is so able to borrow in connection with establishing its commercially reasonable hedge position of such Transaction at a cost of not more than a rate equal to the Maximum Stock Loan Rate for such Transaction, which, for the avoidance of doubt, may be zero.

4. Additional Mutual Representations and Warranties. In addition to the representations and warranties in the Agreement, each party represents and warrants to the other party that it is an "eligible contract participant", as defined in the U.S. Commodity Exchange Act (as amended), and an "accredited investor" as defined in Section 2(a)(15)(ii) of the Securities Act of 1933 (as amended) (the "**Securities Act**"), and is entering into each Transaction hereunder as principal and not for the benefit of any third party.

5. Additional Representations and Warranties of Counterparty. The representations and warranties of Counterparty set forth in Section 3 of the Sales Agreement are true and correct as of the date hereof, each "Forward Date" (as defined in the Sales Agreement), each Trade Date for any Transaction and each "Forward Hedge Settlement Date" (as defined in the Sales Agreement) and are hereby deemed to be repeated to Dealer as if set forth herein. In addition to the representations and warranties in Section 3 of the Sales Agreement, the Agreement and those contained elsewhere herein, Counterparty represents and warrants to Dealer, and agrees with Dealer, that:

(a) without limiting the generality of Section 13.1 of the Equity Definitions, it acknowledges that Dealer is not making any representations or warranties with respect to the treatment of any Transaction, including without limitation ASC Topic 260, *Earnings Per Share*, ASC Topic 815, *Derivatives and Hedging*, ASC Topic 480, *Distinguishing Liabilities from Equity*, ASC 815-40, *Derivatives and Hedging — Contracts in Entity's Own Equity*

(or any successor issue statements) or under the Financial Accounting Standards Board's Liabilities & Equity Project;

(b) it shall not take any action to reduce or decrease the number of authorized and unissued Shares below the sum of (i) the aggregate Number of Shares across all Transactions hereunder *plus* (ii) the total number of Shares issuable upon settlement (whether by net share settlement or otherwise) of any other transaction or agreement to which it is a party;

(c) it will not repurchase any Shares if, immediately following such repurchase, the aggregate Number of Shares across all Transactions hereunder would be equal to or greater than 4.5% of the number of then-outstanding Shares and it will notify Dealer promptly upon the announcement or consummation of any repurchase of Shares in an amount that, taken together with the amount of all repurchases since the date of the last such notice (or, if no such notice has been given, since the Trade Date), exceeds 0.5% of the number of then-outstanding Shares;

(d) it is not entering into this Master Confirmation or any Supplemental Confirmation to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for Shares), or to raise or depress or otherwise manipulate the price of the Shares (or any security convertible into or exchangeable for Shares) for the purpose of inducing the purchase or sale of the Shares (or any security convertible into or exchangeable for Shares) by others;

(e) it is not aware of any material non-public information regarding itself or the Shares; it is entering into this Master Confirmation and each Supplemental Confirmation and will provide any Settlement Notice in good faith and not as part of a plan or scheme to evade compliance with Rule 10b-5 or any other provision of the federal securities laws; it has not entered into or altered any hedging transaction relating to the Shares corresponding to or offsetting any Transaction; and it has consulted with its own advisors as to the legal aspects of its adoption and implementation of this Master Confirmation and each Supplemental Confirmation under Rule 10b5-1 under the Exchange Act ("**Rule 10b5-1**");

(f) as of the date hereof and the Trade Date for each Transaction no state or local (including, to the best of Counterparty's knowledge, non-U.S. jurisdictions) law, rule, regulation or regulatory order applicable to the Shares would give rise to any reporting, consent, registration or other requirement (including without limitation a requirement to obtain prior approval from any person or entity) as a result of Dealer or its affiliates owning or holding (however defined) Shares; *provided* that Counterparty makes no such representation or warranty regarding any such requirement that is applicable generally to the ownership of equity securities by Dealer;

(g) as of the date hereof, the Trade Date for each Transaction and the date of any payment or delivery by Counterparty or Dealer under any Transaction, it is not and will not be "insolvent" (as such term is defined under Section 101(32) of the Bankruptcy Code);

(h) it is not as of the date hereof, and on the Trade Date for each Transaction and after giving effect to the transactions contemplated hereby and by each Supplemental Confirmation will not be, required to register as an "investment company" as such term is defined in the Investment Company Act of 1940, as amended;

(i) as of the date hereof and the Trade Date for each Transaction it: (i) is an "institutional account" as defined in FINRA Rule 4512(c); and (ii) is capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities, and will exercise independent judgment in evaluating any recommendations of Dealer or its associated persons; and

(j) IT UNDERSTANDS AS OF THE DATE HEREOF AND AS OF THE TRADE DATE FOR EACH TRANSACTION THAT EACH TRANSACTION IS SUBJECT TO COMPLEX RISKS WHICH MAY ARISE WITHOUT WARNING AND MAY AT TIMES BE VOLATILE AND THAT LOSSES MAY OCCUR QUICKLY AND IN UNANTICIPATED MAGNITUDE AND IS WILLING TO ACCEPT SUCH TERMS AND CONDITIONS AND ASSUME (FINANCIALLY AND OTHERWISE) SUCH RISKS.

6. Additional Covenants of Counterparty.

(a) Counterparty acknowledges and agrees that any Shares delivered by Counterparty to Dealer on any Settlement Date or Net Share Settlement Date for any Transaction will be (i) newly issued, (ii) approved for listing or quotation on the Exchange, subject to official notice of issuance, and (iii) registered under the Exchange Act, and, when delivered by Dealer (or an affiliate of Dealer) to securities lenders from whom Dealer (or an affiliate of Dealer) borrowed Shares in connection with hedging its exposure to such Transaction, will be freely saleable without further registration or other restrictions under the Securities Act in the hands of those securities lenders, irrespective of whether any such stock loan is effected by Dealer or an affiliate of Dealer. Accordingly, Counterparty agrees that any Shares so delivered will not bear a restrictive legend and will be deposited in, and the delivery thereof shall be effected through the facilities of, the Clearance System. In addition, Counterparty represents and agrees that any such Shares shall be, upon such delivery, duly and validly authorized, issued and outstanding, fully paid and nonassessable, free of any lien, charge, claim or other encumbrance.

