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

FORM 10-Q

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the quarterly period ended September 30, 2026
OR
☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the transition period from ____to
Commission File Number: 1-12252 (Vivmark Residential)
Commission File Number: 0-24920 (ERP Operating Limited Partnership)

VIVMARK RESIDENTIAL
ERP OPERATING LIMITED PARTNERSHIP
(Exact name of registrant as specified in its charter)

Maryland (Vivmark Residential) **Illinois (ERP Operating Limited Partnership)** **(State or other jurisdiction of incorporation or organization)**	**13-3675988 (Vivmark Residential)** **36-3894853 (ERP Operating Limited Partnership)** **(I.R.S. Employer Identification No.)**
Two North Riverside Plaza, Chicago, Illinois 60606 **4040 Wilson Blvd., Suite 1000, Arlington, Virginia 22203** **(Addresses of principal executive offices) (Zip Codes)**	**(312) 474-1300 or** **(703) 329-6300** **(Registrant's telephone number, including area code)**

Equity Residential (Vivmark Residential) / Not applicable (ERP Operating Limited Partnership)
(Former name, former address and former fiscal year, if changed since last report)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Shares of Beneficial Interest, $0.01 Par Value (Vivmark Residential)	VMRK	New York Stock Exchange
7.57% Notes due August 15, 2026 (ERP Operating Limited Partnership)	N/A	N/A(1)

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

Vivmark Residential Yes ☒ No ☐ ERP Operating Limited Partnership Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files).

Vivmark Residential Yes ☒ No ☐ ERP Operating Limited Partnership Yes ☒ No ☐

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

Vivmark Residential:

Large accelerated filer	☒	Accelerated filer	☐
Non-accelerated filer	☐	Smaller reporting company	☐
Emerging growth company	☐		

ERP Operating Limited Partnership:

Large accelerated filer	☐	Accelerated filer	☐
Non-accelerated filer	☒	Smaller reporting company	☐
Emerging growth company	☐		

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.

Vivmark Residential ☐ ERP Operating Limited Partnership ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Vivmark Residential Yes ☐ No ☒ ERP Operating Limited Partnership Yes ☐ No ☒

The number of VMRK Common Shares of Beneficial Interest, $0.01 par value, outstanding on October 30, 2026 was 774,798,545.

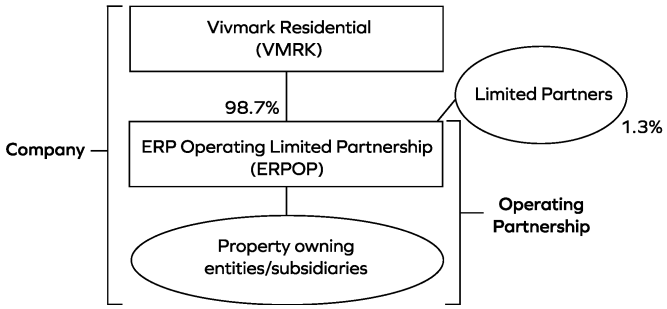
(1) On August 17, 2026, in connection with ERP Operating Limited Partnership's repayment at maturity of all of its outstanding 7.57% Notes due August 15, 2026 (the "Notes"), New York Stock Exchange LLC filed a Form 25 with the U.S. Securities and Exchange Commission to complete the delisting of the Notes from The New York Stock Exchange, which delisting became effective on August 27, 2026. The deregistration of the Notes under Section 12(b) of the Act will be effective 90 days, or such shorter period as the U.S. Securities and Exchange Commission may determine, after filing of the Form 25.

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EXPLANATORY NOTE

On August 17, 2026 (the "Merger Date"), AvalonBay Communities, Inc., a Maryland corporation ("AvalonBay"), Equity Residential, a Maryland real estate investment trust ("Equity Residential"), ERP Operating Limited Partnership, an Illinois limited partnership ("ERPOP"), and Canopy Merger Sub LLC, a Maryland limited liability company and a direct wholly owned subsidiary of Equity Residential ("Merger Sub"), completed the transactions contemplated by the Agreement and Plan of Merger (the "Merger Agreement"). Pursuant to the Merger Agreement, (i) AvalonBay contributed certain assets to ERPOP in exchange for units of partnership interest in ERPOP that had, in the aggregate, a value equal to the fair market value of such contributed assets (the "Asset Contribution") and (ii) following the Asset Contribution, AvalonBay merged with and into Merger Sub, with Merger Sub surviving as a direct, wholly owned subsidiary of Equity Residential (the "Merger"). Following the Merger, Equity Residential contributed all of the membership interests of Merger Sub to ERPOP, and Merger Sub then merged with and into ERPOP, with ERPOP continuing as the surviving entity. On the Merger Date, Equity Residential was renamed Vivmark Residential ("Vivmark"). At the effective time of the Merger, each outstanding share of AvalonBay common stock was automatically cancelled and converted into the right to receive 2.793 common shares ("Common Shares") of Vivmark (the "Exchange Ratio"), plus the right, if any, to receive cash in lieu of fractional Common Shares. As a result, former AvalonBay stockholders and Equity Residential shareholders owned approximately 51% and 49% of Vivmark, respectively. The Merger was accounted for as a reverse acquisition, whereby Equity Residential was the legal acquirer and AvalonBay was the accounting acquirer. As a result, the Company's historical financial statements for periods before the Merger Date are those of AvalonBay and share and per share amounts for those periods have been retroactively adjusted to reflect the Exchange Ratio.

This report combines the reports on Form 10-Q for the quarterly period ended September 30, 2026 of Vivmark and ERPOP. Equity Residential's results of operations are included only from the Merger Date. Unless stated otherwise or the context otherwise requires, references to the "Company," "we," "us" or "our" mean collectively Vivmark, ERPOP and the entities and subsidiaries owned or controlled by Vivmark and/or ERPOP. References to the "Operating Partnership" mean collectively ERPOP and the entities and subsidiaries owned or controlled by ERPOP. The following chart illustrates the Company's and the Operating Partnership's corporate structure:



Vivmark is the sole general partner of ERPOP ("General Partner") and, as of September 30, 2026, owned an approximate 98.7% ownership interest in ERPOP. References to "General Partner Capital" and "General Partner Units" represent Vivmark's ownership interest in ERPOP. Approximately 1.3% is owned by ERPOP's limited partners ("Limited Partners"). References to "Limited Partner Capital" and "Limited Partner Units" represent Limited Partners' interests in ERPOP. As the General Partner, Vivmark has exclusive control of ERPOP's day-to-day management. Management operates Vivmark and ERPOP as one business, and the officers who manage Vivmark also manage ERPOP.

Vivmark and ERPOP are structured as an umbrella partnership REIT ("UPREIT"). Vivmark contributes the net proceeds from its equity offerings to ERPOP. In exchange, Vivmark receives partnership interests in ERPOP ("OP Units") equal in number to the Common Shares issued, or, for any preferred share offerings, preference units with economic terms substantially the same as the related preferred shares. The UPREIT structure allows ERPOP to acquire communities in exchange for OP Units, which may, in certain circumstances, allow sellers to defer some or all of the taxable income or gain they would otherwise recognize on the sale. Under ERPOP's partnership agreement, Limited Partners may tender their OP Units for redemption for Common Shares on a one-for-one basis or, at Vivmark's election, cash. Under ERPOP's partnership agreement, Vivmark and ERPOP maintain a one-for-one relationship between the OP Units held by Vivmark and Vivmark's outstanding Common Shares.

The Company believes that combining the reports on Form 10-Q of Vivmark and ERPOP into this single report provides the following benefits:

- enhances investors' understanding of Vivmark and the Operating Partnership by enabling investors to view the business as a whole in the same manner as management views and operates the business;
- eliminates duplicative disclosure and provides a more streamlined and readable presentation since a substantial portion of the disclosure applies to both Vivmark and the Operating Partnership; and
- creates time and cost efficiencies through the preparation of one combined report instead of two separate reports.

All of the Company's community ownership, operations, development, redevelopment and any other activity are conducted through the Operating Partnership, which holds the Company's assets, including its interests in joint ventures, and has no publicly traded equity. Vivmark's primary function is acting as the General Partner of ERPOP. Vivmark has no assets or liabilities other than its investment in ERPOP, and it has no indebtedness because all debt is incurred by the Operating Partnership. Other than the net proceeds from Vivmark's equity offerings, which Vivmark is obligated to contribute to ERPOP in exchange for OP Units or preference units, the Operating Partnership generates the capital required by the business. Its sources include working capital, net cash provided by operating activities, borrowings under its Unsecured Revolving Credit Facilities and Commercial Paper Program (see definitions in Note 7, "Debt" of the Consolidated Financial Statements), issuances of secured and unsecured debt and partnership interests, and proceeds from dispositions of communities and joint venture interests.

The main differences between the consolidated financial statements of the Company and those of the Operating Partnership are in shareholders' equity, partners' capital, noncontrolling interests, and per-share versus per-unit earnings. Vivmark issues Common Shares and preferred shares, while ERPOP issues OP Units and preference units. Limited Partners' OP Units are presented as noncontrolling interests in the Company's financial statements and as Limited Partner Capital in the Operating Partnership's financial statements. In both sets of statements, noncontrolling interests include unaffiliated partners' interests in consolidated partnerships.

To help investors understand these differences, this report provides separate consolidated financial statements for the Company and the Operating Partnership; a single set of notes that includes separate discussions of each entity's noncontrolling interests, shareholders' equity or partners' capital, and earnings per share or per unit; and a combined Management's Discussion and Analysis of Financial Condition and Results of Operations that includes discrete information for each entity.

Sections of this report that apply to only Vivmark or only the Operating Partnership refer to that entity specifically. Sections that combine disclosure for both entities generally describe actions, holdings and obligations as those of the Company. Although the Operating Partnership, directly or through its subsidiaries, generally enters into contracts and joint ventures and holds the assets and debt, management operates Vivmark and the Operating Partnership as one business, and conducts that business through the Operating Partnership.

This report also includes separate Part I, Item 4, *Controls and Procedures*, sections and separate Exhibit 31 and 32 certifications for each of the Company and the Operating Partnership, as required by Rules 13a-14 and 13a-15 or Rules 15d-14 and 15d-15, as applicable, of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and 18 U.S.C. §1350.

As the General Partner of ERPOP, Vivmark consolidates ERPOP for financial reporting purposes, and Vivmark has no assets or liabilities other than its investment in ERPOP. Therefore, the assets and liabilities of the Company and the Operating Partnership are the same on their respective financial statements. The separate discussions of Vivmark and the Operating Partnership in this report should be read in conjunction with each other to understand the consolidated results of the Company and how management operates it.

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VIVMARK RESIDENTIAL
CONSOLIDATED BALANCE SHEETS
(Amounts in thousands except for share amounts)
(Unaudited)

	September 30, 2026	December 31, 2025
ASSETS		
Operating real estate	$ 61,109,854	$ 27,709,945
Less accumulated depreciation	(9,898,933)	(8,686,084)
Operating real estate, net	51,210,921	19,023,861
Construction in progress ("CIP"), including land	1,689,500	1,458,795
Land held for development	133,943	123,751
Real estate assets held for sale, net	166,642	150,262
Total real estate, net	53,201,006	20,756,669
Unconsolidated real estate investments and advances	448,162	123,173
Cash and cash equivalents	111,876	187,234
Restricted cash	275,828	165,849
Deferred development costs	74,161	73,237
Right of use lease assets	690,130	147,537
Notes receivable, net	310,208	259,051
Prepaid expenses and other assets	867,925	479,387
Total assets	**$ 55,979,296**	**$ 22,192,137**
LIABILITIES AND EQUITY		
Liabilities:		
Unsecured debt, net	$ 13,941,316	$ 7,879,380
Line of credit and commercial paper, net	1,021,255	739,608
Mortgage notes payable, net	2,039,437	709,564
Distributions payable	552,975	250,548
Lease liabilities	415,652	165,200
Accounts payable and accrued expenses	1,198,928	480,120
Other liabilities	221,723	133,400
Total liabilities	**19,391,286**	**10,357,820**
Commitments and contingencies		
Redeemable Noncontrolling Interests – Operating Partnership	**169,781**	—
Equity:		
Shareholders' equity:		
Preferred Shares of beneficial interest, $0.01 par value; 100,000,000 shares authorized; 343,100 shares issued and outstanding as of September 30, 2026 and 0 shares issued and outstanding as of December 31, 2025	17,155	—
Common Shares of beneficial interest, $0.01 par value; 2,000,000,000 shares authorized; 773,374,666 shares issued and outstanding as of September 30, 2026 and 391,245,275 shares issued and outstanding as of December 31, 2025	7,734	3,912
Additional paid-in-capital	36,813,105	11,209,785
Retained earnings (loss)	(1,038,322)	371,157
Accumulated other comprehensive income (loss)	57,580	26,486
Total shareholders' equity	35,857,252	11,611,340
Noncontrolling interests:		
Operating Partnership and DownREIT Units	459,750	222,977
Partially Owned Communities	101,227	—
Total noncontrolling interests	560,977	222,977
Total equity	**36,418,229**	**11,834,317**
Total liabilities and equity	**$ 55,979,296**	**$ 22,192,137**

See accompanying notes

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VIVMARK RESIDENTIAL
CONSOLIDATED STATEMENTS OF OPERATIONS
(Amounts in thousands except per share data)
(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2026	2025	2026	2025
REVENUES				
Rental income	$ 1,193,530	$ 764,926	$ 2,737,962	$ 2,267,665
Management, development and other fees	1,954	1,870	5,568	5,204
Total revenues	1,195,484	766,796	2,743,530	2,272,869
EXPENSES				
Property operating, excluding property taxes	245,277	164,342	559,223	464,748
Property taxes	147,492	89,749	327,715	257,611
Property management	56,273	39,062	136,471	116,653
General and administrative	118,308	22,052	167,521	64,828
Expensed development and pursuit costs	5,017	1,392	16,042	8,629
Transaction costs	464,321	—	476,688	—
Depreciation	897,976	230,371	1,364,056	679,989
Interest expense	123,791	68,172	268,652	197,933
Casualty and impairment loss	2,374	—	6,993	858
Total expenses	2,060,829	615,140	3,323,361	1,791,249
Gain (loss) on sale of communities	108,304	180,155	287,877	336,081
Income (loss) from unconsolidated real estate investments	(5,811)	137	(6,286)	552
Non-operating gains (losses)	3,593	42,454	5,516	43,849
Other income (expense), net	11,446	9,594	29,933	27,740
Income (loss) before income taxes	(747,813)	383,996	(262,791)	889,842
Tax benefit (expense)	672	166	832	772
Net income (loss)	(747,141)	384,162	(261,959)	890,614
Net (income) loss attributable to noncontrolling interests:				
Operating Partnership and DownREIT Units	11,027	(2,856)	7,294	(4,046)
Partially Owned Communities	966	—	966	—
Net income (loss) attributable to controlling interests	(735,148)	381,306	(253,699)	886,568
Preferred distributions	(355)	—	(355)	—
Net income (loss) available to Common Shares	$ (735,503)	$ 381,306	$ (254,054)	$ 886,568
Earnings per share – basic:				
Net income (loss) available to Common Shares	$ (1.27)	$ 0.96	$ (0.56)	$ 2.23
Weighted average Common Shares outstanding	581,369	396,855	455,953	396,977
Earnings per share – diluted:				
Net income (loss) available to Common Shares	$ (1.27)	$ 0.96	$ (0.57)	$ 2.23
Weighted average Common Shares outstanding	585,438	397,934	457,324	398,032

See accompanying notes

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VIVMARK RESIDENTIAL
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)
(Amounts in thousands)
(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2026	2025	2026	2025
Comprehensive income (loss):				
Net income (loss)	$ (747,141)	$ 384,162	$ (261,959)	$ 890,614
Other comprehensive income (loss):				
Gain (loss) on cash flow hedges	19,462	36	33,214	(5,824)
Cash flow hedge (gains) losses reclassified to earnings	(778)	(1,423)	(2,028)	(2,266)
Other comprehensive income (loss)	18,684	(1,387)	31,186	(8,090)
Comprehensive income (loss)	(728,457)	382,775	(230,773)	882,524
Comprehensive (income) loss attributable to noncontrolling interests	11,993	(2,856)	8,260	(4,046)
Comprehensive income (loss) attributable to controlling interests	$ (716,464)	$ 379,919	$ (222,513)	$ 878,478

See accompanying notes

VIVMARK RESIDENTIAL
CONSOLIDATED STATEMENTS OF CHANGES IN EQUITY
(Amounts in thousands except per share data)
(Unaudited)

	Preferred Shares	Common Shares	Additional Paid-In Capital	Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Total Shareholders' Equity	Noncontrolling Interests	Total Equity
Balance at December 31, 2025	$ —	$ 3,912	$ 11,209,785	$ 371,157	$ 26,486	$ 11,611,340	$ 222,977	$ 11,834,317
Net income (loss)	—	—	—	325,730	—	325,730	2,560	328,290
Gain on cash flow hedges, net	—	—	—	—	6,526	6,526	50	6,576
Cash flow hedge gains reclassified to earnings	—	—	—	—	(559)	(559)	(4)	(563)
Dividends declared ($0.64 per Common Share)	—	—	—	(248,883)	—	(248,883)	(1,887)	(250,770)
Issuance of Common Shares, net of withholdings	—	6	(13,169)	371	—	(12,792)	—	(12,792)
Repurchase of Common Shares, including repurchase costs	—	(34)	(89,701)	(108,745)	—	(198,480)	—	(198,480)
Amortization of deferred compensation	—	—	8,043	—	—	8,043	—	8,043
Balance at March 31, 2026	$ —	$ 3,884	$ 11,114,958	$ 339,630	$ 32,453	$ 11,490,925	$ 223,696	$ 11,714,621
Net income (loss)	—	—	—	155,720	—	155,720	1,173	156,893
Gain on cash flow hedges, net	—	—	—	—	7,125	7,125	53	7,178
Cash flow hedge gains reclassified to earnings	—	—	—	—	(682)	(682)	(5)	(687)
Redemption of DownREIT Units	—	—	2,656	—	—	2,656	(16,925)	(14,269)
Dividends declared ($0.64 per Common Share)	—	—	—	(253,212)	—	(253,212)	(1,745)	(254,957)
Issuance of Common Shares, net of withholdings	—	78	608,108	50	—	608,236	—	608,236
Amortization of deferred compensation	—	—	11,643	—	—	11,643	—	11,643
Balance at June 30, 2026	$ —	$ 3,962	$ 11,737,365	$ 242,188	$ 38,896	$ 12,022,411	$ 206,247	$ 12,228,658
Net income (loss)	—	—	—	(735,148)	—	(735,148)	(11,993)	(747,141)
Merger with Equity Residential	17,155	3,744	24,669,309	—	—	24,690,208	528,811	25,219,019
Gain on cash flow hedges, net	—	—	—	—	19,462	19,462	—	19,462
Cash flow hedge gains reclassified to earnings	—	—	—	—	(778)	(778)	—	(778)
Conversion of OP Units into Common Shares	—	—	764	—	—	764	(764)	—
Redemption of DownREIT Units	—	—	344	—	—	344	(3,376)	(3,032)
Dividends declared ($0.7025 per Common Share) and other distributions	—	—	—	(545,376)	—	(545,376)	(10,256)	(555,632)
Issuance of Common Shares, net of withholdings	—	28	225,305	14	—	225,347	—	225,347
Issuance of restricted units to noncontrolling interests	—	—	—	—	—	—	42	42
Adjustment for noncontrolling interests ownership in Operating Partnership	—	—	153,030	—	—	153,030	(153,030)	—
Change in market value of Redeemable Noncontrolling Interests – Operating Partnership	—	—	14,558	—	—	14,558	—	14,558
Supplemental Executive Retirement Plan (SERP)	—	—	(8,313)	—	—	(8,313)	—	(8,313)
Amortization of deferred compensation	—	—	22,645	—	—	22,645	5,296	27,941
Deferred offering costs	—	—	(1,902)	—	—	(1,902)	—	(1,902)
Balance at September 30, 2026	$ 17,155	$ 7,734	$ 36,813,105	$ (1,038,322)	$ 57,580	$ 35,857,252	$ 560,977	$ 36,418,229

See accompanying notes

VIVMARK RESIDENTIAL
CONSOLIDATED STATEMENTS OF CHANGES IN EQUITY (Continued)
(Amounts in thousands except per share data)
(Unaudited)

	Preferred Shares	Common Shares	Additional Paid-In Capital	Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Total Shareholders' Equity	Noncontrolling Interests	Total Equity
Balance at December 31, 2024	$ —	$ 3,972	$ 11,311,566	$ 591,250	$ 34,304	$ 11,941,092	$ —	$ 11,941,092
Net income attributable to controlling interests	—	—	—	236,597	—	236,597	—	236,597
Loss on cash flow hedges, net	—	—	—	—	(3,597)	(3,597)	—	(3,597)
Cash flow hedge gains reclassified to earnings	—	—	—	—	(273)	(273)	—	(273)
Dividends declared to common shareholders ($0.63 per Common Share)	—	—	—	(250,265)	—	(250,265)	—	(250,265)
Issuance of Common Shares, net of withholdings	—	3	(14,373)	(1,096)	—	(15,466)	—	(15,466)
Amortization of deferred compensation	—	—	8,195	—	—	8,195	—	8,195
Balance at March 31, 2025	$ —	$ 3,975	$ 11,305,388	$ 576,486	$ 30,434	$ 11,916,283	$ —	$ 11,916,283
Net income	—	—	—	268,665	—	268,665	1,190	269,855
Loss on cash flow hedges, net	—	—	—	—	(2,263)	(2,263)	—	(2,263)
Cash flow hedge gains reclassified to earnings	—	—	—	—	(570)	(570)	—	(570)
Issuance of DownREIT Units	—	—	—	—	—	—	222,653	222,653
Dividends declared to noncontrolling interests ($0.43 per Common Share)	—	—	—	—	—	—	(1,264)	(1,264)
Dividends declared to common shareholders ($0.63 per Common Share)	—	—	—	(249,610)	—	(249,610)	—	(249,610)
Issuance of Common Shares, net of withholdings	—	—	2,676	(6)	—	2,670	—	2,670
Amortization of deferred compensation	—	—	12,544	—	—	12,544	—	12,544
Balance at June 30, 2025	$ —	$ 3,975	$ 11,320,608	$ 595,535	$ 27,601	$ 11,947,719	$ 222,579	$ 12,170,298
Net income	—	—	—	381,306	—	381,306	2,856	384,162
Gain on cash flow hedges	—	—	—	—	36	36	—	36
Cash flow hedge gains reclassified to earnings	—	—	—	—	(1,423)	(1,423)	—	(1,423)
Dividends declared to noncontrolling interests ($0.63 per Common Share)	—	—	—	—	—	—	(1,855)	(1,855)
Dividends declared to common shareholders ($0.63 per Common Share)	—	—	—	(248,227)	—	(248,227)	—	(248,227)
Issuance of Common Shares, net of withholdings	—	—	49	11	—	60	—	60
Repurchase of Common Shares, including repurchase costs	—	(22)	(62,097)	(89,727)	—	(151,846)	—	(151,846)
Amortization of deferred compensation	—	—	10,290	—	—	10,290	—	10,290
Balance at September 30, 2025	$ —	$ 3,953	$ 11,268,850	$ 638,898	$ 26,214	$ 11,937,915	$ 223,580	$ 12,161,495

See accompanying notes

VIVMARK RESIDENTIAL
CONSOLIDATED STATEMENTS OF CASH FLOWS
(Amounts in thousands)
(Unaudited)

	Nine Months Ended September 30,	
	2026	2025
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net income (loss)	$ (261,959)	$ 890,614
Depreciation	1,364,056	679,989
Amortization of deferred financing costs and debt discount	22,249	10,173
Amortization of stock-based compensation	38,406	21,268
Equity in income (loss) of, and return on, unconsolidated investments	13,676	6,515
Abandonment of development pursuits	13,374	8,629
Casualty and impairment loss	4,130	858
Non-operating (gains) losses	(4,963)	(39,509)
Loss on extinguishment of debt	2,028	—
Cash flow hedge gains reclassified to earnings	(1,583)	(912)
(Gain) loss on sale of real estate assets	(287,877)	(340,150)
(Increase) decrease in prepaid expenses and other assets	(69,094)	(35,365)
Increase (decrease) in accounts payable and accrued expenses and other liabilities	209,431	68,564
Net cash provided by operating activities	1,041,874	1,270,674
CASH FLOWS FROM INVESTING ACTIVITIES:		
Cash acquired in Merger	424,581	—
Investment in real estate – acquisitions	—	(643,975)
Investment in real estate – development/other	(978,961)	(837,848)
Capital expenditures	(266,779)	(186,318)
Proceeds from disposition of real estate, net	532,349	799,247
Investment in unconsolidated entities – cash equity or loans	(18,526)	(35,881)
Distributions from unconsolidated entities – return of capital	413	—
Note receivable lending	(43,919)	(20,327)
Note receivable payments	17,589	25
Net cash provided by (used for) investing activities	$ (333,253)	$ (925,077)

See accompanying notes

VIVMARK RESIDENTIAL
CONSOLIDATED STATEMENTS OF CASH FLOWS (Continued)
(Amounts in thousands)
(Unaudited)

	Nine Months Ended September 30,	
	2026	2025
CASH FLOWS FROM FINANCING ACTIVITIES:		
Issuance of common shares, net	$ 811,778	$ 3,377
Repurchase of common shares, net	(198,480)	(151,846)
Dividends paid	(752,110)	(742,879)
Debt financing costs	(14,966)	(20,003)
Net borrowings under unsecured credit facility and commercial paper	281,647	234,981
Repayments of mortgage notes payable, including prepayment penalties	(200,886)	(10,492)
Issuance of unsecured notes	—	947,488
Repayment of unsecured notes	(567,025)	(525,000)
Proceeds from (payments on) settlement of derivative instruments	—	4,099
Payments related to tax withholding for share-based compensation	(13,693)	(16,643)
Noncontrolling interests, joint venture and preferred equity transactions	(20,265)	(13,864)
Net cash provided by (used for) financing activities	(674,000)	(290,782)
Net increase in cash and cash equivalents and restricted cash	34,621	54,815
Cash and cash equivalents and restricted cash, beginning of period	353,083	267,076
Cash and cash equivalents and restricted cash, end of period	$ 387,704	$ 321,891
Cash and cash equivalents and restricted cash, end of period		
Cash and cash equivalents	$ 111,876	$ 123,313
Restricted cash	275,828	198,578
Total cash and cash equivalents and restricted cash, end of period	$ 387,704	$ 321,891
Cash paid during the period for interest, net of amount capitalized	$ 186,207	$ 163,332

See accompanying notes

VIVMARK RESIDENTIAL
CONSOLIDATED STATEMENTS OF CASH FLOWS (Continued)
(Unaudited)

Supplemental disclosures of non-cash investing and financing activities:

During the nine months ended September 30, 2026:

- Dividends declared but not paid totaled $553.0 million.
- The Company recorded (i) an increase to prepaid expenses and other assets of $33.2 million and a corresponding adjustment to accumulated other comprehensive income (loss); and (ii) reclassified $2.0 million of cash flow hedge gains from other comprehensive income (loss) to interest expense to record the impact of the Company's derivative and hedging activity.
- AvalonBay and Equity Residential completed the previously announced Merger, with each outstanding share of AvalonBay common stock automatically cancelled and converted into the right to receive 2.793 Common Shares, plus the right, if any, to receive cash in lieu of fractional Common Shares. Total net assets acquired were $24.2 billion, exclusive of cash and cash equivalents and restricted cash acquired. See Note 3, “Business Combination,” for more information.
- The Company recorded adjustments related to its Supplemental Executive Retirement Plan ("SERP"). These adjustments resulted in a reduction of $4.1 million in other liabilities (reflecting changes in deferred compensation and SERP benefit obligations), a reduction of $4.0 million in other assets (reflecting market valuation adjustments on underlying plan assets held in trust), and a corresponding reduction to additional paid-in capital of $0.1 million.
- The Company recognized a net increase in payables for construction of $36.6 million.

During the nine months ended September 30, 2025:

- The Company acquired six apartment communities, in the Dallas-Fort Worth metropolitan area, containing 1,844 apartment homes for $415.6 million, with the consideration comprised of a cash payment of $193.0 million and the issuance of 2,960,580 units representing limited partnership interests (the “DownREIT Units”).
- Dividends declared but not paid totaled $250.1 million.
- The Company recorded (i) a decrease to prepaid expenses and other assets of $5.8 million and a corresponding adjustment to accumulated other comprehensive income (loss); and (ii) reclassified $2.3 million of cash flow hedge gains from other comprehensive income (loss) to interest expense to record the impact of the Company's derivative and hedging activity.
- The Company recognized a net increase in payables for construction of $12.0 million.

ERP OPERATING LIMITED PARTNERSHIP
CONSOLIDATED BALANCE SHEETS
(Amounts in thousands)
(Unaudited)

	September 30, 2026	December 31, 2025
ASSETS		
Operating real estate	$ 61,109,854	$ 27,709,945
Less accumulated depreciation	(9,898,933)	(8,686,084)
Operating real estate, net	51,210,921	19,023,861
Construction in progress ("CIP"), including land	1,689,500	1,458,795
Land held for development	133,943	123,751
Real estate assets held for sale, net	166,642	150,262
Total real estate, net	53,201,006	20,756,669
Unconsolidated real estate investments and advances	448,162	123,173
Cash and cash equivalents	111,876	187,234
Restricted cash	275,828	165,849
Deferred development costs	74,161	73,237
Right of use lease assets	690,130	147,537
Notes receivable, net	310,208	259,051
Prepaid expenses and other assets	867,925	479,387
Total assets	**$ 55,979,296**	**$ 22,192,137**
LIABILITIES AND CAPITAL		
Liabilities:		
Unsecured debt, net	$ 13,941,316	$ 7,879,380
Line of credit and commercial paper, net	1,021,255	739,608
Mortgage notes payable, net	2,039,437	709,564
Distributions payable	552,975	250,548
Lease liabilities	415,652	165,200
Accounts payable and accrued expenses	1,198,928	480,120
Other liabilities	221,723	133,400
Total liabilities	**19,391,286**	**10,357,820**
Commitments and contingencies		
Redeemable Limited Partners	**169,781**	—
Capital:		
Partners' Capital:		
Preference Units	17,155	—
General Partner	35,782,517	11,584,854
Limited Partners	335,051	—
Accumulated other comprehensive income (loss)	57,580	26,486
Total partners' capital	36,192,303	11,611,340
Noncontrolling Interests – DownREIT Units	124,699	222,977
Noncontrolling Interests – Partially Owned Communities	101,227	—
Total capital	**36,418,229**	**11,834,317**
Total liabilities and capital	**$ 55,979,296**	**$ 22,192,137**

See accompanying notes

ERP OPERATING LIMITED PARTNERSHIP
CONSOLIDATED STATEMENTS OF OPERATIONS
(Amounts in thousands except per Unit data)
(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2026	2025	2026	2025
REVENUES				
Rental income	$ 1,193,530	$ 764,926	$ 2,737,962	$ 2,267,665
Management, development and other fees	1,954	1,870	5,568	5,204
Total revenues	1,195,484	766,796	2,743,530	2,272,869
EXPENSES				
Property operating, excluding property taxes	245,277	164,342	559,223	464,748
Property taxes	147,492	89,749	327,715	257,611
Property management	56,273	39,062	136,471	116,653
General and administrative	118,308	22,052	167,521	64,828
Expensed development and pursuit costs	5,017	1,392	16,042	8,629
Transaction costs	464,321	—	476,688	—
Depreciation	897,976	230,371	1,364,056	679,989
Interest expense	123,791	68,172	268,652	197,933
Casualty and impairment loss	2,374	—	6,993	858
Total expenses	2,060,829	615,140	3,323,361	1,791,249
Gain (loss) on sale of communities	108,304	180,155	287,877	336,081
Income (loss) from unconsolidated real estate investments	(5,811)	137	(6,286)	552
Non-operating gains (losses)	3,593	42,454	5,516	43,849
Other income (expense), net	11,446	9,594	29,933	27,740
Income (loss) before income taxes	(747,813)	383,996	(262,791)	889,842
Tax benefit (expense)	672	166	832	772
Net income (loss)	(747,141)	384,162	(261,959)	890,614
Net (income) loss attributable to noncontrolling interests – DownREIT Units	2,276	(2,856)	(1,457)	(4,046)
Net (income) loss attributable to noncontrolling interests – Partially Owned Communities	966	—	966	—
Net income (loss) attributable to controlling interests	$ (743,899)	$ 381,306	$ (262,450)	$ 886,568
ALLOCATION OF NET INCOME (LOSS):				
Preference Units	$ 355	$ —	$ 355	$ —
General Partner	$ (735,503)	$ 381,306	$ (254,054)	$ 886,568
Limited Partners	(8,751)	—	(8,751)	—
Net income (loss) available to Units	$ (744,254)	$ 381,306	$ (262,805)	$ 886,568
Earnings per Unit – basic:				
Net income (loss) available to Units	$ (1.27)	$ 0.96	$ (0.57)	$ 2.23
Weighted average Units outstanding	585,438	396,855	457,324	396,977
Earnings per Unit – diluted:				
Net income (loss) available to Units	$ (1.27)	$ 0.96	$ (0.57)	$ 2.23
Weighted average Units outstanding	585,438	397,934	457,324	398,032

See accompanying notes

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ERP OPERATING LIMITED PARTNERSHIP
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)
(Amounts in thousands)
(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2026	2025	2026	2025
Comprehensive income (loss):				
Net income (loss)	$ (747,141)	$ 384,162	$ (261,959)	$ 890,614
Other comprehensive income (loss):				
Gain (loss) on cash flow hedges	19,462	36	33,214	(5,824)
Cash flow hedge (gains) losses reclassified to earnings	(778)	(1,423)	(2,028)	(2,266)
Other comprehensive income (loss)	18,684	(1,387)	31,186	(8,090)
Comprehensive income (loss)	(728,457)	382,775	(230,773)	882,524
Comprehensive (income) loss attributable to noncontrolling interests – DownREIT Units	2,276	(2,856)	(1,457)	(4,046)
Comprehensive (income) loss attributable to noncontrolling interests – Partially Owned Communities	966	—	966	—
Comprehensive income (loss) attributable to controlling interests	$ (725,215)	$ 379,919	$ (231,264)	$ 878,478

See accompanying notes

ERP OPERATING LIMITED PARTNERSHIP
CONSOLIDATED STATEMENTS OF CHANGES IN CAPITAL
(Amounts in thousands except per Unit data)
(Unaudited)

	Preference Units	General Partner Capital	Limited Partner Capital	Accumulated Other Comprehensive Income (Loss)	Total Partners' Capital	Noncontrolling Interests	Total Capital
Balance at December 31, 2025	$ —	$ 11,584,854	$ —	$ 26,486	$ 11,611,340	$ 222,977	$ 11,834,317
Net income (loss)	—	325,730	—	—	325,730	2,560	328,290
Gain on cash flow hedges, net	—	—	—	6,526	6,526	50	6,576
Cash flow hedge gains reclassified to earnings	—	—	—	(559)	(559)	(4)	(563)
Dividends declared ($0.64 per Common Share)	—	(248,883)	—	—	(248,883)	(1,887)	(250,770)
Issuance of Common Shares, net of withholdings	—	(12,792)	—	—	(12,792)	—	(12,792)
Repurchase of Common Shares, including repurchase costs	—	(198,480)	—	—	(198,480)	—	(198,480)
Amortization of deferred compensation	—	8,043	—	—	8,043	—	8,043
Balance at March 31, 2026	$ —	$ 11,458,472	$ —	$ 32,453	11,490,925	$ 223,696	$ 11,714,621
Net income (loss)	—	155,720	—	—	155,720	1,173	156,893
Gain on cash flow hedges, net	—	—	—	7,125	7,125	53	7,178
Cash flow hedge gains reclassified to earnings	—	—	—	(682)	(682)	(5)	(687)
Redemption of DownREIT Units	—	2,656	—	—	2,656	(16,925)	(14,269)
Dividends declared ($0.64 per Common Share)	—	(253,212)	—	—	(253,212)	(1,745)	(254,957)
Issuance of Common Shares, net of withholdings	—	608,236	—	—	608,236	—	608,236
Amortization of deferred compensation	—	11,643	—	—	11,643	—	11,643
Balance at June 30, 2026	$ —	$ 11,983,515	$ —	$ 38,896	12,022,411	$ 206,247	$ 12,228,658
Net income (loss)	—	(735,148)	(8,751)	—	(743,899)	(3,242)	(747,141)
Merger with Equity Residential	17,155	24,673,053	426,195	—	25,116,403	102,616	25,219,019
Gain on cash flow hedges, net	—	—	—	19,462	19,462	—	19,462
Cash flow hedge gains reclassified to earnings	—	—	—	(778)	(778)	—	(778)
Conversion of Limited Partner Units into General Partner Units	—	764	(764)	—	—	—	—
Redemption of DownREIT Units	—	344	—	—	344	(3,376)	(3,032)
Distributions ($0.7025 per Common Share) and other	—	(545,376)	(7,942)	—	(553,318)	(2,314)	(555,632)
Issuance of General Partner Units, net of withholdings	—	225,347	—	—	225,347	—	225,347
Issuance of restricted units to Limited Partners	—	—	42	—	42	—	42
Adjustment for Limited Partners ownership in Operating Partnership	—	153,030	(79,025)	—	74,005	(74,005)	—
Change in market value of Redeemable Limited Partners	—	14,558	—	—	14,558	—	14,558
Supplemental Executive Retirement Plan (SERP)	—	(8,313)	—	—	(8,313)	—	(8,313)
Amortization of deferred compensation	—	22,645	5,296	—	27,941	—	27,941
Deferred offering costs	—	(1,902)	—	—	(1,902)	—	(1,902)
Balance at September 30, 2026	$ 17,155	$ 35,782,517	$ 335,051	$ 57,580	36,192,303	$ 225,926	$ 36,418,229

See accompanying notes

ERP OPERATING LIMITED PARTNERSHIP
CONSOLIDATED STATEMENTS OF CHANGES IN CAPITAL (Continued)
(Amounts in thousands except per Unit data)
(Unaudited)

	Preference Units	General Partner Capital	Limited Partner Capital	Accumulated Other Comprehensive Income (Loss)	Total Partners' Capital	Noncontrolling Interests	Total Capital
Balance at December 31, 2024	$ —	$ 11,906,788	$ —	$ 34,304	$ 11,941,092	$ —	$ 11,941,092
Net income available to Units	—	236,597	—	—	236,597	—	236,597
Loss on cash flow hedges, net	—	—	—	(3,597)	(3,597)	—	(3,597)
Cash flow hedge gains reclassified to earnings	—	—	—	(273)	(273)	—	(273)
Dividends declared to common shareholders ($0.63 per Common Share)	—	(250,265)	—	—	(250,265)	—	(250,265)
Issuance of Common Shares, net of withholdings	—	(15,466)	—	—	(15,466)	—	(15,466)
Amortization of deferred compensation	—	8,195	—	—	8,195	—	8,195
Balance at March 31, 2025	$ —	$ 11,885,849	$ —	$ 30,434	$ 11,916,283	$ —	$ 11,916,283
Net income	—	268,665	—	—	268,665	1,190	269,855
Loss on cash flow hedges, net	—	—	—	(2,263)	(2,263)	—	(2,263)
Cash flow hedge gains reclassified to earnings	—	—	—	(570)	(570)	—	(570)
Issuance of DownREIT Units	—	—	—	—	—	222,653	222,653
Dividends declared to noncontrolling interests ($0.43 per Common Share)	—	—	—	—	—	(1,264)	(1,264)
Dividends declared to common shareholders ($0.63 per Common Share)	—	(249,610)	—	—	(249,610)	—	(249,610)
Issuance of Common Shares, net of withholdings	—	2,670	—	—	2,670	—	2,670
Amortization of deferred compensation	—	12,544	—	—	12,544	—	12,544
Balance at June 30, 2025	$ —	$ 11,920,118	$ —	$ 27,601	$ 11,947,719	$ 222,579	12,170,298
Net income	—	381,306	—	—	381,306	2,856	384,162
Gain on cash flow hedges	—	—	—	36	36	—	36
Cash flow hedge gains reclassified to earnings	—	—	—	(1,423)	(1,423)	—	(1,423)
Dividends declared to noncontrolling interests ($0.63 per Common Share)	—	—	—	—	—	(1,855)	(1,855)
Dividends declared to common shareholders ($0.63 per Common Share)	—	(248,227)	—	—	(248,227)	—	(248,227)
Issuance of Common Shares, net of withholdings	—	60	—	—	60	—	60
Repurchase of Common Shares, including repurchase costs	—	(151,846)	—	—	(151,846)	—	(151,846)
Amortization of deferred compensation	—	10,290	—	—	10,290	—	10,290
Balance at September 30, 2025	$ —	$ 11,911,701	$ —	$ 26,214	$ 11,937,915	$ 223,580	$ 12,161,495

See accompanying notes

ERP OPERATING LIMITED PARTNERSHIP
CONSOLIDATED STATEMENTS OF CASH FLOWS
(Amounts in thousands)
(Unaudited)

	Nine Months Ended September 30,	
	2026	**2025**
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net income (loss)	$ (261,959)	$ 890,614
Depreciation	1,364,056	679,989
Amortization of deferred financing costs and debt discount	22,249	10,173
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ERP OPERATING LIMITED PARTNERSHIP
CONSOLIDATED STATEMENTS OF CASH FLOWS (Continued)
(Amounts in thousands)
(Unaudited)

	Nine Months Ended September 30,	
	2026	2025
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Issuance of General Partner Units, net	$ 811,778	$ 3,377
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Distributions paid	(752,110)	(742,879)
Contributions – Limited Partners	42	—
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ERP OPERATING LIMITED PARTNERSHIP
CONSOLIDATED STATEMENTS OF CASH FLOWS (Continued)
(Unaudited)

Supplemental disclosures of non-cash investing and financing activities:

During the nine months ended September 30, 2026:

- Distributions declared but not paid totaled $553.0 million.
- The Company recorded (i) an increase to prepaid expenses and other assets of $33.2 million and a corresponding adjustment to accumulated other comprehensive income (loss); and (ii) reclassified $2.0 million of cash flow hedge gains from other comprehensive income (loss) to interest expense to record the impact of the Company's derivative and hedging activity.
- AvalonBay and Equity Residential completed the previously announced Merger, resulting in the issuance of Common Shares by the Company and a corresponding issuance of General Partner Units in ERPOP. Total net assets acquired were $24.2 billion, exclusive of cash and cash equivalents and restricted cash acquired. See Note 3, “Business Combination,” for more information.
- The Company recorded adjustments related to its Supplemental Executive Retirement Plan ("SERP"). These adjustments resulted in a reduction of $4.1 million in other liabilities (reflecting changes in deferred compensation and SERP benefit obligations), a reduction of $4.0 million in other assets (reflecting market valuation adjustments on underlying plan assets held in trust), and a corresponding reduction to General Partner Capital of $0.1 million.
- The Company recognized a net increase in payables for construction of $36.6 million.

During the nine months ended September 30, 2025:

- The Company acquired six apartment communities, in the Dallas-Fort Worth metropolitan area, containing 1,844 apartment homes for $415.6 million, with the consideration comprised of a cash payment of $193.0 million and the issuance of 2,960,580 DownREIT Units.
- Dividends declared but not paid totaled $250.1 million.
- The Company recorded (i) a decrease to prepaid expenses and other assets of $5.8 million and a corresponding adjustment to accumulated other comprehensive income (loss); and (ii) reclassified $2.3 million of cash flow hedge gains from other comprehensive income (loss) to interest expense to record the impact of the Company's derivative and hedging activity.
- The Company recognized a net increase in payables for construction of $12.0 million.

VIVMARK RESIDENTIAL
ERP OPERATING LIMITED PARTNERSHIP
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

1. Business

On August 17, 2026 (the "Merger Date"), AvalonBay Communities, Inc., a Maryland corporation ("AvalonBay"), Equity Residential, a Maryland real estate investment trust ("Equity Residential"), ERP Operating Limited Partnership, an Illinois limited partnership ("ERPOP"), and Canopy Merger Sub LLC, a Maryland limited liability company and a direct wholly owned subsidiary of Equity Residential ("Merger Sub"), completed the transactions contemplated by the Agreement and Plan of Merger (the "Merger Agreement"). Pursuant to the Merger Agreement, (i) AvalonBay contributed certain assets to ERPOP in exchange for units of partnership interest in ERPOP with an aggregate value equal to the fair market value of the contributed assets (the "Asset Contribution"), and (ii) following the Asset Contribution, AvalonBay merged with and into Merger Sub, with Merger Sub surviving as a direct, wholly owned subsidiary of Equity Residential (the "Merger"). Following the Merger, Equity Residential contributed all of the membership interests of Merger Sub to ERPOP, and Merger Sub then merged with and into ERPOP, with ERPOP continuing as the surviving entity. On the Merger Date, Equity Residential was renamed Vivmark Residential ("Vivmark").

At the effective time of the Merger, each outstanding share of AvalonBay common stock was automatically cancelled and converted into the right to receive 2.793 common shares ("Common Shares") of Vivmark (the "Exchange Ratio"), plus the right, if any, to receive cash in lieu of fractional Common Shares. As a result, former AvalonBay stockholders and Equity Residential shareholders owned approximately 51% and 49% of Vivmark, respectively.

The Merger was accounted for as a reverse acquisition under ASC 805, *Business Combinations*, with Equity Residential as the legal acquirer and AvalonBay as the accounting acquirer. AvalonBay was determined to be the accounting acquirer based on the following: (i) former AvalonBay stockholders hold the largest portion of the voting rights in the Company; and (ii) AvalonBay's senior management, including its Chief Executive Officer and President, comprise the majority of the executive management team of the Company. Accordingly, the Company's historical financial statements for periods before the Merger Date are those of AvalonBay, and share and per share amounts for those periods have been retroactively adjusted to reflect the Exchange Ratio. AvalonBay's assets and liabilities continue to be reported at their historical carrying amounts, and Equity Residential's identifiable assets acquired and liabilities assumed were recognized at their fair values as of the Merger Date. The Company's results include Equity Residential's operations from the Merger Date. See Note 3, "Business Combination," for additional information.

Vivmark develops, redevelops, acquires, owns and operates multifamily communities in premier U.S. markets and has elected to be taxed as a real estate investment trust ("REIT").

References to the "Company," "we," "us" or "our" mean collectively Vivmark, ERPOP and the entities and subsidiaries owned or controlled by Vivmark and/or ERPOP. References to the "Operating Partnership" mean collectively ERPOP and the entities and subsidiaries owned or controlled by ERPOP. Unless otherwise indicated, these notes apply to both the Company and the Operating Partnership.

Vivmark is the sole general partner of ERPOP ("General Partner") and, as of September 30, 2026, owned an approximate 98.7% ownership interest in ERPOP. References to "General Partner Capital" and "General Partner Units" represent Vivmark's ownership interest in ERPOP. Approximately 1.3% is owned by ERPOP's limited partners ("Limited Partners"). References to "Limited Partner Capital" and "Limited Partner Units" represent Limited Partners' interests in ERPOP. The Company conducts all of its community ownership, operations, development, redevelopment and any other activity through the Operating Partnership, which holds all of the assets of the Company, including the Company's ownership interests in its joint ventures. Vivmark has no assets or liabilities other than its investment in ERPOP. Vivmark is obligated to contribute the net proceeds of its equity offerings to ERPOP. In exchange, it receives one unit of partnership interest in ERPOP ("OP Unit") for each Common Share, or, for any preferred share offerings, preference units with economic terms substantially the same as the related preferred shares. Vivmark does not have any indebtedness as all debt is incurred by the Operating Partnership. ERPOP is structured as a partnership with no publicly traded equity.

As of September 30, 2026, the Company owned or held a direct or indirect ownership interest in 636 communities containing 185,212 apartment homes located in 12 states and the District of Columbia. The Company also owned or held a direct or indirect ownership interest in land or rights to land on which the Company expects to develop an additional 32 communities that, if developed as expected, will contain an estimated 10,273 apartment homes. The ownership breakdown includes:

	Communities (1)	Apartment Homes
Operating Communities	575	166,327
Development Communities	35	11,740
Wholly Owned Communities	610	178,067
Operating Communities	13	3,096
Partially Owned Communities – Consolidated	13	3,096
Operating Communities	13	4,049
Partially Owned Communities – Unconsolidated	13	4,049
Total	**636**	**185,212**

(1) Development communities are included when construction starts, and include communities that have completed construction and are conducting or have completed their lease-up activities.

2. Summary of Significant Accounting Policies

Basis of Presentation

The accompanying unaudited consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles ("GAAP") for interim financial information and in conjunction with the rules and regulations of the Securities and Exchange Commission ("SEC"). Accordingly, certain information and footnote disclosures normally included in complete financial statements required by GAAP have been condensed or omitted pursuant to such rules and regulations. Management believes the disclosures are adequate to ensure the information presented is not misleading. In the opinion of management, all adjustments and eliminations, consisting only of normal, recurring adjustments necessary for a fair presentation of the financial statements for the interim periods, have been included. All significant intercompany balances and transactions have been eliminated in consolidation. Operating results for the three and nine months ended September 30, 2026 are not necessarily indicative of the results that may be expected for the year ending December 31, 2026. These unaudited financial statements should be read in conjunction with the Annual Reports on Form 10-K of AvalonBay and Equity Residential for the year ended December 31, 2025, as previously filed with the SEC. See Note 3, "Business Combination," for additional discussion.

Principles of Consolidation

The Company holds an interest in subsidiaries, partnerships, joint ventures and other similar entities and accounts for these interests in accordance with the consolidation guidance. The Company first determines whether to consolidate the entity as a variable interest entity (“VIE”) or voting interest entity ("VOE"), or to account for the interest under the equity method of accounting as an unconsolidated entity. Under the VIE model, the Company consolidates an investment when it has power to direct the activities of the venture and the obligation to absorb losses or the right to receive benefits that could potentially be significant to the VIE. The Company's maximum exposure for its VIEs is limited to its investments in the respective VIEs and its portion of any loan guarantee. Under the VOE model, the Company consolidates an investment when (i) it controls the investment through ownership of a majority voting interest if the investment is not a limited partnership or (ii) it controls the investment through its ability to remove the other partners in the investment, at its discretion, when the investment is a limited partnership.

Due to Vivmark’s ability as General Partner to control either through ownership or by contract the Operating Partnership and its subsidiaries, the Operating Partnership and each such subsidiary which it controls has been consolidated with the Company for financial reporting purposes.

Noncontrolling Interests

Noncontrolling interests are ownership interests in consolidated entities held by parties other than the Company or the Operating Partnership, as applicable. Except for the redeemable interests described below, the Company classifies noncontrolling interests in the equity section of the consolidated balance sheets, separately from the Company’s equity. Consolidated net income (loss) and comprehensive income (loss) are presented inclusive of amounts attributable to both the parent and noncontrolling interests, followed by specific allocations to each presented separately on the face of the consolidated statements of operations and comprehensive income

(loss). See Note 8, "Equity, Capital and Other Interests," for additional discussion.

Noncontrolling Interests - Operating Partnership units/Limited Partner Units: The book value of the Noncontrolling Interests – Operating Partnership/Limited Partner Capital is allocated based on the ratio of Noncontrolling Interest - Operating Partnership units/Limited Partner Units to total units outstanding, which includes Common Shares/General Partner Units, Noncontrolling Interest - Operating Partnership/Limited Partner Units and DownREIT Units (as defined below). Net income (loss) and comprehensive income (loss) are allocated to Noncontrolling Interests - Operating Partnership/Limited Partner Capital based on the weighted average Limited Partner OP Units as a percentage of total weighted average OP Units and DownREIT Units. Issuances and retirements of Common Shares and OP Units change the ownership interests of both the Noncontrolling Interests - Operating Partnership and Vivmark. Such transactions and the related proceeds/payments are treated as capital transactions. Subject to certain exceptions, holders of Limited Partner Units may tender them for redemption for Common Shares on a one-for-one basis or, at ERPOP's election, cash based on the market price of a Common Share. Restricted units become exchangeable only after their capital accounts reach parity with OP Units (the "book-up" requirement) (see Note 9, "Share-Based Compensation").

Noncontrolling Interests - DownREIT Units: In connection with the Merger, an AvalonBay subsidiary, whose limited partner interests ("DownREIT Units") are held by third parties, became a subsidiary of the Operating Partnership, and the DownREIT Units were adjusted at the Exchange Ratio. DownREIT Units are presented as noncontrolling interests in the financial statements of both Vivmark and ERPOP. The book value of the DownREIT Units is allocated based on the ratio of DownREIT Units to total units outstanding, which includes Common Shares/General Partner Units, Noncontrolling Interest - Operating Partnership/Limited Partner Units and DownREIT Units. Net income (loss) and comprehensive income (loss) are allocated to DownREIT Units based on the weighted average DownREIT Units as a percentage of total weighted average OP Units and DownREIT Units. Subject to certain exceptions, holders of DownREIT Units may tender them for redemption for cash or, at the election of the DownREIT's general partner, Common Shares on a one-for-one basis.

Noncontrolling Interests - Partially Owned Communities: Noncontrolling interests in partially owned communities are the portion of consolidated communities not owned by the Company. The earnings or losses attributable to these interests are generally allocated based on ownership percentage, or according to the venture's distribution provisions where those differ, and are presented as noncontrolling interests in partially owned communities in the accompanying consolidated statements of operations and comprehensive income (loss).

Redeemable Noncontrolling Interests – Operating Partnership / Redeemable Limited Partners

Redeemable OP Units: For some OP Units, the Company is required, by contract or securities law, to deliver registered Common Shares upon exchange. Because delivering registered shares is not solely within the Company's control and settlement in cash is assumed, these OP Units are classified outside permanent equity in the mezzanine section of the accompanying consolidated balance sheets.

The book value of the Redeemable OP Units starts at its pro rata share of the total Limited Partner carrying amount, determined as Redeemable OP Units divided by total Limited Partner OP Units. At each reporting date the book value is adjusted to the greater of that amount or its redemption value, which is based on the Common Share price of Vivmark at the end of each respective reporting period. See Note 8, "Equity, Capital and Other Interests," for additional discussion.

Partners' Capital

The Limited Partners include individuals and entities that received Limited Partner Units in exchange for contributed properties and holders of restricted units issued as share-based compensation. Vivmark is the General Partner and holds all General Partner Units. Net income is allocated to the Limited Partners based on their respective ownership percentage of ERPOP. The ownership percentage is calculated by dividing the number of Limited Partner Units by total OP Units. Issuances and retirements of Common Shares and OP Units change the ownership interests of both the Limited Partners and Vivmark. Such transactions and the related proceeds and payments are treated as capital transactions.

Cash, Cash Equivalents and Restricted Cash

Cash and cash equivalents includes all cash and liquid investments with an original maturity of three months or less from the date acquired. Restricted cash includes replacement reserves for certain communities subject to ground leases, principal reserve funds that are restricted for the repayment of specified secured financing, amounts the Company has designated for planned 1031 exchange activity and resident security deposits. The majority of the Company's cash, cash equivalents and restricted cash are held at major commercial banks.

Real Estate Assets

The Company accounts for real estate acquisitions as either an asset acquisition or a business combination. Under either model, the Company identifies and determines the fair value of assets acquired, liabilities assumed and any noncontrolling interest in the acquiree. Typical assets acquired and liabilities assumed include land, building, furniture, fixtures and equipment, debt and identified intangible assets and liabilities, typically consisting of the value of above or below market leases and in-place leases. The Company utilizes various sources to determine fair value, including its own analysis of recently acquired and existing comparable communities in its portfolio and other market data. Consideration for acquisitions is typically in the form of cash unless otherwise disclosed. For an asset acquisition, the purchase price is allocated based on the relative fair value of the net assets. For a business combination, the Company records the assets acquired and liabilities assumed based on the fair value of each respective item. The Company expenses all applicable acquisition costs for a business combination and capitalizes all applicable acquisition costs for an asset acquisition. The Company expects that acquisitions of individual operating communities will generally be asset acquisitions.

The Company classifies real estate assets as real estate held for sale when it is probable a community will be disposed of. The Company presents the assets and liabilities of any communities that qualify as held for sale separately in the accompanying consolidated balance sheets. Real estate assets held for sale are measured at the lower of the carrying amount or the fair value less the cost to sell. Upon the classification of an asset as held for sale, no further depreciation is recorded.

Income and Other Taxes

Vivmark has elected to be treated as a real estate investment trust ("REIT") for U.S. federal income tax purposes. Vivmark generally will not be subject to corporate level federal income tax on its taxable income if it annually distributes at least 90% of its taxable income to its shareholders. ERPOP generally is not liable for federal income taxes as the partners recognize their allocable share of income or loss in their tax returns. Therefore no provision for federal income taxes has been made for Vivmark or ERPOP. Historically, the Company has generally only incurred certain state and local income, excise and franchise taxes. The Company has elected taxable REIT subsidiary (“TRS”) status for certain of its corporate subsidiaries and, as a result, these entities will incur both federal and state income taxes on any taxable income of such entities after consideration of any net operating losses.

Derivative Instruments and Hedging Activities

The Company enters into interest rate swap and interest rate cap agreements (collectively, "Hedging Derivatives") for interest rate risk management purposes and in conjunction with certain variable rate secured debt to satisfy lender requirements. The Company does not enter into Hedging Derivatives for trading or other speculative purposes. The Company assesses the effectiveness of qualifying hedges, both at inception and on an ongoing basis. The Company recognizes the fair value of all Hedging Derivatives as either assets or liabilities in the accompanying consolidated balance sheets. Fair value changes for derivatives that are not in qualifying hedge relationships are reported as a component of interest expense, net on the accompanying consolidated statements of operations. For the Hedging Derivatives that qualify as effective cash flow hedges, the Company records the cumulative changes in the Hedging Derivatives' fair value in accumulated other comprehensive income (loss) on the accompanying consolidated statements of comprehensive income (loss). Amounts recorded in accumulated other comprehensive income (loss) will be reclassified into earnings in the periods in which earnings are affected by the hedged cash flow. The effective portion of the change in fair value of the Hedging Derivatives that qualify as effective fair value hedges is reported as an adjustment to the carrying amount of the corresponding hedged item. Receipts or payments associated with the gains and losses on the Company’s cash flow hedges of future fixed rate debt issuances are presented as a component of cash flows from financing activities in the period the hedges are terminated and the receipt or payments for the Company’s cash flow hedges of interest on variable rate debt are presented as a component of cash flows from operating activities. Payments for derivatives that are not designated in hedging relationships are presented as a component of cash flows from operating activities. See Note 11, “Fair Value Measurements,” for further discussion of derivative financial instruments.