(b) Counterparty agrees that Counterparty shall not enter into or alter any hedging transaction relating to the Shares corresponding to or offsetting any Transaction. Without limiting the generality of the provisions set forth opposite the caption "Unwind Activities" in Section 2 of this Master Confirmation, Counterparty acknowledges that it has no right to, and agrees that it will not seek to, control or influence Dealer's decision to make any "purchases or sales" (within the meaning of Rule 10b5-1(c)(1)(i)(B)(3)) under or in connection with any Transaction, including, without limitation, Dealer's decision to enter into any hedging transactions.

(c) Counterparty acknowledges and agrees that any amendment, modification, waiver or termination of this Master Confirmation or any Supplemental Confirmation must be effected in accordance with the requirements for the amendment or termination of a "plan" as defined in Rule 10b5-1(c). Without limiting the generality of the foregoing, any such amendment, modification, waiver or termination shall be made in good faith and not as part of a plan or scheme to evade the prohibitions of Rule 10b-5, and no such amendment, modification or waiver shall be made at any time at which Counterparty or any officer, director, manager or similar person of Counterparty is aware of any material non-public information regarding Counterparty or the Shares.

(d) Counterparty shall promptly provide notice thereof to Dealer (i) upon the occurrence of any event that would constitute an Event of Default or a Termination Event in respect of which Counterparty is a Defaulting Party or an Affected Party, as the case may be, and (ii) upon announcement of any event that, if consummated, would constitute an Extraordinary Event or Potential Adjustment Event.

(e) Neither Counterparty nor any of its "affiliated purchasers" (as defined by Rule 10b-18 under the Exchange Act ("**Rule 10b-18**")) shall take any action that would cause any purchases of Shares by Dealer or any of its Affiliates in connection with any Cash Settlement or Net Share Settlement of any Transaction not to meet the requirements of the safe harbor provided by Rule 10b-18 if such purchases were made by Counterparty. Without limiting the generality of the foregoing, during any Unwind Period for any Transaction, except with the prior written consent of Dealer, Counterparty will not, and will cause its affiliated purchasers (as defined in Rule 10b-18) not to, directly or indirectly (including, without limitation, by means of a derivative instrument) purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or announce or commence any tender offer relating to, any Shares (or equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share) or any security convertible into or exchangeable for the Shares.

(f) Counterparty will not be subject to any "restricted period" (as such term is defined in Regulation M promulgated under the Exchange Act ("**Regulation M**")) in respect of Shares or any security with respect to which the Shares are a "reference security" (as such term is defined in Regulation M) during any Unwind Period for any Transaction.

(g) Counterparty shall: (i) prior to the opening of trading in the Shares on any day on which Counterparty makes, or expects to be made, any public announcement (as defined in Rule 165(f) under the Securities Act) of any Merger Transaction, notify Dealer of such public announcement; (ii) promptly notify Dealer following any such announcement that such announcement has been made; (iii) promptly (but in any event prior to the next opening of the regular trading session on the Exchange) provide Dealer with written notice specifying (A) Counterparty's average daily Rule 10b-18 Purchases (as defined in Rule 10b-18) during the three full calendar months immediately preceding the announcement date for the Merger Transaction that were not effected through Dealer or its affiliates and (B) the number of Shares purchased pursuant to the proviso in Rule 10b-18(b)(4) under the Exchange Act for

the three full calendar months preceding such announcement date. Such written notice shall be deemed to be a certification by Counterparty to Dealer that such information is true and correct. In addition, Counterparty shall promptly notify Dealer of the earlier to occur of the completion of such transaction and the completion of the vote by target shareholders. Counterparty acknowledges that any such notice may result in a Regulatory Disruption, a Trading Condition or, if such notice relates to an event that is also an ISDA Event, an Early Valuation, or may affect the length of any ongoing Unwind Period; accordingly, Counterparty acknowledges that its delivery of such notice must comply with the standards set forth in Section 6(c) above. "**Merger Transaction**" means any merger, acquisition or similar transaction involving a recapitalization as contemplated by Rule 10b-18(a)(13)(iv) under the Exchange Act. For the avoidance of doubt, a Merger Transaction or the announcement thereof shall not give either party the right to designate an Early Valuation Date for any Transaction and/or to accelerate or preclude an election by Counterparty of Physical Settlement for any Settlement of any Transaction, unless such Merger Transaction or the announcement thereof is also an ISDA Event.

7. Termination on Bankruptcy. The parties hereto agree that, notwithstanding anything to the contrary in the Agreement or the Equity Definitions, each Transaction constitutes a contract to issue a security of Counterparty as contemplated by Section 365(c)(2) of the Bankruptcy Code and that a Transaction and the obligations and rights of Counterparty and Dealer (except for any liability as a result of breach of any of the representations or warranties provided by Counterparty in Section 4 or Section 5 above) shall immediately terminate, without the necessity of any notice, payment (whether directly, by netting or otherwise) or other action by Counterparty or Dealer, if, on or prior to the final Settlement Date, Cash Settlement Payment Date or Net Share Settlement Date, as the case may be, for such Transaction an Insolvency Filing occurs or any other proceeding commences with respect to Counterparty under the Bankruptcy Code (a "**Bankruptcy Termination Event**").

8. Additional Provisions.

(a) Dealer acknowledges and agrees that Counterparty's obligations under the Transactions are not secured by any collateral and that neither this Master Confirmation nor any Supplemental Confirmation is intended to convey to Dealer rights with respect to the transactions contemplated hereby and by any Supplemental Confirmation that are senior to the claims of common stockholders in any U.S. bankruptcy proceedings of Counterparty; *provided* that nothing herein shall limit or shall be deemed to limit Dealer's right to pursue remedies in the event of a breach by Counterparty of its obligations and agreements with respect to this Master Confirmation, any Supplemental Confirmation or the Agreement; *provided further* that nothing herein shall limit or shall be deemed to limit Dealer's rights in respect of any transaction other than the Transactions.