Leases and Revenue Recognition

The Company recognizes revenue for the transfer of goods and services to customers for consideration that the Company expects to receive. The majority of the Company’s revenue is derived from residential and non-residential rental and other lease income. The Company's revenue streams have the same timing and pattern of revenue recognition, with consistent allocations between the lease and revenue recognition standards. The Company has elected an accounting policy to account for both its lease and non-lease components (specifically common area maintenance charges) as a single lease component under the lease standard.

Residential leases may include lease income related to utility recoveries, parking rent, storage rent and pet rent, while non-residential leases may include lease income related to utility recoveries, parking rent and storage rent. These items are accounted for as part of a single lease component as they cannot be leased separately and have the same timing and pattern of transfer as the related lease. Rental income attributable to residential leases is recognized on a straight-line basis when reasonably assured they are collectible, which is not materially different than if it were recorded when due from residents and recognized monthly as it was earned. Rental income

attributable to non-residential leases is also recorded on a straight-line basis over the term of the lease when reasonably assured they are collectible. Residential leases generally have one-year lease terms renewable upon consent of both parties on an annual or monthly basis. Non-residential leases generally have five- to ten-year lease terms with market-based renewal options.

The Company is a lessor for its residential and non-residential leases and a lessee for its corporate headquarters, regional offices and ground leases for land underlying certain communities. If applicable, lease agreements are evaluated to determine the accounting treatment as a finance or operating lease in accordance with the lease standard.

See Note 6, "Leases," for the Company's rental income detail allocated between the lease and revenue recognition standards.

Use of Estimates

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

Reclassifications

Certain reclassifications have been made to amounts in prior periods reported in the financial statements and notes to the financial statements to conform to current year presentations in connection with the Merger, as well as changes in held for sale classification, disposition activity and segment classification. The reclassifications associated with the Merger include:

Consolidated Balance Sheets

As of December 31, 2025

- $70.3 million from Unconsolidated investments to Prepaid expenses and other assets;
- $259.1 million from Prepaid expenses and other assets to Notes receivable;
- $92.3 million and $68.6 million from Payables for construction and Accrued interest payable, respectively, to Accounts payable and accrued expenses; and
- $60.7 million and $72.7 million from Resident security deposits and Accrued expenses and other liabilities, respectively, to Other liabilities.

These reclassifications had no effect on previously reported total assets, total liabilities and total shareholders' equity as of December 31, 2025.

Consolidated Statements of Operations

For the three months ended September 30, 2025

- $39.1 million from Operating expenses, excluding property taxes to Property management;
- $42.4 million from Income from unconsolidated investments to Non-operating gains (losses); and
- $6.8 million from Structured Investment Program interest income to Other income (expense), net.

For the nine months ended September 30, 2025

- $116.7 million from Operating expenses, excluding property taxes to Property management;
- $39.9 million from Income from unconsolidated investments to Non-operating gains (losses); and
- $19.9 million from Structured Investment Program interest income to Other income (expense), net.

These reclassifications did not impact previously reported net income or comprehensive income (loss) for the three and nine months ended September 30, 2025.

Recent Accounting Pronouncements

In December 2025, the Financial Accounting Standards Board ("FASB") issued an amendment to the interim reporting standards which is intended to improve the navigability of the required interim reporting disclosures and clarify when that guidance is applicable.

The update provides a comprehensive list of interim disclosures required under GAAP and incorporates a disclosure principle that requires disclosures at interim periods when an event or change that has a material effect on an entity has occurred since the previous year end. The standard will be effective for interim reporting periods within annual reporting periods beginning after December 15, 2027, with early adoption permitted, and may be applied either prospectively or retrospectively. The Company is currently evaluating the impact of the rules on its disclosures.

In November 2024, the FASB issued a new standard on disaggregation of income statement expenses, which requires an entity to disclose, on an annual and interim basis, disaggregated information about certain income statement expense line items in a tabular format in the notes to the financial statements. The standard will be effective for annual reporting periods beginning after December 15, 2026 and for interim reporting periods within annual reporting periods beginning after December 15, 2027, with early adoption permitted, and may be applied either prospectively or retrospectively. The Company is currently evaluating the impact of the rules on its disclosures.

3. Business Combination

As discussed in Note 1, "Business," on August 17, 2026, the Company completed the Merger between AvalonBay and Equity Residential, which was accounted for as a reverse acquisition.

Purchase Price and Consideration

Because AvalonBay was the accounting acquirer, the consideration transferred was measured as the fair value of the number of AvalonBay shares that AvalonBay would have had to issue to give Equity Residential shareholders 49% ownership of Vivmark. The consideration was calculated at the Merger Date as summarized in the table below (in thousands, except price per share):

Total initial common shares of Vivmark		772,714
Shares as adjusted by the Exchange Ratio		276,661
Less: Outstanding shares of AvalonBay		(142,612)
Hypothetical AvalonBay shares issued to acquire Equity Residential		134,049
AvalonBay closing share price as of August 14, 2026	$	184.06
Consideration transferred	$	24,673,053

Provisional Purchase Price Allocation

Equity Residential’s historical assets and liabilities were recorded at fair value as of the Merger Date, and the consolidated financial statements present AvalonBay’s historical balances and pre-Merger results. The fair value of the identifiable net assets acquired equaled the consideration transferred of $24.7 billion, and no goodwill was recognized.

Management determined the fair value of the assets acquired and liabilities assumed based, in part, upon a preliminary valuation prepared by an independent third-party valuation specialist, which used techniques including direct capitalization and market-based comparables, among others. The allocation is provisional as the Company is in the process of reviewing the assumptions, inputs, estimates and methodologies to ensure reasonableness. The fair value of noncontrolling interests assumed was based on Equity Residential's share price on the Merger Date. The Company will record any measurement-period adjustments from finalizing its assessment in the period in which they are determined, not to exceed one year from the Merger Date.

The following table summarizes the provisional fair values of the assets acquired and liabilities assumed (in thousands):

Land	$	9,441,282
Building		19,787,630
In place leases (1)		2,232,199
Furniture, fixtures and equipment		1,263,145
Projects under construction		65,415
Total real estate		32,789,671
Unconsolidated real estate investments and advances		339,055
Cash and cash equivalents		316,134
Restricted cash		108,447
Right of use lease assets		557,590
Prepaid expenses and other assets		287,493
Total assets acquired		**34,398,390**
Unsecured debt, net		(6,614,264)
Mortgage notes payable, net		(1,524,511)
Lease liabilities		(264,234)
Accounts payable and accrued expenses		(266,611)
Other liabilities		(333,888)
Less total liabilities assumed		**(9,003,508)**
Redeemable Noncontrolling Interests – Operating Partnership		(184,339)
Preferred Shares		(17,155)
SERP paid-in-capital		8,476
Other Noncontrolling Interests		(528,811)
Less total equity interests assumed		**(721,829)**
Total consideration	**$**	**24,673,053**

(1) The acquired in place lease intangible includes $2.1 billion for residential leases, which has an estimated useful life of six months and is amortized on a straight-line basis as a component of depreciation expense in the consolidated statements of operations.

From the Merger Date through September 30, 2026, the total revenue and net loss from Equity Residential included in Vivmark's consolidated statements of operations are $394.9 million and $483.3 million, respectively. The net loss primarily reflects the impact of depreciation on in-place leases.

Transaction and other Merger-related costs

During the three and nine months ended September 30, 2026, the Company incurred transaction and other Merger-related costs of $544.0 million and $556.4 million, respectively, consisting primarily of $464.3 million and $476.7 million, respectively, of transaction costs, including real estate transfer taxes, advisory fees, legal and accounting and other professional fees, and $79.7 million of Merger-related compensation costs for both the three and nine months ended September 30, 2026, which are presented in general and administrative expenses on the Company's consolidated statements of operations.

Pro forma Information

The pro forma financial information set forth below is based upon the Company’s historical consolidated statements of operations for the three and nine months ended September 30, 2026 and 2025, adjusted to give effect to the Merger as of January 1, 2025. The pro forma financial information is presented for informational purposes only and may not be indicative of what actual results of income would have been, nor does it purport to represent the results of income for future periods (amounts in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2026	2025	2026	2025
Rental income	$ 1,588,012	$ 1,547,200	$ 4,697,221	$ 4,579,395
Net income (loss)	$ (139,270)	$ (406,049)	$ 556,756	$ (685,257)

4. Real Estate

The following table summarizes the carrying amounts for the Company's investment in real estate, at cost, as of September 30, 2026 and December 31, 2025 (amounts in thousands):

	September 30, 2026	December 31, 2025
Land	$ 14,319,107	$ 4,910,995
Buildings and improvements	41,290,158	20,959,101
Furniture, fixtures and equipment	2,986,405	1,546,813
In-place lease intangibles	2,514,184	293,036
Operating real estate	61,109,854	27,709,945
Less accumulated depreciation	(9,898,933)	(8,686,084)
Operating real estate, net	51,210,921	19,023,861
Land under development	349,258	297,527
Construction in progress	1,340,242	1,161,268
Construction in progress ("CIP"), including land	1,689,500	1,458,795
Land held for development	133,943	123,751
Real estate assets held for sale, net	166,642	150,262
Total real estate, net	$ 53,201,006	$ 20,756,669

During the three months ended September 30, 2026, the Company disposed of two wholly owned communities with an aggregate of 467 apartment homes for $208.1 million, resulting in gain on sale of communities of $108.1 million. During the nine months ended September 30, 2026, the Company disposed of five wholly owned communities with an aggregate of 1,351 apartment homes for $548.8 million, resulting in gain on sale of communities of $287.8 million.

As of September 30, 2026, the Company had one real estate asset that qualified as held for sale.

5. Investments

Structured Investment Program

The Company's Structured Investment Program (the "SIP") is an investment platform through which the Company provides mezzanine loans or preferred equity to third-party multifamily developers in the Company's markets. The Company evaluates each SIP commitment to determine the classification as a loan or an investment in a real estate development project. As of September 30, 2026, all SIP commitments are classified as loans.

During the nine months ended September 30, 2026, the Company received full repayment of $17.6 million of principal and interest on one mezzanine loan. As of September 30, 2026, the Company had funded nine outstanding commitments totaling $241.8 million. The Company recognized interest income from the program of $8.6 million and $7.1 million for the three months ended September 30, 2026 and 2025, respectively, and $23.7 million and $19.9 million for the nine months ended September 30, 2026 and 2025, respectively, included in other income (expense), net on the accompanying consolidated statements of operations.

Consolidated Variable Interest Entities

In accordance with accounting standards for consolidation of VIEs, Vivmark consolidates ERPOP. As the General Partner of ERPOP, Vivmark has exclusive control of ERPOP's day-to-day management. The Limited Partners do not have substantive kick-out or participating rights. As a result, ERPOP is a VIE. Vivmark has a controlling financial interest in ERPOP and, thus, is ERPOP's primary beneficiary. Vivmark has the power to direct the activities of ERPOP that most significantly impact ERPOP's economic performance as well as the obligation to absorb losses or the right to receive benefits from ERPOP that could potentially be significant to ERPOP.

The Company has various equity interests in joint ventures that have been deemed to be VIEs, of which the Company is the primary beneficiary and therefore consolidates the joint ventures. The noncontrolling equity balances and net income attributable to these communities are presented as Partially Owned Communities in the accompanying consolidated balance sheet and statement of operations. The following table summarizes the Company's consolidated joint ventures as of September 30, 2026:

	Communities	Apartment Homes
Operating communities	13	3,096

The Company has equity interests in 4 additional wholly owned VIEs consisting of an aggregate of 785 apartment homes as part of a developer funding program.

Unconsolidated Real Estate Investments and Advances

The Company has various equity interests in joint ventures that are unconsolidated and accounted for using the equity method of accounting. Certain of these entities are VIEs for which the Company is not the primary beneficiary. The following table summarizes the Company's unconsolidated real estate investments and advances as of September 30, 2026 and December 31, 2025 (amounts in thousands except for ownership percentage):

	Ownership Percentage	September 30, 2026		December 31, 2025	
Operating communities	20% - 80% (1)	$ 268,165	(2)	$ 122,607	(2)
Development communities	95% (1)	166,689		—	
Other real estate investments	Varies	13,308		566	
Unconsolidated real estate investments and advances		$ 448,162		$ 123,173	

(1) In certain instances, the joint venture agreements contain provisions for promoted interests in favor of our joint venture partner. If the terms of the promoted interest are attained, then our share of the proceeds from a sale or other capital event of the unconsolidated entity may be less than the indicated ownership percentage.

(2) The Company's interest includes $56.8 million of a mortgage note receivable from a joint venture.

The following table summarizes the Company's unconsolidated real estate investments as of September 30, 2026:

	Communities	Apartment Homes
Operating communities	13	4,049

Property Technology Companies and Other Fund Investments

The Company invested in, and may continue in the future to invest in, third-party property technology companies and other fund investments, holding 15 such investments as of September 30, 2026. The Company elected the net asset value ("NAV") practical expedient to measure these funds and related activity. The following table summarizes these investments, which are included in prepaid expenses and other assets on the accompanying consolidated balance sheets as of September 30, 2026 and December 31, 2025 (amounts in thousands):

	September 30, 2026	December 31, 2025
Property technology companies and other fund investments	$ 141,995	$ 71,663

Development and Pursuit Costs

The Company capitalizes costs associated with its development activities to the basis of land held when future development is probable, or if the Company has either not yet acquired the land or if the project is subject to a leasehold interest, the costs are capitalized as deferred development costs ("Development Rights"). Future development of these Development Rights is dependent upon various factors, including zoning and regulatory approval, rental market conditions, construction costs and the availability of capital. Costs incurred for pursuits for which future development is not yet considered probable are expensed as incurred. If the Company determines a Development Right is no longer probable, the Company recognizes any necessary impairment.

The Company incurred expense of $5.0 million and $1.4 million for the three months ended September 30, 2026 and 2025, respectively, and $16.0 million and $8.6 million for the nine months ended September 30, 2026 and 2025, respectively, for costs which include development pursuits that were not yet probable of future development at the time incurred, or for pursuits that the Company determined were no longer probable of being developed. These costs are included in expensed development and pursuit costs on the accompanying consolidated statements of operations.

Casualty and Impairment Loss

The Company recognized expense of $2.4 million for the three months ended September 30, 2026 and $7.0 million and $0.9 million for the nine months ended September 30, 2026 and 2025, respectively, from property damage at certain of the Company's communities. These expenses are reported as casualty and impairment loss on the accompanying consolidated statements of operations.

6. Leases

Lessor Accounting

The Company is the lessor for its residential and non-residential leases. These leases are accounted for as operating leases under the lease standard.

The following table presents the components of the Company's revenue for the three and nine months ended September 30, 2026 and 2025 (amounts in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
Income Type	2026	2025	2026	2025
Management, development and other fees	$ 1,954	$ 1,870	$ 5,568	$ 5,204
Non-lease related revenue (1)	11,966	4,192	20,808	11,740
Total non-lease revenue	13,920	6,062	26,376	16,944
Total lease revenue (2)	1,181,564	760,734	2,717,154	2,255,925
Total revenues	$ 1,195,484	$ 766,796	$ 2,743,530	$ 2,272,869

(1) Amounts include revenue streams related to leasing activities that are not considered components of a lease, and revenue streams not related to leasing activities including, but not limited to, application fees, renters insurance fees and vendor revenue sharing.

(2) Represents residential and non-residential rental and other lease income, as discussed in Note 2, "Summary of Significant Accounting Policies".

7. Debt

Vivmark does not have any indebtedness as all debt is incurred by the Operating Partnership. The outstanding debt balances and weighted average effective interest rates as of September 30, 2026 and December 31, 2025, summarized below (amounts in thousands), include debt issuance costs as well as credit enhancement and trustees' fees, the impact of interest rate hedges, and mark-to-market adjustments. The following amounts and discussion do not include the mortgage notes related to the communities classified as held for sale, if any, as of September 30, 2026 and December 31, 2025, as shown in the accompanying consolidated balance sheets (see Note 4, "Real Estate").

	September 30, 2026		December 31, 2025	
	Debt Balances	Weighted Average Effective Rate	Debt Balances	Weighted Average Effective Rate
Mortgage notes payable	$ 2,039,437	4.3%	$ 709,564	3.9%
Unsecured debt	14,962,571	4.3%	8,618,988	3.6%
Total	$ 17,002,008	4.3%	$ 9,328,552	3.7%
Fixed rate debt:				
Mortgage notes payable – conventional	$ 1,475,957	3.9%	$ 328,777	3.9%
Unsecured debt – public	13,391,316	4.3%	7,329,380	3.5%
Unsecured debt – Term Loan	550,000	4.4%	550,000	4.4%
Total fixed rate debt	$ 15,417,273	4.3%	$ 8,208,157	3.6%
Variable rate debt:				
Mortgage notes payable – tax exempt	$ 563,480	5.3%	$ 380,787	4.0%
Unsecured Revolving Credit Facilities	—	—%	—	—%
Commercial Paper Program	1,021,255	4.0%	739,608	4.0%
Total variable rate debt	$ 1,584,735	4.6%	$ 1,120,395	4.0%
Total	$ 17,002,008	4.3%	$ 9,328,552	3.7%

Unsecured Revolving Credit Facilities and Commercial Paper Program

The Company may borrow up to a maximum of $5.0 billion under two separate revolving credit facilities (the "Unsecured Revolving Credit Facilities" or the "Credit Facilities"). One of the Company's $2.5 billion Credit Facilities matures in April 2030, and the other matures in December 2030. The Company has the ability to increase available borrowings under the Credit Facilities by an additional $0.5 billion and $1.0 billion, respectively, by adding lenders to the Credit Facilities, obtaining the agreement of existing lenders to increase their commitments or incurring one or more term loans. The interest rate on advances under both Credit Facilities will generally be Secured Overnight Financing Rate ("SOFR") plus a spread (currently 0.70%), or based on bids received from the lending group, and an annual facility fee (currently 0.10%). Both the spread and the facility fee are dependent on the Company's senior unsecured credit rating. In addition, the Company limits its utilization of the Credit Facilities in order to maintain liquidity to support its

$2.5 billion Commercial Paper Program (as defined below) along with certain other obligations. The Company did not have any amounts outstanding under its Credit Facilities at September 30, 2026.

The Company has an unsecured commercial paper note program (the "Commercial Paper Program"). In September 2026, the Company increased the borrowing capacity of the Commercial Paper Program from $1.5 billion to $2.5 billion. The commercial paper notes will be sold under customary terms in the United States commercial paper note market and will rank pari passu with all of the Company's other unsecured senior indebtedness.

The availability on the Company's Credit Facilities as of September 30, 2026 was as follows (amounts in thousands):

	September 30, 2026
Unsecured Revolving Credit Facilities commitment	$ 5,000,000
Commercial Paper Program balance outstanding	(1,022,900)
Unsecured Revolving Credit Facilities balance outstanding	—
Other restricted amounts	(4,328)
Available liquidity	$ 3,972,772

Mortgage and Unsecured Notes

The following debt activity occurred during the nine months ended September 30, 2026:

- In May 2026, the Company repaid $475.0 million of its 2.95% unsecured notes at par upon maturity.
- In August 2026, the Company repaid three 3.61% mortgage notes with an aggregate principal amount of $185.1 million in advance of their scheduled maturity, recognizing a loss on debt extinguishment of $2.0 million for the write-off of the remaining deferred issuance and hedging costs.
- In August 2026, the Company repaid $92.0 million of its 7.57% unsecured notes at par upon maturity.

See Note 14, "Subsequent Events," for additional debt activity. Scheduled payments and maturities of fixed and variable rate debt outstanding at September 30, 2026 are as follows (amounts in thousands):

Year	Fixed Rate	Variable Rate	Total Debt	Weighted Average Contractual Rate on Fixed Rate Debt	Weighted Average Contractual Rate on Total Debt
2026	$ 800,284	$ 1,028,000	$ 1,828,284	2.87%	3.53%
2027	852,159	19,500	871,659	3.25%	3.26%
2028	1,751,202	21,700	1,772,902	3.21%	3.22%
2029	1,976,282	47,800	2,024,082	3.63%	3.64%
2030	2,248,462	14,100	2,262,562	2.78%	2.79%
2031	1,728,500	41,200	1,769,700	3.16%	3.18%
2032	1,200,000	30,100	1,230,100	3.26%	3.27%
2033	1,300,000	5,000	1,305,000	5.19%	5.18%
2034	1,000,000	10,900	1,010,900	4.93%	4.92%
2035	400,000	38,575	438,575	5.00%	4.91%
Thereafter	2,705,913	339,135	3,045,048	4.45%	4.39%
	$ 15,962,802	$ 1,596,010	$ 17,558,812	3.71%	3.74%
Unamortized deferred financing costs and debt discount	(545,529)	(11,275)	(556,804)		
Total	$ 15,417,273	$ 1,584,735	$ 17,002,008		

The Company was in compliance at September 30, 2026 with customary covenants under the Credit Facilities, the variable rate term loan (the "Term Loan") and the indentures under which the unsecured notes were issued.

8. Equity, Capital and Other Interests

As of September 30, 2026, the Company's declaration of trust had authorized for issuance up to 2 billion Common Shares, $0.01 par value per share, and 100 million preferred shares of beneficial interest, $0.01 par value per share (the "Preferred Shares"), with specific rights, preferences and other attributes as the Board of Trustees may determine, which may include preferences, powers and rights that are senior to the rights of holders of the Common Shares.

The following table presents the Company's issued and outstanding Preferred Shares and Preference Units as of September 30, 2026 and December 31, 2025 (amounts in thousands, except per share and unit data):

	Call Date (1)	Annual Dividend Per Share/Unit (2)	September 30, 2026	December 31, 2025
Preferred Shares and Preference Units of beneficial interest, $0.01 par value; 100,000,000 shares authorized:				
8.29% Series K Cumulative Redeemable Preferred Shares and Preference Units; liquidation value $50 per share and unit; 343,100 shares and units issued and outstanding as of September 30, 2026 and 0 shares and units issued and outstanding as of December 31, 2025	12/10/2026	$ 4.145	$ 17,155	$ —

(1) On or after the call date, redeemable Preferred Shares/Preference Units may be redeemed for cash at the option of the Company or the Operating Partnership, respectively, in whole or in part, at a redemption price equal to the liquidation price per share/unit, plus accrued and unpaid distributions, if any.

(2) Dividends on Preferred Shares/Preference Units are payable quarterly.

As of September 30, 2026, the Redeemable Noncontrolling Interests – Operating Partnership/Redeemable Limited Partners have a redemption value of $169.8 million which represents the value of Common Shares that would be issued in exchange for the Redeemable Noncontrolling Interests – Operating Partnership/Redeemable Limited Partners. The following table presents the changes in the redemption value of the Redeemable Noncontrolling Interests – Operating Partnership/Redeemable Limited Partners for the nine months ended September 30, 2026 (amounts in thousands):

Balance at January 1,	$ —
Merger assumption of Redeemable Noncontrolling Interests – Operating Partnership/Redeemable Limited Partners	184,339
Change in market value	(14,558)
Change in book value	—
Balance at September 30,	$ 169,781

Other

Vivmark and ERPOP currently have an active universal shelf registration statement for the issuance of equity and debt securities that automatically became effective upon filing with the SEC in May 2025 and expires in May 2028. Per the terms of ERPOP's partnership agreement, Vivmark contributes the net proceeds of all equity offerings to ERPOP in exchange for additional OP Units (on a one-for-one Common Share per OP Unit basis) or preference units (on a one-for-one Preferred Share per Preference Unit basis). As a result, the net proceeds from Common Shares and Preferred Shares are allocated for the Company between shareholders' equity and noncontrolling interests and for the Operating Partnership between General Partner Capital and Limited Partner Capital to account for the change in their respective percentage ownership of the underlying equity.

The Company has an At-The-Market ("ATM") share offering program which allows Vivmark to issue Common Shares from time to time into the existing trading market at current market prices or through negotiated transactions, including under forward sale arrangements. The current program matures in May 2028 and gives Vivmark the authority to issue up to 13 million Common Shares, all of which remain available for issuance as of September 30, 2026. AvalonBay suspended its previously existing continuous equity program as of the date of the Merger Agreement and subsequently terminated the program upon the closing of the Merger.

During the year ended December 31, 2024, AvalonBay completed an underwritten public offering pursuant to which it entered into forward contracts to sell 10,278,240 Common Shares at a discount to the closing price of $81.10 per share for net proceeds of $808.6 million based on the initial forward price. During the nine months ended September 30, 2026, AvalonBay fully settled the outstanding forward contracts, issuing 10,278,240 Common Shares at an average price of $78.75 per share for proceeds of $809.4 million.

During the nine months ended September 30, 2026, AvalonBay repurchased 3,157,028 Common Shares at an average price of $62.87 per share, including fees, for a total of $198.5 million under its previously existing stock repurchase program. In connection with the Merger, AvalonBay suspended its stock repurchase program as of the date of the Merger Agreement. The Company maintains Equity Residential's share repurchase program. Pursuant to the share repurchase program, when Vivmark repurchases Common Shares, ERPOP will concurrently repurchase and retire the same amount of OP Units issued to Vivmark. As of September 30, 2026, 8,156,451 Common Shares remained available for repurchase under this program.

9. Share-Based Compensation

Any Common Shares issued pursuant to Vivmark's equity incentive compensation and employee share purchase plans result in ERPOP issuing OP Units to Vivmark on a one-for-one basis with ERPOP receiving the net cash proceeds of such issuances.

Overview of Share-Based Compensation Plans

Following the closing of the Merger, the Company assumed AvalonBay's 2026 Equity Incentive Plan (the "2026 Plan"), AvalonBay's Second Amended and Restated 2009 Equity Incentive Plan (the "2009 Plan"), and AvalonBay's Deferred Compensation Plan. While the 2026 Plan replaced the 2009 Plan effective May 20, 2026, awards previously granted under the 2009 Plan remain outstanding. Outstanding awards under both the 2026 Plan and the 2009 Plan, as well as obligations under the Deferred Compensation Plan, were converted into or assumed as obligations or equity awards of the Company in accordance with the Merger Agreement, as described below. The Company maintains Equity Residential's 2019 Share Incentive Plan (the "2019 Plan"), which was approved by Equity Residential's shareholders on June 27, 2019. Pursuant to the 2019 Plan, officers, trustees, key employees and consultants of the Company and its subsidiaries may be granted share options to acquire Common Shares ("Options"), including non-qualified share options and incentive share options, share appreciation rights ("SARs"), or restricted shares or units, including long-term incentive plan awards. Options, SARs, restricted shares and restricted units are collectively referred to herein as "Awards". The 2019 Plan reserves 11,331,958 Common Shares for issuance and expires on June 27, 2029. As of September 30, 2026, 4,212,339 Common Shares were available for future issuance. Equity Residential's 2011 Share Incentive Plan also survived the Merger and will terminate when all outstanding Awards have expired and been exercised/vested.

In connection with the Merger, the Company granted certain post-closing management retention equity awards and recognized accelerated share-based compensation expense on certain existing awards under its equity incentive plans that accelerated pursuant to the terms of the Merger Agreement. During the three months ended September 30, 2026, the Company incurred $11.4 million in accelerated share-based compensation costs related to awards that vested upon consummation of the Merger, which is included in general and administrative expenses on the accompanying consolidated statements of operations. Refer to Note 3, "Business Combination," for discussion of transaction and other Merger-related costs.

Treatment of AvalonBay and Equity Residential Awards

At the effective time of the Merger, each outstanding AvalonBay equity award, other than any award of deferred stock units, was converted into an Award of the Company in accordance with the Merger Agreement, as adjusted by the Exchange Ratio. The converted AvalonBay awards remain outstanding and generally continue to be subject to the terms and conditions of the applicable equity incentive compensation plan and award agreement in effect immediately prior to the effective time of the Merger. Outstanding AvalonBay performance awards were converted into restricted share or restricted unit awards based on the greater of target performance and the actual level of performance determined as of close of the Merger, with the performance conditions eliminated and the remaining awards subject to the applicable time-based vesting requirements that applied immediately prior to the effective time of the Merger. Outstanding AvalonBay deferred stock units were converted into Common Shares based on the Exchange Ratio.

Equity Residential Options and restricted shares/units remain outstanding and continue to be subject to the terms and conditions of the 2019 Plan except that each Equity Residential long-term incentive plan award was deemed achieved based on the greater of target performance and the actual level of performance determined as of close of the Merger, with the performance conditions eliminated and the earned awards remaining subject to the applicable time-based vesting requirements.

Compensation Awards

The following table summarizes the terms of the Awards. Unless otherwise noted below, the terms apply to all Awards, including AvalonBay awards converted in connection with the Merger.

	Options	Restricted Shares	Restricted Units
Overview	Options exercised after vesting result in issuance of new Common Shares.	Restricted shareholders generally have the same voting rights and receive quarterly dividend payments on their shares at the same rate and on the same date as any other Common Share holder (1).	When certain conditions are met, restricted units convert into an equal number of OP Units, which the holder may exchange for Common Shares on a one-for-one basis or at the option of the Company, the cash value of such shares. Restricted unitholders receive quarterly distribution payments on their restricted units at the same rate and on the same date as any other OP Unit holder (1).
Grant/Exercise Price	Granted at the fair market value of Common Shares as of the grant date.	Granted at the fair market value of Common Shares as of the grant date.	Granted at varying discount rates to the fair market value of Common Shares as of the grant date (3).
Vesting Period	In three equal installments over a three-year period from the grant date.	Three years from the grant date (2).	Three years from the grant date.
Expiration	Ten years from the grant date.	Not applicable.	Ten years from the grant date (3).
Upon Employee Termination	Unvested options are canceled (2).	Unvested restricted shares are canceled (2).	Unvested restricted units are canceled (2).

(1) Dividends and distributions paid on unvested restricted shares and units are included as a component of retained earnings and Noncontrolling Interest – Operating Partnership/Limited Partner Capital, respectively, and have not been considered in reducing net income available to Common Shares and Units in a manner similar to the Company's preferred share and preference unit dividends for the earnings per share and Unit calculation.

(2) Certain AvalonBay time-based restricted share awards granted under the 2009 and/or 2026 Plans vest over a three-year period at one-third per year. AvalonBay options, restricted share and restricted unit awards granted under the 2009 and/or 2026 Plans vest upon employee termination without cause. Certain Vivmark Awards granted in connection with the Merger vest upon termination without cause, except for retirement.

(3) A restricted unit will automatically convert to an OP Unit when the capital account of each restricted unit increases ("books-up") to a specified target. The probability of a book-up occurring within the ten-year contractual life along with the liquidity risk associated with various hold period restrictions are both reflected in the discount. If the capital target is not attained within ten years following the date of issuance, the restricted unit will automatically be canceled and no compensation will be payable to the holder of such canceled restricted unit. If the capital target is attained and the restricted unit is converted to an OP Unit, it will not expire.

Compensation Expense and Award Activity

The following table summarizes the Award activity of the 2019 Plan, 2026 Plan and 2009 Plan for the nine months ended September 30, 2026:

	Common Shares Subject to Options	Restricted Shares	Restricted Units
Balance at December 31, 2025	758,463	466,931	716,061
Equity Residential Awards assumed	3,993,585	548,755	1,079,579
Merger-related conversions	—	319,625	(277,353)
Awards granted	385,082	601,073	1,200,177
Awards exercised/vested	(213,275)	(424,377)	(837,397)
Awards forfeited	(10,723)	(131,428)	(209,152)
Awards expired	(72,345)	—	—
Balance at September 30, 2026	4,840,787	1,380,579	1,671,915

The following table summarizes information regarding Options outstanding and exercisable at September 30, 2026:

	Options	Weighted Average Remaining Contractual Life in Years	Weighted Average Exercise Price
Options outstanding	4,840,787	3.98	$ 65.43
Options exercisable	4,537,971	3.66	$ 65.43
Vested and expected to vest	300,595	8.81	$ 65.38

Total employee compensation expense recognized in net income (loss) was $36.1 million and $21.4 million for the nine months ended September 30, 2026 and 2025, respectively, and total capitalized compensation expense was $8.9 million and $9.7 million for the nine months ended September 30, 2026 and 2025, respectively. At September 30, 2026, total unrecognized compensation cost was $93.6 million which is expected to be recognized over a weighted average period of 1.4 years. The Company reverses any previously recognized compensation expense for forfeitures as they occur.

Deferred compensation related to the Company's Awards does not impact the Company's consolidated financial statements until recognized as compensation cost.

10. Earnings Per Share and Earnings Per Unit

Vivmark Residential

The following tables set forth the computation of earnings per share – basic and earnings per share – diluted for the Company (amounts in thousands except per share amounts):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2026	2025	2026	2025
Numerator for earnings per share – basic:				
Net income (loss)	$ (747,141)	$ 384,162	$ (261,959)	$ 890,614
Net (income) loss attributable to noncontrolling interests – Operating Partnership	8,751	—	8,751	—
Net (income) loss attributable to noncontrolling interests – DownREIT Units	2,276	(2,856)	(1,457)	(4,046)
Net (income) loss attributable to noncontrolling interests – Partially Owned Communities	966	—	966	—
Preferred distributions	(355)	—	(355)	—
Numerator for earnings per share – basic	$ (735,503)	$ 381,306	$ (254,054)	$ 886,568
Numerator for earnings per share – diluted:				
Net income (loss)	$ (747,141)	$ 384,162	$ (261,959)	$ 890,614
Net (income) loss attributable to noncontrolling interests – DownREIT Units	2,276	(2,856)	(1,457)	(4,046)
Net (income) loss attributable to noncontrolling interests – Partially Owned Communities	966	—	966	—
Preferred distributions	(355)	—	(355)	—
Numerator for earnings per share – diluted	$ (744,254)	$ 381,306	$ (262,805)	$ 886,568
Denominator for earnings per share – basic and diluted:				
Denominator for earnings per share – basic	581,369	396,855	455,953	396,977
Effect of dilutive securities:				
OP Units	4,069	—	1,371	—
Long-term compensation shares/units	—	1,079	—	1,055
Denominator for earnings per share – diluted	585,438	397,934	457,324	398,032
Earnings per share – basic	$ (1.27)	$ 0.96	$ (0.56)	$ 2.23
Earnings per share – diluted	$ (1.27)	$ 0.96	$ (0.57)	$ 2.23

ERP Operating Limited Partnership

The following tables set forth the computation of earnings per Unit – basic and earnings per Unit – diluted for the Operating Partnership (amounts in thousands except per Unit amounts):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2026	2025	2026	2025
Numerator for earnings per Unit – basic and diluted:				
Net income (loss)	$ (747,141)	$ 384,162	$ (261,959)	$ 890,614
Net (income) loss attributable to noncontrolling interests – DownREIT Units	2,276	(2,856)	(1,457)	(4,046)
Net (income) loss attributable to noncontrolling interests – Partially Owned Communities	966	—	966	—
Allocation to Preference Units	(355)	—	(355)	—
Numerator for earnings per Unit – basic and diluted	$ (744,254)	$ 381,306	$ (262,805)	$ 886,568
Denominator for earnings per Unit – basic and diluted:				
Denominator for earnings per Unit – basic	585,438	396,855	457,324	396,977
Effect of dilutive securities:				
Dilution for Units issuable upon assumed exercise/vesting of the Company's long-term compensation shares/units	—	1,079	—	1,055
Denominator for earnings per Unit – diluted	585,438	397,934	457,324	398,032
Earnings per Unit – basic	$ (1.27)	$ 0.96	$ (0.57)	$ 2.23
Earnings per Unit – diluted	$ (1.27)	$ 0.96	$ (0.57)	$ 2.23

11. Fair Value Measurements

A three-level valuation hierarchy exists for disclosure of fair value measurements. The valuation hierarchy is based upon the transparency of inputs to the valuation of an asset or liability as of the measurement date. A financial instrument's categorization within the valuation hierarchy is based upon the lowest level of input that is significant to the fair value measurement. The three levels are defined as follows:

- Level 1 – Inputs to the valuation methodology are quoted prices (unadjusted) for identical assets or liabilities in active markets.
- Level 2 – Inputs to the valuation methodology include quoted prices for similar assets and liabilities in active markets, and inputs that are observable for the asset or liability, either directly or indirectly, for substantially the full term of the financial instrument.
- Level 3 – Inputs to the valuation methodology are unobservable and significant to the fair value measurement.

Financial Instruments Carried at Fair Value

Derivative Financial Instruments

Hedging Derivatives are carried at fair value in the Company's financial statements. The Company minimizes its credit risk on these transactions by dealing with major, creditworthy financial institutions and monitors the credit ratings of counterparties and the exposure of the Company to any single entity. The Company believes the likelihood of realizing losses from counterparty nonperformance is remote. The Company determined that the majority of the inputs used to value its derivatives fall within Level 2 of the fair value hierarchy, relying on readily observable market parameters such as forward yield curves, interest rates, term to maturity, volatility and credit default swap data. Credit valuation adjustments associated with these derivatives use Level 3 inputs, such as estimates of current credit spreads, which the Company concluded are not significant. As a result, the Company determined that its derivative valuations are classified in Level 2 of the fair value hierarchy.

The following table summarizes the consolidated derivative positions at September 30, 2026 (amounts in thousands):

	Non-designated Hedges	Cash Flow Hedges
	Interest Rate Caps	Interest Rate Swaps
Notional balance	$ 353,818	$ 700,000
Weighted average interest rate (1)	5.5%	N/A
Weighted average capped/swapped interest rate	6.7%	3.6%
Earliest maturity date	November 2026	January 2027
Latest maturity date	July 2029	April 2029

(1) For debt hedged by interest rate caps, represents the weighted average interest rate on the hedged debt prior to any impact of the associated interest rate caps.

During the nine months ended September 30, 2026, the Company entered into $150.0 million of forward starting interest rate swap agreements designated as cash flow hedges of interest rate variability on future debt issuance activity through December 31, 2026. The Company expects to cash settle the swaps and either pay or receive cash for the then current fair value. Assuming that the Company issues the debt as expected, the hedging impact from these positions will then be recognized over the life of the issued debt as a yield adjustment.

The Company had certain derivatives not designated as hedges during the three and nine months ended September 30, 2026 and 2025, for which fair value changes during each of the respective periods were not material.

As of September 30, 2026 and December 31, 2025, there were $57.6 million and $26.5 million in deferred gains, net, included in accumulated other comprehensive income (loss), respectively, related to previously settled and/or unsettled derivative instruments. The Company anticipates reclassifying $7.8 million of net hedging gains from accumulated other comprehensive income (loss) into earnings within the next 12 months as an offset to the hedged item during this period.

Redeemable Noncontrolling Interests

Redeemable Noncontrolling Interests are adjusted to the greater of carrying value or the market value of the Common Share price of Vivmark at the end of each respective reporting period. As the valuation is based on observable inputs, Redeemable Noncontrolling Interests are classified as Level 2.

Employee holdings (other than Common Shares) within the supplemental executive retirement plan (the "SERP")

Employee holdings (other than Common Shares) within the supplemental executive retirement plan (the "SERP") are valued using quoted market prices for identical assets. These holdings are included in other assets and other liabilities on the consolidated balance sheets.

Financial Instruments Not Carried at Fair Value

Cash, Cash Equivalents and Restricted Cash

Cash, cash equivalent and restricted cash balances are held with various financial institutions within accounts designed to preserve principal. The Company monitors credit ratings of these financial institutions and the concentration of cash, cash equivalent and restricted cash balances with any one financial institution and believes the likelihood of realizing material losses related to cash, cash equivalent and restricted cash balances is remote. Cash, cash equivalent and restricted cash balances are carried at their face amounts, which reasonably approximate their fair values and are Level 1 within the fair value hierarchy.

Other Financial Instruments

Other financial instruments consist of (i) rents, (ii) other receivables, including notes receivable, (iii) prepaid expenses, (iv) accounts and construction payable and (v) accrued expenses and other liabilities. These assets and liabilities are carried at their face amounts, which reasonably approximate their fair values. The Company determined that its notes receivable approximate fair value because interest rates, yields and other terms are consistent with interest rates, yields and other terms currently available for similar instruments and are considered to be a Level 2 price within the fair value hierarchy.

Equity Securities

The Company has direct equity investments in third-party property technology companies without readily determinable fair values and has elected to measure them using the measurement alternative in accordance with the applicable accounting standards for equity securities. These investments are carried at cost less any impairment and adjusted to fair value if there are observable price changes for an identical or similar investment of the same issuer.

The following table summarizes the Company's property technology investment securities included in prepaid expenses and other assets as of September 30, 2026 and December 31, 2025 (amounts in thousands):

	September 30, 2026	December 31, 2025
Property technology investments	$ 158,747	$ 78,686

During the three months ended September 30, 2026 and 2025, the Company recognized unrealized gains of $24.4 million and $42.4 million, respectively, and unrealized gains of $18.3 million and $39.9 million during the nine months ended September 30, 2026 and 2025, respectively, related to these investments, which were reported as a component of other income (expense), net on the accompanying consolidated statements of operations. As of September 30, 2026, the Company had recorded cumulative fair value adjustments of $86.8 million for net unrealized gains on equity securities.

Indebtedness

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

Financial Instruments Measured/Disclosed at Fair Value on a Recurring Basis

The following tables summarize the classification between the three levels of the fair value hierarchy of the Company's financial instruments measured or disclosed at fair value on a recurring basis (amounts in thousands):

	September 30, 2026			
Description	Total Fair Value	Quoted Prices in Active Markets for Identical Assets/Liabilities (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Assets				
Investments				
Notes receivable, net	$ 310,208	$ —	$ 310,208	$ —
Non-designated hedges				
Interest rate caps	92	—	92	—
Interest rate swaps - assets	28,721	—	28,721	—
Supplemental Executive Retirement Plan	95,984	95,984	—	—
Total Assets	$ 435,005	$ 95,984	$ 339,021	$ —
Liabilities				
Indebtedness				
Fixed rate unsecured debt	$ 12,600,044	$ 12,600,044	$ —	$ —
Mortgage notes payable, commercial paper and Term Loan	3,521,180	—	3,521,180	—
Supplemental Executive Retirement Plan	95,984	95,984	—	—
Total Liabilities	$ 16,217,208	$ 12,696,028	$ 3,521,180	$ —
Redeemable Noncontrolling Interests	$ 169,781	$ —	$ 169,781	$ —

Description	December 31, 2025 Total Fair Value	Quoted Prices in Active Markets for Identical Assets/Liabilities (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Assets				
Investments				
Notes receivable, net	$ 259,051	$ —	$ 259,051	$ —
Total Assets	$ 259,051	$ —	$ 259,051	$ —
Liabilities				
Interest rate swaps - liabilities	$ 4,046	$ —	$ 4,046	$ —
Indebtedness				
Fixed rate unsecured debt	7,025,656	7,025,656	—	—
Mortgage notes payable, commercial paper and Term Loan	1,970,177	—	1,970,177	—
Total Liabilities	$ 8,999,879	$ 7,025,656	$ 1,974,223	$ —

12. Commitments and Contingencies

Commitments

Real Estate Development Commitments

One development community subject to a ground lease includes a completion guaranty that obligates the Company to complete construction of the community and certain off-site infrastructure improvements prior to May 2030. The Company expects to complete construction in Q1 2029 for an estimated total capital cost of $302.3 million.

Contingencies

Litigation and Legal Matters

The Company, as an owner of real estate, is subject to various federal, state and local laws. Compliance by the Company with existing laws has not had a material adverse effect on the Company. However, the Company cannot predict the impact of new or changed laws or regulations on its current communities or on communities that it may acquire in the future.

The Company is involved in various pending and threatened legal proceedings which arise in the ordinary course of business. The Company evaluates these litigation matters on an ongoing basis, but in no event less than quarterly, in assessing the adequacy of its accruals and disclosures. For legal proceedings in which it has been determined that a loss is both probable and reasonably estimable, the Company records new accruals and/or adjusts existing accruals that represent its best estimate of the loss incurred based on the facts and circumstances known at that time. As of September 30, 2026, the Company does not believe there is any litigation pending or threatened against it that, either individually or in the aggregate and inclusive of the matters discussed below, may reasonably be expected to have a material adverse effect on the Company and its financial condition.

In 2022 and early 2023, Equity Residential was named as a defendant in cases brought by private litigants alleging antitrust violations by RealPage, Inc. and owners and/or operators of multifamily housing which utilize revenue management systems provided by RealPage, Inc. The complaints allege collusion among the defendants to illegally fix and inflate the pricing of multifamily rents and seek monetary damages, injunctive relief, fees and costs. On April 13, 2026, Equity Residential entered into a settlement agreement to fully resolve the consolidated putative class action litigation at an amount totaling $56.0 million. On May 12, 2026, Equity Residential funded the $56.0 million to the claims administrator in accordance with the terms of the settlement agreement, and on October 15, 2026, the settlement received final approval from the court. The Company also continues to vigorously defend three other cases with similar allegations filed by the District of Columbia (against Equity Residential and AvalonBay), the State of Maryland (against Equity Residential and AvalonBay), and the State of New Jersey (against AvalonBay), against RealPage, Inc. and a number of multifamily owners and/or operators, including the Company, and no assurance can be given that similar additional cases will not be filed in the future. The resolution of these proceedings cannot be predicted with certainty.

13. Reportable Segments

The Company's reportable operating segments include Same Store, Other Stabilized and Development/Redevelopment. Annually as of January 1, the Company determines which of its communities fall into each of these categories and generally maintains that classification throughout the year for the purpose of reporting segment operations, unless disposition or redevelopment plans regarding a community change. In addition, the Company owns land for future development and has other corporate assets that are not allocated to an operating segment.

The Company's segment disclosures present the measure(s) used by the Chief Operating Decision Maker ("CODM") for assessing each segment's performance. The Company's CODM is comprised of several members of its executive management team, including its Chief Executive Officer and President, Chief Financial Officer, Chief Development Officer, Chief Investment and Growth Officer, Chief Operating Officer, and Executive Vice President - Portfolio and Asset Management. The CODM uses net operating income ("NOI") as the primary financial measure for Same Store communities and Other Stabilized communities. NOI is defined by the Company as total property revenue less direct property operating expenses including property taxes. NOI excludes corporate-level income and expenses including management, development and other fee income, property management expense, expensed development and pursuit costs, transaction costs, interest expense, casualty and impairment loss, gain/loss on sale of communities, income/loss from unconsolidated real estate investments, non-operating gains/losses, other income/expense, net and tax benefit/expense. Although the Company considers NOI a useful measure of communities' operating performance, NOI should not be considered an alternative to net income or net cash flow from operating activities, as determined in accordance with GAAP.

The CODM evaluates the Company's financial performance on a consolidated residential and non-residential basis. The non-residential results attributable to the non-apartment components of the Company's mixed-use communities and other non-residential operations represent 2.0% and 1.5% of total NOI for the three months ended September 30, 2026 and 2025, respectively, and 1.7% and 1.6% of total NOI for the nine months ended September 30, 2026 and 2025, respectively.

A reconciliation of NOI to net income (loss) for the three and nine months ended September 30, 2026 and 2025 is as follows (amounts in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2026	2025	2026	2025
Net (loss) income	$ (747,141)	$ 384,162	$ (261,959)	$ 890,614
Adjustments:				
Property management, net of corporate income	54,319	37,192	130,903	111,449
General and administrative	118,308	22,052	167,521	64,828
Expensed development and pursuit costs	5,017	1,392	16,042	8,629
Transaction costs	464,321	—	476,688	—
Depreciation	897,976	230,371	1,364,056	679,989
Interest expense	123,791	68,172	268,652	197,933
Casualty and impairment loss	2,374	—	6,993	858
(Gain) loss on sale of communities	(108,304)	(180,155)	(287,877)	(336,081)
(Income) loss from unconsolidated real estate investments	5,811	(137)	6,286	(552)
Non-operating (gains) losses	(3,593)	(42,454)	(5,516)	(43,849)
Other (income) expense, net	(11,446)	(9,594)	(29,933)	(27,740)
Tax (benefit) expense	(672)	(166)	(832)	(772)
Total NOI	$ 800,761	$ 510,835	$ 1,851,024	$ 1,545,306

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

The following tables detail the Company's segment information as of the dates specified (amounts in thousands). The segments are classified based on the individual community's status at January 1, 2026. As Equity Residential communities were acquired in connection with the Merger on August 17, 2026, they are not included in the Same Store segment. The Equity Residential communities with stabilized occupancy are classified in the Other Stabilized segment and will not be eligible to enter the Company's Same Store segment until January 1, 2028. Segment information for the three and nine months ended September 30, 2026 and 2025 has been adjusted to exclude the real estate assets that were sold from January 1, 2025 through September 30, 2026, or otherwise qualify as held for sale as of September 30, 2026, as described in Note 4, "Real Estate".

	Three Months Ended September 30, 2026			Three Months Ended September 30, 2025		
	Rental Income (1)	Operating Expenses	NOI (2)	Rental Income (1)	Operating Expenses	NOI (2)
Same Store	$ 722,138	$ 244,137	$ 478,001	$ 699,479	$ 226,682	$ 472,797
Other Stabilized	429,512	132,256	297,256	28,222	11,150	17,072
Development / Redevelopment	33,483	13,402	20,081	11,380	5,572	5,808
Total reportable segments	$ 1,185,133	$ 389,795	$ 795,338	$ 739,081	$ 243,404	$ 495,677

	Nine Months Ended September 30, 2026			Nine Months Ended September 30, 2025		
	Rental Income (1)	Operating Expenses	NOI (2)	Rental Income (1)	Operating Expenses	NOI (2)
Same Store	$ 2,130,884	$ 685,202	$ 1,445,682	$ 2,086,756	$ 651,026	$ 1,435,730
Other Stabilized	497,277	157,578	339,699	59,881	24,450	35,431
Development / Redevelopment	76,458	31,771	44,687	28,200	12,789	15,411
Total reportable segments	$ 2,704,619	$ 874,551	$ 1,830,068	$ 2,174,837	$ 688,265	$ 1,486,572

(1) Does not include non-allocated revenue. Non-allocated revenue represents third-party property management, developer fees and miscellaneous income and other ancillary items which are not allocated to a reportable segment. Non-allocated revenue is $1,954 and $1,870 for the three months ended September 30, 2026 and 2025, respectively, and $5,568 and $5,204 for the nine months ended September 30, 2026 and 2025, respectively.

(2) Does not include NOI from real estate assets sold or held for sale. NOI related to these assets is $5,423 and $15,158 for the three months ended September 30, 2026 and 2025, respectively, and $20,956 and $58,734 for the nine months ended September 30, 2026 and 2025, respectively.

The following table presents a summary of operating expenses for each reportable segment for the periods presented (amounts in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2026	2025	2026	2025
Same Store operating expenses				
Property taxes	$ 87,888	$ 80,826	$ 249,688	$ 235,281
On-site payroll	41,185	40,138	120,834	118,804
Repairs and maintenance	47,124	45,040	125,961	120,950
Utilities	37,964	29,562	98,002	83,722
Office Operations	14,616	15,466	45,454	47,378
Insurance	10,206	10,809	31,609	31,509
Marketing	5,154	4,841	13,654	13,382
Total Same Store operating expenses	244,137	226,682	685,202	651,026
Other Stabilized operating expenses				
Property taxes	54,622	4,486	64,680	9,171
On-site payroll	23,374	2,119	28,080	4,538
Repairs and maintenance	15,936	1,849	20,260	3,340
Utilities	22,609	545	24,473	1,753
Office Operations	9,993	775	11,879	2,218
Insurance	4,263	775	6,027	1,794
Marketing	1,459	601	2,179	1,636
Total Other Stabilized operating expenses	132,256	11,150	157,578	24,450
Development / Redevelopment operating expenses	13,402	5,572	31,771	12,789
Total operating expenses	$ 389,795	$ 243,404	$ 874,551	$ 688,265

The following table presents total real estate assets, net for each reportable segment as of September 30, 2026 (amounts in thousands):

	September 30, 2026			
	Same Store	Other Stabilized	Development / Redevelopment	Total (1)
Total real estate assets	$ 16,069,700	$ 33,669,925	$ 3,336,182	$ 53,075,807

(1) Does not include real estate assets, net of communities sold or held for sale as of September 30, 2026.

14. Subsequent Events

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

As of November 6, 2026, the principal amount outstanding under the Commercial Paper Program was $2.0 billion.

In October and November 2026, the Company had the following activity:

- The Company repaid $300.0 million of its 2.90% unsecured notes at par upon maturity.
- The Company repaid $500.0 million of its 2.85% unsecured notes at par upon maturity.

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

Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") is intended to help provide an understanding of our business, financial condition and results of operations. This MD&A should be read in conjunction with our Consolidated Financial Statements and the accompanying Notes to Consolidated Financial Statements included elsewhere in this report, as well as the Annual Report on Form 10-K for the year ended December 31, 2025 of AvalonBay Communities, Inc., a Maryland corporation ("AvalonBay"), and the combined Annual Report on Form 10-K for the year ended December 31, 2025 of Equity Residential, a Maryland real estate investment trust ("Equity Residential"), and ERP Operating Limited Partnership, an Illinois limited partnership ("ERPOP"), each as previously filed with the SEC.

Forward-Looking Statements

Forward-looking statements are intended to be made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. These statements are based on current expectations, estimates, projections and assumptions made by management. Words such as "expects," "anticipates," "intends," "plans," "believes," "estimates," "may," "will," "should," "could" and similar expressions identify forward-looking statements. While the Company's management believes the assumptions underlying its forward-looking statements are reasonable, such information is inherently subject to uncertainties and may involve certain risks, which could cause actual results, performance or achievements of the Company to differ materially from anticipated future results, performance or achievements expressed or implied by such forward-looking statements, including, without limitation, with respect to our ability to realize the anticipated benefits of the Merger. Many of these uncertainties and risks are difficult to predict and beyond management's control. Additional factors that might cause such differences are discussed in Part I of AvalonBay's Annual Report on Form 10-K for the year ended December 31, 2025 and of Equity Residential's and ERPOP's combined Annual Report on Form 10-K for the year ended December 31, 2025, particularly under Item 1A, *Risk Factors*, in each report. Additional factors are also included in Part II, Item 1A, *Risk Factors*, of this Quarterly Report on Form 10-Q. Forward-looking statements and related uncertainties are also included in the Notes to Consolidated Financial Statements in this report. Forward-looking statements are not guarantees of future performance, results or events. The forward-looking statements contained herein are made as of the date hereof, and the Company undertakes no obligation to update or supplement these forward-looking statements.

Executive Overview

Business Description

On August 17, 2026 (the "Merger Date"), AvalonBay, Equity Residential, ERPOP, and Canopy Merger Sub LLC, a Maryland limited liability company and a direct wholly owned subsidiary of Equity Residential ("Merger Sub"), completed the transactions contemplated by the Agreement and Plan of Merger (the "Merger Agreement"). Pursuant to the Merger Agreement, (i) AvalonBay contributed certain assets to ERPOP in exchange for units of partnership interest in ERPOP with an aggregate value equal to the fair market value of the contributed assets (the "Asset Contribution"), and (ii) following the Asset Contribution, AvalonBay merged with and into Merger Sub, with Merger Sub surviving as a direct, wholly owned subsidiary of Equity Residential (the "Merger"). Following the consummation of the Merger, Equity Residential contributed all of the membership interests of Merger Sub to ERPOP, and Merger Sub then merged with and into ERPOP, with ERPOP continuing as the surviving entity. On the Merger Date, Equity Residential was renamed Vivmark Residential ("Vivmark").

At the effective time of the Merger, each outstanding share of AvalonBay common stock was automatically cancelled and converted into the right to receive 2.793 common shares ("Common Shares") of Vivmark (the "Exchange Ratio"), plus the right, if any, to receive cash in lieu of fractional Common Shares. As a result, former AvalonBay stockholders and Equity Residential shareholders owned approximately 51% and 49% of Vivmark, respectively.

The Merger was accounted for as a reverse acquisition under ASC 805, Business Combinations, with Equity Residential as the legal acquirer and AvalonBay as the accounting acquirer. AvalonBay was determined to be the accounting acquirer based on the following: (i) former AvalonBay stockholders hold the largest portion of the voting rights in the Company; and (ii) AvalonBay's senior management, including its Chief Executive Officer and President, comprise the majority of the executive management team of the Company. Accordingly, the Company's historical financial statements for periods before the Merger Date are those of AvalonBay, and share and per share amounts for those periods have been retroactively adjusted to reflect the Exchange Ratio. AvalonBay's assets and liabilities continue to be reported at their historical carrying amounts, and Equity Residential's identifiable assets acquired and liabilities assumed were recognized at their fair values as of the Merger Date. The Company's results include Equity Residential's operations from the Merger Date. See Note 3, "Business Combination," of the Consolidated Financial Statements for further discussion of the Merger.

Vivmark develops, redevelops, acquires, owns and operates multifamily communities in premier U.S. markets and has elected to be taxed as a real estate investment trust ("REIT").

References to the “Company,” “we,” “us” or “our” mean collectively Vivmark, ERPOP and the entities and subsidiaries owned or controlled by Vivmark and/or ERPOP. References to the “Operating Partnership” mean collectively ERPOP and the entities and subsidiaries owned or controlled by ERPOP.

Vivmark is the sole general partner of ERPOP (“General Partner”) and, as of September 30, 2026, owned an approximate 98.7% ownership interest in ERPOP. References to "General Partner Capital" and "General Partner Units" represent Vivmark's ownership interest in ERPOP. Approximately 1.3% is owned by ERPOP's limited partners ("Limited Partners"). References to "Limited Partner Capital" and "Limited Partner Units" represent Limited Partners' interests in ERPOP. The Company conducts all of its community ownership, operations, development, redevelopment and any other activity through the Operating Partnership, which holds all of the assets of the Company, including the Company’s ownership interests in its joint ventures. Vivmark has no assets or liabilities other than its investment in ERPOP. Vivmark is obligated to contribute the net proceeds of its equity offerings to ERPOP. In exchange, it receives one unit of partnership interest in ERPOP (“OP Unit”) for each Common Share of Vivmark, or, for any preferred share offerings, preference units with economic terms substantially the same as the related preferred shares. Vivmark does not have any indebtedness as all debt is incurred by the Operating Partnership. ERPOP is structured as a partnership with no publicly traded equity.