(b) [Dealer represents and warrants to Counterparty that, as of the date hereof and the Trade Date for each Transaction, the obligations of Dealer under this Master Confirmation and the related Supplemental Confirmation are or will be, as the case may be, fully and unconditionally guaranteed by [Dealer][Dealer Parent] as set forth in the [*Described where guarantee may be obtained*] (the "**Dealer Guarantee**"). For the avoidance of doubt, the Dealer Guarantee shall not be a Credit Support Document hereunder, and [Dealer][Dealer Parent] shall not be a Credit Support Provider of Dealer hereunder.]

(c) The parties hereto intend for:

(i) each Transaction to be a "securities contract" as defined in Section 741(7) of the Bankruptcy Code, and the parties hereto to be entitled to the protections afforded by, among other Sections, Sections 362(b)(6), 362(b)(27), 362(o), 546(e), 546(j), 555 and 561 of the Bankruptcy Code;

(ii) the rights given to Dealer pursuant to "Early Valuation" in Section 2 above to constitute "contractual rights" to cause the liquidation of a "securities contract" and to set off mutual debts and claims in connection with a "securities contract", as such terms are used in Sections 555 and 362(b)(6) of the Bankruptcy Code;

(iii) any cash, securities or other property provided as performance assurance, credit support or collateral with respect to the Transactions to constitute "margin payments" and "transfers" under a "securities contract" as defined in the Bankruptcy Code;

(iv) all payments for, under or in connection with the Transactions, all payments for Shares and the transfer of Shares to constitute "settlement payments" and "transfers" under a "securities contract" as defined in the Bankruptcy Code; and

(v) any or all obligations that either party has with respect to this Master Confirmation, any Supplemental Confirmation or the Agreement to constitute property held by or due from such party to margin, guaranty or settle obligations of the other party with respect to the transactions under the Agreement (including the Transactions) or any other agreement between such parties.

(d) Notwithstanding any other provision of the Agreement, this Master Confirmation or any Supplemental Confirmation, in no event will Counterparty be required to deliver in the aggregate in respect of all Settlement Dates, Net Share Settlement Dates or other dates on which Shares are delivered in respect of any amount owed under any Transaction a number of Shares greater than two times the Number of Shares for such Transaction as of the Trade Date for such Transaction (the "**Capped Number**"). The Capped Number shall be subject to adjustment only on account of (x) Potential Adjustment Events of the type specified in (1) Sections 11.2(e)(i) through (vi) of the Equity Definitions or (2) Section 11.2(e)(vii) of the Equity Definitions so long as, in the case of this sub-clause (2), such event is within Issuer's control and (y) Merger Events requiring corporate action of Issuer (or any surviving entity of the Issuer hereunder in connection with any such Merger Event). Counterparty represents and warrants to Dealer (which representation and warranty shall be deemed to be repeated for all Transactions on each day that any Transaction is outstanding) that the aggregate Capped Number across all Transactions hereunder is equal to or less than the number of authorized but unissued Shares that are not reserved for future issuance in connection with transactions in the Shares (other than the Transactions) on the date of the determination of such aggregated Capped Number. In the event Counterparty shall not have delivered the full number of Shares otherwise deliverable under any Transaction as a result of this Section 8(c) (the resulting deficit for such Transaction, the "**Deficit Shares**"), Counterparty shall be continually obligated to deliver Shares, from time to time until the full number of Deficit Shares have been delivered pursuant to this paragraph, on a pro rata basis across all Transactions hereunder, when, and to the extent that, (A) Shares are repurchased, acquired or otherwise received by Counterparty or any of its subsidiaries after the date hereof (whether or not in exchange for cash, fair value or any other consideration), (B) authorized and unissued Shares reserved for issuance in respect of other transactions prior to such date which prior to the relevant date become no longer so reserved and (C) Counterparty additionally authorizes any unissued Shares that are not reserved for transactions other than the Transactions (such events as set forth in clauses (A), (B) and (C) above, collectively, the "**Share Issuance Events**"). Counterparty shall promptly notify Dealer of the occurrence of any of the Share Issuance Events (including the number of Shares subject to clause (A), (B) or (C) and the corresponding number of Shares to be delivered for each Transaction) and, as promptly as reasonably practicable, deliver such Shares thereafter. Counterparty shall not, until Counterparty's obligations under the Transactions have been satisfied in full, use any Shares that become available for potential delivery to Dealer as a result of any Share Issuance Event for the settlement or satisfaction of any transaction or obligation other than the Transactions or reserve any such Shares for future issuance for any purpose other than to satisfy Counterparty's obligations to Dealer under the Transactions.

(e) The parties intend for this Master Confirmation and each Supplemental Confirmation to constitute a "Contract" as described in the letter dated October 6, 2003 submitted on behalf of Goldman, Sachs & Co. to Paula Dubberly of the staff of the Securities and Exchange Commission (the "**Staff**") to which the Staff responded in an interpretive letter dated October 9, 2003.

(f) The parties intend for each Transaction (taking into account purchases of Shares in connection with any Cash Settlement or Net Share Settlement of any Transaction) to comply with the requirements of Rule 10b5-1(c)(1)(i)(A) under the Exchange Act and for this Master Confirmation and each Supplemental Confirmation to constitute a binding contract or instruction satisfying the requirements of 10b5-1(c) and to be interpreted to comply with the requirements of Rule 10b5-1(c).

(g) Notwithstanding any provisions of the Agreement, all communications relating to the Transactions or the Agreement shall be transmitted exclusively through Dealer at [ ].

(h) Counterparty acknowledges that:

(i) during the term of the Transactions, Dealer and its affiliates may buy or sell Shares or other securities or buy or sell options or futures contracts or enter into swaps or other derivative securities in order to establish, adjust or unwind its hedge position with respect to the Transactions;

(ii) Dealer and its affiliates may also be active in the market for the Shares and derivatives linked to the Shares other than in connection with hedging activities in relation to the Transactions, including acting as agent or as principal and for its own account or on behalf of customers;

(iii) Dealer shall make its own determination as to whether, when or in what manner any hedging or market activities in Counterparty's securities shall be conducted and shall do so in a manner that it deems appropriate to hedge its price and market risk with respect to the Forward Price and the Settlement Price for each Transaction;

(iv) any market activities of Dealer and its affiliates with respect to the Shares may affect the market price and volatility of the Shares, as well as the Forward Price and the Settlement Price for each Transaction, each in a manner that may be adverse to Counterparty; and

(v) each Transaction is a derivatives transaction; Dealer may purchase or sell shares for its own account at an average price that may be greater than, or less than, the price received by Counterparty under the terms of the relevant Transaction.

(i) Counterparty and Dealer agree and acknowledge that (A) the Transactions contemplated by this Master Confirmation will be entered into in reliance on the fact that this Master Confirmation and each Supplemental Confirmation hereto form a single agreement between Counterparty and Dealer, and Dealer would not otherwise enter into such Transactions; (B) this Master Confirmation, together with each Supplemental Confirmation hereto, is a "qualified financial contract," as such term is defined in Section 5-701(b)(2) of the General Obligations Law; (C) each Supplemental Confirmation hereto, regardless of whether transmitted electronically or otherwise, constitutes a "confirmation in writing sufficient to indicate that a contract has been made between the parties" hereto, as set forth in Section 5-701(b)(3)(b) of the General Obligations Law; and (D) this Master Confirmation and each Supplemental Confirmation hereto constitute a prior "written contract," as set forth in Section 5-701(b)(1)(b) of the General Obligations Law, and each party hereto intends and agrees to be bound by this Master Confirmation and such Supplemental Confirmation.

(j) Counterparty and Dealer agree that, upon the delivery of any Transaction Notice (as such term is defined in the Sales Agreement) relating to a Forward (as such term is defined in the Sales Agreement) by Counterparty, in respect of the Transaction to which such Transaction Notice relates, each of the representations, warranties, covenants, agreements and other provisions of this Master Confirmation and the Supplemental Confirmation for such Transaction (including, without limitation, Dealer's right to designate an Early Valuation Date in respect of such Transaction pursuant to the provisions opposite the caption "Early Valuation" in Section 2 and the termination of such Transaction following a Bankruptcy Termination Event as described in Section 7) shall govern, and be applicable to, such Transaction as of the first Trading Day of the Forward Hedge Selling Period for such Transaction as if the Trade Date for such Transaction were such first Trading Day.

9. Indemnification. Counterparty agrees to indemnify and hold harmless Dealer, its affiliates and its assignees and their respective directors, officers and controlling persons (Dealer and each such person being an "Indemnified Party") from and against any and all losses (excluding, for the avoidance of doubt, financial losses resulting from the economic terms of the Transactions), claims, damages and liabilities (or actions in respect thereof), joint or several, incurred by or asserted against such Indemnified Party arising out of, in connection with, or relating to, any breach of any covenant or representation made by Counterparty in this this Master Confirmation, any Supplemental Confirmation or the Agreement. Counterparty will not be liable under the foregoing indemnification provision to the extent that any loss, claim, damage, liability or expense is found in a nonappealable judgment by a court of competent jurisdiction to have resulted from Dealer's willful misconduct, gross negligence or bad faith in performing the services that are subject of the Transactions. If for any reason the foregoing indemnification is unavailable to any Indemnified Party or insufficient to hold harmless any Indemnified Party, then Counterparty shall contribute, to the maximum extent permitted by law, to the amount paid or payable by the Indemnified Party as a result of such loss, claim, damage or liability. In addition, Counterparty will reimburse any

Indemnified Party for all reasonable expenses (including reasonable counsel fees and expenses) as they are incurred in connection with the investigation of, preparation for or defense or settlement of any pending or threatened claim or any action, suit or proceeding arising therefrom, whether or not such Indemnified Party is a party thereto and whether or not such claim, action, suit or proceeding is initiated or brought by or on behalf of Counterparty. Counterparty also agrees that no Indemnified Party shall have any liability to Counterparty or any person asserting claims on behalf of or in right of Counterparty in connection with or as a result of any matter referred to in this Master Confirmation and any Supplemental Confirmation except to the extent that any losses, claims, damages, liabilities or expenses incurred by Counterparty result from the gross negligence, willful misconduct or bad faith of the Indemnified Party. The provisions of this Section 9 shall survive the completion of the Transactions contemplated by this Master Confirmation and any Supplemental Confirmation and any assignment and/or delegation of the Transactions made pursuant to the Agreement, this Master Confirmation or any Supplemental Confirmation shall inure to the benefit of any permitted assignee of Dealer. For the avoidance of doubt, any payments due as a result of this provision may not be used to set off any obligation of Dealer upon settlement of the Transactions.