The Company’s dual corporate headquarters are located in Chicago, Illinois and Arlington, Virginia. The Company also operates regional property management offices in most of its markets.

Third Quarter 2026 Operating Highlights

- Net loss attributable to Common Shares for the three months ended September 30, 2026 was $735.5 million compared to net income attributable to Common Shares of $381.3 million for the prior year period, a decrease of $1.1 billion. The decrease was primarily attributable to an increase in depreciation expense driven by real estate assets acquired in the Merger, specifically in-place lease intangible assets, and transaction costs associated with the Merger.

- Same Store NOI attributable to our apartment rental operations, including parking and other ancillary residential ("Residential") revenue, for the three months ended September 30, 2026 was $471.6 million, an increase of $4.2 million, or 0.9%, over the prior year period. The increase was primarily attributable to an increase in Residential revenue of $21.5 million, or 3.1%, partially offset by an increase in Residential property operating expenses of $17.3 million, or 7.6%.

- Other Stabilized Residential NOI for the three months ended September 30, 2026 was $288.9 million, an increase of $273.5 million over the prior year period due to the real estate assets acquired in the Merger.

- Development and Redevelopment Residential NOI for the three months ended September 30, 2026 was $19.3 million, an increase of $13.8 million over the prior year period due to recently completed Development projects that had not reached stabilized occupancy.

Third Quarter 2026 Development Highlights

At September 30, 2026, we owned or held a direct or indirect interest in:

- 28 wholly owned communities under construction, which are expected to contain 9,104 apartment homes with a projected total capitalized cost of $3.5 billion.

- Land or rights to land on which we expect to develop an additional 32 apartment communities that, if developed as expected, will contain 10,273 apartment homes.

Third Quarter 2026 Real Estate Transaction Highlights

During the three months ended September 30, 2026 we sold two wholly owned communities containing 467 apartment homes for $208.1 million.

Communities Overview

Our real estate investments consist primarily of current apartment operating communities ("Current Communities"), consolidated and unconsolidated communities in various stages of development ("Development" communities and "Unconsolidated Development" communities) and Development Rights (as defined below). Our Current Communities are further classified as Same Store communities, Other Stabilized communities, Redevelopment communities and Unconsolidated communities. Our Current Communities and Development communities include communities that we wholly own as well as communities that we partially own through consolidated or unconsolidated joint ventures. While we generally establish the classification of communities on an annual basis, we update the classification of communities during the calendar year to the extent that our plans with regard to the disposition or redevelopment of a community change, or if something occurs that materially impacts the operations of a community such as a casualty loss. The following is a description of each category:

Current Communities are categorized as Same Store, Other Stabilized, Redevelopment, or Unconsolidated according to the following attributes:

- *Same Store* is composed of consolidated communities where a comparison of operating results from the prior year to the current year is meaningful as these communities were owned and had stabilized occupancy as of the beginning of the respective prior year period. For the nine month periods ended September 30, 2026 and 2025, Same Store communities are consolidated for financial reporting purposes, had stabilized occupancy as of January 1, 2025, are not conducting or expected to conduct substantial redevelopment activities and are not held for sale as of September 30, 2026 or probable for disposition to unrelated third parties within the current year. As Equity Residential communities were acquired in connection with the Merger on August 17, 2026, they are not classified as Same Store communities. The Equity Residential communities with stabilized occupancy are classified as Other Stabilized communities and will not be eligible to enter the Company's Same Store portfolio until January 1, 2028. A community is considered to have stabilized occupancy at the earlier of (i) attainment of 90% physical occupancy or (ii) the one year anniversary of completion of development or redevelopment.

- *Other Stabilized* is composed of completed consolidated communities that we wholly or partially own and that are not Same Store but which have stabilized occupancy, as defined above, as of January 1, 2026, or which were acquired subsequent to January 1, 2025. Other Stabilized includes all stabilized consolidated communities acquired in the Merger. Other Stabilized excludes communities that are conducting, or are probable to conduct substantial redevelopment activities within the current year, as defined below.

- *Redevelopment* is composed of consolidated communities where substantial redevelopment occurred, is in progress, or is probable to begin during the fiscal year. Redevelopment is considered substantial when (i) capital invested is expected to exceed the lesser of $5,000,000 or 10% of the community's pre-redevelopment basis and (ii) physical occupancy is below or is expected to be below 90% during, or as a result of, the redevelopment activity.

- *Unconsolidated* is composed of communities that we have an indirect ownership interest in through our investment interest in an unconsolidated joint venture.

Development is composed of consolidated projects that are either currently under construction, were under construction and were completed during the current year or where construction has been complete for less than one year and that do not have stabilized occupancy. These projects may be partially or fully complete and operating.

Unconsolidated Development is composed of projects that are either currently under construction, or were under construction and were completed during the current year, in which we have an indirect ownership interest through an unconsolidated joint venture. These projects may be partially or fully complete and operating.

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

As of September 30, 2026, communities that we owned or held a direct or indirect interest in were classified as follows:

	Communities	Homes
Same Store:		
Boston, MA	39	9,697
Metro NY/NJ	41	12,795
Mid-Atlantic	36	12,655
Southeast Florida	9	3,091
Denver, CO	8	2,192
Seattle, WA	19	5,624
Northern California	37	11,197
Southern California	59	17,899
Other expansion regions	12	3,200
Total Same Store	260	78,350
Other Stabilized (1):		
Boston, MA	25	6,908
Metro NY/NJ	35	8,784
Mid-Atlantic	42	13,553
Atlanta, GA	22	6,420
Southeast Florida	1	270
Denver, CO	17	5,085
Seattle, WA	40	8,419
Northern California	41	12,339
Southern California	77	19,994
Other expansion regions	26	8,019
Total Other Stabilized	326	89,791
Redevelopment	1	842
Unconsolidated	11	3,410
Total Current Communities	598	172,393
Development	36	12,180
Unconsolidated Development	2	639
Total Communities	636	185,212
Development Rights	32	10,273

(1) Other Stabilized includes all stabilized consolidated communities acquired in the Merger (the "Equity Residential Communities"), including communities that are partially owned through consolidated joint ventures. Equity Residential Communities held through unconsolidated joint ventures are included in Unconsolidated.

Results of Operations

Our results of operations are driven by our operating platform and are primarily affected by both overall and individual geographic market conditions and apartment fundamentals. A comparison of our operating results for the three and nine months ended September 30, 2026 and 2025 is as follows (amounts in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2026	2025	2026	2025
REVENUES				
Rental income	$ 1,193,530	$ 764,926	$ 2,737,962	$ 2,267,665
Management, development and other fees	1,954	1,870	5,568	5,204
Total revenues	1,195,484	766,796	2,743,530	2,272,869
EXPENSES				
Property operating, excluding property taxes	245,277	164,342	559,223	464,748
Property taxes	147,492	89,749	327,715	257,611
Property management	56,273	39,062	136,471	116,653
General and administrative	118,308	22,052	167,521	64,828
Expensed development and pursuit costs	5,017	1,392	16,042	8,629
Transaction costs	464,321	—	476,688	—
Depreciation	897,976	230,371	1,364,056	679,989
Interest expense	123,791	68,172	268,652	197,933
Casualty and impairment loss	2,374	—	6,993	858
Total expenses	2,060,829	615,140	3,323,361	1,791,249
Gain (loss) on sale of communities	108,304	180,155	287,877	336,081
Income (loss) from unconsolidated real estate investments	(5,811)	137	(6,286)	552
Non-operating gains (losses)	3,593	42,454	5,516	43,849
Other income (expense), net	11,446	9,594	29,933	27,740
Income (loss) before income taxes	(747,813)	383,996	(262,791)	889,842
Tax benefit (expense)	672	166	832	772
Net income (loss)	(747,141)	384,162	(261,959)	890,614
Net (income) loss attributable to noncontrolling interests:				
Operating Partnership and DownREIT Units	11,027	(2,856)	7,294	(4,046)
Partially Owned Communities	966	—	966	—
Net income (loss) attributable to controlling interests	(735,148)	381,306	(253,699)	886,568
Preferred distributions	(355)	—	(355)	—
Net income (loss) available to Common Shares	$ (735,503)	$ 381,306	$ (254,054)	$ 886,568

Rental income increased $428.6 million, or 56.0%, and $470.3 million, or 20.7%, for the three and nine months ended September 30, 2026, respectively, as compared to the prior year periods, primarily due to rental revenue from the Equity Residential Communities acquired in the Merger and an increase in rental revenue from our stabilized operating communities. For the Company's same store portfolio, average rental revenue per home increased 2.1% to $3,119 for the nine months ended September 30, 2026.

Our primary financial measure for evaluating each of our apartment communities is net operating income ("NOI"). NOI represents rental income less direct property operating expenses (including property taxes). Management considers NOI to be an important and appropriate supplemental performance measure to net income because it helps both investors and management to understand the core operations of a community or communities prior to the allocation of any corporate-level property management overhead or financing-related costs. Residential NOI represents results attributable to our apartment rental operations, including parking and other ancillary residential revenue.

NOI does not represent cash generated from operating activities in accordance with GAAP, and NOI should not be considered an alternative to net income as an indication of our performance. NOI should also not be considered an alternative to net cash flows from operating activities, as determined by GAAP, as a measure of liquidity, nor is NOI indicative of cash available to fund cash needs.

The following table presents reconciliations of net income (loss) per the Consolidated Statements of Operations to NOI (amounts in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2026	2025	2026	2025
Net (loss) income	$ (747,141)	$ 384,162	$ (261,959)	$ 890,614
Adjustments:				
Property management, net of corporate income	54,319	37,192	130,903	111,449
General and administrative	118,308	22,052	167,521	64,828
Expensed development and pursuit costs	5,017	1,392	16,042	8,629
Transaction costs	464,321	—	476,688	—
Depreciation	897,976	230,371	1,364,056	679,989
Interest expense	123,791	68,172	268,652	197,933
Casualty and impairment loss	2,374	—	6,993	858
(Gain) loss on sale of communities	(108,304)	(180,155)	(287,877)	(336,081)
(Income) loss from unconsolidated real estate investments	5,811	(137)	6,286	(552)
Non-operating (gains) losses	(3,593)	(42,454)	(5,516)	(43,849)
Other (income) expense, net	(11,446)	(9,594)	(29,933)	(27,740)
Tax (benefit) expense	(672)	(166)	(832)	(772)
Total NOI	800,761	510,835	1,851,024	1,545,306
Non-Residential NOI (1)	(15,549)	(7,552)	(31,441)	(25,043)
Residential NOI	$ 785,212	$ 503,283	$ 1,819,583	$ 1,520,263

(1) Represents results attributable to the retail and other non-residential operations at our communities.

The following table presents Residential revenue, Residential operating expenses and Residential NOI for our Same Store, Other Stabilized and Development/Redevelopment communities for the three and nine months ended September 30, 2026 and 2025 (amounts in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2026	2025	2026	2025
Residential revenue:				
Same Store	$ 714,425	$ 692,949	$ 2,109,007	$ 2,066,427
Other Stabilized	417,912	25,608	480,022	51,077
Development / Redevelopment	32,577	11,003	74,447	27,043
Total Residential revenue	1,164,914	729,560	2,663,476	2,144,547
Residential operating expenses:				
Same Store	242,810	225,557	680,958	647,675
Other Stabilized	129,029	10,214	152,528	22,136
Development / Redevelopment	13,286	5,515	31,361	12,639
Total Residential operating expenses	385,125	241,286	864,847	682,450
Residential NOI (1):				
Same Store	471,615	467,392	1,428,049	1,418,752
Other Stabilized	288,883	15,394	327,494	28,941
Development / Redevelopment	19,291	5,488	43,086	14,404
Total Residential NOI	$ 779,789	$ 488,274	$ 1,798,629	$ 1,462,097

(1) Does not include Residential NOI from real estate assets sold or held for sale. Residential NOI related to these assets is $5,423 and $15,009 for the three months ended September 30, 2026 and 2025, respectively, and $20,954 and $58,166 for the nine months ended September 30, 2026 and 2025, respectively.

The 0.7% increase in Same Store Residential NOI for the nine months ended September 30, 2026 is due to an increase in Residential revenue of $42.6 million, or 2.1%, partially offset by an increase in Residential property operating expenses of $33.3 million, or 5.1%, over the prior year period.

The following table provides results related to our Residential Same Store operations by market for the nine months ended September 30, 2026 and 2025 (amounts in thousands):

Market	Apartment Homes	For the Nine Months Ended September 30, Revenues 2026	Revenues 2025	Revenues % Change	Expenses 2026	Expenses 2025	Expenses % Change	NOI 2026	NOI 2025	NOI % Change
Boston, MA	9,697	$ 290,821	$ 287,937	1.0%	$ 98,882	$ 94,476	4.7%	$ 191,939	$ 193,461	(0.8%)
Metro NY/NJ	12,795	432,245	421,748	2.5%	146,450	134,507	8.9%	285,795	287,241	(0.5%)
Mid-Atlantic	12,655	283,138	279,682	1.2%	94,210	86,019	9.5%	188,928	193,663	(2.4%)
Southeast Florida	3,091	80,870	79,891	1.2%	28,755	26,425	8.8%	52,115	53,466	(2.5%)
Denver, CO	2,192	40,115	41,718	(3.8%)	12,717	13,843	(8.1%)	27,398	27,875	(1.7%)
Seattle, WA	5,624	142,460	142,343	0.1%	41,414	39,075	6.0%	101,046	103,268	(2.2%)
Northern California	11,197	324,784	306,842	5.8%	92,648	91,329	1.4%	232,136	215,513	7.7%
Southern California	17,899	462,624	454,131	1.9%	144,165	139,702	3.2%	318,459	314,429	1.3%
Other expansion regions	3,200	51,950	52,135	(0.4%)	21,717	22,299	(2.6%)	30,233	29,836	1.3%
Total	78,350	$ 2,109,007	$ 2,066,427	2.1%	$ 680,958	$ 647,675	5.1%	$ 1,428,049	$ 1,418,752	0.7%

The following table provides results related to the Equity Residential Communities, which are included in our Other Stabilized results, by market for the period from August 17, 2026, the Merger Date, through September 30, 2026 (amounts in thousands):

Market	Apartment Homes	Revenues	Expenses	NOI
Boston, MA	6,908	$ 41,358	$ 11,243	$ 30,115
Metro NY/NJ	8,235	61,848	24,938	36,910
Mid-Atlantic	13,553	55,495	16,899	38,596
Atlanta, GA	6,420	17,949	5,989	11,960
Denver, CO	4,469	13,418	4,540	8,878
Seattle, WA	8,051	32,223	8,971	23,252
Northern California	11,466	62,351	15,675	46,676
Southern California	19,994	86,538	23,626	62,912
Other expansion regions	4,615	12,123	4,391	7,732
Total	83,711	$ 383,303	$ 116,272	$ 267,031

Property management, net of corporate income increased $17.1 million, or 46.1%, and $19.5 million, or 17.5%, for the three and nine months ended September 30, 2026, respectively, as compared to the prior year periods, primarily due to the inclusion of property management costs of Equity Residential subsequent to the closing of the Merger, primarily for higher payroll related costs, legal and professional fees.

General and administrative increased $96.3 million to $118.3 million and $102.7 million to $167.5 million, for the three and nine months ended September 30, 2026, respectively, as compared to the prior year periods, primarily due to Merger-related compensation costs, including severance costs, transaction awards, and accelerated vesting of long-term compensation.

Expensed development and pursuit costs include write downs and costs related to the abandonment of Development Rights, development pursuits not yet considered probable for development, and abandoned acquisition and disposition pursuits. These costs may vary significantly from year to year driven by fluctuations in our investment activity, volatility in capital market conditions, or other factors. In addition, the timing for recoveries will not always align with the timing for expensing an abandoned pursuit. Expensed development and other pursuit costs were $5.0 million and $16.0 million for the three and nine months ended September 30, 2026, respectively, and $1.4 million and $8.6 million for the three and nine months ended September 30, 2025, respectively.

Transaction costs are primarily composed of transfer taxes, advisory fees and legal fees related to the Merger, and were $464.3 million and $476.7 million for the three and nine months ended September 30, 2026, respectively. See Note 3, "Business Combination," of the Consolidated Financial Statements for further discussion of the Merger.

Depreciation increased $667.6 million to $898.0 million and $684.1 million to $1.4 billion, for the three and nine months ended September 30, 2026, respectively, as compared to the prior year periods, primarily due to expense recognized in the current-year periods on in-place lease intangible assets and real estate acquired in the Merger.

Interest expense increased $55.6 million, or 81.6%, and $70.7 million, or 35.7%, for the three and nine months ended September 30, 2026, respectively, as compared to the prior year periods, primarily resulting from the Merger, whereby the Company assumed $8.4 billion principal amount of secured and unsecured indebtedness that remained outstanding as of September 30, 2026. The debt assumed in the Merger was recognized at fair value, resulting in a net discount of $516.0 million, which is recognized as an increase to the contractual interest expense over the life of the related debt. The increase in interest expense was partially offset by higher capitalized interest. The Company capitalized interest of $17.9 million and $13.7 million during the three months ended September 30, 2026 and 2025, respectively, and $48.4 million and $36.1 million during the nine months ended September 30, 2026 and 2025, respectively.

Casualty and impairment loss for the three and nine months ended September 30, 2026 was $2.4 million and $7.0 million, respectively, and $0.9 million for the nine months ended September 30, 2025, which represents property damage and emergency response at certain of our communities resulting from casualty events.

Gain on sales of communities decreased $71.9 million, or 39.9%, and $48.2 million, or 14.3%, for the three and nine months ended September 30, 2026, respectively, as compared to the prior year periods. The amount of gain realized in a particular period depends on many factors, including the number of communities sold, expected operating performance of the communities and the market conditions in the local area. For the three and nine months ended September 30, 2026, we sold two and five wholly owned communities and recognized a gain of $108.1 million and $287.8 million, respectively. For the three and nine months ended September 30, 2025, we sold six and nine wholly owned communities and recognized a gain of $180.2 million and $336.1 million, respectively.

Loss (income) from investment in unconsolidated real estate investments increased $5.9 million and $6.8 million for the three and nine months ended September 30, 2026, respectively, as compared to the prior year periods, primarily due to depreciation expense recognized on in-place lease intangible assets at unconsolidated communities acquired in the Merger.

Non-operating gains (losses) decreased $38.9 million, or 91.5%, and $38.3 million, or 87.4%, for the three and nine months ended September 30, 2026, respectively, as compared to the prior year periods, primarily due to the impairment of a land parcel and lower unrealized gains on property technology investments in the current year periods.

Liquidity and Capital Resources

With $3.2 billion in readily available liquidity as of October 30, 2026 under Vivmark's two separate revolving credit facilities (the "Unsecured Revolving Credit Facilities" or the "Credit Facilities"), available cash on hand, staggered debt maturities, strong credit metrics and access to capital markets, we believe Vivmark is well positioned to meet future obligations and take advantage of opportunities. On August 18, 2026, following completion of the Merger, S&P Global Ratings raised our long-term issuer credit rating to 'A' with a stable outlook from 'A-.'

Statements of Cash Flows

The following table sets forth our sources and uses of cash flows for the nine months ended September 30, 2026 and 2025 (amounts in thousands):

	Nine Months Ended September 30,	
	2026	2025
Cash flows provided by (used for):		
Operating activities	$ 1,041,874	$ 1,270,674
Investing activities	$ (333,253)	$ (925,077)
Financing activities	$ (674,000)	$ (290,782)

The following provides information regarding our cash flows from operating, investing and financing activities for the nine months ended September 30, 2026.

Operating Activities

Cash flows from operations are determined by operating activities and factors including but not limited to (i) the number of apartment homes owned, (ii) rental rates, (iii) occupancy levels, (iv) uncollectible lease revenue levels or interruptions in collections caused by market conditions, (v) operating expenses and (vi) capital expenditures with respect to our communities. Cash provided by operating activities for the nine months ended September 30, 2026 as compared to the prior year period decreased by $228.8 million primarily due to the payment of Merger-related costs and an increase in prepaid expenses and other assets.

Investing Activities

Our investing cash flows are primarily impacted by our transaction activity, development spend and capital expenditures. Cash used in investing activities for the nine months ended September 30, 2026 decreased by approximately $591.8 million primarily due to (i) a decrease in the acquisition of real estate assets from the prior year period and (ii) cash acquired in the Merger, partially offset by a decrease in net proceeds from the disposition of real estate assets.

Financing Activities

Our financing cash flows primarily relate to our borrowing activity (debt proceeds or repayment), distributions and dividends to shareholders/unitholders and other Common Share activity. For the nine months ended September 30, 2026, key drivers were:

- Received net proceeds of $281.6 million from our Commercial Paper Program (as defined below);
- Repaid $475.0 million of our 2.95% unsecured notes at par upon maturity;
- Repaid $92.0 million of our 7.57% unsecured notes at par upon maturity, which were assumed in connection with the Merger;
- Repaid three 3.61% mortgage notes with an aggregate principal amount of $185.1 million in advance of their scheduled maturity;
- Settled outstanding forward contracts, issuing 10,278,240 Common Shares at $78.75 per share for proceeds of $809.4 million;
- Paid dividends and distributions on Common Shares, Preferred Shares, Units (including OP Units, DownREIT units, and restricted units) and noncontrolling interests in partially owned communities totaling approximately $752.1 million; and
- Repurchased 3,157,028 Common Shares at an average price of $62.87 per share, including fees, for a total of approximately $198.5 million.

Short-Term Liquidity and Cash Proceeds

We generally expect to meet our short-term liquidity requirements, including capital expenditures related to maintaining our existing communities and scheduled unsecured note and mortgage note repayments, through our working capital, net cash provided by operating activities and borrowings under our Unsecured Revolving Credit Facilities and Commercial Paper Program (each as defined below). We consider these sources of liquidity to be adequate to meet operating requirements and payments of distributions.

Unsecured Revolving Credit Facilities and Commercial Paper Program

We may borrow up to a maximum of $5.0 billion under two separate revolving credit facilities (the "Unsecured Revolving Credit Facilities" or the "Credit Facilities"). One of our $2.5 billion Credit Facilities matures in April 2030, and the other matures in December 2030. We have the ability to increase available borrowings under the Credit Facilities by an additional $0.5 billion and $1.0 billion, respectively, by adding lenders to the Credit Facilities, obtaining the agreement of existing lenders to increase their commitments or incurring one or more term loans. The interest rate on advances under both Credit Facilities will generally be Secured Overnight Financing Rate ("SOFR") plus a spread (currently 0.70%), or based on bids received from the lending group, and an annual facility fee (currently 0.10%). Both the spread and the facility fee are dependent on our senior unsecured credit rating. We limit utilization of the Credit Facilities in order to maintain liquidity to support our Commercial Paper Program, along with certain other obligations. See Note 7, "Debt," in the Notes to Consolidated Financial Statements for additional discussion of our Credit Facilities.

We have an unsecured commercial paper note program (the "Commercial Paper Program"). In September 2026, we increased the borrowing capacity of the Commercial Paper Program from $1.5 billion to $2.5 billion. The commercial paper notes will be sold under customary terms in the United States commercial paper note market and will rank pari passu with all of our other unsecured senior indebtedness.

The following table presents our cash and cash equivalents, restricted cash and available borrowing capacity under the Credit Facilities as of September 30, 2026 (amounts in thousands):

		September 30, 2026
Cash and cash equivalents	$	111,876
Restricted cash	$	275,828
Credit Facilities commitment	$	5,000,000
Commercial Paper Program balance outstanding		(1,022,900)
Credit Facilities balance outstanding		—
Other restricted amounts		(4,328)
Available borrowing capacity under the Credit Facilities	$	3,972,772

As of October 30, 2026, available borrowing capacity under the Credit Facilities was $3.2 billion. This reflects $1.8 billion of commercial paper outstanding and no borrowings outstanding under the Credit Facilities.

Long-Term Financing and Capital Needs

Our primary long-term liquidity requirements include repayment of long-term debt at maturity, financing real estate acquisitions and development, redevelopment and other capitalized spend at our communities both wholly owned and through the formation of joint ventures. We expect to meet these needs from one or more of a variety of internal and external sources, which may include (i) real estate dispositions, (ii) secured and unsecured debt financings and (iii) issuance of equity securities (including additional OP Units). We have a significant number of unencumbered communities available to secure additional mortgage borrowings should unsecured capital be unavailable or the cost of alternative sources of capital be too high. The value of and cash flow from these unencumbered communities are in excess of the requirements we must maintain in order to comply with covenants under our unsecured notes and Credit Facilities and variable rate term loan (the "Term Loan"). Our ability to obtain additional financing will depend on a variety of factors, such as market conditions, the general availability of credit, the overall availability of credit to the real estate industry, our credit ratings and credit capacity, as well as the perception of lenders regarding our financial prospects. For additional details, see Item 1A, *Risk Factors,* of AvalonBay's Annual Report on Form 10-K for the year ended December 31, 2025 and of Equity Residential's and ERPOP's combined Annual Report on Form 10-K for the year ended December 31, 2025, particularly under Item 1A, *Risk Factors*, in each report, and Part II, Item 1A, *Risk Factors*, of this Quarterly Report on Form 10-Q.

Vivmark issues equity and may guarantee certain debt of the Operating Partnership from time to time. Vivmark does not have any indebtedness as all debt is incurred by the Operating Partnership.

The following table details our consolidated debt obligations, including the effective interest rate and contractual maturity dates, and principal payments for periodic amortization and maturities for the next five years, excluding the Credit Facilities and our Commercial Paper Program and amounts outstanding related to communities classified as held for sale at September 30, 2026 (dollars in thousands).

Debt	Stated interest rate	Principal maturity date	Balance Outstanding (1) 9/30/2026	Scheduled Maturities 2026	2027	2028	2029	2030	Thereafter
Tax-exempt bonds									
Variable rate									
Avalon Acton	4.87%	Jul-2040	$ 45,000	$ —	$ —	$ —	$ —	$ —	$ 45,000
Avalon Clinton North	5.46%	Nov-2038	126,400	—	—	—	—	—	126,400
Avalon Clinton South	5.46%	Nov-2038	104,500	—	—	—	—	—	104,500
Avalon Midtown West	5.17%	May-2029	54,400	700	8,900	9,800	35,000	—	—
Avalon San Bruno I	5.27%	Dec-2037	49,950	—	2,400	2,900	3,100	3,300	38,250
300 East 39th	4.88%	Nov-2031	59,500	4,400	4,800	5,300	5,700	6,400	32,900
West 54th	5.13%	Aug-2032	46,400	—	3,400	3,700	4,000	4,400	30,900
La Terrazza at Colma Station	4.87%	Nov-2035	25,175	—	—	—	—	—	25,175
Glo	5.13%	May-2037	35,290	—	—	—	—	—	35,290
Kelvin Court	4.88%	Jun-2051	26,495	—	—	—	—	—	26,495
			573,110	5,100	19,500	21,700	47,800	14,100	464,910
Conventional loans and notes									
Fixed rate									
$300 million unsecured notes	2.90%	Oct-2026	300,000	300,000	—	—	—	—	—
$350 million unsecured notes	3.90%	Oct-2046	350,000	—	—	—	—	—	350,000
$400 million unsecured notes	3.35%	May-2027	400,000	—	400,000	—	—	—	—
$300 million unsecured notes	4.15%	Jul-2047	300,000	—	—	—	—	—	300,000
$450 million unsecured notes	3.20%	Jan-2028	450,000	—	—	450,000	—	—	—
$300 million unsecured notes	4.35%	Apr-2048	300,000	—	—	—	—	—	300,000
$450 million unsecured notes	3.30%	Jun-2029	450,000	—	—	—	450,000	—	—
$700 million unsecured notes	2.30%	Mar-2030	700,000	—	—	—	—	700,000	—
$600 million unsecured notes	2.45%	Jan-2031	600,000	—	—	—	—	—	600,000
$700 million unsecured notes	2.05%	Jan-2032	700,000	—	—	—	—	—	700,000
$400 million unsecured notes	1.90%	Dec-2028	400,000	—	—	400,000	—	—	—
$350 million unsecured notes	5.00%	Feb-2033	350,000	—	—	—	—	—	350,000
$400 million unsecured notes	5.30%	Dec-2033	400,000	—	—	—	—	—	400,000
$400 million unsecured notes	5.35%	Jun-2034	400,000	—	—	—	—	—	400,000
$400 million unsecured notes	5.00%	Aug-2035	400,000	—	—	—	—	—	400,000
$400 million unsecured notes	4.35%	Dec-2030	400,000	—	—	—	—	400,000	—
$500 million unsecured notes	2.85%	Nov-2026	500,000	500,000	—	—	—	—	—
$400 million unsecured notes	3.25%	Aug-2027	400,000	—	400,000	—	—	—	—
$500 million unsecured notes	3.50%	Mar-2028	500,000	—	—	500,000	—	—	—
$400 million unsecured notes	4.15%	Dec-2028	400,000	—	—	400,000	—	—	—
$600 million unsecured notes	3.00%	Jul-2029	600,000	—	—	—	600,000	—	—
$600 million unsecured notes	2.50%	Feb-2030	600,000	—	—	—	—	600,000	—
$500 million unsecured notes	1.85%	Aug-2031	500,000	—	—	—	—	—	500,000
$600 million unsecured notes	4.95%	Oct-2031	600,000	—	—	—	—	—	600,000
$500 million unsecured notes	4.95%	Jun-2032	500,000	—	—	—	—	—	500,000
$600 million unsecured notes	4.65%	Sep-2034	600,000	—	—	—	—	—	600,000
$400 million unsecured notes	5.45%	Oct-2036	400,000	—	—	—	—	—	400,000
$750 million unsecured notes	4.50%	Jul-2044	750,000	—	—	—	—	—	750,000
$300 million unsecured notes	4.50%	Jun-2045	300,000	—	—	—	—	—	300,000
$300 million unsecured notes	4.00%	Aug-2047	300,000	—	—	—	—	—	300,000
$550 million Term Loan	4.26%	Apr-2029 (2)	550,000	—	—	—	550,000	—	—
Avalon Walnut Creek	4.00%	Jul-2066	5,063	—	—	—	—	—	5,063
Avalon San Bruno III	2.38%	Mar-2027	51,000	—	51,000	—	—	—	—
Avalon Cerritos	3.34%	Aug-2029	30,250	—	—	—	30,250	—	—
Avalon West Plano	5.97%	May-2029	60,557	284	1,159	1,202	57,912	—	—
FNMA 2029	3.94%	Mar-2029	288,120	—	—	—	288,120	—	—
FNMA 2030	2.60%	May-2030	495,000	—	—	—	—	495,000	—
Baxter Decatur	2.24%	Sep-2030	53,462	—	—	—	—	53,462	—
Canyon Creek	3.58%	Mar-2031	28,500	—	—	—	—	—	28,500
FNMA 2033	5.18%	Sep-2033	200,000	—	—	—	—	—	200,000
FNMA 2033	5.25%	Sep-2033	350,000	—	—	—	—	—	350,000
Avenir Apartments	0.10%	May-2061	850	—	—	—	—	—	850
			15,962,802	800,284	852,159	1,751,202	1,976,282	2,248,462	8,334,413
Total indebtedness - excluding Credit Facility and Commercial Paper			$ 16,535,912	$ 805,384	$ 871,659	$ 1,772,902	$ 2,024,082	$ 2,262,562	$ 8,799,323

(1) Balances outstanding represent total amounts due at maturity, and exclude deferred financing costs and debt discount for the unsecured debt of $458,684 as of September 30, 2026 and deferred financing costs and debt discount for the secured notes of $96,475 as of September 30, 2026 as reflected on our Consolidated Balance Sheets included elsewhere in this report.

(2) The Term Loan has been swapped to an effective fixed rate using interest rate swaps.

Forward Equity Offering

During the year ended December 31, 2024, AvalonBay completed an underwritten public offering pursuant to which it entered into forward contracts to sell 10,278,240 Common Shares at a discount to the closing price of $81.10 per share for net proceeds of $808.6 million based on the initial forward price. During the nine months ended September 30, 2026, AvalonBay fully settled the outstanding forward contracts, issuing 10,278,240 Common Shares at an average price of $78.75 per share for proceeds of $809.4 million.

Share Repurchases

During the nine months ended September 30, 2026, AvalonBay repurchased 3,157,028 Common Shares at an average price of $62.87 per share, including fees, for a total of $198.5 million under its previously existing stock repurchase program. In connection with the Merger, AvalonBay suspended its stock repurchase program as of the date of the Merger Agreement. The Company maintains Equity Residential's share repurchase program. Pursuant to the share repurchase program, when Vivmark repurchases Common Shares, ERPOP will concurrently repurchase and retire the same amount of OP Units issued to Vivmark. As of September 30, 2026, 8,156,451 Common Shares remained available for repurchase under this program.

Interest Rate Swap Agreements

During the nine months ended September 30, 2026, we entered into $150.0 million of forward starting interest rate swap agreements designated as cash flow hedges of interest rate variability on future debt issuance activity through December 31, 2026. We expect to cash settle the swaps and either pay or receive cash for the then current fair value, and will amortize the deferred hedging gain or loss over the life of the hedged debt as a component of interest expense.

Partially Owned Operating Communities

The following table summarizes our partially owned operating communities as of September 30, 2026, including NOI for the three and nine months ended September 30, 2026, and the related debt outstanding (amounts in thousands):

				NOI		Debt	
	Weighted Average Ownership	Total Communities	Total Apartment Homes	QTD 2026	YTD 2026	Principal Amount	Weighted Average Interest Rate
Consolidated Communities	86.6%	13	3,096	$ 10,243	$ 10,243	$ 26,274	5.8%
Unconsolidated Communities	69.0%	13	4,049	20,335	53,755	920,002	5.7%
Total Partially Owned Communities		**26**	**7,145**	**$ 30,578**	**$ 63,998**	**$ 946,276**	**5.7%**

Development Communities

As of September 30, 2026, we owned or held a direct interest in 28 Development communities under construction. We expect these Development communities, when completed, to add a total of 9,104 apartment homes and 89,000 square feet of commercial space to our portfolio. We cannot assure you that we will meet our schedule for construction completion or that we will meet our projected total capital cost, either individually, or in the aggregate.

The following table presents a summary of the Development communities (dollars in thousands):

	Location	Number of Apartment Homes	Total Capital Cost (1)	Construction Start	Initial Occupancy	Complete	Stabilized (2)
Communities Under Construction:							
Avalon West Windsor (3)	West Windsor, NJ	535	$ 209,588	Q2 2022	Q3 2025	Q4 2026	Q3 2027
Avalon Pleasanton	Pleasanton, CA	362	218,299	Q2 2024	Q3 2025	Q3 2027	Q4 2027
Avalon at Becker Farm	Roseland, NJ	533	186,483	Q2 2024	Q4 2025	Q4 2026	Q2 2027
Avalon Tech Ridge I	Austin, TX	544	152,589	Q3 2024	Q1 2026	Q2 2027	Q3 2027
Avalon Carmel (4)	Charlotte, NC	360	118,016	Q3 2024	Q2 2026	Q4 2026	Q3 2027
Avalon Plano (4)	Plano, TX	155	57,507	Q3 2024	Q4 2026	Q4 2027	Q2 2028
Avalon Oakridge I	Durham, NC	459	148,971	Q3 2024	Q1 2027	Q1 2028	Q3 2028
AVA Brewer's Hill	Baltimore, MD	418	132,422	Q4 2024	Q4 2026	Q4 2027	Q2 2028
Kanso Hillcrest	San Diego, CA	182	84,860	Q4 2024	Q1 2027	Q2 2027	Q4 2027
Avalon Parker	Parker, CO	312	123,232	Q1 2025	Q3 2026	Q2 2027	Q4 2027
Avalon North Palm Beach (3)	Lake Park, FL	279	117,981	Q1 2025	Q1 2027	Q3 2027	Q1 2028
Avalon Brier Creek	Durham, NC	400	126,087	Q2 2025	Q3 2026	Q3 2027	Q1 2028
Avalon Kendall (4)	Kendall, FL	224	82,938	Q2 2025	Q1 2027	Q2 2027	Q1 2028
Avalon Mission Valley (3)	San Diego, CA	621	302,318	Q3 2025	Q1 2028	Q1 2029	Q3 2029
Avalon Southpoint (4)	Durham, NC	394	131,720	Q3 2025	Q1 2027	Q2 2028	Q3 2028
Avalon Northwest Hills	Austin, TX	252	89,968	Q4 2025	Q1 2028	Q3 2028	Q1 2029
Kanso Parsippany	Parsippany, NJ	280	104,157	Q4 2025	Q2 2027	Q4 2027	Q2 2028
Avalon Billerica	Billerica, MA	200	71,572	Q4 2025	Q2 2027	Q4 2027	Q2 2028
Avalon Townhome Collection Arundel Mills (4)	Hanover, MD	90	45,058	Q4 2025	Q4 2026	Q4 2026	Q4 2027
Avalon San Ramon	San Ramon, CA	456	250,467	Q4 2025	Q2 2028	Q2 2029	Q3 2029
Avalon Somerville Station II	Somerville, NJ	171	64,991	Q1 2026	Q3 2027	Q4 2027	Q3 2028
Avalon Saddle River	Saddle River, NJ	275	123,157	Q1 2026	Q4 2027	Q3 2028	Q4 2028
Loxley (4)	Canton, GA	240	59,612	Q1 2026	Q3 2027	Q1 2028	Q1 2029
Wilder at Windward (3) (4)	Alpharetta, GA	280	112,149	Q1 2026	Q3 2027	Q2 2028	Q1 2029
Kanso Plymouth	Plymouth, MA	300	95,207	Q2 2026	Q3 2027	Q3 2028	Q4 2028
Avalon Townhome Collection Central Park (4)	Denver, CO	146	68,437	Q2 2026	Q2 2027	Q4 2027	Q3 2028
Avalon Dulles Innovation	Herndon, VA	355	120,217	Q2 2026	Q1 2028	Q3 2028	Q1 2029
Avalon Downtown Cary	Cary, NC	281	98,421	Q3 2026	Q2 2028	Q4 2028	Q3 2029
Total Under Construction		**9,104**	**3,496,424**				
Communities Completed this Quarter:							
Avalon Wayne	Wayne, NJ	473	169,635	Q4 2023	Q2 2025	Q3 2026	Q1 2027
Avalon Quincy Adams	Quincy, MA	288	121,685	Q2 2024	Q1 2026	Q3 2026	Q1 2027
Total Communities Completed this Quarter		**761**	**291,320**				
Total Under Construction and Completed this Quarter		**9,865**	**$ 3,787,744**				

(1) Projected total capital cost includes all capitalized costs projected to be or actually incurred to develop the respective Development community, determined in accordance with GAAP, including land acquisition costs, construction costs, real estate taxes, capitalized interest and loan fees, permits, professional fees, allocated development overhead and other regulatory fees, as well as costs incurred for first generation commercial tenants such as tenant improvements and leasing commissions.

(2) Stabilized operations is defined as the earlier of (i) attainment of 90% or greater physical occupancy or (ii) the one-year anniversary of completion of development.

(3) Development communities containing at least 10,000 square feet of commercial space include Avalon West Windsor (19,000 sf), Avalon North Palm Beach (10,000 sf), Avalon Mission Valley (31,000 sf) and Wilder at Windward (11,000 sf).

(4) Communities being developed through our Developer Funding Program ("DFP"). The DFP utilizes third-party multifamily developers to source and construct communities which we own and operate.

Development Rights

At September 30, 2026, we had $133.9 million in acquisition and related capitalized costs for direct interests in seven land parcels we own and intend to develop. In addition, we had $74.2 million in capitalized costs (including legal fees, design fees and related overhead costs) related to pursuits probable of future development including (i) 20 Development Rights for which we control the land parcel, typically through a conditional agreement or option to purchase or lease the land, as well as (ii) costs incurred for five Development Rights that we expect to construct as additional phases of our existing stabilized operating communities on land we own. Collectively, the land held for development and associated costs for deferred Development Rights relate to 32 Development Rights for which we expect to develop new apartment communities in the future. We estimate that the successful completion of all of these communities would ultimately add approximately 10,273 apartment homes to our portfolio. There can be no assurance that any

or all of these developments will be completed on the anticipated terms, or at all.

Structured Investment Program

During the nine months ended September 30, 2026, we entered into one new Structured Investment Program (the "SIP") commitment, agreeing to provide an aggregate investment of up to $15.0 million in a multifamily development project in Metro NY/NJ.

As of September 30, 2026, we had fully funded nine outstanding commitments under the SIP totaling $241.8 million in the aggregate. As of September 30, 2026, our investment commitments had a weighted average rate of return of 11.8% and a weighted average final maturity date of November 2028, inclusive of the impact of contractual extension options which typically allow the borrower to extend the maturity of their loan by up to two years from the initial maturity date. See Note 5, "Investments," in the Notes to Consolidated Financial Statements for additional discussion.

Critical Accounting Policies and Estimates

Preparing financial statements in conformity with GAAP requires management to use judgment in applying accounting policies, including making estimates and assumptions. If our judgment or interpretation of the facts and circumstances relating to various transactions had been different, or different assumptions had been made, different accounting policies might have been applied, resulting in different financial results or a different presentation of our financial statements. Our critical accounting policies are: (i) cost capitalization, (ii) abandoned pursuit costs and asset impairment, and (iii) business combinations. Except for the addition of business combinations as a result of the Merger, described below, our critical accounting policies and estimates have not changed materially from the information included in AvalonBay's Annual Report on Form 10-K for the year ended December 31, 2025 and Equity Residential's and ERPOP's combined Annual Report on Form 10-K for the year ended December 31, 2025.

On August 17, 2026, we completed the Merger, which we accounted for as a reverse acquisition under ASC 805. AvalonBay was determined to be the accounting acquirer, based on the following: (i) former AvalonBay stockholders hold the largest portion of the voting rights in the Company; and (ii) AvalonBay's senior management, including its Chief Executive Officer and President, comprise the majority of the executive management team of the Company. That determination required significant judgment. Equity Residential's assets acquired and liabilities assumed were recorded at fair value as of the Merger Date. The consideration transferred was approximately $24.7 billion, and we recognized no goodwill.

Allocating the purchase price required significant estimates by management, based, in part, on a valuation prepared by an independent third-party valuation specialist. The most significant were:

- Real estate: Land was valued using market comparables. Buildings were valued on an as-if-vacant basis, mainly by direct capitalization.
- In-place lease intangibles: These were valued based on the estimated lost rent and leasing costs avoided during an assumed lease-up period, and are amortized over the remaining lease terms of approximately six months.
- Assumed debt: This was valued using quoted market prices or discounted cash flows, which resulted in a discount that is being amortized into interest expense.

Changes in the valuation assumptions, particularly capitalization rates and market rents, could materially change the allocation among asset classes and future depreciation, amortization and net income. The allocation is provisional. We will record any measurement-period adjustments within one year of the Merger Date. See Note 3, "Business Combination".

Funds From Operations and Core Funds From Operations

FFO and FFO adjusted for non-core items, or "Core FFO," as defined below, are generally considered by management to be appropriate supplemental measures of our operating and financial performance.

Consistent with the definition adopted by the National Association of Real Estate Investment Trusts, we calculate Funds from Operations Attributable to Common Shares ("FFO") as net income or loss attributable to Common Shares computed in accordance with GAAP, adjusted for:

- gains or losses on sales of previously depreciated operating communities;
- cumulative effect of a change in accounting principle;
- impairment write-downs of depreciable real estate assets;
- income or losses attributable to noncontrolling interests;
- write-downs of investments in affiliates due to a decrease in the value of depreciable real estate assets held by those affiliates;
- depreciation of real estate assets; and
- similar adjustments for unconsolidated partnerships and joint ventures, including those from a change in control.

FFO can help with the comparison of the operating and financial performance of a real estate company between periods or as compared to different companies because the adjustments such as (i) gains or losses on sales of previously depreciated property or (ii) real estate depreciation may impact comparability as the amount and timing of these or similar items can vary among owners of identical assets in similar condition based on historical cost accounting and useful life estimates. By further adjusting for items that we do not consider part of our core business operations, Core FFO can help with the comparison of our core operating performance year over year. We believe that, in order to understand our operating results, FFO and Core FFO should be considered in conjunction with net income as presented in the Consolidated Statements of Operations included elsewhere in this report.

We calculate Core FFO as FFO, adjusted for:

- joint venture gains and losses (if not adjusted through FFO), non-core costs, promoted interests from partnerships and distributions from unconsolidated ventures where income recognition is deferred;
- casualty and impairment losses or gains, net on non-depreciable real estate or other investments;
- gains or losses from early extinguishment of consolidated borrowings;
- expensed development and other pursuit costs, net of recoveries;
- transaction costs;
- interest expense adjustment related to the Merger;
- legal recoveries, settlement proceeds, and certain legal costs;
- property and casualty insurance proceeds;
- gains or losses on sales of assets not subject to depreciation and other investment gains or losses;
- advocacy contributions, representing payments to promote our business interests;
- hedge ineffectiveness or gains or losses from derivatives not designated as hedges for accounting purposes;
- changes to expected credit losses associated with the lending commitments under the SIP;
- severance related costs;
- executive transition compensation costs;
- net for-sale condominium activity, including gains, marketing, operating and administrative costs and imputed carry cost; and
- income taxes.

FFO and Core FFO do not represent (i) net income in accordance with GAAP, and therefore should not be considered an alternative to net income, which remains the primary measure, as an indication of our performance, or (ii) cash generated from operating activities in accordance with GAAP, and therefore should not be considered an alternative to net cash flows from operating activities, as determined by GAAP, as a measure of liquidity. In addition, FFO and Core FFO are not necessarily indicative of cash available to fund cash needs and may not be comparable to FFO and Core FFO as calculated by other REITs.

The following is a reconciliation of net income to FFO attributable to Common Shares and Units and to Core FFO attributable to Common Shares and Units (unaudited, amounts in thousands, except per share amounts):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2026	2025	2026	2025
Net income (loss)	$ (747,141)	$ 384,162	$ (261,959)	$ 890,614
Net (income) loss attributable to Noncontrolling Interests – Partially Owned Communities	966	—	966	—
Preferred distributions	(355)	—	(355)	—
Net income (loss) available to Common Shares and Units	(746,530)	384,162	(261,348)	890,614
Adjustments:				
Real estate depreciation	898,675	227,962	1,359,596	674,853
Net (gain) loss on sale of real estate	(108,304)	(180,155)	(287,877)	(336,081)
Casualty loss on real estate	2,374	—	6,993	858
FFO available to Common Shares and Units	46,215	431,969	817,364	1,230,244
Adjustments:				
Unconsolidated investment activity	530	—	1,777	—
Loan reserve adjustment (1)	(202)	236	(365)	6
Hedge accounting activity	159	2	171	24
Advocacy contributions	—	150	2,659	237
Severance	40	751	1,227	953
Expensed development and pursuit costs	4,075	503	13,374	5,798
Merger-related costs (2)	544,040	—	556,407	—
(Gain) loss on extinguishment of debt	2,028	—	2,028	—
Merger accounting interest expense adjustment (3)	8,344	—	8,344	—
Non-operating (gains) losses (4)	(3,587)	(42,477)	(5,489)	(43,759)
Legal settlements and costs	7,409	3,252	16,500	8,828
Tax benefit (expense)	(809)	(193)	(1,033)	(840)
Core FFO available to Common Shares and Units	$ 608,242	$ 394,193	$ 1,412,964	$ 1,201,491
FFO available to Common Shares and Units	$ 46,215	$ 431,969	$ 817,364	$ 1,230,244
FFO per share and Unit – diluted	$ 0.08	$ 1.08	$ 1.77	$ 3.08
Core FFO available to Common Shares and Units	$ 608,242	$ 394,193	$ 1,412,964	$ 1,201,491
Core FFO per share and Unit – diluted	$ 1.03	$ 0.98	$ 3.06	$ 3.01
Weighted average Common Shares and Units outstanding – diluted	589,531	400,894	461,058	399,692

(1) Reflects changes to expected credit losses associated with our lending commitments primarily under the SIP. The timing and amount of actual losses that will be incurred, if any, is to be determined at the maturity of each respective lending agreement.

(2) Merger-related costs include transaction and integration costs, as well as Merger-related compensation costs. Merger-related compensation costs were $79.7 million for the three and nine months ended September 30, 2026 and are recognized in general and administrative expenses on the Company's Consolidated Statements of Operations.

(3) Merger accounting interest expense adjustment (i) excludes the non-cash amortization of the fair value discount recorded on Equity Residential debt with the Merger and (ii) reduces Core FFO by the amortization of Equity Residential original issue discounts that were eliminated in purchase accounting.

(4) Amounts for the three and nine months ended September 30, 2026 consist primarily of net unrealized gains on property technology investments, partially offset by a land impairment charge. Amounts for the three and nine months ended September 30, 2025 consist primarily of net unrealized gains on property technology investments.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

We are exposed to market risks from our financial instruments primarily from changes in market interest rates. In addition, changes in interest rates affect the fair value of our fixed rate debt. In connection with the Merger, the Company assumed from Equity Residential $8.4 billion of fixed rate debt and $193 million of variable rate debt. See Note 7, "Debt" and Note 11, "Fair Value Measurements" for additional information. See also Part II, Item 7A, *Quantitative and Qualitative Disclosures About Market Risk*, of AvalonBay's Annual

Report on Form 10-K for the year ended December 31, 2025 and of Equity Residential's and ERPOP's combined Annual Report on Form 10-K for the year ended December 31, 2025.

Item 4. Controls and Procedures

Vivmark Residential

(a) Evaluation of Disclosure Controls and Procedures:

Effective as of September 30, 2026, the Company carried out an evaluation, under the supervision and with the participation of the Company's management, including the Chief Executive Officer and Chief Financial Officer, of the effectiveness of the Company's disclosure controls and procedures pursuant to Exchange Act Rules 13a-15 and 15d-15. Based on that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that the disclosure controls and procedures are effective to ensure that information required to be disclosed by the Company in its Exchange Act filings is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms.

(b) Changes in Internal Control over Financial Reporting:

On August 17, 2026, the Company completed the Merger. The Company is in the process of integrating Equity Residential's processes, systems and internal controls, and it has implemented new controls related to accounting for the Merger, including the purchase price allocation and consolidation of the Company's financial results. Except for these changes, there were no changes to the internal control over financial reporting of the Company identified in connection with the Company's evaluation referred to above that occurred during the third quarter of 2026 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

ERP Operating Limited Partnership

(a) Evaluation of Disclosure Controls and Procedures:

Effective as of September 30, 2026, the Operating Partnership carried out an evaluation, under the supervision and with the participation of the Operating Partnership's management, including the Chief Executive Officer and Chief Financial Officer of Vivmark, of the effectiveness of the Operating Partnership's disclosure controls and procedures pursuant to Exchange Act Rules 13a-15 and 15d-15. Based on that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that the disclosure controls and procedures are effective to ensure that information required to be disclosed by the Operating Partnership in its Exchange Act filings is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms.

(b) Changes in Internal Control over Financial Reporting:

On August 17, 2026, the Company completed the Merger. In connection with the Merger, AvalonBay's operations and indebtedness were contributed to the Operating Partnership. The Merger was accounted for as a reverse acquisition in which AvalonBay was the accounting acquirer and Equity Residential, including the legacy Operating Partnership, was the acquired business for accounting purposes. The Operating Partnership is in the process of integrating the processes, systems and internal controls of Equity Residential and AvalonBay. It has implemented new controls related to accounting for the Merger, including the purchase price allocation and consolidation of the Operating Partnership's financial results. Except for these changes, there were no changes to the internal control over financial reporting of the Operating Partnership identified in connection with the Operating Partnership's evaluation referred to above that occurred during the third quarter of 2026 that have materially affected, or are reasonably likely to materially affect, the Operating Partnership's internal control over financial reporting.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

As of September 30, 2026, the Company does not believe there is any litigation pending or threatened against it that, either individually or in the aggregate, may reasonably be expected to have a material adverse effect on the Company and its financial

condition. See Note 12, "Commitments and Contingencies," in the Notes to Consolidated Financial Statements for further discussion.

Item 1A. Risk Factors

There have been no material changes to the risk factors that were discussed in Part I, Item 1A of AvalonBay's Annual Report on Form 10-K for the year ended December 31, 2025 and in Part I, Item 1A of Equity Residential's and the Operating Partnership's Annual Report on Form 10-K for the year ended December 31, 2025, except for the following:

The Merger resulted in changes to the Board of Trustees that may affect the strategy of the Company as compared to that of the Company prior to the Merger.

Due to the Merger, the composition of the Board of Trustees has changed. The Board of Trustees currently consists of fourteen (14) members, seven (7) of whom were trustees of Equity Residential prior to the Merger and seven (7) of whom were directors of AvalonBay prior to the Merger. The composition of the Board of Trustees may affect the business strategy and operating decisions of the Company as compared to prior to the Merger.

Uncertainties associated with the Merger may cause a loss of management personnel and other key employees, and the Company may have difficulty attracting and motivating management personnel and other key employees, which could adversely affect the business and operations of the Company.

The Company is dependent on the experience and industry knowledge of its management personnel and other key employees to execute its business plans. The Company's success following the completion of the Merger depends in part upon the ability to attract, motivate, and retain key management personnel and other key employees. Current and prospective employees of the Company may experience uncertainty about their roles within the Company following the completion of the Merger, which may have an adverse effect on the ability of the Company to attract, motivate or retain management personnel and other key employees. In addition, no assurance can be given that the Company will be able to attract, motivate or retain management personnel and other key employees to the same extent that Equity Residential and AvalonBay were previously able to attract or retain their own employees.

The Company has been and may continue to be the target of securities class action and derivative lawsuits that could result in substantial costs, whether or not such lawsuits have any merit.

Securities class action lawsuits, derivative lawsuits and other regulatory actions are often brought against public companies that have completed merger transactions. Even if the lawsuits or regulatory matters are without merit, defending against, responding to or otherwise resolving them can result in substantial costs and divert management time and resources. An adverse judgment, settlement or regulatory penalty could result in monetary damages or fines, which could have a negative impact on the Company's liquidity and financial condition.

Completion of the Merger has triggered change in control or other provisions in certain agreements to which Equity Residential, AvalonBay or their respective subsidiaries are a party, which may have an adverse impact on the Company's business and results of operations.

The completion of the Merger has triggered change in control or other provisions in certain agreements to which Equity Residential, AvalonBay or their respective subsidiaries are a party. If the Company is unable to obtain any required consents or waivers from the applicable counterparties, the counterparties may exercise their rights and remedies under the applicable agreements, potentially resulting in defaults, accelerations of indebtedness, termination of the applicable agreements, or claims for monetary damages. Even if the Company is able to negotiate required consents or waivers, counterparties may require a fee for such consents or waivers or seek to renegotiate the agreements on terms less favorable to the Company. Any of the foregoing or similar developments may have an adverse impact on the Company's business, financial condition and results of operations.

The Company may be unable to successfully integrate the businesses of Equity Residential and AvalonBay and realize the anticipated benefits of the Merger.

The success of the Merger will depend, in part, on the Company's ability to successfully combine the businesses of Equity Residential and AvalonBay, which previously operated as independent public companies, and realize the anticipated benefits, including synergies, cost savings, innovation, operational efficiencies and reduced cost of capital, from the combination. If the Company is unable to achieve these objectives within the anticipated time frame, or at all, the anticipated benefits may not be realized fully, or at all, or may take longer to realize than expected and the value of the Common Shares may be harmed. Additionally, as a result of the Merger, rating agencies may take negative actions against the Company's credit ratings, which may increase the Company's financing costs.

The Merger involves the integration of Equity Residential's and AvalonBay's businesses, which is a complex, costly, and time-consuming process. Neither Equity Residential nor AvalonBay has previously completed a transaction comparable in size or scope to the Merger. The integration of the two companies may result in material challenges, including, without limitation:

- The diversion of management's attention from ongoing business concerns and performance shortfalls as a result of the devotion of management's attention to integration matters;
- Managing a larger combined company;
- Creating, implementing, and executing a unified business strategy and operational, financial and managerial control with respect to the combined entity;
- Maintaining employee morale and attracting, motivating and retaining management personnel and other key employees;
- The possibility of faulty assumptions underlying expectations regarding the integration process;
- Retaining existing business and operational relationships and attracting new business and operational relationships;
- Issues in integrating information technology, operational, safety, communications and other systems, including maintaining cybersecurity and data privacy protections and avoiding security breaches, data loss, or service interruptions during the integration of the Company's systems;
- Consolidating corporate and administrative infrastructures and eliminating duplicative operations and inconsistencies in standards, controls, procedures and policies;
- Coordinating geographically separate organizations;
- Legislative, regulatory and economic developments, including the level of new multifamily communities construction and development, government regulations and competition, that may restrict or adversely impact the Company's business operations;
- Expansion of rent control, rent stabilization, eviction moratoriums or other regulations that restrict the methods and strategies of the Company's business; and
- Unforeseen expenses or delays associated with the integration.

Many of these factors are outside of the Company's control and any one of them could result in delays, increased costs, decreases in the amount of expected revenues and diversion of management's time and energy, which could materially affect the Company's financial position, results of operations and cash flows.

Equity Residential and AvalonBay previously operated independently. The actual integration may result in additional and unforeseen expenses, and the anticipated benefits of the integration plan may not be realized. In particular, the integration of two large multifamily REIT platforms—each with its own property management systems, technology platforms, employee benefit plans, and corporate cultures—presents significant operational challenges. Integration costs may exceed current estimates, and the Company may incur significant one-time charges in connection with the integration.

The future results of the Company may be adversely impacted if the Company does not effectively manage its expanded operations following the completion of the Merger.

The size of the Company's business is significantly larger than the pre-Merger size of either Equity Residential's or AvalonBay's respective businesses. The Company's ability to successfully manage this expanded business will depend, in part, upon management's ability to design and implement operational, managerial, financial and strategic initiatives that address not only the integration of two independent stand-alone companies, but also the increased scale and scope of the combined business with its associated increased costs and complexity. There can be no assurances that the Company will be successful or that it will realize the expected operating efficiencies, synergies, cost savings and other benefits currently anticipated from the Merger.

The Company has incurred and is expected to continue to incur substantial expenses related to the completion of the Merger and the integration of Equity Residential and AvalonBay.