10. Beneficial Ownership. Notwithstanding anything to the contrary in the Agreement, this Master Confirmation or any Supplemental Confirmation, in no event shall Dealer be entitled to receive, or be deemed to receive, or have the "right to acquire" (within the meaning of NYSE Rule 312.04(g)) Shares to the extent that, upon such receipt of such Shares, (i) the "beneficial ownership" (within the meaning of Section 13 of the Exchange Act and the rules promulgated thereunder) of Shares by Dealer, any of its affiliates' business units subject to aggregation with Dealer for purposes of the "beneficial ownership" test under Section 13 of the Exchange Act and any "group" (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) of which Dealer is or may be deemed to be a part (collectively, "**Dealer Group**") would be equal to or greater than the lesser of (x) 4.5% of the outstanding Shares (such condition, an "**Excess Section 13 Ownership Position**"), and (y) 4.9% of the outstanding Shares as of the Trade Date for any Transaction (such number of Shares, the "**Threshold Number of Shares**" and such condition, the "**Excess NYSE Ownership Position**") or (ii) Dealer, Dealer Group or any person whose ownership position would be aggregated with that of Dealer or Dealer Group (Dealer, Dealer Group or any such person, a "**Dealer Person**") under Sections 3-601 through 3-603 of the Maryland Code (Corporations and Associations) or any state or federal bank holding company or banking laws, or any federal, state or local laws, regulations or regulatory orders applicable to ownership of Shares ("**Applicable Laws**"), would own, beneficially own, constructively own, control, hold the power to vote or otherwise meet a relevant definition of ownership in excess of a number of Shares equal to (x) the lesser of (A) the maximum number of Shares that would be permitted under Applicable Laws and (B) the number of Shares that would give rise to reporting or registration obligations or other requirements (including obtaining prior approval by a state or federal regulator) of a Dealer Person under Applicable Laws and with respect to which such requirements have not been met or the relevant approval has not been received or that would give rise to any consequences under the constitutive documents of Counterparty (including, without limitation, Section 9.2(a) of Counterparty's Restated Articles of Incorporation (as amended from time to time)) or any contract or agreement to which Counterparty is a party, in each case *minus* (y) 1% of the number of Shares outstanding on the date of determination (such condition described in clause (ii), an "**Excess Regulatory Ownership Position**"). If any delivery owed to Dealer under any Transaction is not made, in whole or in part, as a result of this provision, (i) Counterparty's obligation to make such delivery shall not be extinguished and Counterparty shall make such delivery as promptly as practicable after, but in no event later than one Exchange Business Day after, Dealer gives notice to Counterparty that such delivery would not result in (x) Dealer Group directly or indirectly so beneficially owning in excess of the lesser of (A) 4.5% of the outstanding Shares and (B) the Threshold Number of Shares or (y) the occurrence of an Excess Regulatory Ownership Position and (ii) if such delivery relates to a Physical Settlement of any Transaction, notwithstanding anything to the contrary herein, Dealer shall not be obligated to satisfy the portion of its payment obligation with respect to such Transaction corresponding to any Shares required to be so delivered until the date Counterparty makes such delivery.

11. Non-Confidentiality. The parties hereby agree that (i) effective from the date of commencement of discussions concerning the Transactions, Counterparty and each of its employees, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Transactions and all materials of any kind, including opinions or other tax analyses, provided by Dealer and its affiliates to Counterparty relating to such tax treatment and tax structure; *provided* that the foregoing does not constitute an authorization to disclose the identity of Dealer or its affiliates, agents or advisers, or, except to the extent relating to such tax structure or tax treatment, any specific pricing terms or commercial or financial

information, and (ii) Dealer does not assert any claim of proprietary ownership in respect of any description contained herein or therein relating to the use of any entities, plans or arrangements to give rise to a particular United States federal income tax treatment for Counterparty.

12. Restricted Shares. If Counterparty is unable to comply with the covenant of Counterparty contained in Section 6 above or Dealer otherwise determines in its reasonable opinion that any Shares to be delivered to Dealer by Counterparty under any Transaction may not be freely returned by Dealer to securities lenders as described in the covenant of Counterparty contained in Section 6 above, then delivery of any such Settlement Shares (the "**Unregistered Settlement Shares**") shall be effected pursuant to Annex A hereto, unless waived by Dealer.

13. Use of Shares. Dealer acknowledges and agrees that, except in the case of a Private Placement Settlement, Dealer shall use any Shares delivered by Counterparty to Dealer on any Settlement Date to return to securities lenders to close out borrowings created by Dealer in connection with its hedging activities related to exposure under the Transactions or otherwise in compliance with applicable law.

14. Rule 10b-18. In connection with bids and purchases of Shares in connection with any Net Share Settlement or Cash Settlement of any Transaction, Dealer shall use commercially reasonable efforts to conduct its activities, or cause its affiliates to conduct their activities, in a manner consistent with the requirements of the safe harbor provided by Rule 10b-18 under the Exchange Act, as if such provisions were applicable to such purchases and taking into account any applicable Securities and Exchange Commission no-action letters as appropriate, and subject to any delays between the execution and reporting of a trade of the Shares on the Exchange and other circumstances beyond Dealer's control.

15. Governing Law. Notwithstanding anything to the contrary in the Agreement, the Agreement, this Master Confirmation, any Supplemental Confirmation and all matters arising in connection with the Agreement this Master Confirmation and any Supplemental Confirmation shall be governed by, and construed and enforced in accordance with, the laws of the State of New York (without reference to its choice of laws doctrine other than Title 14 of Article 5 of the New York General Obligations Law).

16. Set-Off.

(a) The parties agree that upon the occurrence of an Event of Default or Termination Event with respect to a party who is the Defaulting Party or the Affected Party ("**X**"), the other party ("**Y**") will have the right (but not be obliged) without prior notice to X or any other person to set-off or apply any obligation of X owed to Y (whether or not matured or contingent and whether or not arising under the Agreement, and regardless of the currency, place of payment or booking office of the obligation) against any obligation of Y owed to X (whether or not matured or contingent and whether or not arising under the Agreement, and regardless of the currency, place of payment or booking office of the obligation). Y will give notice to the other party of any set-off effected under this Section 16.

Amounts (or the relevant portion of such amounts) subject to set-off may be converted by Y into the Termination Currency at the rate of exchange at which such party would be able, acting in a reasonable manner and in good faith, to purchase the relevant amount of such currency. If any obligation is unascertained, Y may in good faith estimate that obligation and set-off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained. Nothing in this Section 16 shall be effective to create a charge or other security interest. This Section 16 shall be without prejudice and in addition to any right of set-off, combination of accounts, lien or other right to which any party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

(b) Notwithstanding anything to the contrary in the foregoing, Dealer agrees not to set off or net amounts due from Counterparty with respect to any Transaction against amounts due from Dealer to Counterparty with respect to contracts or instruments that are not Equity Contracts. "**Equity Contract**" means any transaction or instrument that does not convey to Dealer rights, or the ability to assert claims, that are senior to the rights and claims of common stockholders in the event of Counterparty's bankruptcy and would be classified as equity according to generally accepted accounting principles in the United States.

17. Staggered Settlement. Notwithstanding anything to the contrary herein, Dealer may, by prior notice to Counterparty, satisfy its obligation to deliver any Shares or other securities on any date due (an "**Original Delivery Date**") by making separate deliveries of Shares or such securities, as the case may be, at more than one time on or prior to such Original Delivery Date, so long as the aggregate number of Shares and other securities so delivered on or prior to such Original Delivery Date is equal to the number required to be delivered on such Original Delivery Date.