The Company has incurred and is expected to continue to incur substantial expenses in connection with the completion of the Merger and the ongoing integration of Equity Residential and AvalonBay. There are a large number of processes, policies, procedures, operations, technologies and systems that must be integrated, including purchasing, accounting and finance, sales, payroll, pricing, revenue management, marketing and benefits. The substantial majority of these costs will be non-recurring expenses related to the Merger, facilities and systems consolidation costs. The Company may incur additional costs to retain employees and/or maintain employee morale and to attract, motivate or retain management personnel and other key employees. The execution of integration plans may also lead to additional unanticipated costs. These incremental transaction and Merger-related costs may exceed the savings the Company expects to achieve from the elimination of duplicative costs and the realization of other efficiencies related to the integration of the businesses, particularly in the near term, and in the event there are material unanticipated costs.

As a result of the Merger, the Company may refinance a significant amount of indebtedness and cannot guarantee that it will be able to obtain the necessary funds on favorable terms or at all.

As a result of the Merger, the Company may seek to refinance some or all of the indebtedness of the Company or, alternatively, seek any waivers or amendments that may be necessary or advisable to permit certain indebtedness to remain outstanding. The Company's ability to obtain such refinancing, waivers or amendments will depend on, among other factors, prevailing market conditions and other factors beyond the control of the Company. The Company cannot assure you that the Company will be able to obtain financing on terms acceptable to the Company or at all, and any such failure could materially adversely affect the operations and financial condition of the Company. If the Company is not able to obtain such refinancing, waivers or amendments, it may be required to repay some or all of such indebtedness, and under such circumstances, the Company may not have sufficient resources to repay such indebtedness.

The Company has significantly greater indebtedness than the Company had prior to the Merger, which may adversely affect the Company's financial flexibility and increase its exposure to interest rate risk.

The significantly increased level of indebtedness of the Company following the closing of the Merger may limit the Company's financial flexibility, increase its exposure to interest rate fluctuations, and require a greater portion of the Company's cash flows to be dedicated to debt service. A significant portion of the Company's indebtedness may bear interest at variable rates, and increases in interest rates could materially increase the Company's interest expense and adversely affect its financial condition and results of operations.

The Company's indebtedness, under certain circumstances, contains restrictions and limitations that could significantly impact the Company's ability to operate its business and increase its borrowing costs.

The Company's consolidated indebtedness may have the effect of, among other things, increasing borrowing costs. In addition, the amount of cash required to service the indebtedness levels is greater than the amount of cash flows required to service the indebtedness of Equity Residential and AvalonBay individually prior to completion of the Merger. The level of indebtedness of the Company could also reduce or limit dividend payments, share repurchases, and other activities and may create competitive disadvantages relative to other companies with lower debt levels. The Company may be required to raise additional financing for working capital, capital expenditures, acquisitions, or other general corporate purposes. The Company's ability to arrange additional financing or refinancing will depend on, among other factors, its financial condition and performance, as well as prevailing market conditions, the terms of third-party debt financing, and other factors beyond its control. There can be no assurance that the Company will be able to obtain additional financing or arrange refinancing on terms acceptable to it or at all, and any such failure could materially adversely affect its operations and financial condition.

Additionally, the agreements governing the terms of the Company's indebtedness contain a number of restrictive covenants (including, without limitation, financial maintenance covenants) that impose significant operating and financial restrictions on the Company and may limit its ability to engage in acts that may be in its long-term best interest. Moreover, the Company's ability to satisfy any financial maintenance covenants may be affected by events beyond its control and, as a result, it cannot provide assurance that it will be able to satisfy any such covenants.

A breach of the covenants under the agreements governing the terms of any of the Company's indebtedness could result in a default or an event of default under the applicable indebtedness agreement. Such an event of default or a default that matures into an event of default may allow the applicable creditors to foreclose on any collateral for such debt, accelerate the related debt, and/or terminate any related commitments to extend further credit and may result in a default or an event of default under or the acceleration of any other debt to which a cross-acceleration or cross-default provision applies. In the event debtholders accelerate the repayment of the Company's indebtedness, the Company may not have sufficient resources to repay such indebtedness.

The Company cannot assure you that it will be able to pay dividends at or above the rate previously paid by the Company or AvalonBay.

The Company declared a dividend of $0.7025 per Common Share for the third quarter of 2026 ($2.81 on an annualized basis), consistent with the initial expected annualized dividend announced at the closing of the Merger, which is higher than AvalonBay's pre-Merger annualized dividend per share on an Exchange Ratio-adjusted basis. However, there can be no guarantee that shareholders of the Company will receive dividends at the same rate, or any rate, that they received as shareholders of the Company or stockholders of AvalonBay prior to the Merger. Dividend payments are subject to the discretion of the Board of Trustees, which reserves the right to change the Company's dividend policy at any time and for any reason, including as a result of the other risk factors discussed in this section.

The Company may incur adverse tax consequences if the Company or AvalonBay has failed or fails to qualify as a REIT.

Each of Equity Residential and AvalonBay has operated in a manner that it believes has allowed it to qualify as a REIT for U.S. federal income tax purposes under the U.S. Internal Revenue Code of 1986, as amended (the "Code"), and the Company intends to continue operating in such a manner. Neither the Company nor AvalonBay has requested or plans to request a ruling from the U.S. Internal Revenue Service (the "IRS") that it qualifies as a REIT. Qualification as a REIT involves the application of highly technical and complex Code provisions for which there are only limited judicial and administrative interpretations. The determination of various factual matters and circumstances not entirely within the control of the Company may affect its ability to qualify as a REIT. In order to qualify as a REIT, each of Equity Residential and AvalonBay must have satisfied, and the Company must continue to satisfy, a number of requirements, including requirements regarding the ownership of its stock and the composition of its gross income and assets. Also, a REIT must make distributions to shareholders aggregating annually at least 90% of its net taxable income, excluding any net capital gains.

In connection with the closing of the Merger, Equity Residential received an opinion from Goodwin Procter LLP, dated as of the closing date of the Merger, substantially in the form attached to the Merger Agreement, to the effect that, beginning with its taxable year ended December 31, 1994 and through its taxable year ending immediately prior to the effective time, AvalonBay was organized and operated in conformity with the requirements for qualification and taxation as a REIT under the Code, and AvalonBay received an opinion from DLA Piper LLP (US), dated as of the closing date of the Merger, substantially in the form attached to the Merger Agreement, to the effect that, beginning with its taxable year ended December 31, 1992, Equity Residential was organized and operated in conformity with the requirements for qualification and taxation as a REIT under the Code, and the Company's proposed method of organization and operation would enable it to continue to satisfy the requirements for qualification and taxation as a REIT under the Code for its taxable year which includes the closing date of the Merger and thereafter. The foregoing REIT opinions, however, were based on the factual representations provided by Equity Residential and AvalonBay to counsel and limited by the exceptions, assumptions and qualifications set forth therein, and if any such representations were or become inaccurate or incomplete, such opinions may be invalid and the conclusions reached therein could be jeopardized. The foregoing REIT opinions are not a guarantee that Equity Residential or AvalonBay, in fact, has qualified, or, in the case of the Company, will continue to qualify, as a REIT, nor are such opinions binding on the IRS and there can be no assurance that the IRS will not take a contrary position or that such position would not be sustained.

If, notwithstanding the opinions described above, the Company loses its REIT status, or either company is determined to have failed to qualify as a REIT in a prior year, it will face serious tax consequences that would substantially reduce the funds available for distribution to its shareholders, because:

- It would be subject to U.S. federal, state and local income tax on its net income at regular corporate rates for the years it did not qualify as a REIT (and, for such years, would not be allowed a deduction for dividends paid to shareholders in computing its taxable income);
- It could be subject to a U.S. federal alternative minimum tax, stock buyback excise tax, and possibly increased state and local taxes for such periods;
- Unless it is entitled to relief under certain U.S. federal income tax laws, neither it nor any "successor" company could re-elect REIT status until the fifth calendar year after the year in which it was disqualified as a REIT;
- If it were to re-elect REIT status, it would have to distribute all earnings and profits from non-REIT years before the end of the first new REIT taxable year; and
- For five years following re-election of REIT status, upon a taxable disposition of an asset owned as of such re-election, it could be subject to U.S. federal corporate level income tax with respect to any built-in gain inherent in such asset at the time of re-election.

Even if the Company retains its REIT status, if AvalonBay is determined to have lost its REIT status for a taxable year ending on

or before the Merger, AvalonBay would be subject to adverse tax consequences similar to those described above. This could substantially reduce the Company's funds available for distributions to shareholders, because, assuming that the Company otherwise maintains its REIT qualification:

- The Company generally would be subject to U.S. federal corporate level income tax with respect to the built-in gain on each asset of AvalonBay existing at the time of the Merger if the Company were to dispose of the AvalonBay asset during the five-year period following the Merger;
- The Company would succeed to any earnings and profits accumulated by AvalonBay for taxable periods that it did not qualify as a REIT, and the Company would have to pay a special dividend and/or employ applicable deficiency dividend procedures (including interest payments to the IRS) to eliminate such earnings and profits (or if the Company does not timely distribute those earnings and profits, the Company could fail to qualify as a REIT); and
- If AvalonBay incurred any unpaid tax liabilities, including penalties and interest, prior to the Merger, those tax liabilities would be transferred to the Company as a result of the Merger.

If there is an adjustment to AvalonBay's taxable income or dividends paid deductions, the Company could elect to use the deficiency dividend procedure in order to maintain AvalonBay's REIT status. That deficiency dividend procedure could require the Company to make significant distributions to its shareholders and to pay significant interest to the IRS.

As a result of all these factors, the failure to qualify as a REIT could impair the Company's ability to expand its business and raise capital, and would materially adversely affect the value of its Common Shares.

Mezzanine debt and preferred equity investments could cause us to incur expenses and experience delays in recovery, which could adversely affect our results of operations.

We make mezzanine loans to borrowers and obtain preferred equity interests in projects owned by third-party sponsors as part of our SIP. Some of these instruments may have some recourse to their borrower or sponsor, while others are limited to the collateral securing the loan or the right to remove the sponsor as manager of the venture in preferred equity investments. In the event of a default under these obligations, we may elect to take possession of the collateral securing these interests, or remove a sponsor from management of a preferred equity investment. Borrowers of mezzanine loans may contest our enforcement actions, including foreclosure, assignment in lieu of foreclosure, or other remedies, and sponsors may contest our removal actions. In addition, borrowers and sponsors may seek bankruptcy protection against such enforcement and/or bring claims for lender liability in response to actions to enforce their obligations to us, which could result in significant legal costs, delays, or limitations on our ability to realize the value of our investments. Declines in the value of the underlying properties may also prevent us from realizing an amount equal to our investment upon foreclosure or other remedies even if we make substantial improvements or repairs to maximize such properties' investment potential.

We cannot be certain that our estimate of future credit losses will be adequate over time because of unanticipated adverse changes in the economy or events adversely affecting specific properties, assets, tenants, borrowers, industries in which our tenants and borrowers operate or markets in which our tenants and borrowers or their properties are located. The ultimate resolutions may differ from our expectation, and we could suffer losses that have a material adverse effect on our financial performance, the trading price of our securities and our ability to pay dividends and distributions.

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

Unregistered Common Shares Issued during the Three Months Ended September 30, 2026 (Vivmark Residential)

During the three months ended September 30, 2026, Vivmark issued 18,052 Common Shares in exchange for 18,052 OP Units held by various limited partners of ERPOP. OP Units are generally exchangeable into Common Shares on a one-for-one basis or, at the option of ERPOP, the cash equivalent thereof, at any time one year after the date of issuance. These shares were either registered under the Securities Act of 1933, as amended (the "Securities Act"), or issued in reliance on an exemption from registration under Section 4(a)(2) of the Securities Act and the rules and regulations promulgated thereunder, as these were transactions by an issuer not involving a public offering. In light of the manner of the sale and information obtained by Vivmark from the limited partners in connection with these transactions, Vivmark believes it may rely on these exemptions.

Common Shares Repurchased during the Three Months Ended September 30, 2026

The Company repurchased and retired the following Common Shares during the three months ended September 30, 2026:

Period	Total Number of Common Shares Purchased (1)	Weighted Average Price Paid Per Share (4)	Total Number of Common Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Number of Common Shares that May Yet be Purchased Under the Plans or Programs (2) (3) (4)
July 1 - July 31, 2026	277	$ 68.18	—	14,681,740
August 1 - August 31, 2026	1,341	$ 66.46	—	8,156,451
September 1 - September 30, 2026	—	$ —	—	8,156,451
Total	1,618	$ 66.75	—	

(1) Consists of Common Shares surrendered to the Company in connection with the exercise of stock options as payment of the exercise price, as well as for taxes associated with the vesting of restricted share grants and the conversion of performance awards to Common Shares.

(2) The number of shares available for purchase under the Company's publicly announced share repurchase program authorized by the Board of Trustees. The Company may repurchase Common Shares under its share repurchase program in open market or privately negotiated transactions. The timing and actual number of shares repurchased under the repurchase program depend on a variety of factors, including price, general business and market conditions and other investment opportunities.

(3) The Company's share repurchase program was publicly announced on July 30, 2013 and the Company's Board of Trustees most recently replenished the share repurchase program on December 11, 2025, giving the Company the authority to repurchase up to 13.0 million Common Shares. The program does not have an expiration date and may be suspended or discontinued at any time and does not obligate the Company to make any repurchases of its Common Shares.

(4) Share and per share amounts for periods prior to the Merger Date are those of AvalonBay and share and per share amounts for those periods have been retroactively adjusted to reflect the Exchange Ratio.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

During the three months ended September 30, 2026, no trustee or officer of the Company adopted or terminated a "Rule 10b5-1 trading arrangement" or "non-Rule 10b5-1 trading arrangement," as each term is defined in Item 408 of Regulation S-K.

Item 6. Exhibits – See the Exhibit Index.

EXHIBIT INDEX

The exhibits listed below are filed as part of this report. References to exhibits or other filings under the caption "Location" indicate that the exhibit or other filing has been filed, that the indexed exhibit and the exhibit referred to are the same and that the exhibit referred to is incorporated by reference. The Commission file numbers for our Exchange Act filings referenced below are 1-12252 (Vivmark Residential) and 0-24920 (ERP Operating Limited Partnership).

Exhibit	Description	Location
3.1	Articles of Amendment to the Declaration of Trust of Vivmark Residential.	Included as Exhibit 3.1 to Vivmark Residential's and ERP Operating Limited Partnership's Form 8-K dated and filed on August 17, 2026.
3.2	Composite restatement of Declaration of Trust of Vivmark Residential reflects the provisions of the Articles of Restatement of Vivmark Residential, dated December 9, 2004, as amended by the Articles of Amendment, dated August 17, 2026.	Attached herein.
3.3	Tenth Amended and Restated Bylaws of Vivmark Residential.	Included as Exhibit 3.2 to Vivmark Residential's and ERP Operating Limited Partnership's Form 8-K dated and filed on August 17, 2026.
4.1	Form of 4.950% Note due October 1, 2031.	Included as Exhibit 4.1 to Equity Residential's and ERP Operating Limited Partnership's Form 8-K dated August 4, 2026, filed on August 6, 2026.
4.2	Form of 5.450% Note due October 1, 2036.	Included as Exhibit 4.2 to Equity Residential's and ERP Operating Limited Partnership's Form 8-K dated August 4, 2026, filed on August 6, 2026.
4.3	Sixth Supplemental Indenture, dated as of August 17, 2026, by and among Canopy Merger Sub LLC, ERP Operating Limited Partnership and The Bank of New York Mellon, as trustee.	Included as Exhibit 4.1 to Vivmark Residential's and ERP Operating Limited Partnership's Form 8-K dated and filed on August 17, 2026.
4.4	Third Supplemental Indenture, dated as of August 17, 2026, by and among Canopy Merger Sub LLC, ERP Operating Limited Partnership and The Bank of New York Mellon, as trustee.	Included as Exhibit 4.2 to Vivmark Residential's and ERP Operating Limited Partnership's Form 8-K dated and filed on August 17, 2026.
4.5	Fourth Supplemental Indenture, dated as of August 17, 2026, by and among Canopy Merger Sub LLC, ERP Operating Limited Partnership and U.S. Bank Trust Company, National Association, as trustee.	Included as Exhibit 4.3 to Vivmark Residential's and ERP Operating Limited Partnership's Form 8-K dated and filed on August 17, 2026.
4.6	Indenture for Senior Debt Securities, dated as of January 16, 1998, between AvalonBay and State Street Bank and Trust Company, as trustee.	Included as Exhibit 4.4 to Vivmark Residential's and ERP Operating Limited Partnership's Form 8-K dated and filed on August 17, 2026.
4.7	Amended and Restated Third Supplemental Indenture, dated as of July 10, 2000 between AvalonBay Communities, Inc. and State Street Bank and Trust Company, as trustee.	Included as Exhibit 4.5 to Vivmark Residential's and ERP Operating Limited Partnership's Form 8-K dated and filed on August 17, 2026.
4.8	Fourth Supplemental Indenture, dated as of September 18, 2006, between AvalonBay Communities, Inc. and U.S. Bank National Association, as trustee.	Included as Exhibit 4.6 to Vivmark Residential's and ERP Operating Limited Partnership's Form 8-K dated and filed on August 17, 2026.
4.9	Fifth Supplemental Indenture, dated as of November 21, 2014, between AvalonBay Communities, Inc. and The Bank of New York Mellon, as trustee.	Included as Exhibit 4.7 to Vivmark Residential's and ERP Operating Limited Partnership's Form 8-K dated and filed on August 17, 2026.
4.10	Indenture for Debt Securities, dated as of February 23, 2018, between AvalonBay Communities, Inc. and The Bank of New York Mellon, as trustee.	Included as Exhibit 4.8 to Vivmark Residential's and ERP Operating Limited Partnership's Form 8-K dated and filed on August 17, 2026.
4.11	First Supplemental Indenture, dated as of March 26, 2018, between AvalonBay Communities, Inc. and The Bank of New York Mellon, as trustee.	Included as Exhibit 4.9 to Vivmark Residential's and ERP Operating Limited Partnership's Form 8-K dated and filed on August 17, 2026.
4.12	Second Supplemental Indenture, dated as of May 29, 2018, between AvalonBay Communities, Inc. and The Bank of New York Mellon, as trustee.	Included as Exhibit 4.10 to Vivmark Residential's and ERP Operating Limited Partnership's Form 8-K dated

		and filed on August 17, 2026.
4.13	Indenture for Debt Securities, dated as of February 23, 2024, between AvalonBay Communities, Inc. and U.S. Bank Trust Company, National Association, as trustee.	Included as Exhibit 4.11 to Vivmark Residential's and ERP Operating Limited Partnership's Form 8-K dated and filed on August 17, 2026.
4.14	First Supplemental Indenture, dated as of May 14, 2024, between AvalonBay Communities, Inc. and U.S. Bank Trust Company, National Association, as trustee, including the form of 5.350% senior notes due 2034.	Included as Exhibit 4.12 to Vivmark Residential's and ERP Operating Limited Partnership's Form 8-K dated and filed on August 17, 2026.
4.15	Second Supplemental Indenture, dated as of July 10, 2025, between AvalonBay Communities, Inc. and U.S. Bank Trust Company, National Association, as trustee, including the form of 5.000% senior notes due 2035.	Included as Exhibit 4.13 to Vivmark Residential's and ERP Operating Limited Partnership's Form 8-K dated and filed on August 17, 2026.
4.16	Third Supplemental Indenture, dated as of December 1, 2025, between AvalonBay Communities, Inc. and U.S. Bank Trust Company, National Association, as trustee, including the form of 4.350% senior notes due 2030.	Included as Exhibit 4.14 to Vivmark Residential's and ERP Operating Limited Partnership's Form 8-K dated and filed on August 17, 2026.
10.1*	Amendment No. 2 to Seventh Amended and Restated Revolving Loan Agreement, dated as of August 17, 2026, among AvalonBay Communities, Inc., ERP Operating Limited Partnership, Bank of America, N.A., as administrative agent, and the lenders party thereto.	Included as Exhibit 10.1 to Vivmark Residential's and ERP Operating Limited Partnership's Form 8-K dated and filed on August 17, 2026.
10.2*	Amendment No. 2 to Term Loan Agreement, dated as of August 17, 2026, among AvalonBay Communities, Inc., ERP Operating Limited Partnership, Truist Bank, as administrative agent, and the lenders party thereto.	Included as Exhibit 10.2 to Vivmark Residential's and ERP Operating Limited Partnership's Form 8-K dated and filed on August 17, 2026.
10.3	Form of Executive Retention Award Agreement.	Attached herein.
10.4	AvalonBay Communities, Inc. 2026 Equity Incentive Plan.	Included as Exhibit 4.4 to Vivmark Residential's Form S-8 filed on August 17, 2026.
10.5	AvalonBay Communities, Inc. Second Amended and Restated 2009 Equity Incentive Plan.	Included as Exhibit 4.5 to Vivmark Residential's Form S-8 filed on August 17, 2026.
10.6	Amended and Restated AvalonBay Communities, Inc. Deferred Compensation Plan, effective as of January 1, 2011.	Included as Exhibit 4.6 to Vivmark Residential's Form S-8 filed on August 17, 2026.
10.7	First Amendment to Amended and Restated AvalonBay Communities, Inc. Deferred Compensation Plan, effective as of November 7, 2011.	Included as Exhibit 4.7 to Vivmark Residential's Form S-8 filed on August 17, 2026.
10.8	Second Amendment to Amended and Restated AvalonBay Communities, Inc. Deferred Compensation Plan, effective as of November 15, 2012.	Included as Exhibit 4.8 to Vivmark Residential's Form S-8 filed on August 17, 2026.
31.1	Vivmark Residential – Certification of Benjamin W. Schall, Chief Executive Officer.	Attached herein.
31.2	Vivmark Residential – Certification of Kevin P. O'Shea, Chief Financial Officer.	Attached herein.
31.3	ERP Operating Limited Partnership – Certification of Benjamin W. Schall, Chief Executive Officer of Registrant's General Partner.	Attached herein.
31.4	ERP Operating Limited Partnership – Certification of Kevin P. O'Shea, Chief Financial Officer of Registrant's General Partner.	Attached herein.
32.1	Vivmark Residential – Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, of Benjamin W. Schall, Chief Executive Officer of the Company.	Attached herein.
32.2	Vivmark Residential – Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, of Kevin P. O'Shea, Chief Financial Officer of the Company.	Attached herein.
32.3	ERP Operating Limited Partnership – Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, of Benjamin W. Schall, Chief Executive Officer of Registrant's General Partner.	Attached herein.
32.4	ERP Operating Limited Partnership – Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act	Attached herein.

	of 2002, of Kevin P. O'Shea, Chief Financial Officer of Registrant's General Partner.
101.INS	Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because XBRL tags are embedded within the Inline XBRL document.
101.SCH	Inline XBRL Taxonomy Extension Schema With Embedded Linkbase Documents.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

*Pursuant to Item 601(a)(5) of Regulation S-K, certain schedules and exhibits have been omitted. The registrants hereby agree to furnish a copy of any omitted schedule or exhibit to the SEC upon request by the SEC.

Table of Contents

SIGNATURES

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

VIVMARK RESIDENTIAL

Date: November 9, 2026

By: /s/ Benjamin W. Schall
Benjamin W. Schall
President and Chief Executive Officer
(Principal Executive Officer)

Date: November 9, 2026

By: /s/ Kevin P. O'Shea
Kevin P. O'Shea
Executive Vice President and Chief Financial Officer
(Principal Financial Officer)

ERP OPERATING LIMITED PARTNERSHIP
BY: VIVMARK RESIDENTIAL
ITS GENERAL PARTNER

Date: November 9, 2026

By: /s/ Benjamin W. Schall
Benjamin W. Schall
President and Chief Executive Officer
(Principal Executive Officer)

Date: November 9, 2026

By: /s/ Kevin P. O'Shea
Kevin P. O'Shea
Executive Vice President and Chief Financial Officer
(Principal Financial Officer)

Exhibit 3.2

This composite copy of the Declaration of Trust of the Trust reflects the provisions of the Articles of Restatement of the Trust, dated December 9, 2004, as amended by the Articles of Amendment, dated August 17, 2026

EQUITY RESIDENTIAL

ARTICLES OF RESTATEMENT

THIS IS TO CERTIFY THAT:

FIRST: Equity Residential, a Maryland real estate investment trust (the "Trust"), desires to restate its Declaration of Trust (the "Declaration of Trust") as currently in effect.

SECOND: The following are all the provisions of the Declaration of Trust currently in effect:

ARTICLE I

THE TRUST; CERTAIN DEFINITIONS

SECTION 1.1 Name. The name of the trust (hereinafter called the "Trust") is:

Vivmark Residential

SECTION 1.2 Resident Agent. The name and address of the resident agent of the Trust in the State of Maryland are The Corporation Trust Incorporated, 300 E. Lombard Street, Baltimore, Maryland 21202. The Trust may have such offices or places of business within or without the State of Maryland as the Trustees may from time to time determine.

SECTION 1.3 Nature of Trust. The Trust is a real estate investment trust within the meaning of Title 8 (as hereinafter defined).

SECTION 1.4 Powers. The Trust shall have all of the powers granted to real estate investment trusts generally by Title 8 and shall have any other and further powers as are not inconsistent with Title 8 or any other applicable law.

SECTION 1.5 Definitions. As used in this Declaration of Trust, the following terms shall have the following meanings unless the context otherwise requires:

"Affiliate" or "Affiliated" means, as to any corporation, partnership, trust or other association (other than the Trust), any Person (i) that holds beneficially, directly or indirectly, 5 % or more of the outstanding stock or equity interests thereof or (ii) who is an officer, director, partner or trustee thereof or of any Person which controls, is controlled by, or is under common control with, such corporation, partnership, trust or other association or (iii) which controls, is controlled by, or is under common control with, such corporation, partnership, trust or other association.

"Board of Trustees" means the Board of Trustees of the Trust.

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

"Declaration" or "Declaration of Trust" means this Second Amended and Restated Declaration of Trust, including any amendments or supplements hereto.

"Person" means an individual, corporation, partnership, estate, trust (including a trust qualified under Section 401(a) or 501(c)(17) of the Code), a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, association, private foundation within the meaning of Section 509(a) of the Code, joint stock company or other entity, or any government and agency or political subdivision thereof.

"REIT Provisions of the Code" means Section 856 through 860 of the Code and any successor or other provisions of the Code relating to real estate investment trusts (including provisions as to the attribution of ownership of beneficial interests therein) and the regulations promulgated thereunder.

"Securities" means Shares (as hereinafter defined), any stock, shares or other evidences of equity, beneficial or other interests, voting trust certificates, bonds, debentures, notes or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in, temporary or interim certificates for, receipts for, guarantees of, or warrants, options or rights to subscribe to, purchase or acquire, any of the foregoing.

"Securities of the Trust" means any Securities issued by the Trust.

"Shareholders" means holders of record of outstanding Shares.

"Shares" means transferable shares of beneficial interest of the Trust of any class or series.

"Title 8" means Title 8 of the Corporations and Associations Article of the Annotated Code of Maryland, as amended, or any successor statute.

"Trustee" means, individually, an individual, and "Trustees" means, collectively, the individuals, in each case as named in Section 2.2 of this Declaration so long as they continue in office and any and all other individuals who have been duly elected and qualify as trustees of the Trust hereunder.

"Trust Property" means any and all property, real, personal or otherwise, tangible or intangible, which is transferred or conveyed to the Trust or the Trustees (including all rents, income, profits and gains therefrom), which is owned or held by, or for the account of, the Trust or the Trustees.

ARTICLE II

TRUSTEES

SECTION 2.1 Number. The number of Trustees initially shall be two, which number may thereafter be increased or decreased by the Trustees then in office from time to time; however, the total number of Trustees shall be not less than two and not more than 15. No reduction in the number of Trustees shall cause the removal of any Trustee from office prior to the expiration of his term.

SECTION 2.2 Term.

At each annual meeting of Shareholders beginning at the annual meeting of Shareholders in 2003, all Trustees shall be elected to hold office for a term of one year. Trustees may be re-elected any number of times. Each Trustee shall hold office until the election and qualification of his or her successor.

SECTION 2.3 Resignation, Removal or Death. Any Trustee may resign by written notice to the remaining Trustees, effective upon execution and delivery to the Trust of such written notice or upon any future date specified in the notice. A Trustee may be removed, only with Cause (as hereinafter defined), at a meeting of the Shareholders called for that purpose, by the affirmative vote of the holders of not less than two-thirds of the Shares then outstanding and entitled to vote in the election of Trustees. As used herein, "Cause" shall mean (a) material theft, fraud or embezzlement or active and deliberate dishonesty by a Trustee; (b) habitual neglect of duty by a Trustee having a material and adverse significance to the Trust; or (c) the conviction of a Trustee of a felony or of any crime involving moral turpitude. Upon the resignation or removal of any Trustee, or his otherwise ceasing to be a Trustee, he shall automatically cease to have any right, title or interest in and to the Trust Property and shall execute and deliver such documents as the remaining Trustees require for the conveyance of any Trust Property held in his name, and shall account to the remaining Trustees as they require for all property which he holds as Trustee. Upon the incapacity or death of any Trustee, his legal representative shall perform those acts.

SECTION 2.4 Legal Title. Legal title to all Trust Property shall be vested in the Trust, but it may cause legal title to any Trust Property to be held by or in the name of any or all of the Trustees or any other Person as nominee, in which case any right, title or interest of the Trustees in and to the Trust Property shall automatically vest in successor and additional Trustees upon their qualification and acceptance of election or appointment as Trustees, and they shall thereupon have all the rights and obligations of Trustees, whether or not conveyancing documents have been executed and delivered pursuant to Section 2.3 or otherwise. Written evidence of the qualification and acceptance of election or appointment of successor and additional Trustees may be filed with the records of the Trust and in such other offices, agencies or places as the Trust or Trustees may deem necessary or desirable.

ARTICLE III

POWERS OF TRUSTEES

Subject to the express limitations herein or in the Bylaws, (1) the business and affairs of the Trust shall be managed under the direction of the Board of Trustees and (2) the Board of Trustees shall have full, exclusive and absolute power, control and authority over the Trust Property and over the business of the Trust. The Board of Trustees may take any actions as in its sole judgment and discretion are necessary or desirable to conduct the business of the Trust. This Declaration of Trust shall be construed with a presumption in favor of the grant of power and authority to the Board of Trustees. Any construction of this Declaration or determination made in good faith by the Board of Trustees concerning the powers and authority of the Trust, the Shareholders, the Board of Trustees or the offices of the Trust hereunder shall be conclusive. The powers of the Board of Trustees shall in no way be limited or restricted by reference to or inference from the terms of this or any other provision of this Declaration or construed or deemed by inference or otherwise in any manner to exclude or limit the powers conferred upon the Board of Trustees under the general laws of the State of Maryland as now or hereafter in force. In the case of an ambiguity in the application of any provision of this Declaration of Trust, including any provision relating to share ownership and transfers, the Board of Trustees shall have the power to determine the application of that provision (subject, however, to the provisions of Section 7.2(a)(1)(A)), and such determination shall be final and conclusive for all purposes.

The Board of Trustees, without any action by the Shareholders, shall have and may exercise, on behalf of the Trust, without limitation, the power to terminate the status of the Trust as a real estate investment trust under the Code; to determine that compliance with any restriction or limitations on ownership and transfers of shares of the Trust's beneficial interest set forth in Article VII of this Declaration of Trust is no longer required in order for the Trust to qualify as a REIT; to adopt, amend and repeal Bylaws; to elect officers in the manner prescribed in the Bylaws; to solicit proxies from holders of shares of beneficial interest of the Trust; and to do any other acts and deliver any other documents necessary or appropriate to the foregoing powers.

ARTICLE IV

INVESTMENT POLICY

The fundamental investment policy of the Trust is to make investments in such a manner as to comply with the REIT Provisions of the Code and with the requirements of Title 8 with respect to the composition of the Trust's investments and the derivation of its income. Subject to Section 6.7, the Trustees shall use their best efforts to carry out this fundamental investment policy and to conduct the affairs of the Trust in such a manner as to continue to qualify the Trust for the tax treatment provided in the REIT Provisions of the Code; provided, however, that no Trustee, officer, employee or agent of the Trust shall be liable for any act or omission resulting in the loss of tax benefits under the Code, except to the extent permitted in Section 11.2. The Board of Trustees may change from time to time, by resolution or in the Bylaws of the Trust, such investment policies as it determines to be in the best interest of the Trust, including prohibitions or restrictions upon certain types of investments.

ARTICLE V

SHARES

SECTION 5.1 Authorized Shares. The total number of Shares which the Trust has authority to issue is 2,100,000,000 shares, of which 2,000,000,000 are common shares, $0.01 par value per share (individually a "Common Share" or collectively "Common Shares"), and 100,000,000 are preferred shares, $0.01 par value per share ("Preferred Shares") of which

(a) [Intentionally Omitted.]

(b) 575,000 shares have been designated as 9-1/8% Series B Cumulative Redeemable Preferred Shares of Beneficial Interest ($0.01 Par Value Per Share) (Liquidation Preference $250.00 Per Share) with the terms set forth in Section 13.2 of this Declaration,

(c) 460,000 shares have been designated as 9-1/8% Series C Cumulative Redeemable Preferred Shares of Beneficial Interest ($0.01 Par Value Per Share) (Liquidation Preference $250.00 Per Share) with the terms set forth in Section 13.3 of this Declaration,

(d) 805,000 have been designated as 8.60% Series D Cumulative Redeemable Preferred Shares of Beneficial Interest (Liquidation Preference $250.00 Per Share) with the terms set forth in Section 13.4 of this Declaration,

(e) 4,600,000 shares have been designated as Series E Cumulative Convertible Preferred Shares of Beneficial Interest with the terms set forth in Section 13.5 of this Declaration,

(f) [Intentionally Omitted.]

(g) 164,951 shares have been designated as Series H Cumulative Convertible Preferred Shares of Beneficial Interest ($.01 Par Value Per Share) (Liquidation Preference $25.00 Per Share) with the terms set forth in Section 13.7 of this Declaration,

(h) 1,000,000 shares have been designated as Series K Cumulative Redeemable Preferred Shares of Beneficial Interest ($.01 Par Value Per Share) (Liquidation Preference $50.00 Per Share) with the terms set forth in Section 13.8 of this Declaration,

(i) 800,000 shares have been designated as 8.00% Series M Cumulative Redeemable Preferred Shares of Beneficial Interest, $.01 par value per share (liquidation preference $50.00 per share), with the terms set forth in Section 13.9 of this Declaration,

(j) 1,320,000 shares have been designated as 8.50% Series M-1 Cumulative Redeemable Preferred Shares of Beneficial Interest, $.01 par value per share (liquidation preference $50.00 per share), with the terms set forth in Section 13.10 of this Declaration,

(k) 600,000 shares have been designated as 8.375% Series M-2 Cumulative Redeemable Preferred Shares of Beneficial Interest, $.01 par value per share (liquidation preference $50.00 per share), with the terms set forth in Section 13.11 of this Declaration,

(l) 1,000,000 shares have been designated as 8.50% Series M-3 Cumulative Redeemable Preferred Shares of Beneficial Interest, $.01 par value per share (liquidation preference $50.00 per share), with the terms set forth in Section 13.12 of this Declaration,

(m) 510,000 shares have been designated as 7.875% Series M-4 Cumulative Redeemable Preferred Shares of Beneficial Interest, $.01 par value per share (liquidation preference $50.00 per share), with the terms set forth in Section 13.13 of this Declaration,

(n) 190,000 shares have been designated as 7.625% Series M-5 Convertible Cumulative Redeemable Preferred Shares of Beneficial Interest, $.01 par value per share (liquidation preference $50.00 per share) with the terms set forth in Section 13.14 of this Declaration,

(o) 270,000 shares have been designated as 7.625% Series M-6 Convertible Cumulative Redeemable Preferred Shares of Beneficial Interest, $.01 par value per share (liquidation preference $50.00 per share), with the terms set forth in Section 13.15 of this Declaration,

(p) 230,000 shares have been designated as 7.625% Series M-7 Convertible Cumulative Redeemable Preferred Shares of Beneficial Interest, $.01 par value per share (liquidation preference $50.00 per share), with the terms set forth in Section 13.16 of this Declaration,

(q) 600,000 shares have been designated as 6.48% Series N Cumulative Redeemable Preferred Shares of Beneficial Interest, $.01 par value per share (liquidation preference $250.00 per share), with the terms set forth in Section 13.17 of this Declaration.

SECTION 5.2 Common Shares. Subject to the provisions of Article VII, each Common Share shall entitle the holder thereof to one vote. Holders of Common Shares shall not be entitled to cumulative voting.

SECTION 5.3 Preferred Shares. The Board of Trustees may classify any unissued Preferred Shares and reclassify any previously classified but unissued Preferred Shares of any series from time to time, in one or more series of Shares.

SECTION 5.4 Classified or Reclassified Shares. Prior to issuance of classified or reclassified Shares of any class or series, the Board of Trustees by resolution shall (a) designate that class or series to distinguish it from all other classes and series of Shares; (b) specify the number of Shares to be included in the class or series; (c) set, subject to the provisions of Article VII and subject to the express terms of any class or series of Shares outstanding at the time, the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms and conditions of redemption for each class or series; and (d) cause the Trust to file articles supplementary with the State Department of Assessments and Taxation of Maryland (the "SDAT"). Any of the terms of any class or series of Shares set pursuant to clause (c) of this Section 5.4 may be made dependent upon facts ascertainable outside the Declaration of Trust (including the occurrence of any event, determination or action by the Trust, or any other person or body) and may vary among holders thereof, provided that the manner in which such facts or variations shall operate upon the terms of such class or series of Shares is clearly and expressly set forth in the articles supplementary filed with the SDAT.

SECTION 5.5 Authorization by Board of Share Issuance. The Board of Trustees may authorize the issuance from time to time of Shares of any class or series, whether now or hereafter authorized, or securities or rights convertible into Shares of any class or series, whether now or thereafter authorized, for such consideration (whether in cash, property, past or future services, obligation for future payment or otherwise) as the Board of Trustees may deem advisable (or without consideration in the case of a Share split or Share dividend), subject to such restrictions or limitations, if any, as may be set forth in this Declaration of Trust or the Bylaws of the Trust.

SECTION 5.6 Dividends and Distributions. The Board of Trustees may from time to time authorize and declare such dividends or distributions, in cash or other assets of the Trust or in securities of the Trust or from any other source as the Board of Trustees in its discretion shall determine. The Board of Trustees shall endeavor to authorize, declare and pay such dividends and distributions as shall be necessary for the Trust to qualify as a real estate investment trust under the Code; however, Shareholders shall have no right to any dividend or distribution unless and until authorized and declared by the Board. The exercise of the powers and rights of the Board of Trustees pursuant to this Section 5.6 shall be subject to the provisions of any class or series of Shares at the time outstanding. Notwithstanding any other provision in this Declaration of Trust, no determination shall be made by the Board of Trustees nor shall any transaction be entered into by the Trust which would cause any Shares or other beneficial interest in the Trust not to constitute "transferable shares" or "transferable certificates of beneficial interest" under Section 856(a)(2) of the Code or which would cause any distribution to constitute a preferential dividend as described in Section 562(c) of the Code.

SECTION 5.7 General Nature of Shares. All Shares shall be personal property entitling the Shareholders only to those rights provided in this Declaration of Trust. The Shareholders shall have no interest in the property of the Trust and shall have no right to compel any partition, division, dividend or distribution of the Trust or of the property of the Trust. The death of a Shareholder shall not terminate the Trust. The Trust is entitled to treat as Shareholders only those persons in whose names Shares are registered as holders of Shares on the beneficial interest ledger of the Trust.

SECTION 5.8 Fractional Shares. The Trust may, without the consent or approval of any Shareholder, issue fractional Shares, eliminate a fraction of a Share by rounding up or down to a full Share, arrange for the disposition of a fraction of a Share by the person entitled to it, or pay cash for the fair value of a fraction of a Share.

SECTION 5.9 Declaration of Trust and Bylaws. All persons who shall acquire Shares shall acquire the same subject to the provisions of this Declaration of Trust and the Bylaws of the Trust.

ARTICLE VI

PROVISIONS FOR DEFINING, LIMITING AND REGULATING CERTAIN POWERS OF THE TRUST AND OF THE SHAREHOLDERS AND TRUSTEES

SECTION 6.1 Authorization by Board of Share Issuance. The Board of Trustees may authorize the issuance from time to time of Shares of any class, whether now or hereafter authorized, or securities convertible into Shares of any class, whether now or hereafter authorized, for such consideration as the Board of Trustees may deem advisable, subject to such restrictions or limitations, if any, as may be set forth in this Declaration of Trust or in the Bylaws of the Trust or in the general laws of the State of Maryland.

SECTION 6.2 Preemptive and Appraisal Rights. Except as may be provided by the Board of Trustees in authorizing the issuance of Shares pursuant to Sections 5.4 and 5.5, no holder of Shares shall, as such holder, (a) have any preemptive right to purchase or subscribe for any additional Shares or any other security of the Trust which the Trust may issue or sell or (b), except as expressly required by Title 8, have any right to require the Trust to pay him the fair value of his Shares in an appraisal or similar proceeding.

SECTION 6.3 Advisor Agreements. Subject to such approval of the Shareholders and other conditions, if any, as may be required by any applicable statute, rule or regulation, the Board of Trustees may authorize the execution and performance by the Trust of one or more agreements with any person, corporation, association, company, trust, partnership (limited or general) or other organization whereby, subject to the supervision and control of the Board of Trustees, any such other person, corporation, association, company, trust, partnership (limited or general) or other organization (the "Advisor") shall render or make available to the Trust managerial, investment, advisory and/or related services, office space and other services and facilities (including, if deemed advisable by the Board of Trustees, the management or supervision of the investments of the Trust) upon such terms and conditions as may be provided in such agreement or agreements (including, if deemed fair and equitable by the Board of Trustees, the compensation payable thereunder by the Trust).

SECTION 6.4 Related Party Transactions.

(a) Without limiting any other procedures available by law or otherwise to the Trust, the Board of Trustees may authorize any agreement of the character described in Section 6.3 or other transaction with any person, corporation, association, company, trust, partnership (limited

or general) or other organization, although one or more of the Trustees or officers of the Trust may be a party to any such agreement or an officer, director, stockholder or member of such other party, and no such agreement or transaction shall be invalidated or rendered void or voidable solely by reason of the existence of any such relationship if the existence is disclosed or known to the Board of Trustees, and the contract or transaction is approved by the Board of Trustees (including the affirmative vote of a majority of the disinterested Trustees even if they constitute less than a quorum of the Board). Any Trustee who is also a director, officer, stockholder or member of such other entity may be counted in determining the existence of a quorum at any meeting of the Board of Trustees considering such matter.

(b) Subsequent to the date hereof (the "Restriction Date") the affirmative vote of a majority of the disinterested Trustees (even if they constitute less than a quorum of the Board) shall be required to approve the purchase by the Trust or its subsidiaries of any properties under the direct or indirect control of Samuel Zell or Starwood Capital Partners, L.P., a Delaware limited partnership, or in which he or it has a direct or indirect substantial economic interest on the Restriction Date.

SECTION 6.5 Determinations by Board. The determination as to any of the following matters, made in good faith by or pursuant to the direction of the Board of Trustees consistent with this Declaration of Trust and in the absence of actual receipt of an improper benefit in money, property or services or active and deliberate dishonesty established by a court, shall be final and conclusive and shall be binding upon the Trust and every holder of Shares: (a) the amount of the net income of the Trust for any period and the amount of assets at any time legally available for the payment of dividends, redemption of Shares or the payment of other distributions with respect to Shares; (b) the amount of paid-in surplus, net assets, other surplus, annual or other net profit, net assets in excess of capital, undivided profits or excess of profits over losses on sales of assets; (c) the amount, purpose, time of creation, increase or decrease, alteration or cancellation of any reserves or charges and the propriety thereof (whether or not any obligation or liability for which such reserves or charges shall have been created shall have been paid or discharged); (d) the fair value, or any sale, bid or asked price to be applied in determining the fair value, of any asset owned or held by the Trust; and (e) any matters relating to the acquisition, holding and disposition of any assets by the Trust.

SECTION 6.6 Reserved Powers of Board. The enumeration and definition of powers of the Board of Trustees included in this Article VI shall in no way be limited or restricted by reference to or inference from the terms of any other clause of this or any other provision of the Declaration of Trust, or construed or deemed by inference or otherwise in any manner to exclude or limit the powers conferred upon the Board of Trustees under the general laws of the State of Maryland as now or hereafter in force.

SECTION 6.7 REIT Qualification. The Board of Trustees shall use its reasonable best efforts to cause the Trust and the Shareholders to qualify for federal income tax treatment in accordance with the REIT Provisions of the Code. In furtherance of the foregoing, the Board of Trustee shall use its reasonable best efforts to take such actions as are necessary, and may take such actions as in its sole judgment and discretion are desirable, to preserve the status of the Trust as a REIT, including amending the provisions of this Declaration of Trust as provided in Article IX; provided, however, that if the Board of Trustees determines that it is no longer in the best interests of the Trust for it to continue to qualify as a REIT, the Board of Trustees may revoke or otherwise terminate the Trust’s REIT election.

ARTICLE VII

RESTRICTION ON TRANSFER AND OWNERSHIP OF SHARES

SECTION 7.1 Definitions. For the purpose of this Article VII, the following terms shall have the following meanings:

Beneficial Ownership. The term "Beneficial Ownership" shall mean ownership of Shares by a Person, whether the interest in Shares is held directly or indirectly (including by a nominee), and shall include interests that would be treated as owned through the application of Section 544 of the Code, as modified by Section 856(h)(1)(B) of the Code. The terms "Beneficial Owner," "Beneficially Owns" and "Beneficially Owned" shall have the correlative meanings.

Business Day. The term "Business Day" shall mean any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions in Chicago, Illinois are authorized or required by law, regulation or executive order to close.

Charitable Beneficiary. The term "Charitable Beneficiary" shall mean one or more beneficiaries of the Charitable Trust as determined pursuant to Section 7.3(g), provided that each such organization must be described in Sections 501(c)(3), 170(b)(1)(A) and 170(c)(2) of the Code.

Charitable Trust. The term "Charitable Trust" shall mean any trust provided for in Section 7.2(a)(2)(A) and Section 7.3(a).

Charitable Trustee. The term "Charitable Trustee" shall mean the Person unaffiliated with the Trust and a Prohibited Owner, that is appointed by the Trust to serve as trustee of the Charitable Trust.

Code. The term "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

Constructive Ownership. The term "Constructive Ownership" shall mean ownership of Shares by a Person, whether the interest in Shares is held directly or indirectly (including by a nominee), and shall include interests that would be treated as owned through the application of Section 318(a) of the Code, as modified by Section 856(d)(5) of the Code. The terms "Constructive Owner," "Constructively Owns" and "Constructively Owned" shall have the correlative meanings.

Declaration of Trust. The term "Declaration of Trust" shall mean this Amended and Restated Declaration of Trust as filed for record with the SDAT, and any amendments thereto.

Excepted Holder. The term "Excepted Holder" shall mean (i) a shareholder of the Trust for whom an Excepted Holder Limit is created by the Board of Trustees pursuant to Section 7.2(g) or (ii) a shareholder of the Trust who was an "Existing Holder" under the Amended and Restated Declaration of Trust of Equity Residential Properties Trust prior to the date hereof.

Excepted Holder Limit. The term "Excepted Holder Limit" shall mean (i) provided that the affected Excepted Holder agrees to comply with the requirements established by the Board of Trustees pursuant to Section 7.2(g), and subject to adjustment pursuant to Section 7.2(h), the percentage limit established by the Board of Trustees pursuant to Section 7.2(g) or (ii) if the Excepted Holder is an Excepted Holder due to its prior status as an "Existing Holder" under the Amended and Restated Declaration of Trust of Equity Residential Properties Trust, the "Existing Holder Limit" as defined under such Amended and Restated Declaration of Trust.

Initial Date. The term "Initial Date" shall mean the date upon which this Amended and Restated Declaration of Trust containing this Article VII is filed for record with the SDAT.

Market Price. The term "Market Price" on any date shall mean, with respect to any class or series of outstanding Shares, the Closing Price for such Shares on such date. The "Closing Price" on any date shall mean the last sale price for such Shares, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, for such Shares, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the NYSE or, if such Shares are not listed or admitted to trading on the NYSE, as reported on the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which such Shares are listed or admitted to trading or, if such Shares are not listed or admitted to trading on any national securities exchange, the last quoted price, or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the NASDAQ Stock Market or, if such system is no longer in use, the principal other automated quotation system that may then be in use or, if such Shares are not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in such Shares selected by the Board of Trustees or, in the event that no trading price is available for such Shares, the fair market value of Shares, as determined in good faith by the Board of Trustees.

NYSE. The term "NYSE" shall mean the New York Stock Exchange, Inc.

Ownership Limit. The term "Ownership Limit" shall mean (i) with respect to the Common Shares, 5.0% (in value or number of shares, whichever is more restrictive) of the outstanding Common Shares of the Trust; and (ii) with respect to any class or series of Preferred Shares, 5.0% (in value or number of Shares, whichever is more restrictive) of the outstanding shares of such class or series of Preferred Shares of the Trust.

Person. The term "Person" shall mean an individual, corporation, partnership, estate, trust (including a trust qualified under Sections 401(a) or 501(c)(17) of the Code), a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, association, private foundation within the meaning of Section 509(a) of the Code, joint stock company or other entity and also includes a group as that term is used for purposes of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended.

Prohibited Owner. The term "Prohibited Owner" shall mean, with respect to any purported Transfer, any Person who, but for the provisions of Section 7.2(a), would Beneficially Own or Constructively Own Shares, and if appropriate in the context, shall also mean any Person who would have been the record owner of Shares that the Prohibited Owner would have so owned.

REIT. The term "REIT" shall mean a real estate investment trust within the meaning of Section 856 of the Code.

Restriction Termination Date. The term "Restriction Termination Date" shall mean the first day after the Initial Date on which the Board of Trustees determines that it is no longer in the best interests of the Trust to attempt to, or continue to, qualify as a REIT or that compliance with the restrictions and limitations on Beneficial Ownership, Constructive Ownership and Transfers of Shares set forth herein is no longer required in order for the Trust to qualify as a REIT.

SDAT. The term "SDAT" shall mean the State Department of Assessments and Taxation of Maryland.

Transfer. The term "Transfer" shall mean any issuance, sale, transfer, gift, assignment, devise or other disposition, as well as any other event that causes any Person to acquire Beneficial Ownership or Constructive Ownership, or any agreement to take any such actions or cause any such events, of Shares or the right to vote or receive dividends on Shares, including (a) a change in the capital structure of the Trust, (b) a change in the relationship between two or more Persons which causes a change in ownership of Shares by application of Section 544 of the Code, as modified by Section 856(h), (c) the granting or exercise of any option or warrant (or any disposition of any option or warrant), pledge, security interest, or similar right to acquire Shares, (d) any disposition of any securities or rights convertible into or exchangeable for Shares or any interest in Shares or any exercise of any such conversion or exchange right and (e) Transfers of interests in other entities that result in changes in Beneficial or Constructive Ownership of Shares; in each case, whether voluntary or involuntary, whether owned of record, Constructively Owned or Beneficially Owned and whether by operation of law or otherwise. (For purposes of this Article VII, the right of a limited partner in ERP Operating Limited Partnership, an Illinois limited partnership, to require the partnership to redeem such limited partner's units of partnership interest pursuant to Section 3.2 of the Agreement of Limited Partnership of ERP Operating Limited Partnership shall not be considered to be an option or similar right to acquire Shares of the Trust.) The terms "Transferring" and "Transferred" shall have the correlative meanings.

SECTION 7.2 Shares.

(a) Ownership Limitations. During the period commencing on the Initial Date and prior to the Restriction Termination Date:

(1) Basic Restrictions.

(A) (i) No Person, other than an Excepted Holder, shall Beneficially Own or Constructively Own Shares in excess of the Ownership Limit and (ii) no Excepted Holder shall Beneficially Own or Constructively Own Shares in excess of the Excepted Holder Limit for such Excepted Holder.

(B) No Person shall Beneficially or Constructively Own Shares to the extent that (i) such Beneficial Ownership of Shares would result in the Trust being "closely held" within the meaning of Section 856(h) of the Code (without regard to whether the ownership interest

is held during the last half of a taxable year), or (ii) such Beneficial or Constructive Ownership of Shares would result in the Trust otherwise failing to qualify as a REIT (including, but not limited to, Constructive Ownership that would result in the Trust owning (actually or Constructively) an interest in a tenant that is described in Section 856(d)(2)(B) of the Code if the income derived by the Trust from such tenant would cause the Trust to fail to satisfy any of the gross income requirements of Section 856(c) of the Code).

(C) No Person shall Transfer any Shares if, as a result of the Transfer, the Shares would be beneficially owned by less than 100 Persons (determined without reference to the rules of attribution under Section 544 of the Code). Notwithstanding any other provisions contained herein, any Transfer of Shares (whether or not such Transfer is the result of a transaction entered into through the facilities of the NYSE or any other national securities exchange or automated inter-dealer quotation system) that, if effective, would result in Shares being beneficially owned by less than 100 Persons (determined under the principles of Section 856(a)(5) of the Code) shall be void ab initio, and the intended transferee shall acquire no rights in such Shares.

(2) Transfer in Trust. If any Transfer of Shares (whether or not such Transfer is the result of a transaction entered into through the facilities of the NYSE or any other national securities exchange or automated inter-dealer quotation system) occurs which, if effective, would result in any Person Beneficially Owning or Constructively Owning Shares in violation of Section 7.2(a)(1)(A) or (B),

(i) then that number of Shares the Beneficial or Constructive Ownership of which otherwise would cause such Person to violate Section 7.2(a)(1)(A) or (B) (rounded to the nearest whole share) shall be automatically transferred to a Charitable Trust for the benefit of a Charitable Beneficiary, as described in Section 7.3, effective as of the close of business on the Business Day prior to the date of such Transfer, and such Person shall acquire no rights in such Shares; or

(ii) if the transfer to the Charitable Trust described in clause (i) of this sentence would not be effective for any reason to prevent the violation of Section 7.2(a)(1)(A) or (B), then the Transfer of that number of Shares that otherwise would cause any Person to violate Section 7.2(a)(1)(A) or (B) shall be void ab initio, and the intended transferee shall acquire no rights in such Shares.

(b) Remedies for Breach. If the Board of Trustees or any duly authorized committee thereof shall at any time determine in good faith that a Transfer or other event has taken place that results in a violation of Section 7.2(a) or that a Person intends to acquire or has attempted to acquire Beneficial or Constructive Ownership of any Shares in violation of Section 7.2(a) (whether or not such violation is intended), the Board of Trustees or a committee thereof shall take such action as it deems advisable to refuse to give effect to or to prevent such Transfer or other event, including, without limitation, causing the Trust to redeem Shares, refusing to give effect to such Transfer on the books of the Trust or instituting proceedings to enjoin such Transfer or other event; provided, however, that any Transfer or attempted Transfer or other event in violation of Section 7.2(a) shall automatically result in the transfer to the Charitable Trust described above, and, where applicable, such Transfer (or other event) shall be void ab initio as provided above irrespective of any action (or non-action) by the Board of Trustees or a committee thereof.

(c) Notice of Restricted Transfer. Any Person who acquires or attempts or intends to acquire Beneficial Ownership or Constructive Ownership of Shares that will or may violate Section 7.2(a)(l), or any Person who would have owned Shares that resulted in a transfer to the Charitable Trust pursuant to the provisions of Section 7.2(a)(2), shall immediately give written notice to the Trust of such event, or in the case of such a proposed or attempted transaction, give at least 15 days prior written notice, and shall provide to the Trust such other information as the Trust may request in order to determine the effect, if any, of such acquisition or ownership on the Trust's status as a REIT.

(d) Owners Required To Provide Information. From the Initial Date and prior to the Restriction Termination Date:

(1) every owner of more than five percent (or such lower percentage as required by the Code or the Treasury Regulations promulgated thereunder) of the outstanding Shares, within 30 days after the end of each taxable year, shall give written notice to the Trust stating the name and address of such owner, the number of Shares Beneficially Owned and a description of the manner in which such Shares are held; provided that a shareholder of record who holds outstanding Shares as nominee for another Person, which other Person is required to include in gross income the dividends received on such Shares (an "Actual Owner"), shall give written notice to the Trust stating the name and address of such Actual Owner and the number of Shares of such Actual Owner with respect to which the shareholder of record is nominee. Each owner shall provide to the Trust such additional information as the Trust may request in order to determine the effect, if any, of such Beneficial Ownership on the Trust's status as a REIT and to ensure compliance with the Ownership Limit.

(2) each Person who is a Beneficial or Constructive Owner of Shares and each Person (including the shareholder of record) who is holding Shares for a Beneficial or Constructive Owner shall provide to the Trust such information as the Trust may request, in good faith, in order to determine the Trust's status as a REIT and to comply with requirements of any taxing authority or governmental authority or to determine such compliance.

(e) Remedies Not Limited. Subject to Article III of the Declaration of Trust, nothing contained in this Section 7.2 shall limit the authority of the Board of Trustees to take such other action as it deems necessary or advisable to protect the Trust and the interests of its shareholders in preserving the Trust's status as a REIT.

(f) Ambiguity. If Section 7.2 or 7.3 requires an action by the Board of Trustees and the Declaration of Trust fails to provide specific guidance with respect to such action, the Board of Trustees shall have the power to determine the action to be taken so long as such action is not contrary to the provisions of Sections 7.1, 7.2 or 7.3.

(g) Exceptions.

(1) The Board, in its sole and absolute discretion, may grant to any Person who makes a request therefor an exception to the Ownership Limit with respect to the ownership of any series or class of Preferred Shares, subject to the following conditions and limitations: (A) the

Board shall have determined that (x) assuming such Person would Beneficially or Constructively Own the maximum amount of Common Shares and Preferred Shares permitted as a result of the exception to be granted and (y) assuming that all other Persons who would be treated as "individuals" for purposes of Section 542(a)(2) (determined taking into account Section 856(h)(3)(A) of the Code) would Beneficially or Constructively Own the maximum amount of Common Shares and Preferred Shares permitted under this Article VII (taking into account any exception, waiver, or exemption granted under this Section 7.2(g) to (or with respect to) such Persons), the Trust would not be "closely held" within the meaning of Section 856(h) of the Code (assuming that the ownership of Shares is determined during the second half of a taxable year) and would not otherwise fail to qualify as a REIT; and (B) such Person provides to the Board such representations and undertakings, if any, as the Board may, in its sole and absolute discretion, require (including, without limitation, an agreement as to a reduced Ownership Limit or Excepted Holder Limit for such Person with respect to the Beneficial or Constructive Ownership of one or more other classes of Shares not subject to the exception), and such Person agrees that any violation of such representations and undertakings or any attempted violation thereof will result in the application of the remedies set forth in Section 7.2 with respect to Shares held in excess of the Ownership Limit or the Excepted Holder Limit (as may be applicable) with respect to such Person (determined without regard to the exception granted such Person under this subparagraph (1)). If a member of the Board requests that the Board grant an exception pursuant to this subparagraph (1) with respect to such member or with respect to any other Person if such Board member would be considered to be the Beneficial or Constructive Owner of Shares owned by such Person, such member of the Board shall not participate in the decision of the Board as to whether to grant any such exception.