18. Arbitration.

(a) All parties to this Confirmation are giving up the right to sue each other in court, including the right to a trial by jury, except as provided by the rules of the arbitration forum in which a claim is filed.

(b) Arbitration awards are generally final and binding; a party's ability to have a court reverse or modify an arbitration award is very limited.

(c) The ability of the parties to obtain documents, witness statements and other discovery is generally more limited in arbitration than in court proceedings.

(d) The arbitrators do not have to explain the reason(s) for their award.

(e) The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry, unless Counterparty is a member of the organization sponsoring the arbitration facility, in which case all arbitrators may be affiliated with the securities industry.

(f) The rules of some arbitration forums may impose time limits for bringing a claim in arbitration. In some cases, a claim that is ineligible for arbitration may be brought in court.

(g) The rules of the arbitration forum in which the claim is filed, and any amendments thereto, shall be incorporated into this Master Confirmation.

(h) Counterparty agrees that any and all controversies that may arise between Counterparty and Dealer arising out of or relating to the Agreement or any Transaction hereunder shall be determined by arbitration conducted before the FINRA Dispute Resolution ("FINRA-DR"), or, if the FINRA-DR declines to hear the matter, before the American Arbitration Association, in accordance with their arbitration rules then in force. The award of the arbitrator shall be final, and judgment upon the award rendered may be entered in any court, state or federal, having jurisdiction.

(i) No person shall bring a putative or certified class action to arbitration, nor seek to enforce any pre-dispute arbitration agreement against any person who has initiated in court a putative class action or who is a member of a putative class who has not opted out of the class with respect to any claims encompassed by the putative class action until: (i) the class certification is denied; (ii) the class is decertified; or (iii) Counterparty is excluded from the class by the court.

(j) Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this Master Confirmation except to the extent stated herein.

19. Counterparts. This Master Confirmation may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Master Confirmation by signing and delivering one or more counterparts.

20. Delivery of Cash. For the avoidance of doubt, nothing in this Master Confirmation or any Supplemental Confirmation shall be interpreted as requiring Counterparty to deliver cash or other assets in respect of the settlement of the Transactions, except in circumstances where the required cash or other asset settlement thereof is permitted for classification of the contract as equity by ASC 815-40, *Derivatives and Hedging — Contracts in Entity's Own Equity*, as in effect on the date hereof.

21. Adjustments. For the avoidance of doubt, whenever the Calculation Agent, the Hedging Party or the Determining Party is called upon to make an adjustment pursuant to the terms of this Master Confirmation, any Supplemental Confirmation or the Equity Definitions to take into account the effect of an event, the Calculation Agent, the Hedging Party or the Determining Party, as applicable, shall make such adjustment by reference to the effect of such event on the Hedging Party, assuming that the Hedging Party maintains a commercially reasonable hedge position at the time of the event.

22. [QFC Stay Rules. The parties acknowledge and agree that (i) to the extent that prior to the date hereof both parties have adhered to the 2018 ISDA U.S. Resolution Stay Protocol (the "**Protocol**"), the terms of the Protocol are incorporated into and form a part of this Agreement, and for such purposes this Agreement shall be deemed a Protocol Covered Agreement, Dealer shall be deemed a Regulated Entity and Counterparty shall be deemed an Adhering Party; (ii) to the extent that prior to the date hereof the parties have executed a separate agreement the effect of which is to amend the qualified financial contracts between them to conform with the requirements of the QFC Stay Rules (the "**Bilateral Agreement**"), the terms of the Bilateral Agreement are incorporated into and form a part of this Agreement, and for such purposes this Agreement shall be deemed a Covered Agreement, Dealer shall be deemed a "Covered Entity" and Counterparty shall be deemed a "Counterparty Entity"; or (iii) if clause (i) and clause (ii) do not apply, the terms of Section 1 and Section 2 and the related defined terms (together, the "**Bilateral Terms**") of the form of bilateral template entitled "Full-Length Omnibus (for use between U.S. G-SIBs and Corporate Groups)" published by ISDA on November 2, 2018 (currently available on the 2018 ISDA U.S. Resolution Stay Protocol page at www.isda.org and, a copy of which is available upon request), the effect of which is to amend the qualified financial contracts between the parties thereto to conform with the requirements of the QFC Stay Rules, are hereby incorporated into and form a part of this Agreement, and for such purposes this Agreement shall be deemed a "Covered Agreement," Dealer shall be deemed a "Covered Entity" and Counterparty shall be deemed a "Counterparty Entity." In the event that, after the date of this Agreement, both parties hereto become adhering parties to the Protocol, the terms of the Protocol will replace the terms of this Section 22. In the event of any inconsistencies between this Agreement and the terms of the Protocol, the Bilateral Agreement or the Bilateral Terms (each, the "**QFC Stay Terms**"), as applicable, the QFC Stay Terms will govern. Terms used in this paragraph without definition shall have the meanings assigned to them under the QFC Stay Rules. For purposes of this paragraph, references to "this Agreement" include any related credit enhancements entered into between the parties or provided by one to the other. In addition, the parties agree that the terms of this paragraph shall be incorporated into any related covered affiliate credit enhancements, with all references to [Dealer Parent] replaced by references to the covered affiliate support provider.