(2) In addition to exceptions permitted under subparagraph (1) above, the Board shall except a Person from the Ownership Limit if: (i) such Person submits to the Board information satisfactory to the Board, in its reasonable discretion, demonstrating that such Person is not an individual for purposes of Section 542(a)(2) of the Code (determined taking into account Section 856(h)(3)(A) of the Code); (ii) such Person submits to the Board information satisfactory to the Board, in its reasonable discretion, demonstrating that no Person who is an individual for purposes of Section 542(a)(2) of the Code (determined taking into account Section 856(h)(3)(A) of the Code) would be considered to Beneficially Own Shares in excess of the Ownership Limit by reason of the Excepted Holder's ownership of Shares in excess of the Ownership Limit pursuant to the exception granted under this subparagraph (2); (iii) such Person submits to the Board information satisfactory to the Board, in its reasonable discretion, demonstrating that clause (ii) of subparagraph (1)(B) of Section 7.2(a) will not be violated by reason of the Excepted Holder's ownership of Shares in excess of the Ownership Limit pursuant to the exception granted under this subparagraph (2); and (iv) such Person provides to the Board such representations and undertakings, if any, as the Board may, in its reasonable discretion, require to ensure that the conditions in clauses (i), (ii) and (iii) hereof are satisfied and will continue to be satisfied throughout the period during which such Person owns Shares in excess of the Ownership Limit pursuant to any exception thereto granted under this subparagraph (2), and such Person agrees that any violation of such representations and undertakings or any attempted violation thereof will result in the application of the remedies set forth in Section 7.2 with respect to Shares held in excess of the Ownership Limit with respect to such Person (determined without regard to the exception granted such Person under this subparagraph (2)).

(3) Prior to granting any exception or exemption pursuant to subparagraph (1) or (2), the Board may require a ruling from the IRS or an opinion of counsel, in either case in

form and substance satisfactory to the Board, in its sole and absolute discretion as it may deem necessary or advisable in order to determine or ensure the Trust's status as a REIT; provided, however, that the Board shall not be obligated to require obtaining a favorable ruling or opinion in order to grant an exception hereunder.

(4) Subject to Section 7.2(a)(1)(B), an underwriter that participates in a public offering or a private placement of Shares (or securities convertible into or exchangeable for Shares) may Beneficially or Constructively Own Shares (or securities convertible into or exchangeable for Shares) in excess of the Ownership Limit, but only to the extent necessary to facilitate such public offering or private placement.

(5) The Board of Trustees may only reduce the Excepted Holder Limit for an Excepted Holder: (1) with the written consent of such Excepted Holder at any time, or (2) pursuant to the terms and conditions of the agreements and undertakings entered into with such Excepted Holder in connection with the establishment of the Excepted Holder Limit for that Excepted Holder. No Excepted Holder Limit shall be reduced to a percentage that is less than the Ownership Limit.

(h) Increase in Ownership Limit. The Board of Trustees may from time to time increase the Ownership Limit, subject to the limitations provided in this Section 7.2(h).

(1) The Ownership Limit may not be increased if, after giving effect to such increase, five Persons who are considered individuals pursuant to Section 542 of the Code, as modified by Section 856(h)(3) of the Code (taking into account all of the Excepted Holders), could Beneficially Own, in the aggregate, more than 49.5% of the value of the outstanding Shares.

(2) Prior to the modification of the Ownership Limit pursuant to this Section 7.2(h), the Board may require such opinions of counsel, affidavits, undertakings or agreements as it may deem necessary or advisable in order to determine or ensure the Trust's status as a REIT if the modification in the Ownership Limit were to be made.

(i) Legend. Each certificate for Shares shall bear substantially the following legend:

> The shares represented by this certificate are subject to restrictions on Beneficial and Constructive Ownership and Transfer for the purpose of the Trust's maintenance of its status as a Real Estate Investment Trust (a "REIT") under the Internal Revenue Code of 1986, as amended (the "Code"). Subject to certain further restrictions and except as expressly provided in the Trust's Declaration of Trust, (i) no Person may Beneficially or Constructively Own Common Shares of the Trust in excess of 5.0 percent (in value or number of shares) of the outstanding Common Shares of the Trust unless such Person is an Excepted Holder (in which case the Excepted Holder Limit shall be applicable); (ii) with respect to any class or series of Preferred Shares, no Person may Beneficially or Constructively Own more than 5.0 percent (in value or number of shares) of the outstanding shares of such class or series of Preferred Shares of the Trust, unless such Person is an Excepted Holder (in which case the Excepted Holder Limit shall be

applicable); (iii) no Person may Beneficially or Constructively Own Shares that would result in the Trust being "closely held" under Section 856(h) of the Code or otherwise cause the Trust to fail to qualify as a REIT; and (iv) no Person may Transfer Shares if such Transfer would result in Shares of the Trust being owned by fewer than 100 Persons. Any Person who Beneficially or Constructively Owns or attempts to Beneficially or Constructively Own Shares which cause or will cause a Person to Beneficially or Constructively Own Shares in excess or in violation of the above limitations must immediately notify the Trust. If any of the restrictions on transfer or ownership are violated, the Shares represented hereby will be automatically transferred to a Charitable Trustee of a Charitable Trust for the benefit of one or more Charitable Beneficiaries. In addition, upon the occurrence of certain events, attempted Transfers in violation of the restrictions described above may be void ab initio. A Person who attempts to Beneficially or Constructively Own Shares in violation of the ownership limitations described above shall have no claim, cause of action, or any recourse whatsoever against a transferor of such Shares. All capitalized terms in this legend have the meanings defined in the Trust's Declaration of Trust, as the same may be amended from time to time, a copy of which, including the restrictions on transfer and ownership, will be furnished to each holder of Shares of the Trust on request and without charge.

Instead of the foregoing legend, the certificate may state that the Trust will furnish a full statement about certain restrictions on transferability to a shareholder on request and without charge.

SECTION 7.3 Transfer of Shares in Trust.

(a) Ownership in Trust. Upon any purported Transfer or other event described in Section 7.2(a)(2) that would result in a transfer of Shares to a Charitable Trust, such Shares shall be deemed to have been transferred to the Charitable Trustee as trustee of a Charitable Trust for the exclusive benefit of one or more Charitable Beneficiaries. Such transfer to the Charitable Trustee shall be deemed to be effective as of the close of business on the Business Day prior to the purported Transfer or other event that results in the transfer to the Charitable Trust pursuant to Section 7.2(a)(2). The Charitable Trustee shall be appointed by the Trust and shall be a Person unaffiliated with the Trust and any Prohibited Owner. Each Charitable Beneficiary shall be designated by the Trust as provided in Section 7.3(g).

(b) Status of Shares Held by the Charitable Trustee. Shares held by the Charitable Trustee shall be issued and outstanding Shares of the Company. The Prohibited Owner shall have no rights in the Shares held by the Charitable Trustee. The Prohibited Owner shall not benefit economically from ownership of any Shares held in trust by the Charitable Trustee, shall have no rights to dividends or other distributions and shall not possess any rights to vote or other rights attributable to the Shares held in the Charitable Trust. The Prohibited Owner shall have no claim, cause of action, or any other recourse whatsoever against the purported transferor of such Shares.

(c) Dividend and Voting Rights. The Charitable Trustee shall have all voting rights and rights to dividends or other distributions with respect to Shares held in the Charitable Trust, which rights shall be exercised for the exclusive benefit of the Charitable Beneficiary. Any dividend or other distribution paid prior to the discovery by the Trust that Shares have been transferred to the Charitable Trustee shall be paid with respect to such Shares to the Charitable Trustee upon demand and any dividend or other distribution authorized but unpaid shall be paid when due to the Charitable Trustee. Any dividends or distributions so paid over to the Charitable Trustee shall be held in trust for the Charitable Beneficiary. The Prohibited Owner shall have no voting rights with respect to Shares held in the Charitable Trust and, subject to Maryland law, effective as of the date that Shares have been transferred to the Charitable Trustee, the Charitable Trustee shall have the authority (at the Charitable Trustee's sole discretion) (i) to rescind as void any vote cast by a Prohibited Owner prior to the discovery by the Trust that Shares have been transferred to the Charitable Trustee and (ii) to recast such vote in accordance with the desires of the Charitable Trustee acting for the benefit of the Charitable Beneficiary; provided, however, that if the Trust has already taken irreversible action, then the Charitable Trustee shall not have the power to rescind and recast such vote. Notwithstanding the provisions of this Article VII, until the Trust has received notification that Shares have been transferred into a Charitable Trust, the Trust shall be entitled to rely on its share transfer and other shareholder records for purposes of preparing lists of shareholders entitled to vote at meetings, determining the validity and authority of proxies and otherwise conducting votes of shareholders.

(d) Rights Upon Liquidation. Upon any voluntary or involuntary liquidation, dissolution or winding up of or any distribution of the assets of the Trust, the Charitable Trustee shall be entitled to receive, ratably with each other holder of Shares of the class or series of Shares that is held in the Charitable Trust, that portion of the assets of the Trust available for distribution to the holders of such class or series (determined based upon the ratio that the number of Shares or such class or series of Shares held by the Charitable Trustee bears to the total number of Shares of such class or series of Shares then outstanding). The Charitable Trustee shall distribute any such assets received in respect of the Shares held in the Charitable Trust in any liquidation, dissolution or winding up of, or distribution of the assets of the Trust, in accordance with Section 7.3(e).

(e) Sale of Shares by Charitable Trustee. Within 20 days of receiving notice from the Trust that Shares have been transferred to the Charitable Trust, the Charitable Trustee of the Charitable Trust shall sell the Shares held in the Charitable Trust to a person, designated by the Charitable Trustee, whose ownership of the Shares will not violate the ownership limitations set forth in Section 7.2(a)(1). Upon such sale, the interest of the Charitable Beneficiary in the Shares sold shall terminate and the Charitable Trustee shall distribute the net proceeds of the sale to the Prohibited Owner and to the Charitable Beneficiary as provided in this Section 7.3(e). The Prohibited Owner shall receive the lesser of (1) the price paid by the Prohibited Owner for the Shares or, if the Prohibited Owner did not give value for the Shares in connection with the event causing the Shares to be held in the Charitable Trust *(e.g.,* in the case of a gift, devise or other such transaction), the Market Price of the Shares on the day of the event causing the Shares to be held in the Charitable Trust and (2) the price per share received by the Charitable Trustee from the sale or other disposition of the Shares held in the Charitable Trust. Any net sales proceeds in excess of the amount payable to the Prohibited Owner shall be immediately paid to the Charitable Beneficiary. If, prior to the discovery by the Trust that Shares have been transferred to the Charitable Trustee, such Shares are sold by a Prohibited Owner, then (i) such Shares shall be deemed to have been sold on behalf of the

Charitable Trust and (ii) to the extent that the Prohibited Owner received an amount for such Shares that exceeds the amount that such Prohibited Owner was entitled to receive pursuant to this Section 7.3(e), such excess shall be paid to the Charitable Trustee upon demand. The Charitable Trustee shall have the right and power (but not the obligation) to offer any Equity Share held in trust for sale to the Trust on such terms and conditions as the Charitable Trustee shall deem appropriate.

(f) Purchase Right in Shares Transferred to the Charitable Trustee. Shares transferred to the Charitable Trustee shall be deemed to have been offered for sale to the Trust, or its designee, at a price per share equal to the lesser of (i) the price per share in the transaction that resulted in such transfer to the Charitable Trust (or, in the case of a devise or gift, the Market Price at the time of such devise or gift) and (ii) the Market Price on the date the Trust, or its designee, accepts such offer. The Trust shall have the right to accept such offer until the Charitable Trustee has sold the Shares held in the Charitable Trust pursuant to Section 7.3(e). Upon such a sale to the Trust, the interest of the Charitable Beneficiary in the Shares sold shall terminate and the Charitable Trustee shall distribute the net proceeds of the sale to the Prohibited Owner.

(g) Designation of Charitable Beneficiaries. By written notice to the Charitable Trustee, the Trust shall designate one or more nonprofit organizations to be the Charitable Beneficiary of the interest in the Charitable Trust such that (i) Shares held in the Charitable Trust would not violate the restrictions set forth in Section 7.2(a)(1) in the hands of such Charitable Beneficiary and (ii) each such organization must be described in Sections 501(c)(3), 170(b)(1)(A) or 170(c)(2) of the Code.

SECTION 7.4 NYSE Transactions. Nothing in this Article VII shall preclude the settlement of any transaction entered into through the facilities of the NYSE or any other national securities exchange or automated inter-dealer quotation system. The fact that the settlement of any transaction is so permitted shall not negate the effect of any other provision of this Article VII and any transferee in such a transaction shall be subject to all of the provisions and limitations set forth in this Article VII.

SECTION 7.5 Enforcement. The Trust is authorized specifically to seek equitable relief, including injunctive relief, to enforce the provisions of this Article VII.

SECTION 7.6 Non-Waiver. No delay or failure on the part of the Trust or the Board of Trustees in exercising any right hereunder shall operate as a waiver of any right of the Trust or the Board of Trustees, as the case may be, except to the extent specifically waived in writing.

SECTION 7.7 - 7-22 [RESERVED]

SECTION 7.23 [Intentionally Omitted.]

SECTION 7.24 [See Article XIII, Section 13.2 (c)]

SECTION 7.25 [See Article XIII, Section 13.3 (c)]

SECTION 7.26 [See Article XIII, Section 13.4 (c)]

ARTICLE VIII

SHAREHOLDERS

SECTION 8.1 Meetings of Shareholders. There shall be an annual meeting of the Shareholders, to be held on proper notice, at such time (after delivery of the annual report) and convenient location as shall be determined by or in the manner prescribed in the Bylaws, at which Trustees shall be elected and any other proper business may be conducted. Except as otherwise provided in this Declaration of Trust, special meetings of Shareholders may be called in the manner provided in the Bylaws. If there are no Trustees, the President or any other officer of the Trust shall promptly call a special meeting of the Shareholders entitled to vote for the election of successor Trustees. Any meeting may be adjourned and reconvened as the Trustees determine or as provided in the Bylaws.

SECTION 8.2 Voting Rights of Shareholders. Subject to the provisions of any class or series of Shares then outstanding, the Shareholders shall be entitled to vote only on the following matters: (a) the election or removal of Trustees; (b) the amendment of this Declaration of Trust; (c) the voluntary dissolution or termination of the Trust; (d) the merger of the Trust, provided, however, that the Shareholders shall not be entitled to vote on a merger of the Trust which may be approved pursuant to the provisions of Title 8 by a majority of the entire Board of Trustees without a vote of the Shareholders and, further provided, that if a shareholder vote is required pursuant to the provisions of Title 8, such merger shall be approved by the affirmative vote of the holders of not less than a majority of all the Shares then outstanding and entitled to vote thereon, (e) the sale or other disposition of all or substantially all of the Trust Property, provided, however, that the sale or other disposition of all or substantially all of the Trust Property shall be approved by the affirmative vote of the holders of not less than a majority of all the Shares then outstanding and entitled to vote thereon, and (f) such other matters with respect to which the Board of Trustees has adopted a resolution declaring advisable or recommending a proposal and directing that the matter be submitted to the Shareholders for consideration. Except with respect to the foregoing matters, no action taken by the Shareholders at any meeting shall in any way bind the Trustees.

SECTION 8.3 Board Approval. The submission of any action to the Shareholders for their consideration shall first be approved by the Board of Trustees.

ARTICLE IX

AMENDMENT

SECTION 9.1 By Shareholders.

(a) Except as provided in Section 9.2 and subsection (b) hereof, this Declaration of Trust may be amended only by the affirmative vote of the holders of not less than two-thirds of all the Shares then outstanding and entitled to vote on the matter.

(b) Notwithstanding the provisions of Section 9.1(a) hereof and subject to the provisions of any class or series of Shares then outstanding, this Declaration of Trust may be amended pursuant to the terms of Articles of Merger accepted for record by the SDAT relating to a

merger of any entity or entities with the Trust, provided that such merger shall have been approved by the affirmative vote of not less than a majority of the Shares then outstanding and entitled to vote thereon.

SECTION 9.2 By Trustees. The Trustees, by a two-thirds vote, may amend provisions of this Declaration of Trust from time to time to enable the Trust to qualify as a real estate investment trust under the Code or Under Title 8.

ARTICLE X

DURATION OF TRUST

The Trust shall continue perpetually unless terminated pursuant to any applicable provision of Title 8. The Trust may be voluntarily dissolved or its existence terminated only by the affirmative vote of the holders of not less than two-thirds of all the Shares then outstanding and entitled to vote on the matter. The Trust may sell or otherwise dispose of all or substantially all of the Trust Property only by the affirmative vote of the holders of not less than a majority of all the Shares then outstanding and entitled to vote on the matter. (a) Upon the termination of the Trust:

(i) The Trust shall carry on no business except for the purpose of winding up its affairs.

(ii) The Trustees shall proceed to wind up the affairs of the Trust and all of the powers of the Trustees under this Declaration of Trust shall continue, including the powers to fulfill or discharge the Trust's contracts, collect its assets, sell, convey, assign, exchange, transfer or otherwise dispose of all or any part of the remaining property of the Trust to one or more persons at public or private sale for consideration which may consist in whole or in part of cash, securities or other property of any kind, discharge or pay its liabilities and do all other acts appropriate to liquidate its business.

(iii) After paying or adequately providing for the payment of all liabilities, and upon receipt of such releases, indemnities and agreements as they deem necessary for their protection, the Trust may distribute the remaining property of the Trust among the Shareholders so that after payment in full or the setting apart for payment of such preferential amounts, if any, to which the holders of any Shares at the time outstanding shall be entitled, the remaining property of the Trust shall, subject to any participating or similar rights of Shares at the time outstanding, be distributed ratably among the holders of Common Shares at the time outstanding.

(b) After termination of the Trust, the liquidation of its business and the distribution to the Shareholders as herein provided, a majority of the Trustees shall execute and file with the Trust's records a document certifying that the Trust has been duly terminated, and the Trustees shall be discharged from all liabilities and duties hereunder, and the rights and interests of all Shareholders shall cease.

ARTICLE XI

LIABILITY OF SHAREHOLDERS, TRUSTEES, OFFICERS, EMPLOYEES AND AGENTS AND TRANSACTIONS BETWEEN THEM AND THE TRUST

SECTION 11.1 Limitation of Shareholder Liability. No Shareholder shall be liable for any debt, claim, demand, judgment or obligation of any kind of, against or with respect to the Trust by reason of his being a Shareholder, nor shall any Shareholder be subject to any personal liability whatsoever, in tort, contract or otherwise, to any Person in connection with the Trust Property or the affairs of the Trust.

SECTION 11.2 Limitation of Trustee and Officer Liability. To the maximum extent that Maryland law in effect from time to time permits limitation of the liability of trustees and officers of a real estate investment trust, no Trustee or officer of the Trust shall be liable to the Trust or to any Shareholder for money damages. Neither the amendment nor repeal of this Section, nor the adoption or amendment of any other provision of this Declaration of Trust inconsistent with this Section, shall apply to or affect in any respect the applicability of the preceding sentence with respect to any act or failure to act which occurred prior to such amendment, repeal or adoption. In the absence of any Maryland statute limiting the liability of trustees and officers of a Maryland real estate investment trust for money damages in a suit by or on behalf of the Trust or by any Shareholder, no Trustee or officer of the Trust shall be liable to the Trust or to any Shareholder for money damages except to the extent that (a) the Trustee or officer actually received an improper benefit or profit in money, property or services, for the amount of the benefit or profit in money, property or services actually received or (b) a judgment or other final adjudication adverse to the Trustee or officer is entered in a proceeding based on a finding in the proceeding that the Trustee's or officer's action or failure to act was the result of active and deliberate dishonesty and was material to the cause of action adjudicated in the proceeding.

SECTION 11.3 Indemnification and Advance for Expenses. The Trust shall have the power, to the maximum extent permitted by Maryland law in effect from time to time, to obligate itself to indemnify, and to pay or reimburse reasonable expenses in advance of final disposition of a proceeding to, (a) any individual who is a present or former Shareholder, Trustee or officer of the Trust or (b) any individual who, while a Shareholder, Trustee or officer of the Trust and at the express request of the Trust, serves or has served another corporation, partnership, joint venture, trust, employee benefit plan or any other enterprise as a director, officer, Shareholder, partner or trustee of such corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, from and against all claims and liabilities to which such person may become subject by reason of his being or having been a Shareholder, Trustee or officer. The Trust shall have the power, with the approval of its Board of Trustees, to provide such indemnification and advancement of expenses to a person who served a predecessor of the Trust in any of the capacities described in (a) or (b) above and to any employee or agent of the Trust or a predecessor of the Trust.

SECTION 11.4 Transactions Between the Trust and its Trustees, Officers, Employees and Agents. Subject to any express restriction in this Declaration of Trust, including (but not limited to) Section 6.4, or any restriction adopted by the Trustees in the Bylaws or by resolution, the Trust may enter into any contract or transaction of any kind (including, without limitation, for the purchase

or sale of property or for any type of services, including those in connection with the underwriting or the offer or sale of Securities of the Trust) with any Person, including any Trustee, officer, employee or agent of the Trust or any Person Affiliated with a Trustee, officer, employee or agent of the Trust, whether or not any of them has a financial interest in such transaction.

ARTICLE XII

MISCELLANEOUS

SECTION 12.1 Governing Law. This Declaration of Trust is executed by the Trustees and delivered in the State of Maryland with reference to the laws thereof, and the rights of all parties and the validity, construction and effect of every provision hereof shall be subject to and construed according to the laws of the State of Maryland without regard to conflicts of laws provisions thereof.

SECTION 12.2 Reliance by Third Parties. Any certificate shall be final and conclusive as to any Person dealing with the Trust if executed by an individual who, according to the records of the Trust or of any recording office in which this Declaration of Trust may be recorded, appears to be the Secretary or an Assistant Secretary of the Trust or a Trustee, and if certifying to: (a) the number or identity of Trustees, officers of the Trust or Shareholders; (b) the due authorization of the execution of any document; (c) any action or vote taken, and the existence of a quorum at a meeting of Trustees or Shareholders; (d) a copy of this Declaration or of the Bylaws as a true and complete copy as then in force; (e) an amendment to this Declaration; (f) the termination of the Trust; or (g) the existence of any fact or facts which relate to the affairs of the Trust. No purchaser, lender, transfer agent or other Person shall be bound to make any inquiry concerning the validity of any transaction purporting to be made on behalf of the Trust by the Trustees or by any officer, employee or agent of the Trust.

SECTION 12.3 Severability.

(a) The provisions of this Declaration of Trust are severable, and if the Trustees shall determine, with the advice of counsel, that any one or more of such provisions (the "Conflicting Provisions") are in conflict with the REIT Provisions of the Code, Title 8 or any other applicable federal or state law, the Conflicting Provisions shall be deemed never to have constituted a part of this Declaration of Trust, even without any amendment of this Declaration pursuant to Article IX; provided, however, that such determination by the Trustees shall not affect or impair any of the remaining provisions of this Declaration of Trust or render invalid or improper any action taken or omitted prior to such determination. No Trustee shall be liable for making or failing to make such a determination.

(b) If any provision of this Declaration of Trust shall be held invalid or unenforceable in any jurisdiction, such holding shall not in any manner affect or render invalid or unenforceable such provision in any other jurisdiction or any other provision of this Declaration of Trust in any jurisdiction.

SECTION 12.4 Construction. In this Declaration of Trust, unless the context otherwise requires, words used in the singular or in the plural include both the plural and singular and words denoting any gender include all genders. The title and headings of different parts of this

Declaration are inserted for convenience and shall not affect the meaning, construction or effect of this Declaration. In defining or interpreting the powers and duties of the Trust and its Trustees and officers, reference may be made by the Board of Trustees and the officers of the Trust, to the extent appropriate and not inconsistent with the Code or Title 8, to Titles 1 through 3 of the Corporations and Associations Article of the Annotated Code of Maryland. In furtherance and not in limitation of the foregoing, in accordance with the provisions of Title 3, Subtitles 6 and 7, of the Corporations and Associations Article of the Annotated Code of Maryland, the Trust shall be included within the definition of "corporation" for purposes of such provisions.

SECTION 12.5 Recordation. This Declaration of Trust and any amendment or supplement hereto shall be filed for record with the State Department of Assessments and Taxation of Maryland and may also be filed or recorded in such other places as the Trustees deem appropriate, but failure to file for record this Declaration or any amendment or supplement hereto in any office other than in the State of Maryland shall not affect or impair the validity or effectiveness of this Declaration or any amendment hereto. A restated Declaration shall, upon filing, be conclusive evidence of all amendments or supplements contained therein and may thereafter be referred to in lieu of the original Declaration and the various amendments or supplements thereto.

ARTICLE XIII

DESIGNATION OF PREFERRED SHARES

SECTION 13.1 [Intentionally Omitted]

SECTION 13.2 Series B Preferred Shares. Pursuant to Section 5.4 of this Declaration, a series of preferred shares of beneficial interest designated 9⅛% Series B Cumulative Redeemable Preferred Shares of Beneficial Interest ($0.01 Par Value Per Share) (Liquidation Preference $250.00 Per Share) (collectively, the "Series B Preferred Shares") is hereby established on the following terms:

(a) Certain Definitions.

Unless the context otherwise requires, the terms defined in this Section 13.2(a) shall have the meanings herein specified (with terms defined in the singular having comparable meanings when used in the plural).

"Business Day" shall mean any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions in New York City are authorized or required by law, regulation or executive order to close.

"Common Shares" shall mean the common shares of beneficial interest, $.01 par value per share, of the Trust.

"Dividend Period" shall have the meaning set forth in Section 13.2(b)(3).

"Junior Shares" shall have the meaning set forth in Section 13.2(b)(2).

"Person" shall mean an individual, corporation, partnership, estate, trust (including a trust qualified under Section 401(a) or 501(c)(17) of the Code), a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, association, private foundation within the meaning of Section 509(a) of the Code, joint stock company or other entity, and also includes a group as that term is used for purposes of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended; but does not include an underwriter which participates in a public offering of the Series B Preferred Shares provided that the ownership of Series B Preferred Shares by such underwriter would not result in the Trust being "closely held" within the meaning of Section 856(h) of the Code, or would otherwise result in the Trust failing to qualify as a REIT.

"Preferred Shares" shall mean preferred shares of beneficial interest, $.01 par value per share, including Series A Preferred Shares, Series B Preferred Shares, Series C Preferred Shares, Series D Preferred Shares, Series E Preferred Shares, and Series F Preferred Shares.

"Quarterly Dividend Date" shall have the meaning set forth in Section 13.2(b)(3) below.

"Record Date" shall have the meaning set forth in Section 13.2(b)(3) below.

"REIT" shall mean a Real Estate Investment Trust under Section 856 of the Code.

"Series B Redemption Date" shall have the meaning set forth in Section 13.2(b)(5) below.

"Series B Redemption Price" shall have the meaning set forth in Section 13.2(b)(5) below.

(b) Series B Preferred Shares

(1) Number. The maximum number of shares of the Series B Preferred Shares shall be 575,000.

(2) Relative Seniority. In respect of rights to receive dividends and to participate in distributions or payments in the event of any Liquidation, dissolution or winding up of the Trust, the Series B Preferred Shares shall rank pari passu with any other preferred shares of beneficial interest of the Trust, including the Series A Preferred Shares, Series C Preferred Shares, Series D Preferred Shares, Series E Preferred Shares and Series F Preferred Shares. The Series B Preferred Shares will rank senior to the Common Shares and any other class or series of shares of beneficial interest of the Trust ranking, as to dividends and upon Liquidation, junior to the Preferred Shares (collectively, "Junior Shares").

(3) Dividends. The holders of the then outstanding Series B Preferred Shares shall be entitled to receive, when and as declared by the Board of Trustees out of any funds legally available therefor, cumulative dividends at the rate of $22.8125 per share per year, payable in equal amounts of $5.703125 per share quarterly in cash on the fifteenth day, or if not a Business Day, the next succeeding Business Day, of January, April, July and October in each year, beginning

January 15, 1996 (each such day being hereinafter called a "Quarterly Dividend Date" and each period ending on a Quarterly Dividend Date being hereinafter called a "Dividend Period"), to shareholders of record at the close of business on such date as shall be fixed by the Board of Trustees at the time of declaration of the dividend (the "Record Date"), which shall be not less than 10 nor more than 30 days preceding the Quarterly Dividend Date. The amount of any dividend payable for the initial Dividend Period and for any other Dividend Period shorter than a full Dividend Period shall be prorated and computed on the basis of a 360-day year of twelve 30-day months. Dividends on each share of Series B Preferred Shares shall accrue and be cumulative from and including the date of original issue thereof, whether or not (i) dividends on such shares are earned or declared or (ii) on any Quarterly Dividend Date there shall be funds legally available for the payment of dividends. Dividends paid on the Series B Preferred Shares in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a per share basis among all such shares at the time outstanding.

The amount of any dividends accrued on any Series B Preferred Shares at any Quarterly Dividend Date shall be the amount of any unpaid dividends accumulated thereon, to and including such Quarterly Dividend Date, whether or not earned or declared, and the amount of dividends accrued on any shares of Series B Preferred Shares at any date other than a Quarterly Dividend Date shall be equal to the sum of the amount of any unpaid dividends accumulated thereon, to and including the last preceding Quarterly Dividend Date, whether or not earned or declared, plus an amount calculated on the basis of the annual dividend rate of $22.8125 for the period after such last preceding Quarterly Dividend Date to and including the date as of which the calculation is made based on a 360-day year of twelve 30-day months.

Except as provided in this Section 13.2, the Series B Preferred Shares shall not be entitled to participate in the earnings or assets of the Trust.

(4) Liquidation Rights.

(A) Upon the voluntary or involuntary dissolution, liquidation or winding up of the Trust, the holders of the Series B Preferred Shares then outstanding shall be entitled to receive and to be paid out of the assets of the Trust available for distribution to its shareholders, before any payment or distribution shall be made on any Junior Shares, the amount of $250.00 per Series B Preferred Share, plus accrued and unpaid dividends thereon.

(B) After the payment to the holders of the Series B Preferred Shares of the full preferential amounts provided for in this paragraph (b), the holders of the Series B Preferred Shares as such shall have no right or claim to any of the remaining assets of the Trust.

(C) If, upon any voluntary or involuntary dissolution, liquidation, or winding up of the Trust, the amounts payable with respect to the preference value of the Series B Preferred Shares and any other shares of beneficial interest of the Trust ranking as to

any such distribution on a parity with the Series B Preferred Shares are not paid in full, the holders of the Series B Preferred Shares and of such other shares will share ratably in any such distribution of assets of the Trust in proportion to the full respective preference amounts to which they are entitled.

(D) Neither the sale of all or substantially all the property or business of the Trust, nor the merger or consolidation of the Trust into or with any other entity or the merger or consolidation of any other entity into or with the Trust, shall be deemed to be a dissolution, Liquidation or winding up, voluntary or involuntary, for the purposes of this paragraph (b).

(5) Redemption.

(A) Optional Redemption. On and after October 15, 2005, the Trust may, at its option, redeem at any time all or, from time to time, part of the Series B Preferred Shares at a price per share (the "Series B Redemption Price"), payable in cash, of $250.00 per Series B Preferred Share, together with all accrued and unpaid dividends to and including the date fixed for redemption (the "Series B Redemption Date").

(B) Procedures for Redemption.

(i) Notice of any redemption will be mailed by the Trust, postage prepaid, not less than 30 nor more than 60 days prior to the Series B Redemption Date, addressed to the holders of record of the Series B Preferred Shares to be redeemed at their addresses as they appear on the share transfer records of the Trust. No failure to give such notice or any defect therein or in the mailing thereof shall affect the validity of the proceedings for the redemption of any Series B Preferred Shares except as to the holder to whom the Trust has failed to give notice or except as to the holder to whom notice was defective. In addition to any information required by law or by the applicable rules of any exchange upon which Series B Preferred Shares may be listed or admitted to trading, such notice shall state: (a) the Series B Redemption Date; (b) the Series B Redemption Price; (c) the number of Series B Preferred Shares to be redeemed; (d) the place or places where certificates for such shares are to be surrendered for payment of the Series B Redemption Price; (e) that dividends on the shares to be redeemed will cease to accumulate on the Series B Redemption Date; and (f) the date on which conversion rights shall expire, the conversion price and the place or places where certificates for such shares are to be surrendered for conversion.

(ii) If notice has been mailed in accordance with Section 13.2(b)(5)(B)(i) above and provided that on or before the Series B Redemption Date specified in such notice all funds necessary for such redemption shall have been irrevocably set aside by the Trust, separate and apart from its other funds in trust for the pro rata benefit of the holders of the Series B Preferred Shares so called for redemption, so as to be, and to continue to be available therefor, then, from and after the Series B Redemption Date, dividends on the Series B Preferred Shares so called for redemption shall cease to accumulate, and said shares shall no longer be deemed to be outstanding and shall not have the status of Series B Preferred Shares and all rights of the holders thereof as shareholders of the Trust (except the right to receive the Series B Redemption Price) shall cease. Upon surrender, in accordance with said notice, of the certificates for any Series B Preferred Shares so redeemed (properly endorsed or assigned for transfer, if the Trust shall so require and the notice shall so state), such Series B Preferred Shares shall be redeemed by the Trust at the Series B Redemption Price. In case fewer than all the Series B Preferred Shares represented by any such certificate are redeemed, a new certificate or certificates shall be issued representing the unredeemed Series B Preferred Shares without cost to the holder thereof.

(iii) Any funds deposited with a bank or trust company for the purpose of redeeming Series B Preferred Shares shall be irrevocable except that:

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

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

(iv) No Series B Preferred Shares may be redeemed except with funds legally available for the payment of the Series B Redemption Price.

(v) Unless full accumulated dividends on all Series B Preferred Shares shall have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past Dividend Periods and the then current Dividend Period, no Series B Preferred Shares shall be redeemed (unless all outstanding Series B Preferred Shares are simultaneously redeemed) or purchased or otherwise acquired directly or indirectly (except by conversion into or exchange for capital shares of the Trust ranking junior to the Series B Preferred Shares as to dividends and upon liquidation); provided, however, that the foregoing shall not prevent the redemption of Series B Preferred Shares pursuant to Article VII of this Declaration of Trust or the purchase or acquisition of Series B Preferred Shares pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding shares of Series B Preferred Shares.

(vi) If the Series B Redemption Date is after a Record Date and before the related Quarterly Dividend Date, the dividend payable on such Quarterly Dividend Date shall be paid to the holder in whose name the Series B Preferred Shares to be redeemed are registered at the close of business on such Record Date notwithstanding the redemption thereof between such Record Date and the related Quarterly Dividend Date or the Trust's default in the payment of the dividend due.

(vii) In case of redemption of less than all Series B Preferred Shares at the time outstanding, the Series B Preferred Shares to be redeemed shall be selected pro rata from the holders of record of such shares in proportion to the number of Series B Preferred Shares held by such holders (with adjustments to avoid redemption of fractional shares) or by any other equitable method determined by the Trust.

(6) Voting Rights. Except as required by law, the holders of the Series B Preferred Shares shall not be entitled to vote at any meeting of the shareholders for election of trustees or for any other purpose or otherwise to participate in any action taken by the Trust or the shareholders thereof, or to receive notice of any meeting of shareholders.

(A) In any matter in which the Series B Preferred Shares are entitled to vote (as expressly provided herein or as may be required by law), including any action by written consent, each Series B Preferred Share shall be entitled to 10 votes, each of which 10 votes may be directed separately by the holder thereof (or by any proxy or proxies of such holder). With respect to each Series B Preferred Share, the holder thereof may designate up to 10 proxies, with each such proxy having the right to vote a whole number of votes (totaling 10 votes per Series B Preferred Share).

(B) Whenever dividends on any Series B Preferred Shares shall be in arrears for six or more quarterly periods, the holders of the Depositary Shares representing such Series B Preferred Shares (voting separately as a class with all other series of Preferred Shares upon which like voting rights have been conferred and are exercisable) will be entitled to vote for the election of two additional Trustees of the Trust at a special meeting called by the holders of record of at least ten percent (10%) of any series of Preferred Shares so in arrears (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the shareholders) or at the next annual meeting of shareholders, and at each subsequent annual meeting until all dividends accumulated on such Series B Preferred Shares for the past dividend periods and the then current dividend period shall have been fully paid or declared and a sum sufficient for the payment thereof set aside for payment. In such case, the entire Board of Trustees of the Trust will be increased by two Trustees.

(C) So long as any Series B Preferred Shares remain outstanding, the Trust will not, without the affirmative vote or consent of the holders of at least two-thirds of the Series B Preferred Shares outstanding at the time, given in person or by proxy, either in writing or at a meeting (such series voting separately as a class), (i) authorize or create, or increase the authorized or issued amount of, any class or series of shares of beneficial interest ranking prior to the Series B Preferred Shares with respect to the payment of dividends or the distribution of assets upon liquidation, dissolution or winding up or reclassify any authorized shares of beneficial interest of the Trust into such shares, or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase any such shares; or (ii) amend, alter or repeal the provisions of this Declaration of Trust, whether by merger, consolidation or otherwise (an "Event"), so as to materially and adversely affect any right, preference, privilege or voting power of the Series B Preferred Shares or the holders thereof; provided, however, with respect to the occurrence of any of the Events set forth in (ii) above, so long as the Series B Preferred Shares remain outstanding with the terms thereof materially unchanged, taking into account that upon the occurrence of an Event, the Trust may not be the surviving entity, the occurrence of any such Event shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting power of holders of Series B Preferred Shares and provided further that (x) any increase in the amount of the authorized Preferred Shares or the creation of issuance of any other Series B Preferred Shares, or (y) any increase in the amount of authorized the Series B Preferred Shares or any other Preferred Shares, in each case ranking on a parity with or junior to the Series B Preferred Shares with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting powers.

The foregoing voting provisions will not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding Series B

Preferred Shares shall have been redeemed or called for redemption and sufficient funds shall have been deposited in trust to effect such redemption.

(7) Conversion. The Series B Preferred Shares are not convertible into or exchangeable for any other property or securities of the Trust.

(8) Exclusion of Other Rights.

Except as may otherwise be required by law, the Series B Preferred Shares shall not have any voting powers, preferences and relative, participating, optional or other special rights, other than those specifically set forth in this Section 13.2. The Series B Preferred Shares shall have no preemptive or subscription rights.

(9) Headings of Subdivisions.

The headings of the various subdivisions within this Section 13.2 are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

(10) Severability of Provisions.

If any voting powers, preferences and relative, participating, optional and other special rights of the Series B Preferred Shares and qualifications, limitations and restrictions thereof set forth in this Section 13.2 is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other voting powers, preferences and relative, participating, optional and other special rights of Series B Preferred Shares and qualifications, limitations and restrictions thereof set forth in this Section 13.2 which can be given effect without the invalid, unlawful or unenforceable voting powers, preferences and relative, participating, optional and other special rights of Series B Preferred Shares and qualifications, limitations and restrictions thereof herein set forth, shall nevertheless, remain in full force and effect and no preferences or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption of the Series B Preferred Shares herein set forth shall be deemed dependent upon any other such voting powers, preferences and relative, participating, optional or other special right of Series B Preferred Shares and qualifications, limitations and restrictions there of unless so expressed herein.

(c) Article VII of the Trust's Declaration of Trust shall be supplemented by adding the following new section 7.24.

7.24 Special Rules for Series B Preferred Shares.

(1) Certain Definitions.

For purposes of this Section 7.24 the following terms shall have the following meanings:

"Closing Date of the Series B Preferred Shares Offering" shall mean the time and date of payment for and delivery of Series B Preferred Shares issued

pursuant to the effective registration statement for such Series B Preferred Shares filed under the Securities Act of 1933, as amended.

"Special Triggering Event" shall mean either (i) the redemption or purchase by the Trust of all or a portion of the outstanding shares of beneficial interest in the Trust, or (ii) a change in the value of the Series B Preferred Shares relative to any other class of beneficial interest in the Trust.

(2) Special Triggering Event. If during the period commencing on the Closing Date of the Series B Preferred Shares Offering and prior to the date on which the Board of Trustees determines that it is no longer in the best interest of the Trust to attempt to, or continue to, qualify as a REIT, a Special Triggering Event (if effective) or other event or occurrence (if effective) would result in any violation of Section 7.2(a) of the Trust's Declaration of Trust (or would result in the Trust being "closely held" within the meaning of Section 856(h) of the Code or would otherwise cause the Trust to fail to qualify as a REIT), then (i) the number of Series B Preferred Shares (rounded up to the nearest whole share) that would (but for this Section 7.24) cause any Person to directly or indirectly own either Series B Preferred Shares, or to directly or indirectly own Series B Preferred Shares and any other shares of beneficial interest in the Trust, in violation of Section 7.2(a) (or would result in the Trust being "closely held" or otherwise fail to qualify as a REIT) shall constitute "Excess Shares" and shall be treated as provided in Article VII. Such designation and treatment shall be effective as of the close of business on the business day prior to the date of the Special Triggering Event or other event or occurrence.

SECTION 13.3 Series C Preferred Shares. Pursuant to Section 5.4 of this Declaration, a series of preferred shares of beneficial interest designated 9⅛% Series C Cumulative Redeemable Preferred Shares of Beneficial Interest ($0.01 Par Value Per Share) (Liquidation Preference $250.00 Per Share) (the "Series C Preferred Shares") is hereby established on the following terms:

(a) Certain Definitions.

Unless the context otherwise requires, the terms defined in this Section 13.3 shall have the meanings herein specified (with terms defined in the singular having comparable meanings when used in the plural).

"Business Day" shall mean any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions in New York City are authorized or required by law, regulation or executive order to close.

"Common Shares" shall mean the common shares of beneficial interest, $.01 par value per share, of the Trust.

"Distribution Period" shall have the meaning set forth in Section 13.3(b)(3).

"Junior Shares" shall have the meaning set forth in Section 13.3(b)(2).

"Person" shall mean an individual, corporation, partnership, estate, trust (including a trust qualified under Section 401(a) or 501(c)(17) of the Code), a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, association, private foundation within the meaning of Section 509(a) of the Code, joint stock company or other entity, and also includes a group as that term is used for purposes of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended; but does not include an underwriter which participates in a public offering of the Series C Preferred Shares provided that the ownership of Series C Preferred Shares by such Underwriter would not result in the Trust being "closely held" within the meaning of Section 856(h) of the Code, or would otherwise result in the Trust failing to qualify as a REIT.

"Preferred Shares" shall mean preferred shares of beneficial interest, $.01 par value per share, including Series A Preferred Shares, Series B Preferred Shares, Series C Preferred Shares, Series D Preferred Shares, Series E Preferred Shares, and Series F Preferred Shares.

"Quarterly Distribution Date" shall have the meaning set forth in Section 13.3(b)(3) below.

"Record Date" shall have the meaning set forth in Section 13.3(b)(3) below.

"REIT" shall mean a Real Estate Investment Trust under Section 856 of the Code.

"Series C Redemption Date" shall have the meaning set forth in Section 13.3(b)(5) below.

"Series C Redemption Price" shall have the meaning set forth in Section 13.3(b)(5) below.

(b) Series C Preferred Shares.

(1) Number. The maximum number of shares of the Series C Preferred Shares shall be 460,000.

(2) Relative Seniority. In respect of rights to receive distributions and to participate in distributions or payments in the event of any Liquidation, dissolution or winding up of the Trust, the Series C Preferred Shares shall rank pari passu with any other preferred shares of beneficial interest of the Trust, including the Series A Preferred Shares, Series B Preferred Shares, Series D Preferred Shares, Series E Preferred Shares and Series F Preferred Shares. The Series C Preferred Shares will rank senior to the Common Shares and any other class or series of shares of beneficial interest of the Trust ranking, as to distributions and upon Liquidation, junior (collectively, the "Junior Shares") to the Preferred Shares.

(3) Distributions. The holders of the then outstanding Series C Preferred Shares shall be entitled to receive, when and as declared by the Board of Trustees out of any funds legally available therefor, cumulative distributions at the rate of $22.8125 per share per year, payable in equal amounts of $5.703125 per share quarterly in cash on the fifteenth day, or if not a Business Day, the next succeeding Business Day, of January, April, July and October in each year, beginning October 15, 1996 (each such day being hereinafter called a "Quarterly Distribution Date" and each period ending on a Quarterly Distribution Date being hereinafter called a "Distribution Period"), to shareholders of record at the close of business on such date as shall be fixed by the Board of Trustees at the time of declaration of the distribution (the "Record Date"), which shall not be less than 10 nor more than 30 days preceding the Quarterly Distribution Date. The amount of any distribution payable for the initial Distribution Period and for any other Distribution Period shorter than a full Distribution Period shall be prorated and computed on the basis of a 360-day year of twelve 30-day months. Distributions on each share of Series C Preferred Shares shall accrue and be cumulative from and including the date of original issue thereof, whether or not (i) distributions on such shares are earned or declared or (ii) on any Quarterly Distribution Date there shall be funds legally available for the payment of distributions. Distributions paid on the Series C Preferred Shares in an amount less than the total amount of such distributions at the time accrued and payable on such shares shall be allocated pro rata on a per share basis among all such shares at the time outstanding.

The amount of any distributions accrued on any Series C Preferred Shares at any quarterly Distribution Date shall be the amount of any unpaid distributions accumulated thereon, to and including such Quarterly Distribution Date, whether or not earned or declared, and the amount of distributions accrued on any shares of Series C Preferred Shares at any date other than a Quarterly Distribution Date shall be equal to the sum of the amount of any unpaid distributions accumulated thereon, to and including the last preceding Quarterly Distribution Date, whether or not earned or declared, plus an amount calculated on the basis of the annual distribution rate of $22.8125 for the period after such last preceding Quarterly Distribution Date to and including the date as of which the calculation is made based on a 360-day year of twelve 30-day months.

Except as provided in this Section 13.3, the Series C Preferred Shares shall not be entitled to participate in the earnings or assets of the Trust.

(4) Liquidation Rights.

(A) Upon the voluntary or involuntary dissolution, liquidation or winding up of the Trust, the holders of the Series C Preferred Shares then outstanding shall be entitled to receive and to be paid out of the assets of the Trust available for distribution to its shareholders, before any payment or distribution shall be made on any Junior Shares, the amount of $250.00 per Series C Preferred Share, plus accrued and unpaid distributions thereon.

(B) After the payment to the holders of the Series C Preferred Shares of the full preferential amounts provided for in this paragraph (b), the holders of the Series C Preferred Shares as

such shall have no right or claim to any of the remaining assets of the Trust.

(C) If, upon any voluntary or involuntary dissolution, liquidation, or winding up of the Trust, the amounts payable with respect to the preference value of the Series C Preferred Shares and any other shares of beneficial interest of the Trust ranking as to any such distribution on a parity with the Series C Preferred Shares are not paid in full, the holders of the Series C Preferred Shares and of such other shares will share ratably in any such distribution of assets of the Trust in proportion to the full respective preference amounts to which they are entitled.

(D) Neither the sale of all or substantially all the property or business of the Trust, nor the merger or consolidation of the Trust into or with any other entity or the merger or consolidation of any other entity into or with the Trust, shall be deemed to be a dissolution, Liquidation or winding up, voluntary or involuntary, for the purposes of this paragraph (b).

(5) Redemption.

(A) Optional Redemption. On and after September 9, 2006, the Trust may, at its option, redeem at any time all or, from time to time, part of the Series C Preferred Shares at a price per share (the "Series C Redemption Price"), payable in cash, of $250.00 per Series C Preferred Share, together with all accrued and unpaid distributions to and including the date fixed for redemption (the "Series C Redemption Date").

(B) Procedures for Redemption.

(i) Notice of any redemption will be mailed by the Trust, postage prepaid, not less than 30 nor more than 60 days prior to the Series C Redemption Date, addressed to the holders of record of the Series C Preferred Shares to be redeemed at their addresses as they appear on the share transfer records of the Trust. No failure to give such notice or any defect therein or in the mailing thereof shall affect the validity of the proceedings for the redemption of any Series C Preferred Shares except as to the holder to whom the Trust has failed to give notice or except as to the holder to whom notice was defective. In addition to any information required by law or by the applicable rules of any exchange upon which Series C Preferred Shares may be listed or admitted to trading, such notice shall state: (a) the Series C Redemption Date; (b) the Series C Redemption Price; (c) the number of Series C

Preferred Shares to be redeemed; (d) the place or places where certificates for such shares are to be surrendered for payment of the Series C Redemption Price; and (e) that distributions on the shares to be redeemed will cease to accumulate on the Series C Redemption Date.

(ii) If notice has been mailed in accordance with Section 13.3(b)(5)(B)(i) above and provided that on or before the Series C Redemption Date specified in such notice all funds necessary for such redemption shall have been irrevocably set aside by the Trust, separate and apart from its other funds in trust for the pro rata benefit of the holders of the Series C Preferred Shares so called for redemption, so as to be, and to continue to be available therefor, then, from and after the Series C Redemption Date, dividends on the Series C Preferred Shares so called for redemption shall cease to accumulate, and said shares shall no longer be deemed to be outstanding and shall not have the status of Series C Preferred Shares and all rights of the holders thereof as shareholders of the Trust (except the right to receive the Series C Redemption Price) shall cease. Upon surrender, in accordance with said notice, of the certificates for any Series C Preferred Shares so redeemed (properly endorsed or assigned for transfer, if the Trust shall so require and the notice shall so state), such Series C Preferred Shares shall be redeemed by the Trust at the Series C Redemption Price. In case fewer than all the Series C Preferred Shares represented by any such certificate are redeemed, a new certificate or certificates shall be issued representing the unredeemed Series C Preferred Shares without cost to the holder thereof.

(iii) Any funds deposited with a bank or trust company for the purpose of redeeming Series C Preferred Shares shall be irrevocable except that:

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

(b) any balance of monies so deposited by the Trust and unclaimed by the holders of the Series C Preferred Shares entitled thereto at the expiration of two years from the applicable Series C Redemption Date shall be repaid,

together with any interest or other earnings earned thereon, to the Trust, and after any such repayment, the holders of the shares entitled to the funds so repaid to the Trust shall look only to the Trust for payment without interest or other earnings.

(iv) No Series C Preferred Shares may be redeemed except with funds legally available for the payment of the Series C Redemption Price.

(v) Unless full accumulated dividends on all Series C Preferred Shares shall have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past Dividend Periods and the then current Dividend Period, no Series C Preferred Shares shall be redeemed (unless all outstanding Series C Preferred Shares are simultaneously redeemed) or purchased or otherwise acquired directly or indirectly (except by conversion into or exchange for capital shares of the Trust ranking junior to the Series C Preferred Shares as to dividends and upon liquidation); provided, however, that the foregoing shall not prevent the redemption of Series C Preferred Shares pursuant to Article VII of the Declaration of Trust or the purchase or acquisition of Series C Preferred Shares pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding shares of Series C Preferred Shares.

(vi) If the Series C Redemption Date is after a Record Date and before the related Quarterly Distribution Date, the distribution payable on such Quarterly Distribution Date shall be paid to the holder in whose name the Series C Preferred Shares to be redeemed are registered at the close of business on such Record Date notwithstanding the redemption thereof between such Record Date and the related Quarterly Distribution Date or the Trust's default in the payment of the distribution due.

(vii) In case of redemption of less than all Series C Preferred Shares at the time outstanding, the Series C Preferred Shares to be redeemed shall be selected pro rata from the holders of record of such shares in proportion to the number of Series C Preferred Shares held by such holders (with adjustments to avoid redemption of fractional shares) or by any other equitable method determined by the Trust.

(6) Voting Rights. Except as required by law, the holders of the Series C Preferred Shares shall not be entitled to vote at any meeting of the shareholders for election of trustees or for any other purpose or otherwise to participate in any action taken by the Trust or the shareholders thereof, or to receive notice of any meeting of shareholders.

(A) In any matter in which the Series C Preferred Shares are entitled to vote (as expressly provided herein or as may be required by law), including any action by written consent, each Series C Preferred Share shall be entitled to 10 votes, each of which 10 votes may be directed separately by the holder thereof (or by any proxy or proxies of such holder). With respect to each Series C Preferred Share, the holder thereof may designate up to 10 proxies, with each such proxy having the right to vote a whole number of votes (totaling 10 votes per Series C Preferred Share).

(B) Whenever distributions on any Series C Preferred Shares shall be in arrears for six or more quarterly periods, the holders of the Depositary Shares representing such Series C Preferred Shares, voting separately as a class with all other series of Preferred Shares upon which like voting rights have been conferred and are exercisable, will be entitled to vote for the election of two additional Trustees of the Trust at a special meeting called by the holders of record of at least ten percent (10%) of any series of Preferred Shares so in arrears (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the shareholders) or at the next annual meeting of shareholders, and at each subsequent annual meeting until all distributions accumulated on such Series C Preferred Shares for the past distribution periods and the then current distribution period shall have been fully paid or declared and a sum sufficient for the payment thereof set aside for payment. In such case, the entire Board of Trustees of the Trust will be increased by two Trustees.

(C) So long as any Series C Preferred Shares remain outstanding, the Trust will not, without the affirmative vote or consent of the holders of at least two-thirds of the Series C Preferred Shares outstanding at the time, given in person or by proxy, either in writing or at a meeting (such series voting separately as a class), (i) authorize or create, or increase the authorized or issued amount of, any class or series of shares of beneficial interest ranking prior to the Series C Preferred Shares with respect to the payment of distributions or the distribution of assets upon liquidation, dissolution or winding up or reclassify any authorized shares of beneficial interest of the Trust into such shares, or create, authorize or issue any obligation or

security convertible into or evidencing the right to purchase any such shares; or (ii) amend, alter or repeal the provisions of this Declaration of Trust whether by merger, consolidation or otherwise (an "Event"), so as to materially and adversely affect any right, preference, privilege or voting power of the Series C Preferred Shares or the holders thereof; provided, however, with respect to the occurrence of any of the Events set forth in (ii) above, so long as the Series C Preferred Shares remain outstanding with the terms thereof materially unchanged, taking into account that upon the occurrence of an Event, the Trust may not be the surviving entity, the occurrence of any such Event shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting power of holders of Series C Preferred Shares and provided further that (x) any increase in the amount of the authorized Preferred Shares or the creation or issuance of any other Series C Preferred Shares, or (y) any increase in the amount of authorized Series C Preferred Shares or any other Preferred Shares, in each case ranking on a parity with or junior to the Series C Preferred Shares with respect to payment of distributions or the distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting powers.

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

(7) Conversion. The Series C Preferred Shares are not convertible into or exchangeable for any other property or securities of the Trust.

(8) Exclusion of Other Rights.

Except as may otherwise be required by law, the Series C Preferred Shares shall not have any voting powers, preferences and relative, participating, optional or other special rights, other than those specifically set forth in this Section 13.3. The Series C Preferred Shares shall have no preemptive or subscription rights.

(9) Headings of Subdivisions.

The headings of the various subdivisions within this Section 13.3 are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

(10) Severability of Provisions.

If any voting powers, preferences and relative, participating, optional and other special rights of the Series C Preferred Shares and qualifications, limitations and restrictions thereof set forth in this Section 13.3 is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other voting powers, preferences and relative, participating, optional and other special rights of Series C Preferred Shares and qualifications, limitations and restrictions thereof set forth in this Section 13.3 which can be given effect without the invalid, unlawful or unenforceable voting powers, preferences and relative, participating, optional and other special rights of Series C Preferred Shares and qualifications, limitations and restrictions thereof herein set forth, shall nevertheless, remain in full force and effect and no preferences or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption of the Series C Preferred Shares herein set forth shall be deemed dependent upon any other such voting powers, preferences and relative, participating, optional or other special right of Series C Preferred Shares and qualifications, limitations and restrictions thereof unless so expressed herein.

(c) Article VII of the Trust's Declaration of Trust shall be supplemented by adding the following new Section 7.25.

7.25 Special Rules for Series C Preferred Shares.

(1) Certain Definitions.

For purposes of this Section 7.25 the following terms shall have the following meanings:

"Closing Date of the Series C Preferred Shares Offering" shall mean the time and date of payment for and delivery of Series C Preferred Shares issued pursuant to the effective registration statement for such Series C Preferred Shares filed under the Securities Act of 1933, as amended.

"Special Triggering Event" shall mean either (i) the redemption or purchase by the Trust of all or a portion of the outstanding shares of beneficial interest in the Trust, or (ii) a change in the value of the Series C Preferred Shares relative to any other class of beneficial interest in the Trust.

(2) Special Triggering Event. If during the period commencing on the Closing Date of the Series C Preferred Shares Offering and prior to the date on which the Board of Trustees determines that it is no longer in the best interest of the Trust to attempt to, or continue to, qualify as a REIT, a Special Triggering Event (if effective) or other event or occurrence (if effective) would result in any violation of Section 7.2(a) of the Trust's Declaration of Trust (or would result in the Trust being "closely held" within the meaning of Section 856(h) of the Code or would otherwise cause the Trust to fail to qualify as a REIT), then (i) the number of Series C Preferred Shares (rounded up to the nearest whole share) that would (but for this Section 7.25) cause any Person to directly or indirectly own either Series C Preferred Shares, or to directly or indirectly own Series C Preferred Shares and any other shares of beneficial interest in the Trust, in violation of Section 7.2(a) (or would result in the Trust being "closely held" or otherwise fail to qualify as a REIT) shall constitute "Excess

Shares" and shall be treated as provided in Article VII. Such designation and treatment shall be effective as of the close of business on the business day prior to the date of the Special Triggering Event or other event or occurrence.

SECTION 13.4. Series D Preferred Shares. Pursuant to Section 5.4 of this Declaration, a series of preferred shares of beneficial interest designated 8.60% Series D Cumulative Redeemable Preferred Shares of Beneficial Interest (Liquidation Preference $250.00 Per Share) (the "Series D Preferred Shares") is hereby established on the following terms:

(a) Certain Definitions.

Unless the context otherwise requires, the terms defined in this subparagraph (a) shall have, for all purposes of this Section 13.4, the meanings herein specified (with terms defined in the singular having comparable meanings when used in the plural).

"Business Day" shall mean any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions in New York City are authorized or required by law, regulation or executive order to close.

"Common Shares" shall mean the common shares of beneficial interest, $.01 par value per share, of the Trust.

"Distribution Period" shall have the meaning set forth in Section 13.4(b)(3).

"Junior Shares" shall have the meaning set forth in Section 13.4(b)(2).

"Person" shall mean an individual, corporation, partnership, estate, trust (including a trust qualified under Section 401(a) or 501(c)(17) of the Code), a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, association, private foundation within the meaning of Section 509(a) of the Code, joint stock company or other entity, and also includes a group as that term is used for purposes of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended; but does not include an underwriter which participates in a public offering of the Series D Preferred Shares provided that the ownership of Series D Preferred Shares by such Underwriter would not result in the Trust being "closely held" within the meaning of Section 856(h) of the Code, or would otherwise result in the Trust failing to qualify as a REIT.

"Preferred Shares" shall mean preferred shares of beneficial interest, including Series A Preferred Shares, Series B Preferred Shares, Series C Preferred Shares, Series D Preferred Shares, Series E Preferred Shares and Series F Preferred Shares.

"Quarterly Distribution Date" shall have the meaning set forth in Section 13.4(b)(3).

"Record Date" shall have the meaning set forth in subparagraph (3) of paragraph B below.

"REIT" shall mean a Real Estate Investment Trust under Section 856 of the Code.

"Series D Redemption Date" shall have the meaning set forth in Section 13.4(b)(5).

"Series D Redemption Price" shall have the meaning set forth in Section 13.4(b)(5).

(b) Series D Preferred Shares

(1) Number. The maximum number of shares of the Series D Preferred Shares shall be 805,000.

(2) Relative Seniority. In respect of rights to receive distributions and to participate in distributions or payments in the event of any Liquidation, dissolution or winding up of the Trust, the Series D Preferred Shares shall rank pari passu with any other preferred shares of beneficial interest of the Trust, including the Series A Preferred Shares, Series B Preferred Shares, Series C Preferred Shares, Series E Preferred Shares, and Series F Preferred Shares, and will rank senior to the Common Shares and any other class or series of shares of beneficial interest of the Trust ranking, as to distributions and upon Liquidation, junior (collectively, the "Junior Shares") to the Preferred Shares.

(3) Distributions. The holders of the then outstanding Series D Preferred Shares shall be entitled to receive, when and as declared by the Board of Trustees out of any funds legally available therefor, cumulative distributions at the rate of $2.15 per share per year, payable in equal amounts of $.5375 per share quarterly in cash on the fifteenth day, or if not a Business Day, the next succeeding Business Day, of January, April, July and October in each year, beginning July 15, 1997 (each such day being hereinafter called a "Quarterly Distribution Date" and each period ending on a Quarterly Distribution Date being hereinafter called a "Distribution Period"), to shareholders of record at the close of business on such date as shall be fixed by the Board of Trustees at the time of declaration of the distribution (the "Record Date"), which shall not be less than 10 nor more than 30 days preceding the Quarterly Distribution Date. The amount of any distribution payable for the initial Distribution Period and for any other Distribution Period shorter than a full Distribution Period shall be prorated and computed on the basis of a 360-day year of twelve 30-day months. Distributions on each share of Series D Preferred Shares shall accrue and be cumulative from and including the date of original issue thereof, whether or not (i) distributions on such shares are earned or declared or (ii) on any Quarterly Distribution Date there shall be funds legally available for the payment of distributions. Distributions paid on the Series D Preferred Shares in an amount less than the total amount of such distributions at the time accrued and payable on such shares shall be allocated pro rata on a per share basis among all such shares at the time outstanding.

The amount of any distributions accrued on any Series D Preferred Shares at any quarterly Distribution Date shall be the amount of any unpaid distributions accumulated thereon, to and including such Quarterly Distribution Date, whether or not earned or declared, and the amount of distributions accrued on any Series D Preferred Shares at any date other

than a Quarterly Distribution Date shall be equal to the sum of the amount of any unpaid distributions accumulated thereon, to and including the last preceding Quarterly Distribution Date, whether or not earned or declared, plus an amount calculated on the basis of the annual distribution rate of $2.15 for the period after such last preceding Quarterly Distribution Date to and including the date as of which the calculation is made based on a 360-day year of twelve 30-day months.

Except as provided in these Articles, the Series D Preferred Shares shall not be entitled to participate in the earnings or assets of the Trust.

(4) Liquidation Rights.

(A) Upon the voluntary or involuntary dissolution, liquidation or winding up of the Trust, the holders of the Series D Preferred Shares then outstanding shall be entitled to receive and to be paid out of the assets of the Trust available for distribution to its shareholders, before any payment or distribution shall be made on any Junior Shares, the amount of $250.00 per Series D Preferred Share, plus accrued and unpaid distributions thereon.

(B) After the payment to the holders of the Series D Preferred Shares of the full preferential amounts provided for in this paragraph (b), the holders of the Series D Preferred Shares as such shall have no right or claim to any of the remaining assets of the Trust.

(C) If, upon any voluntary or involuntary dissolution, liquidation, or winding up of the Trust, the amounts payable with respect to the preference value of the Series D Preferred Shares and any other shares of beneficial interest of the Trust ranking as to any such distribution on a parity with the Series D Preferred Shares are not paid in full, the holders of the Series D Preferred Shares and of such other shares will share ratably in any such distribution of assets of the Trust in proportion to the full respective preference amounts to which they are entitled.

(D) Neither the sale of all or substantially all the property or business of the Trust, nor the merger or consolidation of the Trust into or with any other entity or the merger or consolidation of any other entity into or with the Trust, shall be deemed to be a dissolution, Liquidation or winding up, voluntary or involuntary, for the purposes of this paragraph (b).

(5) Redemption.

(A) Optional Redemption. On and after June 1, 2007, the Trust may, at its option, redeem at any time all or, from time to time, part of the Series D Preferred Shares at a price per share (the "Series D Redemption Price"), payable in cash, of $250.00 per Series D Preferred Share, together with all accrued and unpaid distributions to and including the date fixed for redemption (the "Series D Redemption Date").

(B) Procedures for Redemption.

(i) Notice of any redemption will be mailed by the Trust, postage prepaid, not less than 30 nor more than 60 days prior to the Series D Redemption Date, addressed to the holders of record of the Series D Preferred Shares to be redeemed at their addresses as they appear on the share transfer records of the Trust. No failure to give such notice or any defect therein or in the mailing thereof shall affect the validity of the proceedings for the redemption of any Series D Preferred Shares except as to the holder to whom the Trust has failed to give notice or except as to the holder to whom notice was defective. In addition to any information required by law or by the applicable rules of any exchange upon which Series D Preferred Shares may be listed or admitted to trading, such notice shall state: (a) the Series D Redemption Date; (b) the Series D Redemption Price; (c) the number of Series D Preferred Shares to be redeemed; (d) the place or places where certificates for such shares are to be surrendered for payment of the Series D Redemption Price; and (e) that distributions on the shares to be redeemed will cease to accumulate on the Series D Redemption Date.

(ii) If notice has been mailed in accordance with subparagraph 13 .4(b)(5)(B)(i) above and provided that on or before the Series D Redemption Date specified in such notice all funds necessary for such redemption shall have been irrevocably set aside by the Trust, separate and apart from its other funds in trust for the pro rata benefit of the holders of the Series D Preferred Shares so called for redemption, so as to be, and to continue to be available therefor, then, from and after the Series D Redemption Date, distributions on the Series D Preferred Shares so called for redemption shall cease to accumulate, and said shares shall no longer be deemed to be outstanding and shall not have the status of Series D Preferred Shares and all rights of the holders thereof as shareholders of the Trust (except the right to receive the Series D Redemption Price) shall cease. Upon surrender, in accordance with said notice, of the certificates for any Series D Preferred Shares so

redeemed (properly endorsed or assigned for transfer, if the Trust shall so require and the notice shall so state), such Series D Preferred Shares shall be redeemed by the Trust at the Series D Redemption Price. In case fewer than all the Series D Preferred Shares represented by any such certificate are redeemed, a new certificate or certificates shall be issued representing the unredeemed Series D Preferred Shares without cost to the holder thereof.

(iii) Any funds deposited with a bank or trust company for the purpose of redeeming Series D Preferred Shares shall be irrevocable except that:

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

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

(iv) No Series D Preferred Shares may be redeemed except with funds legally available for the payment of the Series D Redemption Price.

(v) Unless full accumulated distributions on all Series D Preferred Shares shall have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past Distribution Periods and the then current Distribution Period, no Series D Preferred Shares shall be redeemed (unless all outstanding Series D Preferred Shares are simultaneously redeemed) or purchased or otherwise acquired

directly or indirectly (except by conversion into or exchange for capital shares of the Trust ranking junior to the Series D Preferred Shares as to distributions and upon liquidation); provided, however, that the foregoing shall not prevent the redemption of Series D Preferred Shares pursuant to Article VII of this Declaration of Trust or the purchase or acquisition of Series D Preferred Shares pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding shares of Series D Preferred Shares.

(vi) If the Series D Redemption Date is after a Record Date and before the related Quarterly Distribution Date, the distribution payable on such Quarterly Distribution Date shall be paid to the holder in whose name the Series D Preferred Shares to be redeemed are registered at the close of business on such Record Date notwithstanding the redemption thereof between such Record Date and the related Quarterly Distribution Date or the Trust's default in the payment of the distribution due.

(vii) In case of redemption of less than all Series D Preferred Shares at the time outstanding, the Series D Preferred Shares to be redeemed shall be selected pro rata from the holders of record of such shares in proportion to the number of Series D Preferred Shares held by such holders (with adjustments to avoid redemption of fractional shares) or by any other equitable method determined by the Trust.

(6) Voting Rights. Except as required by law, the holders of the Series D Preferred Shares shall not be entitled to vote at any meeting of the shareholders for election of trustees or for any other purposes or otherwise to participate in any action taken by the Trust or the shareholders thereof, or to receive notice of any meeting of shareholders.

(A) In any matter in which the Series D Preferred Shares are entitled to vote (as expressly provided herein or as may be required by law), including any action by written consent, each Series D Preferred Share shall be entitled to 10 votes, each of which 10 votes may be directed separately by the holder thereof (or by any proxy or proxies of such holder). With respect to each Series D Preferred Share, the holder thereof may designate up to 10 proxies, with each such proxy having the right to vote a whole number of votes (totaling 10 votes per Series D Preferred Share).

(B) Whenever distributions on any Series D Preferred Shares shall be in arrears for six or more quarterly periods, the holders of the Depositary Shares representing such Series D Preferred Shares, voting separately as a class with all other series of Preferred Shares upon which like voting rights have been conferred and are exercisable, will be entitled to vote for the election of two additional Trustees of the Trust at a special meeting called by the holders of record of at least ten percent (10%) of any series of Preferred Shares so in arrears (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the shareholders) or at the next annual meeting of shareholders, and at each subsequent annual meeting until all distributions accumulated on such Series D Preferred Shares for the past distribution periods and the then current distribution period shall have been fully paid or declared and a sum sufficient for the payment thereof set aside for payment. In such case, the entire Board of Trustees of the Trust will be increased by two Trustees.

(C) So long as any Series D Preferred Shares remain outstanding, the Trust will not, without the affirmative vote or consent of the holders of at least two-thirds of the Series D Preferred Shares outstanding at the time, given in person or by proxy, either in writing or at a meeting (such series voting separately as a class), (i) authorize or create, or increase the authorized or issued amount of, any class or series of shares of beneficial interest ranking prior to the Series D Preferred Shares with respect to the payment of distributions or the distribution of assets upon liquidation, dissolution or winding up or reclassify any authorized shares of beneficial interest of the Trust into such shares, or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase any such shares; or (ii) amend, alter or repeal the provisions of the Trust's Declaration of Trust whether by merger, consolidation or otherwise (an "Event"), so as to materially and adversely affect any right, preference, privilege or voting power of the Series D Preferred Shares or the holders thereof; provided, however, with respect to the occurrence of any of the Events set forth in (ii) above, so long as the Series D Preferred Shares remain outstanding with the terms thereof materially unchanged, taking into account that upon the

occurrence of an Event, the Trust may not be the surviving entity, the occurrence of any such Event shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting power of holders of Series D Preferred Shares and provided further that (x) any increase in the amount of the authorized Preferred Shares or the creation or issuance of any other Series D Preferred Shares, or (y) any increase in the amount of authorized Series D Preferred Shares or any other Preferred Shares, in each case ranking on a parity with or junior to the Series D Preferred Shares with respect to payment of distributions or the distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting powers.

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

(7) Conversion. The Series D Preferred Shares are not convertible into or exchangeable for any other property or securities of the Trust.

(8) Exclusion of Other Rights.

Except as may otherwise be required by law, the Series D Preferred Shares shall not have any voting powers, preferences and relative, participating, optional or other special rights, other than those specifically set forth in this Section 13.4 (as such Section may be amended from time to time) and in the Declaration of Trust. The Series D Preferred Shares shall have no preemptive or subscription rights.

(9) Headings of Subdivisions.

The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

(10) Severability of Provisions.

If any voting powers, preferences and relative, participating, optional and other special rights of the Series D Preferred Shares and qualifications, limitations and restrictions thereof set forth in this Section 13.4 (as this Section 13.4 may be amended from time to time) is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other voting powers, preferences and relative, participating, optional and other special rights of Series D Preferred Shares and qualifications, limitations and restrictions thereof set forth in this Section 13.4 (as so amended) which can be given effect

without the invalid, unlawful or unenforceable voting powers, preferences and relative, participating, optional or other special rights of Series D Preferred Shares and qualifications, limitations and restrictions thereof herein set forth, shall nevertheless, remain in full force and effect and no preferences or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption of the Series D Preferred Shares herein set forth shall be deemed dependent upon any other such voting powers, preferences and relative, participating, optional or other special right of Series D Preferred Shares and qualifications, limitations and restrictions thereof unless so expressed herein.

(c) Articles VII of the Trust's Declaration of Trust shall be supplemented by adding the following new section 7.26.

7.26 Special Rules for Series D Preferred Shares

(1) Certain Definitions.

For purposes of this section 7.26 the following terms shall have the following meanings:

"Closing Date of the Series D Preferred Shares Offering" shall mean the time and date of payment for and delivery of Series D Preferred Shares issued pursuant to the Trust's effective registration statement for such Series D Preferred Shares filed under the Securities Act of 1933, as amended.

"Special Triggering Event" shall mean either (i) the redemption or purchase by the Trust of all or a portion of the outstanding shares of beneficial interest in the Trust, or (ii) a change in the value of the Series D Preferred Shares relative to any other class of beneficial interest in the Trust.

(2) Special Triggering Event. If during the period commencing on the Closing Date of the Series D Preferred Shares Offering and prior to the Restriction Termination Date, a Special Triggering Event (if effective) or other event or occurrence (if effective) would result in any violation of section 7.2(a) of the Trust's Declaration of Trust (or would result in the Trust being "closely held" within the meaning of Section 856(h) of the Code or would otherwise cause the Trust to fail to qualify as a REIT), then (i) the number of Series D Preferred Shares (rounded up to the nearest whole share) that would (but for this section 7.26) cause any Person to Beneficially Own either Series D Preferred Shares, or to Beneficially own Series D Preferred Shares and any other shares of beneficial interest in the Trust, in violation of section 7.2(a) (or would result in the Trust being "closely held" or otherwise fail to qualify as a REIT) shall constitute "Excess Shares" and shall be treated as provided in Article VII. Such designation and treatment shall be effective as of the close of business on the Business Day prior to the date of the Special Triggering Event or other event or occurrence.

SECTION 13.5. Series E Preferred Shares. Pursuant to Section 5.4 of this Declaration, a series of preferred shares of beneficial interest designated the "Series E Cumulative Convertible

Preferred Shares of Beneficial Interest" (the "Series E Convertible Preferred Shares") is hereby established on the following terms:

1. Designation and Amount. The shares of the series of preferred shares established hereunder shall be designated as Series E Convertible Preferred Shares and the authorized number of shares constituting such series shall be 4,600,000. The par value of the Series E Convertible Preferred Shares shall be $.01 per share.

2. Distributions.

(a) The holders of shares of the Series E Convertible Preferred Shares will be entitled to receive, when, as and if authorized by the Board of Trustees out of assets of the Trust legally available therefor (and subject to the limitation described in the last sentence of this paragraph), cumulative cash distributions on the shares of the Series E Convertible Preferred Shares at the annual rate of $1.75 per share, payable quarterly on January 1, April 1, July 1 and October 1 of each year, commencing on January 1, 1994 (which initial partial distribution shall be from the date of issuance of the Series E Convertible Preferred Shares). Such distributions shall be cumulative from the date of original issue of the Series E Convertible Preferred Shares. If permissible under applicable law and provided the distributions will qualify for the dividends paid deduction (within the meaning of Sections 561 and 562 of the Internal Revenue Code of 1986 or any successor provisions thereto), such distributions shall be paid as follows: first, from income of the Trust other than net capital gains, and the balance, if any, from net capital gains of the Trust. If the Board of Trustees determines, in its sole discretion, that distributions to be paid in accordance with the preceding sentence would not qualify for such dividends paid deduction, then such distributions shall be paid in a manner determined by the Board of Trustees. Each distribution shall be paid to the holders of record of the Series E Convertible Preferred Shares as they appear on the share register of the Trust on such record date, not more than 90 days preceding the distribution payment date thereof, as shall be fixed by the Board of Trustees or a duly authorized committee thereof. If a holder converts Series E Convertible Preferred Shares after the close of business on the record date for a distribution and before the opening of business on the payment date for such distribution, then, pursuant to Section 13.5(7) hereof, the holder will be required to pay to the Trust at the time of such conversion the amount of such distribution (unless the shares were converted after the issuance of a notice of redemption with respect to such shares, in which event the holder of such shares shall be entitled to the distribution payable thereon on such distribution payment date without making such payment).

(b) If any Convertible Preferred Shares are outstanding, no full distributions shall be declared or paid or set apart for payment on any other preferred shares of beneficial interest of the Trust ranking as to distributions on a parity with or junior to the Series E Convertible Preferred Shares for any period unless full cumulative distributions have been declared and paid or declared and a sum sufficient for the payment thereof has been set apart for such payment on the Series E Convertible Preferred Shares for all past distribution periods and the then current distribution period. If distributions are not paid in full, or not declared in full and a sum sufficient for such full payment is not set apart for the payment thereof, upon the Series E Convertible Preferred Shares and any other preferred shares ranking on a parity as to distributions with the Series E Convertible Preferred Shares, all

distributions declared upon Series E Convertible Preferred Shares and upon any other preferred shares ranking on a parity as to distributions shall be paid or declared pro rata so that in all cases the amount of distributions paid or declared per share on the Series E Convertible Preferred Shares and such other preferred shares shall bear to each other the same ratio that accumulated distributions per share, including distributions accrued or in arrears, if any, on the Series E Convertible Preferred Shares and such other preferred shares bear to each other. Except as provided in the preceding sentence, unless full cumulative distributions on the Series E Convertible Preferred Shares have been paid or declared and a sum sufficient for such full payment set apart for payment for all past distribution periods and the then current distribution period, no distributions (other than distributions in shares of Common Shares (as hereinafter defined) or in any other shares of beneficial interest of the Trust ranking junior to the Series E Convertible Preferred Shares as to distribution rights and the liquidation preference) shall be declared or paid or set apart for payment or other distribution upon the Trust's common shares of beneficial interest, par value $.01 per share (the "Common Shares"), or, except as provided above, on any other shares of beneficial interest of the Trust ranking junior to or on a parity with the Series E Convertible Preferred Shares as to distribution rights or the liquidation preference, nor shall any Common Shares or any other shares of beneficial interest of the Trust ranking junior to or on a parity with the Series E Convertible Preferred Shares as to distribution rights or the liquidation preference be redeemed, purchased or otherwise acquired for any consideration (or any payment made to or available for a sinking fund for the redemption of any such shares) by the Trust or any subsidiary of the Trust (except by conversion into or exchange for shares of beneficial interest of the Trust ranking junior to the Series E Convertible Preferred Shares as to distribution rights and the liquidation preference). Holders of the Series E Convertible Preferred Shares shall not be entitled to any distributions, whether payable in cash, property or shares of beneficial interest, in excess of full accrued and cumulative distributions as herein provided. No interest or sum of money in lieu of interest shall be payable in respect of any distribution payment or payments on the Series E Convertible Preferred Shares that may be in arrears.

The terms "accrued distributions," "distributions accrued" and "distributions in arrears," whenever used herein with reference to shares of preferred shares of beneficial interest, shall be deemed to mean an amount which shall be equal to distributions thereon at the annual distribution rates per share for the respective series thereof from the date or dates on which such distributions commence to accrue to the end of the then current quarterly distribution period for such preferred shares (or, in the case of redemption, to the date of redemption), less the amount of all distributions paid, or declared in full and set aside for the payment thereof, upon such shares of preferred shares.

(c) Distributions payable on the Series E Convertible Preferred Shares for any period less than a full quarterly distribution period shall be computed on the basis of a 360-day year of twelve 30-day months. Quarterly distributions payable on the Series E Convertible Preferred Shares shall be computed by dividing the annual distribution rate by four.

3. Trustees' Right to Refuse to Transfer Series E Convertible Preferred Shares; Limitation on Holdings.

(a) The terms and provisions of this Section 13.5(3) shall apply in addition to, and not in limitation of, the terms and provisions of Article VII of this Declaration of Trust.

(b) Each Person (as defined in Section 1.5 of the Declaration of Trust) who owns directly or indirectly more than five percent in number or value of the total Series E Convertible Preferred Shares outstanding shall, within 30 days after January 1 of each year, give written notice to the Trust stating the Person's name and address, the number of Series E Convertible Preferred Shares directly or indirectly owned by such Person, and a description of the capacity in which such Series E Convertible Preferred Shares are held. For purposes of this Section 13.5, the number and value of the total Series E Convertible Preferred Shares outstanding shall be determined by the Board of Trustees in good faith, which determination shall be conclusive for all purposes hereunder. In addition, each direct or indirect holder of Series E Convertible Preferred Shares, irrespective of such shareholder's percentage ownership of outstanding Series E Convertible Preferred Shares, shall upon demand disclose to the Trust in writing such information with respect to the direct or indirect ownership of Series E Convertible Preferred Shares as the Board of Trustees deems necessary from time to time to enable the Board of Trustees to determine whether the Trust complies with the REIT Provisions of the Code (as defined in Section 1.5 of the Declaration of Trust), to comply with the requirements of any taxing authority or governmental agency or to determine any such compliance.

(c) If, in the opinion of the Board of Trustees, which shall be binding upon any prospective acquiror of Series E Convertible Preferred Shares, any proposed transfer or issuance would jeopardize the status of the Trust as a real estate investment trust under the REIT Provisions of the Code, the Board of Trustees shall have the right, but not the duty, to refuse to permit such transfer or issuance or refuse to give effect to such transfer or issuance and to take any action to void any such issuance or cause any such transfer not to occur.

(d) As a condition to any transfer and/or registration of transfer on the books of the Trust of any Series E Convertible Preferred Shares which could result in direct or indirect ownership (as hereinafter defined) of Series E Convertible Preferred Shares exceeding 20% of the lesser of the number or the value of the total Series E Convertible Preferred Shares outstanding (the "Excess Preferred Shares") by a Person other than a Preferred Excepted Person (as defined in Section 3(e) below), such prospective transferee shall give written notice to the Trust of the proposed transfer and shall furnish such opinions of counsel, affidavits, undertakings, agreements and information as may be required by the Board of Trustees no later than the 15th day prior to any transfer which, if consummated, would result in such ownership.

(e) Any transfer of Series E Convertible Preferred Shares that would (i) create a direct or indirect owner of Excess Preferred Shares other than a Preferred Excepted Person; or (ii) result in the Trust being "closely held" within the meaning of Section 856(h) of the Code, shall be void ab initio and the prospective acquiror shall not be entitled to any rights afforded to owners of Series E Convertible Preferred Shares hereunder and shall be deemed never to have had an interest therein. Any issuance of Series E Convertible

Preferred Shares that would (i) create a direct or indirect owner of Excess Preferred Shares other than a Preferred Excepted Person; or (ii) result in the Trust being "closely held" within the meaning of Section 856(h) of the Code, shall be void ab initio and the prospective acquiror shall not be entitled to any rights afforded to owners of Series E Convertible Preferred Shares hereunder and shall be deemed never to have had an interest therein.

"Preferred Excepted Person" shall mean any Person approved by the Board of Trustees, at their option and in their sole discretion, provided, however, that such approval shall not be granted to any Person whose ownership of in excess of 20% of the lesser of the number or the value of the total Series E Convertible Preferred Shares outstanding would result, directly, indirectly or as a result of attribution of ownership, in termination of the status of the Trust as a real estate investment trust under the REIT Provisions of the Code.

(f) The Trust, by notice to the holder thereof, may purchase any or all Series E Convertible Preferred Shares that are proposed to be transferred pursuant to a transfer which, in the opinion of the Board of Trustees, which shall be binding upon any proposed transferor or transferee of Series E Convertible Preferred Shares, would result in any Person acquiring Excess Preferred Shares, or would otherwise jeopardize the status of the Trust as a real estate investment trust under the REIT Provisions of the Code. The Trust shall have the power, by lot or other means deemed equitable by the Board of Trustees in their sole discretion, to purchase such Excess Preferred Shares from the prospective transferor. The purchase price for any Excess Preferred Shares shall be equal to the fair market value of the Series E Convertible Preferred Shares on the last trading day immediately preceding the day on which notice of such proposed transfer is sent, as reflected in the closing sale price for the Series E Convertible Preferred Shares, if then listed on a national securities exchange, or such price for the Series E Convertible Preferred Shares on the principal exchange if then listed on more than one national securities exchange, or if the Series E Convertible Preferred Shares are not then listed on a national securities exchange, the latest bid quotation for the Series E Convertible Preferred Shares if then traded over-the-counter, or, if no such closing sales prices or quotations are available, then the purchase price shall be equal to the fair market value of such Series E Convertible Preferred Shares as determined by the Board of Trustees in good faith. Prompt payment of the purchase price shall be made in cash by the Trust in such manner as may be determined by the Board of Trustees. From and after the date fixed for purchase by the Board of Trustees, and so long as payment of the purchase price for the Series E Convertible Preferred Shares to be so redeemed shall have been made or duly provided for, the holder of any Excess Preferred Shares so called for purchase shall cease to be entitled to dividends, distributions, voting rights and other benefits with respect to such Series E Convertible Preferred Shares, excepting only the right to payment of the purchase price fixed as aforesaid. Any dividend or distribution paid to a proposed transferee of Excess Preferred Shares prior to the discovery by the Trust that the Series E Convertible Preferred Shares have been transferred in violation of this Section 3 shall be repaid to the Trust upon demand.

(g) Notwithstanding any other provision in this Declaration of Trust or the Trust's Bylaws, Sections 13.5(3)(e), (f), (g) and (h) may not be amended or repealed without the affirmative vote of the holders of not less than two-thirds of the Series E Convertible Preferred Shares then outstanding and entitled to vote. If Section 13.5(3)(e),

(f), (g) or (h) is determined to be void or invalid by virtue of any legal decision, statute, rule or regulation, then the acquiror of Series E Convertible Preferred Shares in violation of such Sections shall be deemed, at the option of the Trust, to have acted as agent on behalf of the Trust in acquiring such Series E Convertible Preferred Shares on behalf of the Trust.

(h) Subject to Section 13.5(3)(l), notwithstanding any other provision of this Section 13.5 to the contrary, any purported transfer, sale or acquisition of Series E Convertible Preferred Shares (whether such purported transfer, sale or acquisition results from the direct or indirect acquisition of ownership of Series E Convertible Preferred Shares) which would result in the termination of the status of the Trust as a real estate investment trust under the REIT Provisions of the Code shall be null and void ab initio. Any such Series E Convertible Preferred Shares may be treated by the Board of Trustees in the manner prescribed for Excess Preferred Shares in subsection (f) of this Section 13.5(3).

(i) Subject to Section 13.5(3)(l), nothing contained in this Section 13.5(3) or in any other provision of this Section 13.5 shall limit the authority of the Board of Trustees to take such other action as they deem necessary or advisable to protect the Trust and the interests of the shareholders by preservation of the Trust's status as a real estate investment trust under the REIT Provisions of the Code.

(j) If any provision of this Section 13.5(3) or any application of any such provision is determined to be invalid by any federal or state court having jurisdiction over the issues, the validity of the remaining provisions shall not be affected and other applications of such provision shall be affected only to the extent necessary to comply with the determination of such court. To the extent this Section 13.5(3) may be inconsistent with any other provision of this Section 13.5, this Section 13.5(3) shall be controlling.

(k) For purposes of this Section 13.5, Series E Convertible Preferred Shares not owned directly shall be deemed to be owned indirectly by a person if that person or a group of which he is a member would be the beneficial owner of such Series E Convertible Preferred Shares, as defined in Rule 13d-3 under the Securities Exchange Act of 1934, and/or would be considered to own such Series E Convertible Preferred Shares by reason of the REIT Provisions of the Code.

(l) Notwithstanding any other provision of Section 13.5(3), nothing in this Section 13.5 shall preclude the settlement of transactions entered into through the facilities of the New York Stock Exchange, Inc. The fact that the settlement of any transaction is permitted shall not negate the effect of any other provision of this Section 13.5(3) and any transferee in such a transaction shall be subject to all of the provisions and limitations set forth in this Section 13.5(3).

4. Redemption at the Option of the Trust.

(a) The Series E Convertible Preferred Shares are not redeemable prior to November 1, 1998. On and after November 1, 1998, the Series E Convertible Preferred Shares may be redeemed at the option of the Trust by resolution of its Board of Trustees, in

whole or from time to time in part, subject to the limitations set forth below, at the following redemption prices per share if redeemed during the twelve-month period beginning November 1 of the year indicated below (the "Call Price"), plus, in each case, all distributions accrued and unpaid on the shares of the Series E Convertible Preferred Shares up to the date of such redemption, upon giving notice as provided below:

If redeemed during the twelve-month period beginning November 1,	Call Price
1998	$25.875
1999	$25.700
2000	$25.525
2001	$25.350
2002	$25.175
2003 and thereafter	$25.000

(b) If fewer than all of the outstanding Series E Convertible Preferred Shares are to be redeemed, the shares to be redeemed shall be determined pro rata or by lot or in such other manner and subject to such regulations as the Board of Trustees in its sole discretion shall prescribe. In the event that such redemption is to be by lot, if as a result of such redemption any holder of Series E Convertible Preferred Shares would become a holder of in excess of 20% of the lesser of the number or the value of the total Series E Convertible Preferred Shares outstanding because such holder's Series E Convertible Preferred Shares were not redeemed, or were only redeemed in part, then the Trust shall redeem the requisite number of Series E Convertible Preferred Shares of such shareholder such that he will not hold in excess of 20% of the lesser of the number or the value of the total Series E Convertible Preferred Shares outstanding subsequent to such redemption, unless the holder is a Preferred Excepted Person (as defined in Section 3(e) hereof), in which event the Trust shall have the option to redeem such requisite number of Series E Convertible Preferred Shares, as determined in the sole discretion of the Board of Trustees.

(c) At least 30 days but not more than 60 days prior to the date fixed for the redemption of the Series E Convertible Preferred Shares, the Trust shall mail a written notice to each holder of record of the Series E Convertible Preferred Shares to be redeemed in a postage prepaid envelope addressed to such holder at his address as shown on the records of the Trust, notifying such holder of the election of the Trust to redeem such shares, stating the date fixed for redemption thereof (the "Redemption Date"), the redemption price, the number of shares to be redeemed (and, if fewer than all the Series E Convertible Preferred Shares are to be redeemed, the number of shares to be redeemed from such holder) and the place(s) where the certificate(s) representing such shares are to be surrendered for payment. On or after the Redemption Date each holder of the Series E Convertible Preferred Shares to be redeemed shall present and surrender his certificate or certificates for such shares to the Trust at the place designated in such notice and thereupon the redemption price of such shares shall be paid to or on the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be cancelled. In the

event that fewer than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares. From and after the Redemption Date (unless default shall be made by the Trust in payment of the redemption price), all distributions on the Series E Convertible Preferred Shares designated for redemption in such notice shall cease to accrue, and all rights of the holders thereof as shareholders of the Trust, except the right to receive the redemption price of such shares (including all accrued and unpaid distributions up to the Redemption Date) upon the surrender of certificates representing the same, shall cease and terminate and such shares shall not thereafter be transferred (except with the consent of the Trust) on the books of the Trust, and such shares shall not be deemed to be outstanding for any purpose whatsoever. At its election, the Trust prior to the Redemption Date may irrevocably deposit the redemption price (including all accrued and unpaid distributions up to the Redemption Date) of the Series E Convertible Preferred Shares so called for redemption in trust for the holders thereof with a bank or trust company (having a capital surplus and undivided profits aggregating not less than $50,000,000) in the Borough of Manhattan, City and State of New York, or in any other city in which the Trust at the time shall maintain a transfer agency with respect to such shares, in which case the aforesaid notice to holders of the Series E Convertible Preferred Shares to be redeemed shall state the date of such deposit, shall specify the office of such bank or trust company as the place of payment of the redemption price, and shall call upon such holders to surrender the certificates representing such shares at such place on or after the date fixed in such redemption notice (which shall not be later than the Redemption Date) against payment of the redemption price (including all accrued and unpaid distributions up to the Redemption Date). Any interest accrued on such funds shall be paid to the Trust from time to time. Any moneys so deposited which shall remain unclaimed by the holders of the Series E Convertible Preferred Shares at the end of two years after the Redemption Date shall be returned by such bank or trust company to the Trust.

If a notice of redemption has been given pursuant to this Section 13.5(4) and any holder of Series E Convertible Preferred Shares shall, prior to the close of business on the last business day preceding the Redemption Date, give written notice to the Trust pursuant to Section 13.5(7) below of the conversion of any or all of the shares to be redeemed held by such holder (accompanied by a certificate or certificates for such shares, duly endorsed or assigned to the Trust, and any necessary transfer tax payment, as required by Section 13.5(7) below, then such redemption shall not become effective as to such shares to be converted, such conversion shall become effective as provided in Section 13.5(7) below and any moneys set aside by the Trust for the redemption of such shares of converted Series E Convertible Preferred Shares shall revert to the general funds of the Trust (unless such shares were converted after the close of business on the record date for a distribution and before the opening of business on the payment date for such distribution, in which event the holders of such shares shall be entitled to the distribution payable thereon on such distribution payment date).

Notwithstanding the foregoing, unless full cumulative distributions on all outstanding Series E Convertible Preferred Shares have been paid or declared and a sum sufficient for the payment thereof set apart for payment for all past distribution periods and the then current distribution period, no Series E Convertible Preferred Shares shall be redeemed unless all outstanding Series E Convertible Preferred Shares are simultaneously

redeemed; provided, however, that the foregoing shall not prevent the purchase or acquisition of Series E Convertible Preferred Shares pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding Series E Convertible Preferred Shares, and, unless full cumulative distributions on all outstanding Series E Convertible Preferred Shares have been paid or declared and a sum sufficient for the payment thereof set apart for payment for all past distribution periods and the then current distribution period, the Trust shall not purchase or otherwise acquire directly or indirectly any Series E Convertible Preferred Shares (except by conversion into or exchange for shares of beneficial interest of the Trust ranking junior to the Series E Convertible Preferred Shares as to distribution rights and the liquidation preference).

(d) The Series E Convertible Preferred Shares redeemed, repurchased or retired pursuant to the provisions of this Section 13.5(4) or surrendered to the Trust upon conversion shall thereupon be retired and may not be reissued as Series E Convertible Preferred Shares but shall thereafter have the status of authorized but unissued shares of beneficial interest.

5. Voting Rights.

(a) The holders of Series E Convertible Preferred Shares shall not be entitled to vote on any matter except (i) as provided in Section 13.5(9), (ii) as provided in Section 13.5(5)(b) and (iii) as required by law.

(b) In the event the Trust shall have failed to declare and pay or set apart for payment in full the distributions accumulated on the outstanding Series E Convertible Preferred Shares for any six consecutive quarterly distribution payment periods (a "Preferential Distribution Non-Payment"), the number of trustees of the Trust shall be increased by two and the holders of the outstanding Series E Convertible Preferred Shares, voting together as a class with all other classes or series of preferred shares of the Trust ranking on a parity with the Series E Convertible Preferred Shares with respect to distribution rights and then entitled to vote on the election of such additional two trustees, shall be entitled to elect such two additional trustees until the full distributions accumulated on all outstanding Series E Convertible Preferred Shares have been declared and paid or set apart for payment. Upon the occurrence of a Preferential Distribution Non-Payment or a vacancy in the office of a Preferred Shares Trustee (as defined below), the Board of Trustees shall within a reasonable period call a special meeting of the holders of the Series E Convertible Preferred Shares and all holders of other classes or series of preferred shares of the Trust ranking on a parity with the Series E Convertible Preferred Shares with respect to distribution rights who are then entitled to vote on the election of such additional trustee or trustees for the purpose of electing the additional trustee or trustees. If and when all accumulated distributions on the Series E Convertible Preferred Shares have been declared and paid or set aside for payment in full, the holders of the Series E Convertible Preferred Shares shall be divested of the special voting rights provided by this Section 13.5(5)(b), subject to revesting in the event of each and every subsequent Preferential Distribution Non-Payment. Upon termination of such special voting rights attributable to all holders of the Series E Convertible Preferred Shares and shares of any other class or series of preferred shares of the Trust ranking on a parity with the Series E Convertible Preferred Shares with respect to distribution rights, the term of office of each

trustee elected by the holders of the Series E Convertible Preferred Shares and such parity preferred shares (a "Preferred Shares Trustee") pursuant to such special voting rights shall forthwith terminate and the number of trustees constituting the entire Board of Trustees shall be reduced by the number of Preferred Shares Trustees. Any Preferred Shares Trustee may be removed by, and shall not be removed otherwise than by, the vote of the holders of record of a majority of the outstanding Series E Convertible Preferred Shares and all other series of preferred shares of the Trust ranking on a parity with the Series E Convertible Preferred Shares with respect to distribution rights who were entitled to vote in such Preferred Shares Trustee's election, voting as a separate class, at a meeting called for such purpose.

(c) So long as any Series E Convertible Preferred Shares are outstanding, the number of trustees constituting the entire Board of Trustees of the Trust shall at all times be such that the exercise, by the holders of the Series E Convertible Preferred Shares and the holders of preferred shares of the Trust ranking on a parity with the Series E Convertible Preferred Shares with respect to distribution rights, of the right to elect trustees under the circumstances provided for in subclause (b) of this Section 13.5(5) will not contravene any other provision of this Declaration restricting the number of trustees which may constitute the entire Board of Trustees of the Trust.

(d) Trustees elected pursuant to subclause (b) of this Section 13.5(5) shall serve until the earlier of (x) the next annual meeting of the shareholders of the Trust and the election (by the holders of the Series E Convertible Preferred Shares and the holders of preferred shares of the Trust ranking on a parity with the Series E Convertible Preferred Shares with respect to distribution rights) and qualification of their respective successors or (y) the termination of the term of office of each Preferred Shares Trustee upon the termination of the special voting rights as provided for in Section 13.5(5)(b).

(e) So long as a Preferential Distribution Non-Payment shall continue, any vacancy in the office of a Preferred Shares Trustee may be filled by vote of the holders of record of a majority of the outstanding Series E Convertible Preferred Shares and all other series of preferred shares ranking on a parity with the Series E Convertible Preferred Shares with respect to distribution rights who are then entitled to vote in the election of such Preferred Shares Trustee as provided above. As long as the Preferential Distribution Non-Payment shall continue, holders of the Series E Convertible Preferred Shares shall not, as such shareholders, be entitled to vote on the election or removal of trustees other than Preferred Shares Trustees, but shall not be divested of any other voting rights provided to such shareholders by law, this Declaration with respect to any other matter to be acted upon by the shareholders of the Trust.

6. Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of the affairs of the Trust, whether voluntary or otherwise, after payment or provision for payment of the debts and other liabilities of the Trust, the holders of Series E Convertible Preferred Shares shall be entitled to receive, in cash, out of the remaining assets of the Trust legally available therefor, the amount of Twenty-five Dollars ($25.00) for each Series E Convertible Preferred Share, plus an amount equal to all distributions accrued and unpaid on each such

share up to the date of such distribution of assets, before any distribution shall be made to the holders of Common Shares or any other shares of beneficial interest of the Trust ranking (as to any such distribution of assets) junior to the Series E Convertible Preferred Shares. If upon any liquidation, dissolution or winding up of the Trust, the assets distributable among the holders of Series E Convertible Preferred Shares and all other classes and series of preferred shares ranking (as to any such distribution of assets) on a parity with the Series E Convertible Preferred Shares are insufficient to permit the payment in full to the holders of all such shares of all preferential amounts payable to all such holders, then the entire assets of the Trust thus distributable shall be distributed ratably among the holders of Series E Convertible Preferred Shares and such other classes and series of preferred shares ranking (as to any such distribution of assets) on a parity with the Series E Convertible Preferred Shares in proportion to the respective amounts that would be payable per share if such assets were sufficient to permit payment in full.

(b) For purposes of this Section 13.5(6), a distribution of assets in any dissolution, winding up or liquidation shall not include (i) any consolidation or merger of the Trust with or into any other corporation, (ii) any dissolution, liquidation, winding up or reorganization of the Trust immediately followed by incorporation of another corporation to which such assets are distributed or (iii) a sale or other disposition of all or substantially all of the Trust's assets to another corporation; provided, however, that, in each case, effective provision is made in the charter of the resulting and surviving corporation or otherwise for the recognition, preservation and protection of the rights of the holders of Series E Convertible Preferred Shares.

(c) After the payment of the full preferential amounts provided for herein to the holders of Series E Convertible Preferred Shares or funds necessary for such payment have been set aside in trust for the holders thereof, such holders shall be entitled to no other or further participation in the distribution of the assets of the Trust.

(d) In determining whether a distribution by dividend, redemption or other acquisition of Shares or otherwise is permitted under Maryland law, no effect shall be given to amounts that would be needed, if the Trust were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights on dissolution are superior to those receiving the distribution.

7. Conversion.

(a) Holders of Series E Convertible Preferred Shares shall have the right, exercisable at any time and from time to time, except in the case of the Series E Convertible Preferred Shares called for redemption as set forth below, to convert all or any such Series E Convertible Preferred Shares into Common Shares at the conversion price of $44.93 per Common Share (equivalent to a conversion rate of approximately 0.5564 Common Shares for each Series E Convertible Preferred Share so converted), subject to adjustment as described below. In the case of Series E Convertible Preferred Shares called for redemption, conversion rights will expire at the close of business on the last business day preceding the Redemption Date. Notice of redemption at the option of the Trust must be mailed not less than 30 days and not more than 60 days prior to the Redemption Date as

provided in Section 13.5(4)(c) hereof. Upon conversion, no adjustment or payment will be made for distributions, but if any holder surrenders Series E Convertible Preferred Shares for conversion after the close of business on the record date for the payment of a distribution and prior to the opening of business on the related distribution payment date, then, notwithstanding such conversion, the distribution payable on such distribution payment date will be paid to the registered holder of such shares on such distribution record date. In such event, such shares, when surrendered for conversion during the period between the close of business on any distribution record date and the opening of business on the corresponding distribution payment date, must be accompanied by payment of an amount equal to the distribution payable on such distribution payment date on the shares so converted (unless such shares were converted after the issuance of a notice of redemption with respect to such shares, in which event such shares shall be entitled to the distribution payable thereon on such distribution payment date without making such payment).

(b) Any holder of one or more Series E Convertible Preferred Shares electing to convert such share or shares shall deliver the certificate or certificates therefor to the principal office of any transfer agent for the Common Shares, with the form of notice of election to convert as the Trust shall prescribe fully completed and duly executed and (if so required by the Trust or any conversion agent) accompanied by instruments of transfer in form satisfactory to the Trust and to any conversion agent, duly executed by the registered holder or his duly authorized attorney, and transfer taxes, stamps or funds therefor or evidence of payment thereof if required pursuant to Section 13.5(7)(a) or 13.5(7)(d) hereof. The conversion right with respect to any such shares shall be deemed to have been exercised at the date upon which the certificates therefor accompanied by such duly executed notice of election and instruments of transfer and such taxes, stamps, funds or evidence of payment shall have been so delivered, and the person or persons entitled to receive the shares of the Common Shares issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of the Common Shares upon said date.

(c) No fractional Common Share or scrip representing a fractional share shall be issued upon conversion of Series E Convertible Preferred Shares. If more than one Series E Convertible Preferred Share shall be surrendered for conversion at one time by the same holder, the number of full Common Shares which shall be issuable upon conversion thereof shall be computed on the basis of the aggregate number of Series E Convertible Preferred Shares so surrendered. Instead of any fractional Common Share which would otherwise be issuable upon conversion of any Series E Convertible Preferred Shares, the Trust shall pay a cash adjustment in respect of such fraction in an amount equal to the same fraction of the closing price for the Common Shares on the last trading day preceding the date of conversion. The closing price for such day shall be the last reported sales price regular way or, in case no such reported sale takes place on such date, the average of the reported closing bid and asked prices regular way, in either case on the New York Stock Exchange, or if the Common Shares are not listed or admitted to trading on such Exchange, on the principal national securities exchange on which the Common Shares are listed or admitted to trading or, if not listed or admitted to trading on any national securities exchange, the closing sale price of the Common Shares or in case no reported sale takes place, the average of the closing bid and asked prices, on NASDAQ or any comparable system. If the Common Shares are

not quoted on NASDAQ or any comparable system, the Board of Trustees shall in good faith determine the current market price on the basis of such quotation as it considers appropriate.

(d) If a holder converts Series E Convertible Preferred Shares, the Trust shall pay any documentary, stamp or similar issue or transfer tax due on the issuance of Common Shares upon the conversion. The holder, however, shall pay to the Trust the amount of any tax which is due (or shall establish to the satisfaction of the Trust payment thereof) if the shares are to be issued in a name other than the name of such holder and shall pay to the Trust any amount required by the last sentence of Section 13.5(7)(a) hereof.

(e) The Trust shall reserve and shall at all times have reserved out of its authorized but unissued Common Shares a sufficient number of Common Shares to permit the conversion of the then outstanding Series E Convertible Preferred Shares. All Common Shares which may be issued upon conversion of Series E Convertible Preferred Shares shall be validly issued, fully paid and nonassessable, and not subject to preemptive or other similar rights. In order that the Trust may issue Common Shares upon conversion of Series E Convertible Preferred Shares, the Trust will endeavor to comply with all applicable Federal and State securities laws and will endeavor to list such Common Shares to be issued upon conversion on each securities exchange on which the Common Shares are listed.

(f) The conversion rate in effect at any time shall be subject to adjustment from time to time as follows:

(i) In case the Trust shall (1) pay or make a distribution in Common Shares to holders of the Common Shares, (2) reclassify the outstanding Common Shares into shares of some other class or series of shares, (3) subdivide the outstanding Common Shares into a greater number of Common Shares or (4) combine the outstanding Common Shares into a smaller number of Common Shares, the conversion rate immediately prior to such action shall be adjusted so that the holder of any Series E Convertible Preferred Shares thereafter surrendered for conversion shall be entitled to receive the number of Common Shares which he would have owned immediately following such action had such Series E Convertible Preferred Shares been converted immediately prior thereto. An adjustment made pursuant to this Section 13.5(7)(f)(i) shall become effective immediately after the record date in the case of a distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or reclassification.

(ii) In case the Trust shall issue rights or warrants to all holders of the Common Shares entitling them to subscribe for or purchase Common Shares (or

securities convertible into Common Shares) at a price per share less than the current market price (as determined pursuant to Section 13.5(7)(f)(iv)) of the Common Shares on such record date, the number of Common Shares into which each Series E Convertible Preferred Share shall be convertible shall be adjusted so that the same shall be equal to the number determined by multiplying the number of Common Shares into which such Series E Convertible Preferred Share was convertible immediately prior to such record date by a fraction of which the numerator shall be the number of Common Shares outstanding on such record date plus the number of additional Common Shares offered (or into which the convertible securities so offered are convertible), and of which the denominator shall be the number of Common Shares outstanding on such record date, plus the number of Common Shares which the aggregate offering price of the additional Common Shares offered (or into which the convertible securities so offered are convertible) would purchase at such current market price. Such adjustments shall become effective immediately after such record date for the determination of the holders of the Common Shares entitled to receive such distribution. For purposes of this subsection (ii), the number of Common Shares at any time outstanding shall not include Common Shares held in the treasury of the Trust.

(iii) In case the Trust shall distribute to all holders of the Common Shares any class of shares of beneficial interest other than the Common Shares, evidences of indebtedness or assets of the Trust (other than cash distributions out of current or retained earnings), or shall distribute to all holders of the Common Shares rights or warrants to subscribe for securities (other than those referred to in Section 13.5(7)(f)(ii)), then in each such case the number of Common Shares into which each Series E Convertible Preferred Share shall be convertible shall be adjusted so that the same shall equal the number determined by multiplying the number of Common Shares into which such Series E Convertible Preferred Share was convertible immediately prior to the date of such distribution by a fraction of which the numerator shall be the current market price (determined as provided in Section 13.5(7)(f)(iv)) of the Common Shares on the record date mentioned below, and of which the denominator

shall be such current market price of the Common Shares, less the then fair market value (as determined by the Board of Trustees, whose determination shall be conclusive evidence of such fair market value) of the portion of the securities or assets so distributed or of such subscription rights or warrants applicable to one Common Share. Such adjustment shall become effective immediately after the record date for the determination of the holders of the Common Shares entitled to receive such distribution. Notwithstanding the foregoing, in the event that the Trust shall distribute rights or warrants (other than those referred to in Section 13.5(7)(f)(ii)) ("Rights") pro rata to holders of the Common Shares, the Trust may, in lieu of making any adjustment pursuant to this Section 13.5(7)(f)(iii), make proper provision so that each holder of a Series E Convertible Preferred Share who converts such share after the record date for such distribution and prior to the expiration or redemption of the Rights shall be entitled to receive upon such conversion, in addition to the Common Shares issuable upon such conversion (the "Conversion Shares"), a number of Rights to be determined as follows: (1) if such conversion occurs on or prior to the date for the distribution to the holders of Rights of separate certificates evidencing such Rights (the "Distribution Date"), the same number of Rights to which a holder of a number of Common Shares equal to the number of Conversion Shares is entitled at the time of such conversion in accordance with the terms and provisions of and applicable to the Rights; and (2) if such conversion occurs after the Distribution Date, the same number of Rights to which a holder of the number of Common Shares into which a Series E Convertible Preferred Share so converted was convertible immediately prior to the Distribution Date would have been entitled on the Distribution Date in accordance with the terms and provisions of and applicable to the Rights.

(iv) The current market price per share of the Common Shares on any date shall be deemed to be the average of the daily closing prices for thirty consecutive trading days commencing forty-five trading days before the date in question. The closing price for each day shall be the last reported sales price regular way or, in case no such reported sale takes place on such date, the average of the reported closing bid and asked prices

regular way, in either case on the New York Stock Exchange, or if the Common Shares are not listed or admitted to trading on such Exchange, on the principal national securities exchange on which the Common Shares are listed or admitted to trading or, if not listed or admitted to trading on any national securities exchange, the closing sale price of the Common Shares or, in case no reported sale takes place, the average of the closing bid and asked prices, on NASDAQ or any comparable system, or if the Common Shares are not quoted on NASDAQ or any comparable system, the closing sale price or, in case no reported sale takes place, the average of the closing bid and asked prices, as furnished by any two members of the National Association of Securities Dealers, Inc. selected from time to time by the Trust for that purpose.

(v) In any case in which this Section 13.5(7) shall require that an adjustment be made immediately following a record date, the Trust may elect to defer (but only until five business days following the mailing of the notice described in Section 13.5(7)(j)) issuing to the holder of any Series E Convertible Preferred Shares converted after such record date the Common Shares and other shares of beneficial interest of the Trust issuable upon such conversion over and above the Common Shares and other shares of beneficial interest of the Trust issuable upon such conversion only on the basis of the conversion rate prior to adjustment; and, in lieu of the shares the issuance of which is so deferred, the Trust shall issue or cause its transfer agents to issue appropriate evidence of the right to receive such shares.

(g) No adjustment in the conversion rate shall be required until cumulative adjustments result in a change of 1% or more of the conversion price as in effect prior to the last adjustment of the conversion rate; provided, however, that any adjustment which by reason of this Section 13.5(7)(g) is not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this Section 13.5(7) shall be made to the nearest cent ($.01) or to the nearest one-hundredth (1/100) of a share, as the case may be. No adjustment to the conversion rate shall be made for cash dividends.

(h) In the event that, as a result of an adjustment made pursuant to Section 13.5(7)(f), the holder of any Series E Convertible Preferred Shares thereafter surrendered for conversion shall become entitled to receive any shares of beneficial interest of the Trust other than Common Shares, thereafter the number of such other shares so receivable upon conversion of any Series E Convertible Preferred Shares shall be subject to adjustment from

time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to the Common Shares contained in this Section 13.5(7).

(i) The Trust may make such increases in the conversion rate, in addition to those required by Sections 13.5(7)(f) (i), (ii) and (iii), as is considered to be advisable in order that any event treated for Federal income tax purposes as a distribution of shares or share rights shall not be taxable to the recipients thereof.

(j) Whenever the conversion rate is adjusted, the Trust shall promptly mail to all holders of record of Series E Convertible Preferred Shares a notice of the adjustment and shall cause to be prepared a certificate signed by a principal financial officer of the Trust setting forth the adjusted conversion rate and a brief statement of the facts requiring such adjustment and the computation thereof; such certificate shall forthwith be filed with each transfer agent for the Series E Convertible Preferred Shares.

(k) In the event that:

(1) the Trust takes any action which would require an adjustment in the conversion rate,

(2) the Trust consolidates or merges with, or transfers all or substantially all of its assets to, another corporation and shareholders of the Trust must approve the transaction, or

(3) there is a dissolution, winding up or liquidation of the Trust,

a holder of Series E Convertible Preferred Shares may wish to convert some or all of such shares into Common Shares prior to the record date for, or the effective date of, the transaction so that he may receive the rights, warrants, securities or assets which a holder of Common Shares on that date may receive. Therefore, the Trust shall mail to holders of Series E Convertible Preferred Shares a notice stating the proposed record or effective date of the transaction, as the case may be. The Trust shall mail the notice at least 10 days before such date; however, failure to mail such notice or any defect therein shall not affect the validity of any transaction referred to in clauses (1), (2) or (3) of this Section 13.5(7)(k).

(l) If any of the following shall occur, namely: (i) any reclassification or change of outstanding Common Shares issuable upon conversion of Series E Convertible Preferred Shares (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination), (ii) any consolidation or merger to which the Trust is a party other than a merger in which the Trust is the surviving entity and which does not result in any reclassification of, or change (other than a change in name, or par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination) in, outstanding Common Shares or (iii) any sale, transfer or lease of all or substantially all of the property or business of the Trust as an entirety, then the Trust, or such successor or purchasing entity, as the case may be, shall, as a condition precedent to such reclassification, change, consolidation, merger, sale, transfer or lease, provide in its charter document that each Series E Convertible Preferred Share shall be

convertible into the kind and amount of shares of stock or beneficial interest and other securities and property (including cash) receivable upon such reclassification, change, consolidation, merger, sale, transfer or lease by a holder of the number of Common Shares deliverable upon conversion of such Series E Convertible Preferred Share immediately prior to such reclassification, change, consolidation, merger, sale, transfer or lease. Such charter document shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Section 13.5(7). The foregoing, however, shall not in any way affect the right that a holder of Series E Convertible Preferred Shares may otherwise have, pursuant to clause (2) of the last sentence of Section 13.5(7)(f)(iii), to receive Rights upon conversion of Series E Convertible Preferred Shares. If, in the case of any such consolidation, merger, sale, transfer or lease, the shares of stock or beneficial interest or other securities and property (including cash) receivable thereupon by a holder of the Common Shares includes shares of stock or beneficial interest or other securities and property of a corporation other than the successor or purchasing corporation, as the case may be, in such consolidation, merger, sale, transfer or lease, then the charter document of such other corporation shall contain such additional provisions to protect the interests of the holders of Series E Convertible Preferred Shares as the Board of Trustees shall reasonably consider necessary by reason of the foregoing. The provisions of this Section l3.5(7)(l) shall similarly apply to successive consolidations, mergers, sales, transfers or leases.

8. Ranking. With regard to rights to receive distributions and amounts payable upon liquidation, dissolution or winding up of the Trust, the Series E Convertible Preferred Shares shall rank senior to the Common Shares and on a parity with any other preferred shares issued by the Trust, unless the terms of such other preferred shares provide otherwise and, if applicable, the requirements of Section 9 hereof have been complied with. However, the Trust may authorize or increase any class or series of shares of beneficial interest ranking on a parity with or junior to the Series E Convertible Preferred Shares as to distribution rights and the liquidation preference without the vote or consent of the holders of the Series E Convertible Preferred Shares.