"**QFC Stay Rules**" means the regulations codified at 12 C.F.R. 252.2, 252.81—8, 12 C.F.R. 382.1-7 and 12 C.F.R. 47.1-8, which, subject to limited exceptions, require an express recognition of the stay-and-transfer powers of the FDIC under the Federal Deposit Insurance Act and the Orderly Liquidation Authority under Title II of the Dodd Frank Wall Street Reform and Consumer Protection Act and the override of default rights related directly or indirectly to the entry of an affiliate into certain insolvency proceedings and any restrictions on the transfer of any covered affiliate credit enhancements.](1)

23. Other Forward(s). Dealer acknowledges that Counterparty has entered into or may enter in the future into one or more substantially identical forward transactions on the Shares (each, an "**Other Forward**" and, collectively, the "**Other Forwards**") with one or more other forward purchasers. Dealer and Counterparty agree that if Counterparty designates a "Settlement Date" with respect to one or more Other Forwards for which "Cash Settlement" or "Net Share Settlement" is applicable, and the resulting "Unwind Period" for such Other Forward(s) coincides for any period of time with an Unwind Period for this Transaction (the "**Overlap Unwind Period**"), Counterparty shall notify Dealer at least one Scheduled Trading Day prior to the commencement of such Overlap Unwind Period of the first Scheduled Trading Day and the length of such Overlap Unwind Period, and Dealer shall be permitted to purchase Shares to unwind its hedge in respect of this Transaction only on alternating Scheduled Trading Days during such Overlap Unwind Period, as notified to Dealer by Counterparty at least one Business Day prior to such Overlap Unwind Period (which alternating Scheduled Trading Days, for the avoidance of doubt, may

(1) Update, as appropriate, for each Dealer

be every other Scheduled Trading Day if there is only one Other Forward, every third Scheduled Trading Day if there are two Other Forwards, etc.).

24. Right to Designate. Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing Dealer to purchase, sell, receive or deliver any Shares or other securities to or from Counterparty, Dealer may designate any of its affiliates (each, a "**Designee**") to purchase, sell, receive or deliver such Shares or other securities and otherwise to perform Dealer's obligations in respect of the Transaction and any such Designee may assume such obligations.

25. Tax Matters. [Insert applicable Dealer tax language]

26. [Reserved]. [Insert any Dealer boilerplate]

Counterparty hereby agrees (a) to check this Master Confirmation carefully and immediately upon receipt so that errors or discrepancies can be promptly identified and rectified and (b) to confirm that the foregoing (in the exact form provided by Dealer) correctly sets forth the terms of the agreement between Dealer and Counterparty hereunder, by manually signing this Master Confirmation or this page hereof as evidence of agreement to such terms and providing the other information requested herein and immediately returning an executed copy to us.

Yours faithfully,

[DEALER]

By: _____
Name:
Title:

Agreed and accepted by:

AVALONBAY COMMUNITIES, INC.

By: _____
Name:
Title:

ANNEX A

PRIVATE PLACEMENT PROCEDURES

If Counterparty delivers Unregistered Settlement Shares pursuant to Section 12 above (a "**Private Placement Settlement**"), then:

(a) all Unregistered Settlement Shares shall be delivered to Dealer (or any affiliate of Dealer designated by Dealer) pursuant to the exemption from the registration requirements of the Securities Act provided by Section 4(a)(2) thereof;

(b) as of or prior to the date of delivery, Dealer and any potential purchaser of any such shares from Dealer (or any affiliate of Dealer designated by Dealer) identified by Dealer shall be afforded a commercially reasonable opportunity to conduct a due diligence investigation with respect to Counterparty customary in scope for private placements of equity securities of similar size (including, without limitation, the right to have made available to them for inspection all financial and other records, pertinent corporate documents and other information reasonably requested by them);

(c) as of the date of delivery, Counterparty shall enter into an agreement (a "**Private Placement Agreement**") with Dealer (or any affiliate of Dealer designated by Dealer) in connection with the private placement of such shares by Counterparty to Dealer (or any such affiliate) and the private resale of such shares by Dealer (or any such affiliate), substantially similar to private placement purchase agreements customary for private placements of equity securities of similar size, in form and substance commercially reasonably satisfactory to Dealer, which Private Placement Agreement shall include, without limitation, provisions substantially similar to those contained in such private placement purchase agreements relating, without limitation, to the indemnification of, and contribution in connection with the liability of, Dealer and its affiliates and obligations to use best efforts to obtain customary opinions, accountants' comfort letters and lawyers' negative assurance letters, and shall provide for the payment by Counterparty of all commercially reasonable fees and expenses in connection with such resale, including all commercially reasonable fees and expenses of counsel for Dealer, and shall contain representations, warranties, covenants and agreements of Counterparty reasonably necessary or advisable to establish and maintain the availability of an exemption from the registration requirements of the Securities Act for such resales; and

(d) in connection with the private placement of such shares by Counterparty to Dealer (or any such affiliate) and the private resale of such shares by Dealer (or any such affiliate), Counterparty shall, if so requested by Dealer, prepare, in cooperation with Dealer, a private placement memorandum in form and substance reasonably satisfactory to Dealer.

In the case of a Private Placement Settlement, Dealer shall, in its good faith discretion, adjust the amount of Unregistered Settlement Shares to be delivered to Dealer hereunder in a commercially reasonable manner to reflect the fact that such Unregistered Settlement Shares may not be freely returned to securities lenders by Dealer and may only be saleable by Dealer at a discount to reflect the lack of liquidity in Unregistered Settlement Shares.

If Counterparty delivers any Unregistered Settlement Shares in respect of a Transaction, Counterparty agrees that (i) such Shares may be transferred by and among Dealer and its affiliates and (ii) after the minimum "holding period" within the meaning of Rule 144(d) under the Securities Act has elapsed after the applicable Settlement Date, Counterparty shall promptly remove, or cause the transfer agent for the Shares to remove, any legends referring to any transfer restrictions from such Shares upon delivery by Dealer (or such affiliate of Dealer) to Counterparty or such transfer agent of seller's and broker's representation letters customarily delivered by Dealer or its affiliates in connection with resales of restricted securities pursuant to Rule 144 under the Securities Act, each without any further requirement for the delivery of any certificate, consent, agreement, opinion of counsel, notice or any other document, any transfer tax stamps or payment of any other amount or any other action by Dealer (or such affiliate of Dealer).

SCHEDULE A

SUPPLEMENTAL CONFIRMATION

To:	AvalonBay Communities, Inc.
A/C:	[ ]
From:	[*Dealer*]
Re:	Issuer Share Forward Sale Transaction
Ref. No:	[ ]
Date:	[ ], 20[ ]

Dear Sir(s):

The purpose of this Supplemental Confirmation is to confirm the terms and conditions of the Transaction entered into between [ ] ("**Dealer**") and AvalonBay Communities, Inc. ("**Counterparty**") (together, the "**Contracting Parties**") on the Trade Date specified below. This Supplemental Confirmation is a binding contract between Dealer and Counterparty as of the relevant Trade Date for the Transaction referenced below.