9. Limitations. In addition to any other rights provided by applicable law, so long as any Series E Convertible Preferred Shares are outstanding, the Trust shall not, without the affirmative vote, or the written consent as provided by law, of the holders of at least two-thirds (2/3) of the total number of outstanding Series E Convertible Preferred Shares, voting as a class,

(a) authorize, create or issue, or increase the authorized or issued amount of, any class or series of, or rights to subscribe to or acquire, any security convertible into, any class or series of shares of beneficial interest ranking as to distribution rights or the liquidation preference, senior to the Series E Convertible Preferred Shares, or reclassify any shares of beneficial interest into any such shares; or

(b) amend, alter or repeal, whether by merger, consolidation or otherwise, any of the provisions of this Declaration that would change the preferences, rights or powers with respect to the Series E Convertible

Preferred Shares so as to affect the Series E Convertible Preferred Shares adversely;

but (except as otherwise required by applicable law) nothing herein contained shall require such a vote or consent (i) in connection with any increase in the total number of authorized Common Shares, or (ii) in connection with the authorization or increase of any class or series of shares of beneficial interest ranking, as to distribution rights and the liquidation preference, on a parity with or junior to the Series E Convertible Preferred Shares; and provided further that no such vote or written consent of the holders of the Series E Convertible Preferred Shares shall be required if, at or prior to the time when the issuance of any such shares ranking senior to the Series E Convertible Preferred Shares is to be made or any such change is to take effect, as the case may be, proper notice has been given and sufficient funds have been irrevocably deposited in trust for the redemption of all the then outstanding Series E Convertible Preferred Shares.

10. No Preemptive Rights. No holder of Series E Convertible Preferred Shares will possess any preemptive rights to subscribe for or acquire any unissued shares of beneficial interest of the Trust (whether now or hereafter authorized) or securities of the Trust convertible into or carrying a right to subscribe to or acquire shares of beneficial interest of the Trust.

SECTION 13.6. [Intentionally Omitted]

SECTION 13.7. Series H Preferred Shares.

Section 1. Number of Shares and Designation. This series of Preferred Shares shall be designated as Series H Cumulative Convertible Preferred Shares of Beneficial Interest ($.01 Par Value Per Share) (Liquidation Preference $25.00 Per Share) (the "Series H Preferred Shares") and 164,951 shall be the number of shares constituting such series.

Section 2. Definitions. For purposes of the Series H Preferred Shares, the following terms shall have the meanings indicated:

"Act" shall have the meaning set forth in paragraph (g) of Section 5 hereof.

"Board of Trustees" shall mean the Board of Trustees of the Trust or any committee of the Board of Trustees authorized by such Board of Trustees to perform any of its responsibilities with respect to the Series H Preferred Shares.

"Business Day" shall mean any day other than a Saturday, Sunday or a day on which state or federally chartered banking institutions in Chicago, Illinois or New York, New York are not required to be open.

"Call Date" shall have the meaning set forth in paragraph (c) of Section 5 hereof.

"Common Shares" shall mean the common shares of beneficial interest of the Trust, $.01 par value per share.

"Constituent Person" shall have the meaning set forth in paragraph (e) of Section 7 hereof.

"Conversion Price" shall mean the conversion price per Common Share for which a Series H Preferred Share is convertible, as such Conversion Price may be adjusted pursuant to Section 7 hereof. The initial conversion price shall be $34.53 (equivalent to a conversion rate of .7240 Common Shares for each Series H Preferred Share).

"Current Market Price" of publicly traded Common Shares or any other class of shares of beneficial interest or other security of the Trust or any other issuer for any day shall mean the last reported sales price, regular way on such day, or, if no sale takes place on such day, the average of the reported closing bid and asked prices on such day, regular way, in either case as reported on the New York Stock Exchange ("NYSE") or, if such security is not listed or admitted for trading on the NYSE, on the principal national securities exchange on which such security is listed or admitted for trading or, if not listed or admitted for trading on any national securities exchange, on the National Market System of the National Association of Securities Dealers, Inc. Automated Quotations System ("NASDAQ") or, if such security is not quoted on such National Market System, the average of the closing bid and asked prices on such day in the over-the-counter market as reported by NASDAQ or, if bid and asked prices for such security on such day shall not have been reported through NASDAQ, the average of the bid and asked prices on such day as furnished by any NYSE member firm regularly making a market in such security selected for such purpose by the Chief Executive Officer of the Board of Trustees.

"Dividend Payment Date" shall mean the last calendar day of March, June, September and December, in each year, commencing on December 31, 1998; *provided, however*, that if any Dividend Payment Date falls on any day other than a Business Day, the dividend payment due on such Dividend Payment Date shall be paid on the Business Day immediately following such dividend Payment Date.

"Dividend Periods" shall mean quarterly dividend periods commencing on January 1, April 1, July 1 and October 1 of each year and ending on and including the day preceding the first day of the next succeeding Dividend Period.

"Fair Market Value" shall mean the average of the daily Current Market Prices of a Common Share during the five (5) consecutive Trading Days selected by the Trust commencing not more than 20 Trading Days before, and ending not later than, the earlier of the day in question and the day before the "ex date" with respect to the issuance or distribution requiring such computation. The term "ex date," when used with respect to any issuance or distribution, means the first day on which the Common Shares trade regular way, without the right to receive such issuance or distribution, on the exchange or in the market, as the case may be, used to determine that day's Current Market Price.

"Issue Date" shall mean the first day on which Series H Preferred Shares are issued.

"Junior Shares" shall mean the Common Shares and any other class or series of shares of the Trust over which the Series H Preferred Shares and the Parity Shares have preference or priority in the payment of dividends or in the distribution of assets on any liquidation, dissolution or winding up of the Trust.

"Non-Electing Share" shall have the meaning set forth in paragraph (e) of Section 7 hereof.

"Parity Shares" shall have the meaning set forth in paragraph (b) of Section 8 hereof.

"Permitted Common Share Cash Distributions" means cash dividends and distributions paid after December 31, 1997 not in excess of the Trust's cumulative undistributed net earnings at December 31, 1997, plus the cumulative amount of funds from operations, as determined by Board of Trustees on a basis consistent with the financial reporting practices of the Trust, after December 31, 1997, minus the cumulative amount of dividends accrued or paid on the Series H Preferred Shares or any other class of Preferred Shares after the date of these Articles Supplementary.

"Person" shall mean any individual, firm, partnership, corporation or other entity, and shall include any successor (by merger or otherwise) of such entity.

"Press Release" shall have the meaning set forth in paragraph (b) of Section 5 hereof.

"Securities" shall have the meaning set forth in paragraph (d)(iii) of Section 7 hereof.

"Series H Preferred Shares" shall have the meaning set forth in Section 1 hereof.

"set apart for payment" shall be deemed to include, without any action other than the following, the recording by the Trust in its accounting ledgers of any accounting or bookkeeping entry which indicates, pursuant to an authorization of dividends or other distribution by the Board of Trustees, the allocation of funds to be so paid on any series or class of shares of beneficial interest of the Trust; *provided*, *however*, that if any funds for any class or series of Junior Shares or any class or series of shares ranking on a parity with the Series H Preferred Shares as to the payment of dividends are placed in a separate account of the Trust or delivered to a disbursing, paying or other similar agent, then "set apart for payment" with respect to the Series H Preferred Shares shall mean placing such funds in a separate account or delivering such funds to a disbursing, paying or other similar agent.

"Trading Day" shall mean any day on which the securities in question are traded on the NYSE, or if such securities are not listed or admitted for trading on the NYSE, on the principal national securities exchange on which such securities are listed or admitted, or if not listed or admitted for trading on any national securities exchange, on the National Market System of

NASDAQ, or if such securities are not quoted on such National Market System, in the applicable securities market in which the securities are traded.

"Transaction" shall have the meaning set forth in paragraph (e) of Section 7 hereof.

"Transfer Agent" means Boston Equiserve LP, Boston, Massachusetts, or such other agent or agents of the Trust as may be designated by the Board of Trustees or their designee as the transfer agent for the Series H Preferred Shares.

"Voting Preferred Shares" shall have the meaning set forth in Section 9 hereof.

Section 3. Dividends. (a) The holders of Series H Preferred Shares shall be entitled to receive, when, as and if authorized by the Board of Trustees out of funds legally available for that purpose, dividends payable in cash at the rate per annum of $1.75 per Series H Preferred Share. Such dividends shall be cumulative from October 1, 1998, whether or not in any Dividend Period or Periods there shall be funds of the Trust legally available for the payment of such dividends, and shall be payable quarterly, when, as and if authorized by the Board of Trustees, in arrears on Dividend Payment Dates, commencing on the first Dividend Payment Date after the Issue Date. Each such dividend shall be payable in arrears to the holders of record of Series H Preferred Shares, as they appear on the share records of the Trust at the close of business on such record dates, not more than 60 days preceding such Dividend Payment Dates thereof, as shall be fixed by the Board of Trustees. Accrued and unpaid dividends for any past Dividend Periods may be declared and paid at any time, without reference to any regular Dividend Payment Date, to holders of record on such date, not exceeding 45 days preceding the payment date thereof, as may be fixed by the Board of Trustees.

(b) The amount of dividends payable for each full Dividend Period for the Series H Preferred Shares shall be computed by dividing the annual dividend rate by four. The amount of dividends payable for any period shorter or longer than a full Dividend Period on the Series H Preferred Shares shall be computed on the basis of twelve 30-day months and a 360-day year. Holders of Series H Preferred Shares shall not be entitled to any dividends, whether payable in cash, property or shares, in excess of cumulative dividends, as herein provided, on the Series H Preferred Shares. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on the Series H Preferred Shares that may be in arrears.

(c) So long as any Series H Preferred Shares are outstanding, no dividends except as described in the immediately following sentence, shall be declared or paid or set apart for payment on any class or series of Parity Shares for any period unless full cumulative dividends have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for such payment on the Series H Preferred Shares for all Dividend Periods terminating on or prior to the Dividend Payment Date on such class or series of Parity Shares. When dividends are not paid in full or a sum sufficient for such payment is not set apart, as aforesaid, all dividends declared upon the Series H Preferred Shares and all dividends declared upon any other class or series of Parity Shares shall be declared ratably in proportion to the respective amounts of dividends accumulated and unpaid on the Series H Preferred Shares and accumulated and unpaid on such Parity Shares.

(d) So long as any Series H Preferred Shares are outstanding, no dividends (other than dividends or distributions paid in shares of, or options, warrants or rights to subscribe for or purchase, Junior Shares), shall be declared or paid or set apart for payment or other distribution declared or made upon Junior Shares, nor shall Junior Shares be redeemed, purchased or otherwise acquired (other than a redemption, purchase or other acquisition of Common Shares made for purposes of an employee incentive or benefit plan of the Trust or any subsidiary) for any consideration (or any moneys be paid to or made available for a sinking fund for the redemption of any shares of any such Junior Shares) by the Trust, directly or indirectly (except by conversion into or exchange for Junior Shares), unless in each case (i) the full cumulative dividends on all outstanding Series H Preferred Shares and any other Parity Shares of the Trust shall have been paid or set apart for payment for all past Dividend Periods with respect to the Series H Preferred Shares and all past dividend periods with respect to such Parity Shares and (ii) sufficient funds shall have been paid or set apart for the payment of the dividend for the current Dividend Period with respect to the Series H Preferred Shares and the current dividend period with respect to such Parity Shares.

Section 4. Liquidation Preference. (a) In the event of any liquidation, dissolution or winding up of the Trust, whether voluntary or involuntary, before any payment or distribution of the assets of the Trust (whether capital or surplus) shall be made to or set apart for the holders of Junior Shares, the holders of the Series H Preferred Shares shall be entitled to receive Twenty-five Dollars ($25.00) per Series H Preferred Share plus an amount equal to all dividends (whether or not earned or declared) accrued and unpaid thereon to the date of final distribution to such holders; but such holders shall not be entitled to any further payment. If, upon liquidation, dissolution or winding up of the Trust, the assets of the Trust, or proceeds thereof, distributable among the holders of the Series H Preferred Shares shall be insufficient to pay in full the preferential amount aforesaid and liquidating payments on any other shares of any class or series of Parity Shares, then such assets, or the proceeds thereof, shall be distributed among the holders of Series H Preferred Shares and any such other Parity Shares ratably in accordance with the respective amounts that would be payable on such Series H Preferred Shares and any such other Parity Shares if all amounts payable thereon were paid in full. For the purposes of this Section 4, (i) a consolidation or merger of the Trust with one or more entities, (ii) a sale or transfer or all or substantially all of the Trust's assets, or (iii) a statutory share exchange shall not be deemed to be a liquidation, dissolution or winding up, voluntary or involuntary, of the Trust.

(b) Subject to the rights of the holders of shares of any series or class or classes of shares ranking on a parity with or prior to the Series H Preferred Shares upon liquidation, dissolution or winding up, upon any liquidation, dissolution or winding up of the Trust, after payment shall have been made in full to the holders of the Series H Preferred Shares, as provided in this Section 4, any other series or class or classes of Junior Shares shall, subject to the respective terms and provisions (if any) applying thereto, be entitled to receive any and all assets remaining to be paid or distributed, and the holders of the Series H Preferred Shares shall not be entitled to share therein.

Section 5. Redemption at the Option of the Trust.

(a) The Trust, at its option, may redeem the Series H Preferred Shares in whole or in part, as set forth herein, subject to the provisions described below.

(b) The Series H Preferred Shares may be redeemed, in whole or in part, at the option of the Trust, at any time, only if for 20 Trading Days, within any period of 30 consecutive Trading Days, including the last Trading Day of such period, the Current Market Price of the Common Shares on each of such 20 Trading Days equals or exceeds the Conversion Price in effect on such Trading Day. In order to exercise its redemption option, the Trust must issue a press release announcing the redemption (the "Press Release") prior to the opening of business on the second Trading Day after the condition in the preceding sentence has, from time to time, been met. The Press Release shall announce the redemption and set forth the number of Series H Preferred Shares which the Trust intends to redeem. The Call Date shall be selected by the Trust, shall be specified in the notice of redemption and shall be not less than 30 days or more than 60 days after the date on which the Trust issues the Press Release.

(c) Upon redemption of Series H Preferred Shares by the Trust on the date specified in the notice to holders required under subparagraph (e) of this Section 5 (the "Call Date"), each Series H Preferred Share so redeemed shall be converted into a number of Common Shares equal to the liquidation preference (excluding any accrued and unpaid dividends) of the Series H Preferred Shares being redeemed divided by the Conversion Price as of the opening of business on the Call Date.

Upon any redemption of Series H Preferred Shares, the Trust shall pay any accrued and unpaid dividends in arrears for any Dividend Period ending on or prior to the Call Date. If the Call Date falls after a dividend payment record date and prior to the corresponding Dividend Payment Date, then each holder of Series H Preferred Shares at the close of business on such dividend payment record date shall be entitled to the dividend payable on such shares on the corresponding Dividend Payment Date notwithstanding the redemption of such shares before such Dividend Payment Date. Except as provided above, the Trust shall make no payment or allowance for unpaid dividends, whether or not in arrears, on Series H Preferred Shares called for redemption or on the Common Shares issued upon such redemption.

(d) If full cumulative dividends on the Series H Preferred Shares and any other class or series of Parity Shares of the Trust have not been paid or declared and set apart for payment, the Series H Preferred Shares may not be redeemed in part and the Trust may not purchase or acquire Series H Preferred Shares, otherwise than pursuant to a purchase or exchange offer made on the same terms to all holders of Series H Preferred Shares.

(e) If the Trust shall redeem Series H Preferred Shares pursuant to paragraph (a) of this Section 5, notice of such redemption shall be given not more than four Business Days after the date on which the Trust issues the Press Release to each holder of record of the shares to be redeemed. Such notice shall be provided by first class mail, postage prepaid, at such holder's address as the same appears on the share records of the Trust, or by publication in The Wall Street Journal or the New York Times, or if neither such newspaper is then being published, any other daily newspaper of national circulation. If the Trust elects to provide such notice by publication, it shall also promptly mail notice of such redemption to the holders of the Series H Preferred Shares to be redeemed. Neither the failure to mail any notice required by this paragraph (e), nor any defect therein or in the mailing thereof, to any particular holder, shall affect the sufficiency of the notice or the validity of the proceedings for redemption with respect to the other holders. Any notice which was mailed in the manner herein provided shall be conclusively presumed to have been duly given on the date

mailed whether or not the holder receives the notice. Each such mailed or published notice shall state, as appropriate: (1) the Call Date; (2) the number of Series H Preferred Shares to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (3) the number of Common Shares to be issued with respect to each Series H Preferred Share; (4) the place or places at which certificates for such shares are to be surrendered for certificates evidencing Common Shares; (5) the then-current Conversion Price; and (6) that dividends on the shares to be redeemed shall cease to accrue on such Call Date except as otherwise provided herein. Notice having been published or mailed as aforesaid, from and after the Call Date (unless the Trust shall fail to make available a number of Common Shares or amount of cash necessary to effect such redemption), (i) except as otherwise provided herein, dividends on the Series H Preferred Shares so called for redemption shall cease to accrue, (ii) said shares shall no longer be deemed to be outstanding, and (iii) all rights of the holders thereof as holders of Series H Preferred Shares of the Trust shall cease (except the rights to receive the Common Shares and cash payable upon such redemption, without interest thereon, upon surrender and endorsement of their certificates if so required and to receive any dividends payable thereon). The Trust's obligation to provide Common Shares and cash in accordance with the preceding sentence shall be deemed fulfilled if, on or before the Call Date, the Trust shall deposit with a bank or trust company (which may be an affiliate of the Trust) that has an office in the Borough of Manhattan, City of New York, or in Chicago, Illinois and that has, or is an affiliate of a bank or trust company that has, a capital and surplus of at least $50,000,000, Common Shares and any cash necessary for such redemption, in trust, with irrevocable instructions that such Common Shares and cash be applied to the redemption of the Series H Preferred Shares so called for redemption. At the close of business on the Call Date, each holder of Series H Preferred Shares to be redeemed (unless the Trust defaults in the delivery of the Common Shares or cash payable on such Call Date) shall be deemed to be the record holder of the number of Common Shares into which such Series H Preferred Shares are to be redeemed, regardless of whether such holder has surrendered the certificates evidencing the Series H Preferred Shares. No interest shall accrue for the benefit of the holders of Series H Preferred Shares to be redeemed on any cash so set aside by the Trust. Subject to applicable escheat laws, any such cash unclaimed at the end of two years from the Call Date shall revert to the general funds of the Trust, after which reversion the holders of such shares so called for redemption shall look only to the general funds of the Trust for the payment of such cash.

As promptly as practicable after the surrender in accordance with said notice of the certificates for any such shares so redeemed (properly endorsed or assigned for transfer, if the Trust shall so require and if the notice shall so state), such shares shall be exchanged for certificates of Common Shares and any cash (without interest thereon) for which such shares have been redeemed. If fewer than all the outstanding Series H Preferred Shares are to be redeemed, shares to be redeemed shall be selected by the Trust from outstanding Series H Preferred Shares not previously called for redemption by lot or pro rata (as nearly as may be) or by any other method determined by the Board of Trustees of the Trust in its sole discretion to be equitable. If fewer than all the Series H Preferred Shares evidenced by any certificate are redeemed, then new certificates evidencing the unredeemed shares shall be issued without cost to the holder thereof.

(f) No fractional shares or scrip representing fractions of Common Shares shall be issued upon redemption of the Series H Preferred Shares. Instead of any fractional interest in a Common Share that would otherwise be deliverable upon the redemption of a Series H Preferred Share, the Trust shall pay to the holder of such share an amount in cash (computed to the nearest

cent) based upon the Current Market Price of Common Shares on the Trading Day immediately preceding the Call Date. If more than one share shall be surrendered for redemption at one time by the same holder, the number of full Common Shares issuable upon redemption thereof shall be computed on the basis of the aggregate number of Series H Preferred Shares so surrendered.

(g) The Trust covenants that any Common Shares issued upon redemption of the Series H Preferred Shares shall be validly issued, fully paid and non-assessable. The Trust shall endeavor to list the Common Shares required to be delivered upon the redemption of the Series H Preferred Shares, prior to such redemption, upon each national securities exchange, if any, upon which the outstanding Common Shares are listed at the time of such delivery.

The Trust shall endeavor to take any action necessary to ensure that any Common Shares issued upon the redemption of Series H Preferred Shares are freely transferable and not subject to any resale restrictions under the Securities Act of 1933, as amended (the "Act"), or any applicable state securities or blue sky laws (other than any Common Shares issued upon redemption of any Series H Preferred Shares which are held by an "affiliate" (as defined in Rule 144 under the Act) of the Trust).

Section 6. Shares To Be Retired.

All Series H Preferred Shares which shall have been issued and reacquired in any manner by the Trust shall be restored to the status of authorized but unissued Preferred Shares, without designation as to series.

Section 7. Conversion.

Holders of Series H Preferred Shares shall have the right to convert all or a portion of such Series H Preferred Shares into Common Shares, as follows:

(a) Subject to and upon compliance with the provisions of this Section 7, a holder of Series H Preferred Shares shall have the right, at his or her option, at any time to convert such shares into the number of fully paid and non-assessable Common Shares obtained by dividing the aggregate liquidation preference (excluding any accrued and unpaid dividends) of such shares by the Conversion Price (as in effect at the time and on the date provided for in the last paragraph of paragraph (b) of this Section 7) by surrendering such shares to be converted, such surrender to be made in the manner provided in Section 7 paragraph (b); *provided, however*, that the right to convert shares called for redemption pursuant to Section 5 shall terminate at the close of business on the Call Date fixed for such redemption, unless the Trust shall default in making payment of the Common Shares and any cash payable upon such redemption under Section 5 hereof.

(b) In order to exercise the conversion right, the holder of each Series H Preferred Share to be converted shall surrender the certificate evidencing such share, duly endorsed or assigned to the Trust or in blank, at the office of the Transfer Agent, accompanied by written notice to the Trust that the holder thereof elects to convert such Series H Preferred Shares. Unless the shares issuable on conversion are to be issued in the same name as the name in which such Series H Preferred Share is registered, each share surrendered for conversion shall be accompanied by instruments of transfer, in form satisfactory to the Trust, duly executed by the holder or such holder's

duly authorized attorney and an amount sufficient to pay any transfer or similar tax (or evidence reasonably satisfactory to the Trust demonstrating that such taxes have been paid).

Holders of Series H Preferred Shares at the close of business on a dividend payment record date shall be entitled to receive the dividend payable on such shares on the corresponding Dividend Payment Date notwithstanding the conversion thereof following such dividend payment record date and prior to such Dividend Payment Date. However, Series H Preferred Shares surrendered for conversion during the period between the close of business on any dividend payment record date and the opening of business on the corresponding Dividend Payment Date (except shares converted after the issuance of notice of redemption with respect to a Call Date during such period, such Series H Preferred Shares being entitled to such dividend on the Dividend Payment Date) must be accompanied by payment of an amount equal to the dividend payable on such shares on such Dividend Payment Date. A holder of Series H Preferred Shares on a dividend payment record date who (or whose transferee) tenders any such shares for conversion into Common Shares on such Dividend Payment Date will receive the dividend payable by the Trust on such Series H Preferred Shares on such date, and the converting holder need not include payment of the amount of such dividend upon surrender of Series H Preferred Shares for conversion. Except as provided above, the Trust shall make no payment or allowance for unpaid dividends, whether or not in arrears, on converted shares or for dividends on the Common Shares issued upon such conversion.

As promptly as practicable after the surrender of certificates for Series H Preferred Shares as aforesaid, the Trust shall issue and shall deliver at such office to such holder, or on his or her written order, a certificate for the number of full Common Shares issuable upon the conversion of such shares in accordance with provisions of this Section 7, and any fractional interest in respect of a Common Share arising upon such conversion shall be settled as provided in paragraph (c) of this Section 7.

Each conversion shall be deemed to have been effected immediately prior to the close of business on the date on which the certificates for Series H Preferred Shares shall have been surrendered and such notice (and if applicable, payment of an amount equal to the dividend payable on such shares) received by the Trust as aforesaid, and the person or persons in whose name or names any certificate or certificates for Common Shares shall be issuable upon such conversion shall be deemed to have become the holder or holders of record of the shares represented thereby at such time on such date and such conversion shall be at the Conversion Price in effect at such time on such date unless the share transfer books of the Trust shall be closed on that date, in which event such person or persons shall be deemed to have become such holder or holders of record at the close of business on the next succeeding day on which such share transfer books are open, but such conversion shall be at the Conversion Price in effect on the date on which such shares shall have been surrendered and such notice received by the Trust.

(c) No fractional shares or scrip representing fractions of Common Shares shall be issued upon conversion of the Series H Preferred Shares. Instead of any fractional interest in a Common Share that would otherwise be deliverable upon the conversion of a Series H Preferred Share, the Trust shall pay to the holder of such share an amount in cash based upon the Current Market Price of a Common Share on the Trading Day immediately preceding the date of conversion. If more than one share shall be surrendered for conversion at one time by the same holder, the number

of full Common Shares issuable upon conversion thereof shall be computed on the basis of the aggregate number of Series H Preferred Shares so surrendered.

(d) The Conversion Price shall be adjusted from time to time as follows:

(i) If the Trust shall after the Issue Date (A) pay a dividend or make a distribution on its shares of beneficial interest of its Common Shares, (B) subdivide its outstanding Common Shares into a greater number of shares, (C) combine its outstanding Common Shares into a smaller number of shares or (D) issue any shares by reclassification of its Common Shares, the Conversion Price in effect at the opening of business on the day following the date fixed for the determination of shareholders entitled to receive such dividend or distribution or at the opening of business on the day following the day on which such subdivision, combination or reclassification becomes effective, as the case may be, shall be adjusted so that the holder of any Series H Preferred Share thereafter surrendered for conversion shall be entitled to receive the number of Common Shares that such holder would have owned or have been entitled to receive after the happening of any of the events described above had such Series H Preferred Share been converted immediately prior to the record date in the case of a dividend or distribution or the effective date in the case of a subdivision, combination or reclassification. An adjustment made pursuant to this subparagraph (i) shall become effective immediately after the opening of business on the day next following the record date (except as provided in paragraph (h) below) in the case of a dividend or distribution and shall become effective immediately after the opening of business on the day next following the effective date in the case of a subdivision, combination or reclassification.

(ii) If the Trust shall issue after the Issue Date rights, options or warrants to all holders of Common Shares entitling them (for a period expiring within 45 days after the record date mentioned below) to subscribe for or purchase Common Shares at a price per share less than the Fair Market Value per Common Share on the record date for the determination of shareholders entitled to receive such rights or warrants, then the Conversion Price in effect at the opening of business on the day next following such record date shall be adjusted to equal the price determined by multiplying (I) the Conversion Price in effect immediately prior to the opening of business on the day following the date fixed for such determination by (II) a fraction, the numerator of which shall be the sum of (A) the number of Common Shares outstanding on the close of business on the date fixed for such determination and (B) the number of shares that the aggregate proceeds to the Trust from the exercise of such rights or warrants for Common Shares would purchase at such Fair Market Value, and the denominator of which shall be the sum of (A) the number of Common Shares outstanding on the close of business on the date fixed for such determination and (B) the number of additional Common Shares offered for subscription or purchase pursuant to such rights or warrants. Such adjustment shall become effective immediately after the opening of business on the day next following such record date (except as provided in paragraph (h) below). In determining whether any rights or warrants entitle the holders of Common Shares to subscribe for or purchase Common Shares at less than such Fair Market Value, there shall be taken into account any consideration received by the Trust upon issuance and upon exercise of such rights or warrants, the value of such consideration, if other than cash, to be determined by the Chief Executive Officer or the Board of Trustees.

(iii) If the Trust shall distribute to all holders of its Common Shares any shares of beneficial interest of the Trust (other than Common Shares) or evidence of its indebtedness or assets (excluding Permitted Common Share Cash Distributions) or rights or warrants to subscribe for or purchase any of its securities (excluding those rights and warrants issued to all holders of Common Shares entitling them for a period expiring within 45 days after the record date referred to in subparagraph (ii) above to subscribe for or purchase Common Shares, which rights and warrants are referred to in and treated under subparagraph (ii) above) (any of the foregoing being hereinafter in this subparagraph (iii) called the "Securities"), then in each such case the Conversion Price shall be adjusted so that it shall equal the price determined by multiplying (I) the Conversion Price in effect immediately prior to the close of business on the date fixed for the determination of shareholders entitled to receive such distribution by (II) a fraction, the numerator of which shall be the Fair Market Value per Common Share on the record date mentioned below less the then fair market value (as determined by the Chief Executive Officer or the Board of Trustees, whose determination shall be conclusive), of the portion of the shares or assets or evidences of indebtedness so distributed or of such rights or warrants applicable to one Common Share, and the denominator of which shall be the Fair Market Value per Common Share on the record date mentioned below. Such adjustment shall become effective immediately at the opening of business on the Business Day next following (except as provided in paragraph (h) below) the record date for the determination of shareholders entitled to receive such distribution. For the purposes of this clause (iii), the distribution of a Security, which is distributed not only to the holders of the Common Shares on the date fixed for the determination of shareholders entitled to such distribution of such Security, but also is distributed with each Common Share delivered to a Person converting a Series H Preferred Share after such determination date, shall not require an adjustment of the Conversion Price pursuant to this clause (iii); *provided* that on the date, if any, on which a person converting a Series H Preferred Share would no longer be entitled to receive such Security with a Common Share (other than as a result of the termination of all such Securities), a distribution of such Securities shall be deemed to have occurred and the Conversion Price shall be adjusted as provided in this clause (iii) and such day shall be deemed to be "the date fixed for the determination of the shareholders entitled to receive such distribution" and "the record date" within the meaning of the two preceding sentences.

(iv) No adjustment in the Conversion Price shall be required unless such adjustment would require a cumulative increase or decrease of at least 1% in such price; *provided, however,* that any adjustments that by reason of this subparagraph (iv) are not required to be made shall be carried forward and taken into account in any subsequent adjustment until made; and *provided, further,* that any adjustment shall be required and made in accordance with the provisions of this Section 7 (other than this subparagraph (iv)) not later than such time as may be required in order to preserve the tax-free nature of a distribution to the holders of Common Shares. Notwithstanding any other provisions of this Section 7, the Trust shall not be required to make any adjustment of the Conversion Price for the issuance of any Common Shares pursuant to any plan providing for the reinvestment of dividends or interest payable on securities of the Trust and the investment of additional optional amounts in Common Shares under such plan. All calculations under this Section 7 shall be made to the nearest cent (with $.005 being rounded upward) or to the nearest one-tenth of a share (with .05 of a share being rounded upward), as the case may be. Anything in

this paragraph (d) to the contrary notwithstanding, the Trust shall be entitled, to the extent permitted by law, to make such reductions in the Conversion Price, in addition to those required by this paragraph (d), as it in its discretion shall determine to be advisable in order than any share dividends, subdivision of shares, reclassification or combination of shares, distribution of rights or warrants to purchase shares or securities, or a distribution of other assets (other than cash dividends) hereafter made by the Trust to its shareholders shall not be taxable.

(e) If the Trust shall be a party to any transaction (including without limitation a merger, consolidation, statutory share exchange, self tender offer for all or substantially all Common Shares, sale of all or substantially all of the Trust's assets or recapitalization of the Common Shares and excluding any transaction as to which subparagraph (d)(i) of this Section 7 applies) (each of the foregoing being referred to herein as a "Transaction"), in each case as a result of which Common Shares shall be converted into the right to receive shares, securities or other property (including cash or any combination thereof), each Series II Preferred Share which is not converted into the right to receive shares, securities or other property in connection with such Transaction shall thereafter be convertible into the kind and amount of shares, securities and other property (including cash or any combination thereof) receivable upon the consummation of such Transaction by a holder of that number of Common Shares into which one Series H Preferred Share was convertible immediately prior to such Transaction, assuming such holder of Common Shares (i) is not a Person with which the Trust consolidated or into which the Trust merged or which merged into the Trust or to which such sale or transfer was made, as the case may be ("Constituent Person"), or an affiliate of a Constituent Person and (ii) failed to exercise his rights of election, if any, as to the kind or amount of shares, securities and other property (including cash) receivable upon such Transaction (*provided* that if the kind or amount of shares, securities and other property (including cash) receivable upon such Transaction is not the same for each Common Share of the Trust held immediately prior to such Transaction by other than a Constituent Person or an affiliate thereof and in respect of which such rights of election shall not have been exercised ("Non-Electing Share"), then for the purpose of this paragraph (e) the kind and amount of shares, securities and other property (including cash) receivable upon such Transaction by each Non-Electing Share shall be deemed to be the kind and amount so receivable per share by a plurality of the non-electing shares). The Trust shall not be a party to any Transaction unless the terms of such Transaction are consistent with the provisions of this paragraph (e), and it shall not consent or agree to the occurrence of any Transaction until the Trust has entered into an agreement with the successor or purchasing entity, as the case may be, for the benefit of the holders of the Series H Preferred Shares that will contain provisions enabling the holders of the Series H Preferred Shares that remain outstanding after such Transaction to convert into the consideration received by holders of Common Shares at the Conversion Price in effect immediately prior to such Transaction. The provisions of this paragraph (e) shall similarly apply to successive Transactions.

(f) If:

(i) the Trust shall declare a dividend (or any other distribution) on the Common Shares (other than Permitted Common Share Cash Distributions); or

(ii) the Trust shall authorize the granting to the holders of the Common Shares of rights or warrants to subscribe for or purchase any shares of any class or any other rights or warrants; or

(iii) there shall be any reclassification of the Common Shares (other than an event to which subparagraph (d)(i) of this Section 7 applies) or any consolidation or merger to which the Trust is a party and for which approval of any shareholders of the Trust is required, or a statutory share exchange, or a self tender offer by the Trust for all or substantially all of its outstanding Common Shares or the sale or transfer of all or substantially all of the assets of the Trust as an entirety; or

(iv) there shall occur the voluntary or involuntary liquidation, dissolution or winding up of the Trust;

then the Trust shall cause to be filed with the Transfer Agent and shall cause to be mailed to the holders of Series H Preferred Shares at their addresses as shown on the share records of the Trust, as promptly as possible, but at least 15 days prior to the applicable date hereinafter specified, a notice stating (A) the date on which a record is to be taken for the purpose of such dividend or other distribution or grant of rights or warrants, or, if a record is not to be taken, the date as of which the holders of Common Shares of record to be entitled to such dividend or other distribution or rights or warrants are to be determined or (B) the date on which such reclassification, consolidation, merger, statutory share exchange, sale, transfer, liquidation, dissolution or winding up is expected to become effective, and the date as of which it is expected that holders of Common Shares of record shall be entitled to exchange their Common Shares for securities or other property, if any, deliverable upon such reclassification, consolidation, merger, statutory share exchange, sale, transfer, liquidation, dissolution or winding up. Failure to give or receive such notice or any defect therein shall not affect the legality or validity of the proceedings described in this Section 7.

(g) Whenever the Conversion Price is adjusted as herein provided, the Trust shall promptly file with the Transfer Agent an officer's certificate setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment which certificate shall be conclusive evidence of the correctness of such adjustment absent manifest error. Promptly after delivery of such certificate, the Trust shall prepare a notice of such adjustment of the Conversion Price setting forth the adjusted Conversion Price and the effective date that such adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Price to the holder of each Series H Preferred Share at such holder's last address as shown on the share records of the Trust.

(h) In any case in which paragraph (d) of this Section 7 provides that an adjustment shall become effective on the day next following the record date for an event, the Trust may defer until the occurrence of such event (A) issuing to the holder of any Series H Preferred Share converted after such record date and before the occurrence of such event the additional Common Shares issuable upon such conversion by reason of the adjustment required by such event over and above the Conversion Shares issuable upon such conversion before giving effect to such adjustment and (B) paying to such holder any amount of cash in lieu of any fraction pursuant to paragraph (c) of this Section 7.

(i) There shall be no adjustment of the Conversion Price in case of the issuance of any shares of the Trust in a reorganization, acquisition or other similar transaction except as

specifically set forth in this Section 7. If any action or transaction would require adjustment of the Conversion Price pursuant to more than one paragraph of this Section 7, only one adjustment shall be made and such adjustment shall be the amount of adjustment that has the highest absolute value.

(j) If the Trust shall take any action affecting the Common Shares, other than action described in this Section 7, that in the opinion of the Board of Trustees would materially adversely affect the conversion rights of the holders of the Series H Preferred Shares, the Conversion Price for the Series H Preferred Shares may be adjusted, to the extent permitted by law, in such manner, if any, and at such time, as the Board of Trustees, in its sole discretion, may determine to be equitable in the circumstances.

(k) The Trust covenants that it will at all times reserve and keep available, free from preemptive rights, out of the aggregate of its authorized but unissued Common Shares, for the purpose of effecting conversion of the Series H Preferred Shares, the full number of Common Shares deliverable upon the conversion of all outstanding Series H Preferred Shares not theretofore converted. For purposes of this paragraph (k), the number of Common Shares that shall be deliverable upon the conversion of all outstanding Series H Preferred Shares shall be computed as if at the time of computation all such outstanding shares were held by a single holder.

The Trust covenants that any Common Shares issued upon conversion of the Series H Preferred Shares shall be validly issued, fully paid and non-assessable.

The Trust shall endeavor to list the Common Shares required to be delivered upon conversion of the Series H Preferred Shares, prior to such delivery, upon each national securities exchange, if any, upon which the outstanding Common Shares are listed at the time of such delivery.

Prior to the delivery of any securities that the Trust shall be obligated to deliver upon conversion of the Series H Preferred Shares, the Trust shall endeavor to comply with all federal and state laws and regulations thereunder requiring the registration of such securities with, or any approval of or consent to the delivery thereof by, any governmental authority.

(l) The Trust will pay any and all documentary stamp or similar issue or transfer taxes payable in respect of the issue or delivery of Common Shares or other securities or property on conversion of the Series H Preferred Shares pursuant hereto; *provided, however*, that the Trust shall not be required to pay any tax that may be payable in respect of any transfer involved in the issue or delivery of Common Shares or other securities or property in a name other than that of the holder of the Series H Preferred Shares to be converted, and no such issue or delivery shall be made unless and until the person requesting such issue or delivery has paid to the Trust the amount of any such tax or established, to the reasonable satisfaction of the Trust, that such tax has been paid.

Section 8. Ranking. Any class or series of shares of the Trust shall be deemed to rank:

(a) Prior to the Series H Preferred Shares, as to the payment of dividends and as to distribution of assets upon liquidation, dissolution or winding up, if the holders of such class or series shall be entitled to the receipt of dividends or of amounts distributable upon liquidation, dissolution or winding up, as the case may be, in preference or priority to the holders of Series H Preferred Shares;

(b) On a parity with the Series H Preferred Shares, as to the payment of dividends and as to distribution of assets upon liquidation, dissolution or winding up, whether or not the dividend rates dividend payment dates or redemption or liquidation prices per share thereof be different from those of the Series H Preferred Shares, if the holders of such class of shares or series and the Series H Preferred Shares shall be entitled to the receipt of dividends and of amounts distributable upon liquidation, dissolution or winding up in proportion to their respective amounts of accrued and unpaid dividends per share or liquidation preferences, without preference or priority one over the other ("Parity Shares"), which Parity Shares include, as of the Issue Date, the Trust's Series A Preferred Shares, Series B Preferred Shares, Series C Preferred Shares, Series D Preferred Shares, Series E Preferred Shares, Series F Preferred Shares, Series G Preferred Shares, Series I Preferred Shares, Series J Preferred Shares, Series K Preferred Shares and Series L Preferred Shares; and

(c) Junior to the Series H Preferred Shares, as to the payment of dividends or as to the distribution of assets upon liquidation, dissolution or winding up, if such shares or series shall be Common Shares or if the holders of Series H Preferred Shares shall be entitled to receipt of dividends or of amounts distributable upon liquidation, dissolution or winding up, as the case may be, in preference or priority to the holders of such shares or series.

Section 9. Voting. If and whenever six quarterly dividends (whether or not consecutive) payable on the Series H Preferred Shares or any series or class of Parity Shares shall be in arrears (which shall, with respect to any such quarterly dividend, mean that any such dividend has not been paid in full), whether or not earned or declared, the number of trustees then constituting the Board of Trustees shall be increased by two and the holders of Series H Preferred Shares, together with the holders of every other series of Parity Shares (any such other series, the "Voting Preferred Shares",) voting as a single class regardless of series, shall be entitled to elect the two additional trustees to serve on the Board of Trustees at any annual meeting of shareholders or special meeting held in place thereof, or at a special meeting of the holders of the Series H Preferred Shares and the Voting Preferred Shares called as hereinafter provided. Whenever all arrears in dividends on the Series H Preferred Shares and the Voting Preferred Shares then outstanding shall have been paid and dividends thereon for the current quarterly dividend period shall have been paid or declared and set apart for payment, then the right of the holders of the Series H Preferred Shares and the Voting Preferred Shares to elect such additional two trustees shall cease (but subject always to the same provision for the vesting of such voting rights in the case of any similar future arrearages in six quarterly dividends), and the terms of office of all persons elected as trustees by the holders of the Series H Preferred Shares and the Voting Preferred Shares shall forthwith terminate and the number of the Board of Trustees shall be reduced accordingly. At any time after such voting power shall have been so vested in the holders of Series H Preferred Shares and the Voting Preferred Shares, the secretary of the Trust may, and upon the written request of any holder of Series H Preferred Shares (addressed to the secretary at the principal office of the Trust) shall, call a special meeting of the holders of the Series H Preferred Shares and of the Voting Preferred Shares for the election of the two trustees to be elected by them as herein provided, such call to be made by notice similar to that provided in the Bylaws of the Trust for a special meeting of the shareholders or as required by law. If any such special meeting required to be called as above provided shall not be called by the secretary within 20 days after receipt of any such request, then any holder of Series H Preferred Shares may call such meeting, upon the notice above provided, and for that purpose shall have access to the share books of the Trust. The trustees elected at any such special meeting shall hold office until the next annual

meeting of the shareholders or special meeting held in lieu thereof if such office shall not have previously terminated as above provided. If any vacancy shall occur among the trustees elected by the holders of the Series H Preferred Shares and the Voting Preferred Shares, a successor shall be elected by the Board of Trustees, upon the nomination of the then-remaining trustee elected by the holders of the Series H Preferred Shares and the Voting Preferred Shares or the successor of such remaining trustee, to serve until the next annual meeting of the shareholders or special meeting held in place thereof if such office shall not have previously terminated as provided above.

So long as any Series H Preferred Shares are outstanding, in addition to any other vote or consent of shareholders required by law or by the Declaration of Trust, as amended, the affirmative vote of at least 66 2/3% of the votes entitled to be cast by the holders of the Series H Preferred Shares and the Voting Preferred Shares, at the time outstanding, acting as a single class regardless of series, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, shall be necessary for effecting or validating:

(a) Any amendment, alteration or repeal of any of the provisions of the Declaration of Trust that materially adversely affects the voting powers, rights or preferences of the holders of the Series H Preferred Shares or the Voting Preferred Shares; *provided, however*, that the amendment of the provisions of the Declaration of Trust so as to authorize or create, or to increase the authorized amount of, any Junior Shares or any shares of any class ranking on a parity with the Series H Preferred Shares or the Voting Preferred Shares shall not be deemed to materially adversely affect the voting powers, rights or preferences of the holders of Series H Preferred Shares, and *provided further*, that if any such amendment, alteration or repeal would materially adversely affect any voting powers, rights or preferences of the Series H Preferred Shares or another series of Voting Preferred Shares that are not enjoyed by some or all of the other series which otherwise would be entitled to vote in accordance herewith, the affirmative vote of at least 66 2/3% of the votes entitled to be cast by the holders of all series similarly affected, similarly given shall be required in lieu of the affirmative vote of at least 66 2/3% of the votes entitled to be cast by the holders of the Series H Preferred Shares and the Voting Preferred Shares which otherwise would be entitled to vote in accordance herewith; or

(b) The authorization or creation of, or the increase in the authorized amount of, any shares of any class or any security convertible into shares of any class ranking prior to the Series H Preferred Shares in the distribution of assets on any liquidation, dissolution or winding up of the Trust or in the payment of dividends; *provided, however*, that no such vote of the holders of Series H Preferred Shares shall be required if, at or prior to the time when such amendment, alteration or repeal is to take effect, or when the issuance of any such prior shares or convertible security is to be made, as the case may be, provision is made for the redemption of all Series H Preferred Shares at the time outstanding.

For purposes of the foregoing provisions of this Section 9, each Series H Preferred Share shall have one (1) vote per share, except that when any other series of Preferred Shares shall have the right to vote with the Series H Preferred Shares as a single class on any matter, then the Series H Preferred Shares and such other series shall have with respect to such matters one (1) vote per $25.00 of stated liquidation preference. Except as otherwise required by applicable law or as set forth herein, the Series H Preferred Shares shall not have any voting rights and powers other than as

set forth herein, and the consent of the holders thereof shall not be required for the taking of any trust action.

Section 10. Record Holders. The Trust and the Transfer Agent may deem and treat the record holder of any Series H Preferred Shares as the true and lawful owner thereof for all purposes, and neither the Trust nor the Transfer Agent shall be affected by any notice to the contrary.

SECTION 13.8. Series K Preferred Shares.

Section 1. Number of Shares and Designation. This series of Preferred Shares shall be designated as Series K Cumulative Redeemable Preferred Shares of Beneficial Interest ($.01 Par Value Per Share)(Liquidation Preference $50.00 Per Share) (the "Series K Preferred Shares") and 1,000,000 shall be the number of Preferred Shares constituting such series.

Section 2. Definitions. For purposes of the Series K Preferred Shares, the following terms shall have the meanings indicated:

"Board of Trustees" shall mean the Board of Trustees of the Trust or any committee authorized by such Board of Trustees to perform any of its responsibilities with respect to the Series K Preferred Shares.

"Business Day" shall mean any day other than a Saturday, Sunday or a day on which state or federally chartered banking institutions in Chicago, Illinois or New York, New York are not required to be open.

"Call Date" shall have the meaning set forth in paragraph (c) of Section 5 hereof.

"Common Shares" shall mean the common shares of beneficial interest of the Trust, $.01 par value per share.

"Dividend Payment Date" shall mean the last calendar day of March, June, September and December, in each year, commencing on December 31, 1998; *provided, however*, that if any Dividend Payment Date falls on any day other than a Business Day, the dividend payment due on such Dividend Payment Date shall be paid no later than the Business Day immediately following such Dividend Payment Date.

"Dividend Periods" shall mean quarterly dividend periods commencing on January 1, April 1, July 1 and October 1 of each year and ending on and including the day preceding the first day of the next succeeding Dividend Period (other than the initial Dividend Period, which shall commence on the Issue Date and end on and include December 31, 1998).

"Issue Date" shall mean the date on which the Trust first issues a Series K Preferred Share.

"Junior Shares" shall mean the Common Shares and any other class or series of shares of the Trust over which the Series K Preferred Shares have preference or priority in the payment of dividends or in the distribution of assets on any liquidation, dissolution or winding up of the Trust.

"Parity Shares" shall have the meaning set forth in paragraph (b) of Section 8 hereof.

"Person" shall mean any individual, firm, partnership, corporation or other entity, and shall include any successor (by merger or otherwise) of such entity.

"Press Release" shall have the meaning set forth in paragraph (b) of Section 5 hereof.

"Series K Preferred Shares" shall have the meaning set forth in Section 1 hereof.

"set apart for payment" shall be deemed to include, without any action other than the following, the recording by the Trust in its accounting ledgers of any accounting or bookkeeping entry which indicates, pursuant to an authorization of dividends or other distribution by the Board of Trustees, the allocation of funds to be so paid on any series or class of shares of beneficial interest of the Trust; *provided, however*, that if any funds for any class or series of Junior Shares or any class or series of shares ranking on a parity with the Series K Preferred Shares as to the payment of dividends are placed in a separate account of the Trust or delivered to a disbursing, paying or other similar agent, then "set apart for payment" with respect to the Series K Preferred Shares shall mean placing such funds in a separate account or delivering such funds to a disbursing, paying or other similar agent.

"Transfer Agent" means Boston Equiserve LP, Boston, Massachusetts, or such other agent or agents of the Trust as may be designated by the Board of Trustees or their designee as the transfer agent for the Series K Preferred Shares.

"Voting Preferred Shares" shall have the meaning set forth in Section 9 hereof.

Section 3. Dividends. (a) The holders of Series K Preferred Shares shall be entitled to receive, when, as and if authorized by the Board of Trustees, out of funds legally available for that purpose, dividends payable in cash in an amount per Series K Preferred Share equal to $4.145 per annum. Such dividends shall be cumulative from October 1, 1998, whether or not in any Dividend Period or Periods there shall be funds of the Trust legally available for the payment of such dividends, and shall be payable quarterly, when, as and if authorized by the Board of Trustees, in arrears on Dividend Payment Dates, commencing on December 31, 1998. Each such dividend shall be payable in arrears to the holders of record of Series K Preferred Shares, as they appear on the share records of the Trust at the close of business on such record dates, which shall be on or about the 15th day of the calendar months in which the Dividend Payment Dates fall or such other dates not less than 10 days nor more than 60 days proceeding such Dividend Payment Dates thereof, as shall be fixed by the Board of Trustees. Accrued and unpaid dividends for any past Dividend Periods may be declared and paid at any time, without reference to any regular Dividend Payment Date, to holders of record on such date, not exceeding 45 days preceding the payment date thereof, as may be fixed by the Board of Trustees.

(b) The amount of dividends payable for each full Dividend Period for the Series K Preferred Shares shall be computed by dividing the annual dividend rate by four. The amount of dividends payable for any period shorter or longer than a full Dividend Period, on the Series K Preferred Shares shall be computed on the basis of twelve 30-day months and a 360-day year.

Holders of Series K Preferred Shares shall not be entitled to any dividends, whether payable in cash, property or shares, in excess of cumulative dividends, as herein provided, on the Series K Preferred Shares. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on the Series K Preferred Shares that may be in arrears.

(c) So long as any Series K Preferred Shares are outstanding, no dividends, except as described in the immediately following sentence, shall be declared or paid or set apart for payment on any class or series of Parity Shares for any period unless full cumulative dividends have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for such payment on the Series K Preferred Shares for all Dividend Periods terminating on or prior to the Dividend Payment Date on such class or series of Parity Shares. When dividends are not paid in full or a sum sufficient for such payment is not set apart, as aforesaid, all dividends declared upon Series K Preferred Shares and all dividends declared upon any other class or series of Parity Shares shall be declared ratably in proportion to the respective amounts of dividends accumulated and unpaid on the Series K Preferred Shares and accumulated and unpaid on such Parity Shares.

(d) So long as any Series K Preferred Shares are outstanding, no dividends (other than dividends or distributions paid in shares of, or options, warrants or rights to subscribe for or purchase, Junior Shares), shall be declared or paid or set apart for payment or other distribution declared or made upon Junior Shares, nor shall Junior Shares be redeemed, purchased or otherwise acquired (other than a redemption, purchase or other acquisition of Common Shares made for purposes of an employee incentive or benefit plan of the Trust or any subsidiary) for any consideration (or any moneys be paid to or made available for a sinking fund for the redemption of any such shares) by the Trust, directly or indirectly (except by conversion into or exchange for Junior Shares), unless in each case (i) the full cumulative dividends on all outstanding Series K Preferred Shares and any other Parity Shares of the Trust shall have been paid or set apart for payment for all past Dividend Periods with respect to the Series K Preferred Shares and all past dividend periods with respect to such Parity Shares and (ii) sufficient funds shall have been paid or set apart for the payment of the dividend for the current Dividend Period with respect to the Series K Preferred Shares and the current dividend period with respect to such Parity Shares.

Section 4. Liquidation Preference. (a) In the event of any liquidation, dissolution or winding up of the Trust, whether voluntary or involuntary, before any payment or distribution of the assets of the Trust (whether capital or surplus) shall be made to or set apart for the holders of Junior Shares, the holders of the Series K Preferred Shares shall be entitled to receive Fifty Dollars ($50.00) per Series K Preferred Share plus an amount equal to all dividends (whether or not earned or declared) accrued and unpaid thereon to the date of final distribution to such holders; but such holders shall not be entitled to any further payment. If, upon any liquidation, dissolution or winding up of the Trust, the assets of the Trust, or proceeds thereof, distributable among the holders of the Series K Preferred Shares shall be insufficient to pay in full the preferential amount aforesaid and liquidating payments on any other shares of any class or series of Parity Shares, then such assets, or the proceeds thereof, shall be distributed among the holders of Series K Preferred Shares and any such other Parity Shares ratably in accordance with the respective amounts that would be payable on such Series K Preferred Shares and any such other Parity Shares if all amounts payable thereon were paid in full. For the purposes of this Section 4, (i) a consolidation or merger of the Trust with one or more entities, (ii) a sale or transfer of all or substantially all of the Trust's assets, or (iii) a statutory

share exchange shall not be deemed to be a liquidation, dissolution or winding up, voluntary or involuntary, of the Trust.

(b) Subject to the rights of the holders of shares of any series or class or classes of shares ranking on a parity with or prior to the Series K Preferred Shares upon liquidation, dissolution or winding up, upon any liquidation, dissolution or winding up of the Trust, after payment shall have been made in full to the holders of the Series K Preferred Shares, as provided in this Section 4, any other series or class or classes of Junior Shares shall, subject to the respective terms and provisions (if any) applying thereto, be entitled to receive any and all assets remaining to be paid or distributed, and the holders of the Series K Preferred Shares shall not be entitled to share therein.

Section 5. Redemption at the Option of the Trust. (a) The Series K Preferred Shares shall not be redeemable by the Trust prior to December 10, 2026. On and after December 10, 2026, the Trust, at its option, may redeem the Series K Preferred Shares in whole or in part, as set forth herein, subject to the provisions described below.

(b) No Series K Preferred Share may be redeemed except from proceeds from the sale of other shares of beneficial interest of the Trust, including but not limited to Common Shares, Preferred Shares, depository shares, interests, participations or other ownership interests (however designated) and any rights (other than debt securities convertible into or exchangeable for equity securities) or options to purchase any of the foregoing. In order to exercise its redemption option, the Trust must issue a press release announcing the redemption (the "Press Release"). The Press Release shall announce the redemption and set forth the number of Series K Preferred Shares which the Trust intends to redeem. The Call Date shall be selected by the Trust, shall be specified in the notice of redemption and shall be not less than 30 days or more than 60 days after the date on which the Trust issues the Press Release.

(c) Upon redemption of Series K Preferred Shares by the Trust on the date specified in the notice to holders required under subparagraph (e) of this Section 5 (the "Call Date"), for each Series K Preferred Share so redeemed, the Trust shall pay in cash the liquidation preference, including all dividends (whether or not earned or declared) accrued and unpaid thereon to the Call Date, except that if the Call Date falls after a dividend payment record date and prior to the corresponding Dividend Payment Date, then each holder of Series K Preferred Shares at the close of business on such dividend payment record date shall be entitled to the dividend payable on such shares on the corresponding Dividend Payment Date notwithstanding the redemption of such shares before such Dividend Payment Date. Except as provided above, the Trust shall make no payment or allowance for unpaid dividends, whether or not in arrears, on Series K Preferred Shares called for redemption, after the date of redemption.

(d) If full cumulative dividends on the Series K Preferred Shares and any other class or series of Parity Shares of the Trust have not been paid or declared and set apart for payment, the Series K Preferred Shares may not be redeemed in part and the Trust may not purchase or acquire Series K Preferred Shares, otherwise than pursuant to a purchase or exchange offer made on the same terms to all holders of Series K Preferred Shares.

(e) If the Trust shall redeem Series K Preferred Shares pursuant to paragraph (a) of this Section 5, notice of such redemption shall be given not more than four Business Days after

the date on which the Trust issues the Press Release to each holder of record of the shares to be redeemed. Such notice shall be provided by first class mail, postage prepaid, at such holder's address as the same appears on the share records of the Trust, or by publication in a newspaper of general circulation in the City of New York once per week for at least two successive weeks. If the Trust elects to provide such notice by publication, it shall also promptly mail notice of such redemption to the holders of the Series K Preferred Shares to be redeemed not less than 30 nor more than 60 days prior to the Call Date. Neither the failure to mail any notice required by this paragraph (e), nor any defect therein or in the mailing thereof, to any particular holder, shall affect the sufficiency of the notice or the validity of the proceedings for redemption with respect to the other holders. Any notice which was mailed in the manner herein provided shall be conclusively presumed to have been duly given on the date mailed whether or not the holder receives the notice. Each such mailed or published notice shall state, as appropriate: (1) the Call Date; (2) the number of Series K Preferred Shares to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed for such holder; (3) the redemption price with respect to each Series K Preferred Share, including dividends accrued through the Call Date; (4) the place or places at which certificates for such shares are to be surrendered for payment; and (5) that dividends on the shares to be redeemed shall cease to accrue on such Call Date except as otherwise provided herein. Notice having been published or mailed as aforesaid, from and after the Call Date (unless the Trust shall fail to make available the amount of cash necessary to effect such redemption), (i) except as otherwise provided herein, dividends on the Series K Preferred Shares so called for redemption shall cease to accrue, (ii) said shares shall no longer be deemed to be outstanding, and (iii) all rights of the holders thereof as holders of Series K Preferred Shares of the Trust shall cease (except the rights to receive the cash payable upon such redemption, without interest thereon, upon surrender and endorsement of their certificates if so required and to receive any dividends payable thereon). The Trust's obligation to provide cash in accordance with the preceding sentence shall be deemed fulfilled if, on or before the Call Date, the Trust shall deposit with a bank or trust company (which may be an affiliate of the Trust) that has an office in the Borough of Manhattan, City of New York, or in Chicago, Illinois and that has, or is an affiliate of a bank or trust company that has, a capital and surplus of at least $50,000,000, cash necessary for such redemption, in trust, with irrevocable instructions that cash be applied to the redemption of the Series K Preferred Shares so called for redemption. At the close of business on the Call Date, each holder of Series K Preferred Shares to be redeemed (unless the Trust defaults in the delivery of the cash payable on such Call Date) shall no longer be deemed to be the record holder of the number of such Series K Preferred Shares to be redeemed, regardless of whether such holder has surrendered the certificates evidencing the Series K Preferred Shares. The Trust shall be entitled to receive from such bank or trust company the interest or other earnings, if any, earned on any money so deposited in trust, and the holders of any shares redeemed shall have no claim to such interest or other earnings. No interest shall accrue for the benefit of the holders of Series K Preferred Shares to be redeemed on the cash so set aside by the Trust. Subject to applicable escheat laws, any such cash unclaimed at the end of two years from the Call Date shall revert to the general funds of the Trust, after which reversion the holders of such shares so called for redemption shall look only to the general funds of the Trust for the payment of such cash.

As promptly as practicable after the surrender in accordance with said notice of the certificates for any such shares so redeemed (properly endorsed or assigned for transfer, if the Trust shall so require and if the notice shall so state), the Trust shall pay the cash (without interest thereon) representing the redemption price for the redeemed shares. If fewer than all the outstanding Series

K Preferred Shares are to be redeemed, shares to be redeemed shall be selected by the Trust from outstanding Series K Preferred Shares not previously called for redemption by lot or pro rata (as nearly as may be) or by any other method determined by the Trust in its sole discretion to be equitable. If fewer than all the Series K Preferred Shares evidenced by any certificate are redeemed, then new certificates evidencing the unredeemed shares shall be issued without cost to the holder thereof.