1. This Supplemental Confirmation supplements, forms part of, and is subject to the Master Confirmation dated as of [ ], 2019 (the "**Master Confirmation**") between the Contracting Parties, as amended and supplemented from time to time. All provisions contained in the Master Confirmation govern this Supplemental Confirmation except as expressly modified below.

2. The terms of the Transaction to which this Supplemental Confirmation relates are as follows:

Trade Date:	[ ], 20[ ]
Effective Date:	[ ], 20[ ]
Maturity Date:	[ ], 20[ ]
Number of Shares:	[ ]
Initial Forward Price:	USD [ ]
Spread:	[.]%
Volume-Weighted Hedge Price:	USD [ ]
Threshold Price:	USD [ ]
Initial Stock Loan Rate:	[ ] basis points per annum
Maximum Stock Loan Rate:	[ ] basis points per annum

Counterparty hereby agrees (a) to check this Supplemental Confirmation carefully and immediately upon receipt so that errors or discrepancies can be promptly identified and rectified and (b) to confirm that the foregoing (in the exact form provided by Dealer) correctly sets forth the terms of the agreement between Dealer and Counterparty hereunder, by manually signing this Supplemental Confirmation or this page hereof as evidence of agreement to such terms and providing the other information requested herein and immediately returning an executed copy to us.

Yours faithfully,

[DEALER]

By: _____
Name:
Title:

Agreed and accepted by:

AVALONBAY COMMUNITIES, INC.

By: _____
Name:
Title:

[*Signature Page to Supplemental Confirmation*]

Schedule I

FORWARD PRICE REDUCTION AMOUNTS

Forward Price Reduction Date:	**Forward Price Reduction Amount:**	
[ ], 20[ ]	USD	[ ]
[ ], 20[ ]	USD	[ ]
[ ], 20[ ]	USD	[ ]
.....		.....
[ ], 20[ ]	USD	[ ]

REGULAR DIVIDEND AMOUNTS

For any calendar quarter ending on or prior to [December 31, 20[ ]]:	USD[ ]
For any calendar quarter ending after [December 31, 20[ ]]:	USD[ ]

Exhibit 5.1

May 6, 2019

AvalonBay Communities, Inc.
Ballston Tower
671 N. Glebe Road, Suite 800
Arlington, Virginia 22203

Re: Securities Registered under Registration Statement on Form S-3

Ladies and Gentlemen:

We have acted as counsel to you in connection with your filing of a Registration Statement on Form S-3 (File No. 333-223183) (as amended or supplemented, the "Registration Statement") filed on February 23, 2018 with the Securities and Exchange Commission (the "Commission") pursuant to the Securities Act of 1933, as amended (the "Securities Act"), relating to the registration of the offering by Avalonbay Communities, Inc., a Maryland corporation (the "Company") of an unlimited amount of any combination of securities of the types specified therein. The Registration Statement became effective upon filing with the Commission on February 23, 2018. Reference is made to our opinion letter dated February 23, 2019 and included as Exhibit 5.1 to the Registration Statement. We are delivering this supplemental opinion letter in connection with the prospectus supplement (the "Prospectus Supplement") filed on May 6, 2019 by the Company with the Commission pursuant to Rule 424 under the Securities Act. The Prospectus Supplement relates to the offering by the Company of up to $1,000,000,000 in shares (the "Shares") of the Company's common stock, par value $0.01 per share ("Common Stock") covered by the Registration Statement.

The Shares may be offered and sold from time to time pursuant to the terms of 13 separate sales agency financing agreements, each dated May 6, 2019 (collectively, the "Sales Agency Financing Agreements") with each of J.P. Morgan Securities LLC, Barclays Capital Inc., BTIG, LLC, Citigroup Global Markets Inc., Deutsche Bank Securities Inc., Goldman Sachs & Co. LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Morgan Stanley & Co. LLC, Jefferies LLC, RBC Capital Markets, LLC, SunTrust Robinson Humphrey, Inc., TD Securities (USA) LLC and Wells Fargo Securities, LLC (when acting in this capacity, collectively, the "Sales Agents"), as sales agents, relating to issuances, offers and sales of the Shares. Concurrently with entry into the Sales Agency Financing Agreements, the Company has entered into 10 separate master forward sale agreements and related supplemental confirmations (collectively, the "Master Forward Sale Agreements") between the Company and certain of the Sales Agents or their respective affiliates, acting as forward purchasers, providing for the future issuance from time to time of the Shares. The Sales Agency Financing Agreements and the Master Forward Sale Agreements are referred to collectively as the "Agreements."

We have reviewed such documents and made such examination of law as we have deemed appropriate to give the opinions set forth below. We have relied, without independent verification, on certificates of public officials and, as to matters of fact material to the opinions set forth below, on certificates of officers of the Company.

For purposes of the opinion set forth below, we have assumed that the Shares are issued for a price per share equal to or greater than the minimum price authorized by the Company's board of directors prior to the date hereof (the "Minimum Price") and that no event occurs that causes the number of authorized shares of Common Stock available for issuance by the Company to be less than the number of then unissued Shares that may be issued for the Minimum Price.

The opinion set forth below is limited to the Maryland General Corporation Law.

Based on the foregoing, we are of the opinion that the Shares have been duly authorized and, when issued, delivered and paid for in accordance with the Agreement(s) and in exchange for a price per share equal to or greater than the minimum price authorized by the Company's board of directors, will be validly issued, fully paid and nonassessable.

This opinion is being furnished to you for submission to the Commission as an exhibit to the Company's Current Report on Form 8-K relating to the Shares (the "Current Report"), which is incorporated by reference in the Registration Statement. We hereby consent to the filing of this opinion letter as an exhibit to the Current Report and its incorporation by reference and the reference to our firm in that report. In giving our consent, we do not admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations thereunder.

Very truly yours,

/s/ Goodwin Procter LLP

GOODWIN PROCTER LLP