Section 6. Shares To Be Retired.

All Series K Preferred Shares which shall have been issued and reacquired in any manner by the Trust shall be restored to the status of authorized but unissued Preferred Shares, without designation as to series. The Trust may also reclassify any unissued Series K Preferred Shares, and such shares shall then be restored to the status of authorized but unissued Preferred Shares, without designation as to series.

Section 7. Conversion.

Holders of Series K Preferred Shares shall not have the right to convert all or a portion of such shares into Common Shares or any other class of shares of the Trust.

Section 8. Ranking. Any class or series of shares of the Trust shall be deemed to rank:

(a) prior to the Series K Preferred Shares, as to the payment of dividends and as to distribution of assets upon liquidation, dissolution or winding up, if the holders of such class or series shall be entitled to the receipt of dividends or of amounts distributable upon liquidation, dissolution or winding up, as the case may be, in preference or priority to the holders of Series K Preferred Shares;

(b) on a parity with the Series K Preferred Shares, as to the payment of dividends and as to distribution of assets upon liquidation, dissolution or winding up, whether or not the dividend rates, dividend payment dates or redemption or liquidation prices per share thereof be different from those of the Series K preferred Shares, if the holders of such class of shares or series and the Series K Preferred Shares shall be entitled to the receipt of dividends and of amounts distributable upon liquidation, dissolution or winding up in proportion to their respective amounts of accrued and unpaid dividends per share or liquidation preferences, without preference or priority one over the other ("Parity Shares"), which Parity Shares include, as of the Issue Date, the Trust's Series A Preferred Shares, Series B Preferred Shares, Series C Preferred Shares, Series D Preferred Shares, Series E Preferred Shares, Series F Preferred Shares, Series G Preferred Shares, Series H Preferred Shares, Series I Preferred Shares, Series J Preferred Shares and Series L Preferred Shares; and

(c) junior to the Series K Preferred Shares, as to the payment of dividends or as to the distribution of assets upon liquidation, dissolution or winding up, if such shares or series shall be Common Shares or if the holders of Series K Preferred Shares shall be entitled to receipt of dividends or of amounts distributable upon liquidation, dissolution or winding up, as the case may be, in preference or priority to the holders of such shares or series.

Section 9. Voting. If and whenever six quarterly dividends (whether or not consecutive) payable on the Series K Preferred Shares or any series or class of Parity Shares shall be in arrears (which shall, with respect to any such quarterly dividend, mean that any such dividend has not been paid in full), whether or not earned or declared, the number of trustees then constituting the Board of Trustees shall be increased by two (if not already increased by reason of a similar arrearage with respect to any Parity Shares) and the holders of Series K Preferred Shares, together with the holders of shares of every other series of Parity Shares (any such other series, the "Voting Preferred Shares"), voting as a single class regardless of series, shall be entitled to elect the two additional trustees to serve on the Board of Trustees at any annual meeting of shareholders or special meeting held in place thereof, or at a special meeting of the holders of the Series K Preferred Shares and the Voting Preferred Shares called as hereinafter provided. Whenever all arrears in dividends on the Series K Preferred Shares and the Voting Preferred Shares then outstanding shall have been paid and dividends thereon for the current quarterly dividend period shall have been paid or declared and set apart for payment, then the right of the holders of the Series K Preferred Shares and the Voting Preferred Shares to elect such additional two trustees shall cease (but subject always to the same provision for the vesting of such voting rights in the case of any similar future arrearages in six quarterly dividends), and the terms of office of all persons elected as trustees by the holders of the Series K Preferred Shares and the Voting Preferred Shares shall forthwith terminate and the number of the Board of Trustees shall be reduced accordingly. At any time after such voting power shall have been so vested in the holders of Series K Preferred Shares and the Voting Preferred Shares, the secretary of the Trust may, and upon the written request of any holder of Series K Preferred Shares (addressed to the secretary at the principal office of the Trust) shall, call a special meeting of the holders of the Series K Preferred Shares and of the Voting Preferred Shares for the election of the two trustees to be elected by them as herein provided, such call to be made by notice similar to that provided in the Bylaws of the Trust for a special meeting of the shareholders or as required by law. If any such special meeting required to be called as above provided shall not be called by the secretary within 20 days after receipt of any such request, then any holder of Series K Preferred Shares may call such meeting, upon the notice above provided, and for that purpose shall have access to the share books of the Trust. The trustees elected at any such special meeting shall hold office until the next annual meeting of the shareholders or special meeting held in lieu thereof if such office shall not have previously terminated as above provided. If any vacancy shall occur among the trustees elected by the holders of the Series K Preferred Shares and the Voting Preferred Shares, a successor shall be elected by the Board of Trustees, upon the nomination of the then-remaining trustee elected by the holders of the Series K Preferred Shares and the Voting Preferred Shares or the successor of such remaining trustee, to serve until the next annual meeting of the shareholders or special meeting held in place thereof if such office shall not have previously terminated as provided above.

So long as any Series K Preferred Shares are outstanding, in addition to any other vote or consent of shareholders required by law or by the Declaration of Trust, as amended, the affirmative vote of at least 66 2/3% of the votes entitled to be cast by the holders of the Series K Preferred Shares and the Voting Preferred Shares, at the time outstanding, acting as a single class regardless of series, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, shall be necessary for effecting or validating:

(a) Any amendment, alteration or repeal of any of the provisions of the Declaration of Trust that materially adversely affects the voting powers, rights or preferences of the holders of the Series K Preferred Shares or the Voting Preferred Shares; *provided, however,* that the

amendment of the provisions of the Declaration of Trust so as to authorize or create, or to increase the authorized amount of, any Junior Shares or any shares of any class ranking on a parity with the Series K Preferred Shares or the Voting Preferred Shares shall not be deemed to materially adversely affect the voting powers, rights or preferences of the holders of Series K Preferred Shares, and *provided further,* that if any such amendment, alteration or repeal would materially adversely affect any voting powers, rights or preferences of the Series K Preferred Shares or another series of Voting Preferred Shares that are not enjoyed by some or all of the other series which otherwise would be entitled to vote in accordance herewith, the affirmative vote of at least 66 2/3% of the votes entitled to be cast by the holders of all series similarly affected, similarly given, shall be required in lieu of the affirmative vote of at least 66 2/3% of the votes entitled to be cast by the holders of the Series K Preferred Shares and the Voting Preferred Shares which otherwise would be entitled to vote in accordance herewith; or

(b) The authorization or creation of, or the increase in the authorized amount of, any shares of any class or any security convertible into shares of any class ranking prior to the Series K Preferred Shares in the distribution of assets on any liquidation, dissolution or winding up of the Trust or in the payment of dividends; *provided, however,* that no such vote of the holders of Series K Preferred Shares shall be required if, at or prior to the time when such amendment, alteration or repeal is to take effect, or when the issuance of any such prior shares or convertible security is to be made, as the case may be, provision is made for the redemption of all Series K Preferred Shares at the time outstanding.

For purposes of the foregoing provisions of this Section 9, each Series K Preferred Share shall have one (1) vote per share, except that when any other series of preferred shares shall have the right to vote with the Series K Preferred Shares as a single class on any matter, then the Series K Preferred Shares and such other series shall have with respect to such matters one (1) vote per $25.00 of stated liquidation preference. Except as otherwise required by applicable law or as set forth herein, the Series K Preferred Shares shall not have any voting rights and powers other than as set forth herein, and the consent of the holders thereof shall not be required for the taking of any trust action.

Section 10. Record Holders. The Trust and the Transfer Agent may deem and treat the record holder of any Series K Preferred Shares as the true and lawful owner thereof for all purposes, and neither the Trust nor the Transfer Agent shall be affected by any notice to the contrary.

SECTION 13.9. Series M Preferred Shares.

1. A. Certain Definitions.

Unless the context otherwise requires, the terms defined in this subparagraph A of paragraph 1 shall have, for all purposes of these terms of the Series M Preferred Shares, the meanings herein specified (with terms defined in the singular having comparable meanings when used in the plural).

“Business Day” shall mean any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions in New York City are authorized or required by law, regulation or executive order to close.

"Common Shares" shall mean the common shares of beneficial interest, $.01 par value per share, of the Trust.

"Distribution Period" shall have the meaning set forth in subparagraph (3) of paragraph B.

"Junior Shares" shall have the meaning set forth in subparagraph (2) of paragraph B.

"Person" shall mean an individual, corporation, partnership, estate, trust (including a trust qualified under Section 401(a) or 501(c)(17) of the Code), a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, association, private foundation within the meaning of Section 509(a) of the Code joint stock company or other entity, and also includes a group as that term is used for purposes of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended; but does not include an underwriter which participates in a public offering of the Series M Preferred Shares provided that the ownership of Series M Preferred Shares by such Underwriter would not result in the Trust being "closely held" within the meaning of Section 856(h) of the Code, or would otherwise result in the Trust failing to qualify as a REIT.

"Preferred Shares" shall mean preferred shares of beneficial interest of the Trust, including Series A Preferred Shares, Series B Preferred Shares, Series C Preferred Shares, Series D Preferred Shares, Series E Preferred Shares, Series F Preferred Shares, Series G Preferred Shares, Series H Preferred Shares, Series I Preferred Shares, Series J Preferred Shares, Series K Preferred Shares, Series L Preferred Shares, and Series M Preferred Shares, and any other shares designated as preferred in respect of rights to receive distributions and to participate in distributions or payments in the event of liquidation, dissolution, or winding up of the Trust, as may be issued and outstanding from time to time.

"Quarterly Distribution Date" shall have the meaning set forth in subparagraph (3) of paragraph B below.

"Record Date" shall have the meaning set forth in subparagraph (3) of paragraph B below.

"REIT" shall mean a Real Estate Investment Trust under Section 856 of the Code.

"Series M Redemption Date" shall have the meaning set forth in subparagraph (5) of paragraph B below.

"Series M Redemption Price" shall have the meaning set forth in subparagraph (5) of paragraph B below.

All other capitalized terms used but not defined herein shall have the meanings ascribed to them in the Declaration of Trust.

B. Series M Preferred Shares

(1) Number and Designation. A series of Preferred Shares, consisting of 800,000 Preferred Shares designated as 8.00% Series M Cumulative Redeemable Preferred Shares of

Beneficial Interest, $.01 par value per share (liquidation preference $50.00 per share) (the “Series M Preferred Shares”), is hereby established.

(2) Ranking. In respect of rights to receive distributions and to participate in distributions or payments in the event of any liquidation, dissolution or winding up of the Trust, the Series M Preferred Shares shall rank pari passu with any other Preferred Shares of the Trust, and will rank senior to the Common Shares and any other class or series of shares of beneficial interest of the Trust ranking, as to distributions and upon liquidation, junior (collectively, the "Junior Shares") to the Preferred Shares.

(3) Distributions. The holders of the then outstanding Series M Preferred Shares shall be entitled to receive, when and as declared by the Board of Trustees out of any funds legally available therefor, cumulative distributions at the rate of $4.00 per share per year, payable in equal amounts of $1.00 per share quarterly in cash on the fifteenth day, or if not a Business Day, the next succeeding Business Day, of January, April, July and October in each year, beginning October 15, 1999 (each such day being hereinafter called a "Quarterly Distribution Date" and each period ending on a Quarterly Distribution Date being hereinafter called a "Distribution Period"), to shareholders of record at the close of business on such date as shall be fixed by the Board of Trustees at the time of declaration of the distribution (the "Record Date"), which shall not be less than 10 nor more than 30 days preceding the Quarterly Distribution Date. The amount of any distribution payable for the initial Distribution Period and for any other Distribution Period shorter than a full Distribution Period shall be prorated and computed on the basis of a 360-day year of twelve 30-day months. Distributions on each Series M Preferred Share shall accrue and be cumulative from and including the date of original issue thereof, whether or not (i) distributions on such shares are earned or declared or (ii) on any Quarterly Distribution Date there shall be funds legally available for the payment of distributions. Distributions paid on the Series M Preferred Shares in an amount less than the total amount of such distributions at the time accrued and payable on such shares shall be allocated pro rata on a per share basis among all such shares at the time outstanding.

The amount of any distributions accrued on any Series M Preferred Shares at any Quarterly Distribution Date shall be the amount of any unpaid distributions accumulated thereon, to and including such Quarterly Distribution Date, whether or not earned or declared, and the amount of distributions accrued on any Series M Preferred Shares at any date other than a Quarterly Distribution Date shall be equal to the sum of the amount of any unpaid distributions accumulated thereon, to and including the last preceding Quarterly Distribution Date, whether or not earned or declared, plus an amount calculated on the basis of the annual distribution rate of $4.00 for the period after such last preceding Quarterly Distribution Date to and including the date as of which the calculation is made based on a 360-day year of twelve 30-day months.

In determining whether a distribution (other than upon voluntary or involuntary liquidation), by dividend, redemption or other acquisition of shares of beneficial interest of the Trust or otherwise, is permitted under Maryland law, amounts that would be needed, if the Trust were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of holders of Series M Preferred Shares will not be added to the Trust’s total liabilities.

Except as provided in these terms of the Series M Preferred Shares, the Series M Preferred Shares shall not be entitled to participate in the earnings or assets of the Trust.

(4) Liquidation Rights.

(a) Upon the voluntary or involuntary dissolution, liquidation or winding up of the Trust, the holders of the Series M Preferred Shares then outstanding shall be entitled to receive and to be paid out of the assets of the Trust available for distribution to its shareholders, before any payment or distribution shall be made on any Junior Shares, the amount of $50.00 per Series M Preferred Share, plus accrued and unpaid distributions thereon.

(b) After the payment to the holders of the Series M Preferred Shares of the full preferential amounts provided for in this paragraph B, the holders of the Series M Preferred Shares as such shall have no right or claim to any of the remaining assets of the Trust.

(c) If, upon any voluntary or involuntary dissolution, liquidation, or winding up of the Trust, the amounts payable with respect to the preference value of the Series M Preferred Shares and any other shares of beneficial interest of the Trust ranking as to any such distribution on a parity with the Series M Preferred Shares are not paid in full, the holders of the Series M Preferred Shares and of such other shares will share ratably in any such distribution of assets of the Trust in proportion to the full respective preference amounts to which they are entitled.

(d) Neither the sale of all or substantially all the property or business of the Trust, nor the merger or consolidation of the Trust into or with any other entity or the merger or consolidation of any other entity into or with the Trust, shall be deemed to be a dissolution, liquidation or winding up, voluntary or involuntary, for the purposes of this paragraph B.

(5) Redemption.

(a) Optional Redemption. On and after October 1, 2004, the Trust may, at its option, redeem at any time all or, from time to time, part of the Series M Preferred Shares at a price per share (the "Series M Redemption Price"), payable in cash, of $50.00 per Series M Preferred Share, together with all accrued and unpaid distributions to and including the date fixed for redemption (the "Series M Redemption Date").

(b) Procedures for Redemption.

(i) Notice of any redemption will be mailed by the Trust, postage prepaid, not less than 30 days nor more than 60 days prior to the Series M

Redemption Date, addressed to the holders of record of the Series M Preferred Shares to be redeemed at their addresses as they appear on the share transfer records of the Trust. No failure to give such notice or any defect therein or in the mailing thereof shall affect the validity of the proceedings for the redemption of any Series M Preferred Shares except as to the holder to whom the Trust has failed to give notice or except as to the holder to whom notice was defective. In addition to any information required by law or by the applicable rules of any exchange upon which Series M Preferred Shares may be listed or admitted to trading, such notice shall state: (a) the Series M Redemption Date; (b) the Series M Redemption Price; (c) the number of Series M Preferred Shares to be redeemed; (d) the place or places where certificates for such shares are to be surrendered for payment of the Series M Redemption Price; and (e) that distributions on the shares to be redeemed will cease to accumulate on the Series M Redemption Date.

(ii) If notice has been mailed in accordance with subparagraph (5)(b)(i) above and provided that on or before the Series M Redemption Date specified in such notice all funds necessary for such redemption shall have been irrevocably set aside by the Trust, separate and apart from its other funds in trust for the pro rata benefit of the holders of the Series M Preferred Shares so called for redemption, so as to be, and to continue to be available therefor, then, from and after the Series M Redemption Date, distributions on the Series M Preferred Shares so called for redemption shall cease to accumulate, and said shares shall no longer be deemed to be outstanding and shall not have the status of Series M Preferred Shares and all rights of the holders thereof as shareholders of the Trust (except the right to receive the Series M Redemption Price) shall cease. Upon surrender, in accordance with said notice, of the certificates for any Series M Preferred Shares so redeemed (properly endorsed or assigned for transfer, if the Trust shall so require and the notice shall so state), such Series M Preferred Shares shall be redeemed by the Trust at the Series M Redemption Price. In case fewer than all the Series M Preferred Shares evidenced by any such certificate are redeemed, a new certificate or certificates shall be issued evidencing the unredeemed Series M Preferred Shares without cost to the holder thereof.

(iii) Any funds deposited with a bank or trust company for the purpose of redeeming Series M Preferred Shares shall be irrevocable except that:

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

(B) any balance of monies so deposited by the Trust and unclaimed by the holders of the Series M Preferred

Shares entitled thereto at the expiration of two years from the applicable Series M Redemption Date shall be repaid, together with any interest or other earnings earned thereon, to the Trust, and after any such repayment, the holders of the shares entitled to the funds so repaid to the Trust shall look only to the Trust for payment without interest or other earnings.

(iv) No Series M Preferred Shares may be redeemed except with funds legally available for the payment of the Series M Redemption Price.

(v) Unless full accumulated distributions on all Series M Preferred Shares shall have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past Distribution Periods and the then current Distribution Period, no Series M Preferred Shares shall be redeemed (unless all outstanding Series M Preferred Shares are simultaneously redeemed) or purchased or otherwise acquired directly or indirectly (except by conversion into or exchange for shares of beneficial interest of the Trust ranking junior to the Series M Preferred Shares as to distributions and upon liquidation); provided, however, that the foregoing shall not prevent the redemption of Series M Preferred Shares pursuant to Article VII of the Declaration of Trust or the purchase or acquisition of Series M Preferred Shares pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding Series M Preferred Shares.

(vi) If the Series M Redemption Date is after a Record Date and before the related Quarterly Distribution Date, the distribution payable on such Quarterly Distribution Date shall be paid to the holder in whose name the Series M Preferred Shares to be redeemed are registered at the close of business on such Record Date notwithstanding the redemption thereof between such Record Date and the related Quarterly Distribution Date or the Trust's default in the payment of the distribution due.

(vii) In case of redemption of less than all Series M Preferred Shares at the time outstanding, the Series M Preferred Shares to be redeemed shall be selected pro rata from the holders of record of such shares in proportion to the number of Series M Preferred Shares held by such holders (with adjustments to avoid redemption of fractional shares) or by any other equitable method determined by the Trust.

(6) Voting Rights. Except as provided in these terms of the Series M Preferred Shares, the holders of the Series M Preferred Shares shall not be entitled to vote at any meeting of the shareholders for election of trustees or for any other purposes or otherwise to participate in any action taken by the Trust or the shareholders thereof, or to receive notice (except for such notice as required by law) of any meeting of shareholders.

(a) In any matter in which the Series M Preferred Shares are entitled to vote (as expressly provided herein), including any action by written consent, each Series M Preferred Share shall be entitled to 10 votes, each of which 10 votes may be directed separately by the holder thereof (or by any proxy or proxies of such holder). With respect to each Series M Preferred Share, the holder thereof may designate up to 10 proxies, with each such proxy having the right to vote a whole number of votes (totaling 10 votes per Series M Preferred Share).

(b) Whenever distributions on any Series M Preferred Shares shall be in arrears for six or more quarterly periods, the holders of such Series M Preferred Shares, voting separately as a class with all other series of Preferred Shares upon which like voting rights have been conferred and are exercisable, will be entitled to vote for the election of two additional Trustees of the Trust at a special meeting called by the holders of record of at least ten percent (10%) of any series of Preferred Shares so in arrears (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the shareholders) or at the next annual meeting of shareholders, and at each subsequent annual meeting until all distributions accumulated on such Series M Preferred Shares for the past distribution periods and the then current distribution period shall have been fully paid or declared and a sum sufficient for the payment thereof set aside for payment. In such case, the entire Board of Trustees of the Trust will increase by two Trustees.

(c) So long as any Series M Preferred Shares remain outstanding, the Trust will not, without the affirmative vote or consent of the holders of at least two-thirds of the Series M Preferred Shares outstanding at the time, given in person or by proxy, either in writing or at a meeting (such series voting separately as a class), (i) authorize or create, or increase the authorized or issued amount of, any class or series of shares of beneficial interest ranking prior to the Series M Preferred Shares with respect to the payment of distributions or the distribution of assets upon liquidation, dissolution or winding up or reclassify any authorized shares of beneficial interest of the Trust into such shares, or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase any such shares; or (ii) amend, alter or repeal the provisions of the Trust's Declaration of Trust or the terms of the Series M Preferred Shares whether by merger, consolidation or otherwise (an "Event"), so as to materially and adversely affect any right, preference, privilege or voting power of the Series M Preferred Shares or the holders thereof; provided, however, with respect to the occurrence of any Events set forth in (ii) above, so long as the Series M Preferred Shares remain outstanding with the terms thereof materially unchanged, taking into account that upon the occurrence of an Event, the Trust may not be the surviving entity or the Series M

Preferred Shares that remain outstanding may bear a new title, designation and/or be issued by a different issuer, the occurrence of any such Event shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting power of holders of Series M Preferred Shares and provided further that (x) any increase in the amount of the authorized Preferred Shares or the creation or issuance of any other Series M Preferred Shares, or (y) any increase in the amount of authorized Series M Preferred Shares or any other Preferred Shares, in each case ranking on a parity with or junior to the Series M Preferred Shares with respect to payment of distributions or the distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting powers.

The foregoing voting provisions will not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding Series M Preferred Shares shall have been redeemed or called for redemption and sufficient funds shall have been deposited in trust to effect such redemption.

(7) Conversion. The Series M Preferred Shares are not convertible into or exchangeable for any other property or securities of the Trust, except into Excess Shares in connection with maintaining the ability of the Trust to qualify as a REIT.

C. Restrictions on Transfer. The Series M Preferred Shares shall be subject to the restrictions on transfer and ownership of Shares in Article VII of the Declaration of Trust, as supplemented below.

(1) Certain Definitions.

For purposes of the Series M Preferred Shares the following terms shall have the following meanings:

"Closing Date of the Series M Preferred Shares Offering" shall mean the time and date of payment for and delivery of Series M Preferred Shares issued pursuant to the exchange of Series A Cumulative Convertible Redeemable Preference Interests in EQR-Mosaic, LLC.

"Special Triggering Event" shall mean either (i) the redemption or purchase by the Trust of all or a portion of the outstanding shares of beneficial interest in the Trust, or (ii) a change in the value of the Series M Preferred Shares relative to any other class of beneficial interest in the Trust.

(2) Special Triggering Event. If during the period commencing on the Closing Date of the Series M Preferred Shares Offering and prior to the Restriction Termination Date, a Special Triggering Event (if effective) or other event or occurrence (if effective) would result in any violation of section 7.2(a) of the Trust's Declaration of Trust (or would result in the Trust being "closely held" within the meaning of Section 856(h) of the Code or would otherwise cause the Trust to fail to qualify as a REIT), then (i) the number of Series M Preferred Shares (rounded up to the

nearest whole share) that would (but for this section) cause any Person to Beneficially Own either Series M Preferred Shares, or to Beneficially Own Series M Preferred Shares and any other shares of beneficial interest in the Trust, in violation of section 7.2(a) (or would result in the Trust being "closely held" or otherwise fail to qualify as a REIT) shall constitute "Excess Shares" and shall be treated as provided in Article VII. Such designation and treatment shall be effective as of the close of business on the Business Day prior to the date of the Special Triggering Event or other event or occurrence.

(3) Ambiguity. In the case of an ambiguity in the application of any of the provisions of this section, including any definition contained in paragraph (1), the Board of Trustees shall have the power to determine the application of this section with respect to any situation based on the facts known to it (subject, however, to the provisions of Section 7.2(a)).

(4) Exclusion of Other Rights.

The Series M Preferred Shares shall not have any voting powers, preferences and relative, participating, optional or other special rights, other than those specifically set forth in these terms of the Series M Preferred Shares (as such terms may be amended from time to time) and in the Declaration of Trust. The Series M Preferred Shares shall have no preemptive or subscription rights.

(5) Headings of Subdivisions.

The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

(6) Severability of Provisions.

If any voting powers, preferences and relative, participating, optional and other special rights of the Series M Preferred Shares and qualifications, limitations and restrictions thereof set forth in these terms of the Series M Preferred Shares (as such terms may be amended from time to time) is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other voting powers, preferences and relative, participating, optional and other special rights of Series M Preferred Shares and qualifications, limitations and restrictions thereof set forth in these terms of the Series M Preferred Shares (as so amended) which can be given effect without the invalid, unlawful or unenforceable voting powers, preferences, and relative, participating, optional or other special rights of Series M Preferred Shares and qualifications, limitations and restrictions thereof herein set forth, shall nevertheless, remain in full force and effect and no preferences or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption of the Series M Preferred Shares herein set forth shall be deemed dependent upon any other such voting powers, preferences and relative, participating, optional or other special right of Series M Preferred Shares and qualifications, limitations and restrictions thereof unless so expressed herein.

SECTION 13.10. Series M-1 Preferred Shares.

1. A. Certain Definitions**.**

Unless the context otherwise requires, the terms defined in this subparagraph A of paragraph 1 shall have, for all purposes of these terms of the Series M-1 Preferred Shares, the meanings herein specified (with terms defined in the singular having comparable meanings when used in the plural).

"Business Day" shall mean any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions in New York City are authorized or required by law, regulation or executive order to close.

"Common Shares" shall mean the common shares of beneficial interest, $.01 par value per share, of the Trust.

"Distribution Period" shall have the meaning set forth in subparagraph (3) of paragraph B.

"Junior Shares" shall have the meaning set forth in subparagraph (2) of paragraph B.

"Person" shall mean an individual, corporation, partnership, estate, trust (including a trust qualified under Section 401(a) or 501(c)(17) of the Code), a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, association, private foundation within the meaning of Section 509(a) of the Code joint stock company or other entity, and also includes a group as that term is used for purposes of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended; but does not include an underwriter which participates in a public offering of the Series M-1 Preferred Shares provided that the ownership of Series M-1 Preferred Shares by such Underwriter would not result in the Trust being "closely held" within the meaning of Section 856(h) of the Code, or would otherwise result in the Trust failing to qualify as a REIT.

"Preferred Shares" shall mean shares of beneficial interest of the Trust designated as or otherwise on a parity with the Series M-1 Preferred Shares as to distributions and rights upon voluntary or involuntary liquidation, winding up or dissolution of the Trust as may be issued and outstanding from time to time, including Series A Preferred Shares and Series B Preferred Shares, Series C Preferred Shares, Series D Preferred Shares, Series E Preferred Shares, Series F Preferred Shares, Series G Preferred Shares, Series H Preferred Shares, Series J Preferred Shares, Series K Preferred Shares, Series L Preferred Shares, Series M Preferred Shares, and any other shares so designated.

"Quarterly Distribution Date" shall have the meaning set forth in subparagraph (3) of paragraph B below.

"Record Date" shall have the meaning set forth in subparagraph (3) of paragraph B below.

"REIT" shall mean a Real Estate Investment Trust under Section 856 of the Code.

"Series M-1 Redemption Date" shall have the meaning set forth in subparagraph (5) of paragraph B below.

"Series M-1 Redemption Price" shall have the meaning set forth in subparagraph (5) of paragraph B below.

All other capitalized terms used but not defined herein shall have the meanings ascribed to them in the Declaration of Trust.

B. Series M-1 Preferred Shares

(1) Number and Designation. A series of Preferred Shares, consisting of 1,320,000 Preferred Shares designated as 8.50% Series M-1 Cumulative Redeemable Preferred Shares of Beneficial Interest, $.01 par value per share (liquidation preference $50.00 per share) (the "Series M-1 Preferred Shares"), is hereby established.

(2) Ranking. In respect of rights to receive distributions and to participate in distributions or payments in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Trust, the Series M-1 Preferred Shares shall rank pari passu with any other Preferred Shares of the Trust, and will rank senior to the Common Shares and any other class or series of shares of beneficial interest of the Trust ranking, as to distributions and upon liquidation, junior (collectively, the "Junior Shares") to the Preferred Shares.

(3) Distributions. The holders of the then outstanding Series M-1 Preferred Shares shall be entitled to receive, when and as authorized by the Board of Trustees and declared by the Trust out of any funds legally available therefor, cumulative distributions at the rate of $4.25 per share per year, payable in equal amounts of $1.0625 per share quarterly in arrears in cash on the fifteenth day, or if not a Business Day, the next succeeding Business Day, of January, April, July and October in each year (each such day being hereinafter called a "Quarterly Distribution Date" and each period ending on a Quarterly Distribution Date being hereinafter called a "Distribution Period"), beginning on the first Quarterly Distribution Date following the issuance of the Series M-1 Preferred Shares, to shareholders of record at the close of business on such date as shall be fixed by the Board of Trustees at the time of declaration of the distribution (the "Record Date"), which shall not be less than 10 nor more than 30 days preceding the Quarterly Distribution Date. The amount of any distribution payable for the initial Distribution Period and for any other Distribution Period shorter than a full Distribution Period shall be prorated and computed on the basis of a 360-day year of twelve 30-day months. Distributions on each Series M-1 Preferred Share shall accrue and be cumulative from and including the date of original issue thereof, whether or not (i) distributions on such shares are earned or declared or (ii) on any Quarterly Distribution Date there shall be funds legally available for the payment of distributions. Distributions paid on the Series M-1 Preferred Shares in an amount less than the total amount of such distributions at the time accrued and payable on such shares shall be allocated pro rata on a per share basis among all such shares at the time outstanding.

The amount of any distributions accrued on any Series M-1 Preferred Shares at any Quarterly Distribution Date shall be the amount of any unpaid distributions accumulated thereon, to and including such Quarterly Distribution Date, whether or not earned or declared, and the amount of distributions accrued on any Series M-1 Preferred Shares at any date other than a Quarterly Distribution Date shall be equal to the sum of the amount of any unpaid distributions accumulated thereon, to and including the last preceding Quarterly Distribution Date, whether or not earned or declared, plus an amount calculated on the basis of the annual distribution rate of $4.25 for the period after such last preceding Quarterly Distribution Date to and including the date as of which the calculation is made based on a 360-day year of twelve 30-day months.

In determining whether a distribution (other than upon voluntary or involuntary liquidation), by dividend, redemption or other acquisition of shares of beneficial interest of the Trust or otherwise, is permitted under Maryland law, amounts that would be needed, if the Trust were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of holders of Series M-1 Preferred Shares will not be added to the Trust's total liabilities.

Except as provided in these terms of the Series M-1 Preferred Shares, the Series M-1 Preferred Shares shall not be entitled to participate in the earnings or assets of the Trust.

(4) Liquidation Rights.

(a) Upon the voluntary or involuntary dissolution, liquidation or winding up of the Trust, the holders of the Series M-1 Preferred Shares then outstanding shall be entitled to receive and to be paid out of the assets of the Trust available for distribution to its shareholders, before any payment or distribution shall be made on any Junior Shares, the amount of $50.00 per Series M-1 Preferred Share, plus accrued and unpaid distributions thereon.

(b) After the payment to the holders of the Series M-1 Preferred Shares of the full preferential amounts provided for in this paragraph B, the holders of the Series M-1 Preferred Shares as such shall have no right or claim to any of the remaining assets of the Trust.

(c) If, upon any voluntary or involuntary dissolution, liquidation, or winding up of the Trust, the amounts payable with respect to the preference value of the Series M-1 Preferred Shares and any other shares of beneficial interest of the Trust ranking as to any such distribution on parity with the Series M-1 Preferred Shares are not paid in full, the holders of the Series M-1 Preferred Shares and of such other shares will share ratably in any such distribution of assets of the Trust in proportion to the full respective preference amounts to which they are entitled.

(d) Neither the sale of all or substantially all the property or business of the Trust, nor the merger or consolidation of the Trust into or with any other entity or the merger or consolidation of any other entity

into or with the Trust, shall be deemed to be a dissolution, liquidation or winding up, voluntary or involuntary, for the purposes of this paragraph B.

(5) Redemption.

(a) Optional Redemption. On and after March 3, 2005, the Trust may, at its option, redeem at any time all or, from time to time, part of the Series M-1 Preferred Shares at a price per share (the "Series M-1 Redemption Price"), payable in cash, of $50.00 per Series M-1 Preferred Share, together with all accrued and unpaid distributions to and including the date fixed for redemption (the "Series M-1 Redemption Date").

(b) Procedures for Redemption.

(i) Notice of any redemption will be mailed by the Trust, postage prepaid, not less than 30 days nor more than 60 days prior to the Series M-1 Redemption Date, addressed to the holders of record of the Series M-1 Preferred Shares to be redeemed at their addresses as they appear on the share transfer records of the Trust. No failure to give such notice or any defect therein or in the mailing thereof shall affect the validity of the proceedings for the redemption of any Series M-1 Preferred Shares except as to the holder to whom the Trust has failed to give notice or except as to the holder to whom notice was defective. In addition to any information required by law or by the applicable rules of any exchange upon which Series M-1 Preferred Shares may be listed or admitted to trading, such notice shall state: (a) the Series M-1 Redemption Date; (b) the Series M-1 Redemption Price; (c) the number of Series M-1 Preferred Shares to be redeemed; (d) the place or places where certificates for such shares are to be surrendered for payment of the Series M-1 Redemption Price; and (e) that distributions on the shares to be redeemed will cease to accumulate on the Series M-1 Redemption Date.

(ii) If notice has been mailed in accordance with subparagraph (5)(b)(i) above and provided that on or before the Series M-1 Redemption Date specified in such notice all funds necessary for such redemption shall have been irrevocably set aside by the Trust, separate and apart from its other funds in trust for the pro rata benefit of the holders of the Series M-1 Preferred Shares so called for redemption, so as to be, and to continue to be available therefor, then, from and after the Series M-1 Redemption Date, distributions on the Series M-1 Preferred Shares so called for redemption shall cease to accumulate, and said shares shall no longer be deemed to be outstanding and shall not have the status of Series M-1 Preferred Shares and all rights of the holders thereof as shareholders of the Trust (except the right to receive the Series M-1 Redemption Price) shall cease. Upon surrender, in accordance with said notice, of the certificates for any Series M-1 Preferred

Shares so redeemed (properly endorsed or assigned for transfer, if the Trust shall so require and the notice shall so state), such Series M-1 Preferred Shares shall be redeemed by the Trust at the Series M-1 Redemption Price. In case fewer than all the Series M-1 Preferred Shares evidenced by any such certificate are redeemed, a new certificate or certificates shall be issued evidencing the unredeemed Series M-1 Preferred Shares without cost to the holder thereof.

(iii) Any funds deposited with a bank or trust company for the purpose of redeeming Series M-1 Preferred Shares shall be irrevocable except that:

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

(B) any balance of monies so deposited by the Trust and unclaimed by the holders of the Series M-1 Preferred Shares entitled thereto at the expiration of two years from the applicable Series M-1 Redemption Date shall be repaid, together with any interest or other earnings earned thereon, to the Trust, and after any such repayment, the holders of the shares entitled to the funds so repaid to the Trust shall look only to the Trust for payment without interest or other earnings.

(iv) No Series M-1 Preferred Shares may be redeemed except with funds legally available for the payment of the Series M-1 Redemption Price.

(v) Unless full accumulated distributions on all Series M-1 Preferred Shares shall have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past Distribution Periods and the then current Distribution Period, no Series M-1 Preferred Shares shall be redeemed (unless all outstanding Series M-1 Preferred Shares are simultaneously redeemed) or purchased or otherwise acquired directly or indirectly (except by conversion into or exchange for shares of beneficial interest of the Trust ranking junior to the Series M-1 Preferred Shares as to distributions and upon liquidation); provided, however, that the foregoing shall not prevent the redemption of Series M-1 Preferred Shares pursuant to Article VII of the Declaration of Trust or the purchase or acquisition of Series M-1 Preferred Shares pursuant

to a purchase or exchange offer made on the same terms to holders of all outstanding Series M-1 Preferred Shares.

(vi) If the Series M-1 Redemption Date is after a Record Date and before the related Quarterly Distribution Date, the distribution payable on such Quarterly Distribution Date shall be paid to the holder in whose name the Series M-1 Preferred Shares to be redeemed are registered at the close of business on such Record Date notwithstanding the redemption thereof between such Record Date and the related Quarterly Distribution Date or the Trust's default in the payment of the distribution due.

(vii) In case of redemption of less than all Series M-1 Preferred Shares at the time outstanding, the Series M-1 Preferred Shares to be redeemed shall be selected pro rata from the holders of record of such shares in proportion to the number of Series M-1 Preferred Shares held by such holders (with adjustments to avoid redemption of fractional shares) or by any other equitable method determined by the Trust.

(6) Voting Rights. Except as provided in these terms of the Series M-1 Preferred Shares, the holders of the Series M-1 Preferred Shares shall not be entitled to vote at any meeting of the shareholders for election of trustees or for any other purposes or otherwise to participate in any action taken by the Trust or the shareholders thereof, or to receive notice (except for such notice as required by law) of any meeting of shareholders.

(a) In any matter in which the Series M-1 Preferred Shares are entitled to vote (as expressly provided herein), including any action by written consent, each Series M-1 Preferred Share shall be entitled to 10 votes, each of which 10 votes may be directed separately by the holder thereof (or by any proxy or proxies of such holder). With respect to each Series M-1 Preferred Share, the holder thereof may designate up to 10 proxies, with each such proxy having the right to vote a whole number of votes (totaling 10 votes per Series M-1 Preferred Share).

(b) Whenever distributions on any Series M-1 Preferred Shares shall be in arrears for six or more quarterly periods, the Board of Trustees of the Trust shall be increased by the two trustees and the holders of such Series M-1 Preferred Shares, voting separately as a class with all other series of Preferred Shares upon which like voting rights have been conferred and are exercisable, will be entitled to vote for the election of two additional Trustees of the Trust at a special meeting called by the holders of record of at least ten percent (10%) of any series of Preferred Shares so in arrears (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the shareholders) or at the next annual meeting of shareholders, and at each subsequent annual meeting until all distributions accumulated on such Series

M-1 Preferred Shares for the past distribution periods and the then current distribution period shall have been fully paid or declared and a sum sufficient for the payment thereof set aside for payment.

(c) So long as any Series M-1 Preferred Shares remain outstanding, the Trust will not, without the affirmative vote or consent of the holders of at least two-thirds of the Series M-1 Preferred Shares outstanding at the time, given in person or by proxy, either in writing or at a meeting (such series voting separately as a class), (i) authorize or create, or increase the authorized or issued amount of, any class or series of shares of beneficial interest ranking senior to the Series M-1 Preferred Shares with respect to the payment of distributions or the distribution of assets upon liquidation, dissolution or winding up or reclassify any authorized shares of beneficial interest of the Trust into such shares, or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase any such shares; or (ii) amend, alter or repeal the provisions of the Trust's Declaration of Trust or the terms of the Series M-1 Preferred Shares whether by merger, consolidation or otherwise (an "Event"), so as to materially and adversely affect any right, preference, privilege or voting power of the Series M-1 Preferred Shares or the holders thereof; provided, however, with respect to the occurrence of any Events set forth in (ii) above, so long as the Series M-1 Preferred Shares remain outstanding with the terms thereof materially unchanged, taking into account that upon the occurrence of an Event, the Trust may not be the surviving entity or the Series M-1 Preferred Shares that remain outstanding may bear a new title, designation and/or be issued by a different issuer, the occurrence of any such Event shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting power of holders of Series M-1 Preferred Shares and provided further that (x) any increase in the amount of the authorized Preferred Shares or the creation or issuance of any other Series M-1 Preferred Shares, or (y) any increase in the amount of authorized Series M-1 Preferred Shares or any other Preferred Shares, in each case ranking on a parity with or junior to the Series M-1 Preferred Shares with respect to payment of distributions or the distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting powers.

The foregoing voting provisions will not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding Series M-1 Preferred Shares shall have been redeemed or called for redemption and sufficient funds shall have been deposited in trust to effect such redemption.

(7) Conversion. The Series M-1 Preferred Shares are not convertible into or exchangeable for any other property or securities of the Trust, except into Excess Shares in connection with maintaining the ability of the Trust to qualify as a REIT.

C. Restrictions on Transfer. The Series M-1 Preferred Shares shall be subject to the restrictions on transfer and ownership of Shares in Article VII of the Declaration of Trust, as supplemented below.

(1) Certain Definitions.

For purposes of the Series M-1 Preferred Shares the following terms shall have the following meanings:

"Closing Date of the Series M-1 Preferred Shares Offering" shall mean the time and date of payment for and delivery of Series M-1 Preferred Shares issued pursuant to the exchange of Series B Preference Units of Lexford Properties, L.P.

"Special Triggering Event" shall mean either (i) the redemption or purchase by the Trust of all or a portion of the outstanding shares of beneficial interest in the Trust, or (ii) a change in the value of the Series M-1 Preferred Shares relative to any other class of beneficial interest in the Trust.

(2) Special Triggering Event. If during the period commencing on the Closing Date of the Series M-1 Preferred Shares Offering and prior to the Restriction Termination Date, a Special Triggering Event (if effective) or other event or occurrence (if effective) would result in any violation of section 7.2(a) of the Trust's Declaration of Trust (or would result in the Trust being "closely held" within the meaning of Section 856(h) of the Code or would otherwise cause the Trust to fail to qualify as a REIT), then (i) the number of Series M-1 Preferred Shares (rounded up to the nearest whole share) that would (but for this section) cause any Person to Beneficially Own either Series M-1 Preferred Shares, or to Beneficially Own Series M-1 Preferred Shares and any other shares of beneficial interest in the Trust, in violation of section 7.2(a) (or would result in the Trust being "closely held" or otherwise fail to qualify as a REIT) shall constitute "Excess Shares" and shall be treated as provided in Article VII. Such designation and treatment shall be effective as of the close of business on the Business Day prior to the date of the Special Triggering Event or other event or occurrence.

(3) Ambiguity. In the case of an ambiguity in the application of any of the provisions of this section, including any definition contained in paragraph (1), the Board of Trustees shall have the power to determine the application of this section with respect to any situation based on the facts known to it (subject, however, to the provisions of Section 7.2(a)).

(4) Exclusion of Other Rights.

The Series M-1 Preferred Shares shall not have any voting powers, preferences and relative, participating, optional or other special rights, other than those specifically set forth in these terms of the Series M-1 Preferred Shares (as such terms may be amended from time to time) and in

the Declaration of Trust. The Series M-1 Preferred Shares shall have no preemptive or subscription rights.

(5) Headings of Subdivisions.

The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

(6) Severability of Provisions.

If any voting powers, preferences and relative, participating, optional and other special rights of the Series M-1 Preferred Shares and qualifications, limitations and restrictions thereof set forth in these terms of the Series M-1 Preferred Shares (as such terms may be amended from time to time) is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other voting powers, preferences and relative, participating, optional and other special rights of Series M-1 Preferred Shares and qualifications, limitations and restrictions thereof set forth in these terms of the Series M-1 Preferred Shares (as so amended) which can be given effect without the invalid, unlawful or unenforceable voting powers, preferences, and relative, participating, optional or other special rights of Series M-1 Preferred Shares and qualifications, limitations and restrictions thereof herein set forth, shall nevertheless, remain in full force and effect and no preferences or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption of the Series M-1 Preferred Shares herein set forth shall be deemed dependent upon any other such voting powers, preferences and relative, participating, optional or other special right of Series M-1 Preferred Shares and qualifications, limitations and restrictions thereof unless so expressed herein.

SECTION 13.11. Series M-2 Preferred Shares.

1. A. Certain Definitions.

Unless the context otherwise requires, the terms defined in this subparagraph A of paragraph 1 shall have, for all purposes of these terms of the Series M-2 Preferred Shares, the meanings herein specified (with terms defined in the singular having comparable meanings when used in the plural).

"Business Day" shall mean any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions in New York City are authorized or required by law, regulation or executive order to close.

"Common Shares" shall mean the common shares of beneficial interest, $.01 par value per share, of the Trust.

"Distribution Period" shall have the meaning set forth in subparagraph (3) of paragraph B.

"Junior Shares" shall have the meaning set forth in subparagraph (2) of paragraph B.

"Person" shall mean an individual, corporation, partnership, estate, trust (including a trust qualified under Section 401(a) or 501(c)(17) of the Code), a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, association, private foundation within the meaning of Section 509(a) of the Code joint stock company or other entity, and also includes a group as that term is used for purposes of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended; but does not include an underwriter which participates in a public offering of the Series M-2 Preferred Shares provided that the ownership of Series M-2 Preferred Shares by such Underwriter would not result in the Trust being "closely held" within the meaning of Section 856(h) of the Code, or would otherwise result in the Trust failing to qualify as a REIT.

"Preferred Shares" shall mean shares of beneficial interest of the Trust designated as or otherwise on a parity with the Series M-2 Preferred Shares as to distributions and rights upon voluntary or involuntary liquidation, winding up or dissolution of the Trust as may be issued and outstanding from time to time, including Series A Preferred Shares and Series B Preferred Shares, Series C Preferred Shares, Series D Preferred Shares, Series E Preferred Shares, Series F Preferred Shares, Series G Preferred Shares, Series H Preferred Shares, Series J Preferred Shares, Series K Preferred Shares, Series L Preferred Shares, Series M Preferred Shares, Series M-1 Preferred Shares, and any other shares so designated.

"Quarterly Distribution Date" shall have the meaning set forth in subparagraph (3) of paragraph B below.

"Record Date" shall have the meaning set forth in subparagraph (3) of paragraph B below.

"REIT" shall mean a Real Estate Investment Trust under Section 856 of the Code.

"Series M-2 Redemption Date" shall have the meaning set forth in subparagraph (5) of paragraph B below.

"Series M-2 Redemption Price" shall have the meaning set forth in subparagraph (5) of paragraph B below.

All other capitalized terms used but not defined herein shall have the meanings ascribed to them in the Declaration of Trust.

B. Series M-2 Preferred Shares

(1) Number and Designation. A series of Preferred Shares, consisting of 600,000 Preferred Shares designated as 8.375% Series M-2 Cumulative Redeemable Preferred Shares of Beneficial Interest, $.01 par value per share (liquidation preference $50.00 per share) (the "Series M-2 Preferred Shares"), is hereby established.

(2) Ranking. In respect of rights to receive distributions and to participate in distributions or payments in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Trust, the Series M-2 Preferred Shares shall rank pari passu with

any other Preferred Shares of the Trust, and will rank senior to the Common Shares and any other class or series of shares of beneficial interest of the Trust ranking, as to distributions and upon liquidation, junior (collectively, the "Junior Shares") to the Preferred Shares.

(3) Distributions. The holders of the then outstanding Series M-2 Preferred Shares shall be entitled to receive, when and as authorized by the Board of Trustees and declared by the Trust out of any funds legally available therefor, cumulative distributions at the rate of $4.185 per share per year, payable in equal amounts of $1.046875 per share quarterly in arrears in cash on the fifteenth day, or if not a Business Day, the next succeeding Business Day, of January, April, July and October in each year (each such day being hereinafter called a "Quarterly Distribution Date" and each period ending on a Quarterly Distribution Date being hereinafter called a "Distribution Period"), beginning on the first Quarterly Distribution Date following the issuance of the Series M-2 Preferred Shares, to shareholders of record at the close of business on such date as shall be fixed by the Board of Trustees at the time of declaration of the distribution (the "Record Date"), which shall not be less than 10 nor more than 30 days preceding the Quarterly Distribution Date. The amount of any distribution payable for the initial Distribution Period and for any other Distribution Period shorter than a full Distribution Period shall be prorated and computed on the basis of a 360-day year of twelve 30-day months. Distributions on each Series M-2 Preferred Share shall accrue and be cumulative from and including the date of original issue thereof, whether or not (i) distributions on such shares are earned or declared or (ii) on any Quarterly Distribution Date there shall be funds legally available for the payment of distributions. Distributions paid on the Series M-2 Preferred Shares in an amount less than the total amount of such distributions at the time accrued and payable on such shares shall be allocated pro rata on a per share basis among all such shares at the time outstanding.

The amount of any distributions accrued on any Series M-2 Preferred Shares at any Quarterly Distribution Date shall be the amount of any unpaid distributions accumulated thereon, to and including such Quarterly Distribution Date, whether or not earned or declared, and the amount of distributions accrued on any Series M-2 Preferred Shares at any date other than a Quarterly Distribution Date shall be equal to the sum of the amount of any unpaid distributions accumulated thereon, to and including the last preceding Quarterly Distribution Date, whether or not earned or declared, plus an amount calculated on the basis of the annual distribution rate of $4.185 for the period after such last preceding Quarterly Distribution Date to and including the date as of which the calculation is made based on a 360-day year of twelve 30-day months.

In determining whether a distribution (other than upon voluntary or involuntary liquidation), by dividend, redemption or other acquisition of shares of beneficial interest of the Trust or otherwise, is permitted under Maryland law, amounts that would be needed, if the Trust were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of holders of Series M-2 Preferred Shares will not be added to the Trust's total liabilities.

Except as provided in these terms of the Series M-2 Preferred Shares, the Series M-2 Preferred Shares shall not be entitled to participate in the earnings or assets of the Trust.

(4) Liquidation Rights.

(a) Upon the voluntary or involuntary dissolution, liquidation or winding up of the Trust, the holders of the Series M-2 Preferred Shares then outstanding shall be entitled to receive and to be paid out of the assets of the Trust available for distribution to its shareholders, before any payment or distribution shall be made on any Junior Shares, the amount of $50.00 per Series M-2 Preferred Share, plus accrued and unpaid distributions thereon.

(b) After the payment to the holders of the Series M-2 Preferred Shares of the full preferential amounts provided for in this paragraph B, the holders of the Series M-2 Preferred Shares as such shall have no right or claim to any of the remaining assets of the Trust.

(c) If, upon any voluntary or involuntary dissolution, liquidation, or winding up of the Trust, the amounts payable with respect to the preference value of the Series M-2 Preferred Shares and any other shares of beneficial interest of the Trust ranking as to any such distribution on parity with the Series M-2 Preferred Shares are not paid in full, the holders of the Series M-2 Preferred Shares and of such other shares will share ratably in any such distribution of assets of the Trust in proportion to the full respective preference amounts to which they are entitled.

(d) Neither the sale of all or substantially all the property or business of the Trust, nor the merger or consolidation of the Trust into or with any other entity or the merger or consolidation of any other entity into or with the Trust, shall be deemed to be a dissolution, liquidation or winding up, voluntary or involuntary, for the purposes of this paragraph B.

(5) Redemption.

(a) Optional Redemption. On and after May 1, 2005, the Trust may, at its option, redeem at any time all or, from time to time, part of the Series M-2 Preferred Shares at a price per share (the "Series M-2 Redemption Price"), payable in cash, of $50.00 per Series M-2 Preferred Share, together with all accrued and unpaid distributions to and including the date fixed for redemption (the "Series M-2 Redemption Date").

(b) Procedures for Redemption.

(i) Notice of any redemption will be mailed by the Trust, postage prepaid, not less than 30 days nor more than 60 days prior to the Series M-2 Redemption Date, addressed to the holders of record of the Series

M-2 Preferred Shares to be redeemed at their addresses as they appear on the share transfer records of the Trust. No failure to give such notice or any defect therein or in the mailing thereof shall affect the validity of the proceedings for the redemption of any Series M-2 Preferred Shares except as to the holder to whom the Trust has failed to give notice or except as to the holder to whom notice was defective. In addition to any information required by law or by the applicable rules of any exchange upon which Series M-2 Preferred Shares may be listed or admitted to trading, such notice shall state: (a) the Series M-2 Redemption Date; (b) the Series M-2 Redemption Price; (c) the number of Series M-2 Preferred Shares to be redeemed; (d) the place or places where certificates for such shares are to be surrendered for payment of the Series M-2 Redemption Price; and (e) that distributions on the shares to be redeemed will cease to accumulate on the Series M-2 Redemption Date.

(ii) If notice has been mailed in accordance with subparagraph (5)(b)(i) above and provided that on or before the Series M-2 Redemption Date specified in such notice all funds necessary for such redemption shall have been irrevocably set aside by the Trust, separate and apart from its other funds in trust for the pro rata benefit of the holders of the Series M-2 Preferred Shares so called for redemption, so as to be, and to continue to be available therefor, then, from and after the Series M-2 Redemption Date (unless the Trust defaults in the payment of the Series M-2 Redemption Price), distributions on the Series M-2 Preferred Shares so called for redemption shall cease to accumulate, and said shares shall no longer be deemed to be outstanding and shall not have the status of Series M-2 Preferred Shares and all rights of the holders thereof as shareholders of the Trust (except the right to receive the Series M-2 Redemption Price) shall cease. Upon surrender, in accordance with said notice, of the certificates for any Series M-2 Preferred Shares so redeemed (properly endorsed or assigned for transfer, if the Trust shall so require and the notice shall so state), such Series M-2 Preferred Shares shall be redeemed by the Trust at the Series M-2 Redemption Price. In case fewer than all the Series M-2 Preferred Shares evidenced by any such certificate are redeemed, a new certificate or certificates shall be issued evidencing the unredeemed Series M-2 Preferred Shares without cost to the holder thereof.

(iii) Any funds deposited with a bank or trust company for the purpose of redeeming Series M-2 Preferred Shares shall be irrevocable except that:

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

(B) any balance of monies so deposited by the Trust and unclaimed by the holders of the Series M-2 Preferred Shares entitled thereto at the expiration of two years from the applicable Series M-2 Redemption Date shall be repaid, together with any interest or other earnings earned thereon, to the Trust, and after any such repayment, the holders of the shares entitled to the funds so repaid to the Trust shall look only to the Trust for payment without interest or other earnings.

(iv) No Series M-2 Preferred Shares may be redeemed except with funds legally available for the payment of the Series M-2 Redemption Price.

(v) Unless full accumulated distributions on all Series M-2 Preferred Shares shall have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past Distribution Periods and the then current Distribution Period, no Series M-2 Preferred Shares shall be redeemed (unless all outstanding Series M-2 Preferred Shares are simultaneously redeemed) or purchased or otherwise acquired directly or indirectly (except by conversion into or exchange for shares of beneficial interest of the Trust ranking junior to the Series M-2 Preferred Shares as to distributions and upon liquidation); provided, however, that the foregoing shall not prevent the redemption of Series M-2 Preferred Shares pursuant to Article VII of the Declaration of Trust or the purchase or acquisition of Series M-2 Preferred Shares pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding Series M-2 Preferred Shares.

(vi) If the Series M-2 Redemption Date is after a Record Date and before the related Quarterly Distribution Date, the distribution payable on such Quarterly Distribution Date shall be paid to the holder in whose name the Series M-2 Preferred Shares to be redeemed are registered at the close of business on such Record Date notwithstanding the redemption thereof between such Record Date and the related Quarterly Distribution Date or the Trust's default in the payment of the distribution due.

(vii) In case of redemption of less than all Series M-2 Preferred Shares at the time outstanding, the Series M-2 Preferred Shares to be redeemed shall be selected pro rata from the holders of record of such shares in proportion to the number of Series M-2 Preferred Shares held by such holders (with adjustments to avoid redemption of fractional shares) or by any other equitable method determined by the Trust.

(6) Voting Rights. Except as provided in these terms of the Series M-2 Preferred Shares, the holders of the Series M-2 Preferred Shares shall not be entitled to vote at any meeting of the shareholders for election of trustees or for any other purposes or otherwise to participate in any action taken by the Trust or the shareholders thereof, or to receive notice (except for such notice as required by law) of any meeting of shareholders.

(a) In any matter in which the Series M-2 Preferred Shares are entitled to vote (as expressly provided herein), including any action by written consent, each Series M-2 Preferred Share shall be entitled to 10 votes, each of which 10 votes may be directed separately by the holder thereof (or by any proxy or proxies of such holder). With respect to each Series M-2 Preferred Share, the holder thereof may designate up to 10 proxies, with each such proxy having the right to vote a whole number of votes (totaling 10 votes per Series M-2 Preferred Share).

(b) Whenever distributions on any Series M-2 Preferred Shares shall be in arrears for six or more quarterly periods, the holders of such Series M-2 Preferred Shares, voting separately as a class with all other series of Preferred Shares upon which like voting rights have been conferred and are exercisable, will be entitled to vote for the election of two additional Trustees of the Trust at a special meeting called by the holders of record of at least ten percent (10%) of any series of Preferred Shares so in arrears (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the shareholders) or at the next annual meeting of shareholders, and at each subsequent annual meeting until all distributions accumulated on such Series M-2 Preferred Shares for the past distribution periods and the then current distribution period shall have been fully paid or declared and a sum sufficient for the payment thereof set aside for payment. In such case, the entire Board of Trustees of the Trust will be increased by two Trustees.

(c) So long as any Series M-2 Preferred Shares remain outstanding, the Trust will not, without the affirmative vote or consent of the holders of at least two-thirds of the Series M-2 Preferred Shares outstanding at the time, given in person or by proxy, either in writing or at a meeting (such series voting separately as a class), (i) authorize or create, or increase the authorized or issued amount of, any class or series of shares of beneficial interest ranking senior to the Series M-2 Preferred Shares with respect to the payment of distributions or the distribution of assets upon liquidation, dissolution or winding up or reclassify any authorized shares of beneficial interest of the Trust into such shares, or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase any such shares; or (ii) amend, alter or repeal

the provisions of the Trust's Declaration of Trust or the terms of the Series M-2 Preferred Shares whether by merger, consolidation or otherwise (an "Event"), so as to materially and adversely affect any right, preference, privilege or voting power of the Series M-2 Preferred Shares or the holders thereof; provided, however, with respect to the occurrence of any Events set forth in (ii) above, so long as the Series M-2 Preferred Shares remain outstanding with the terms thereof materially unchanged, taking into account that upon the occurrence of an Event, the Trust may not be the surviving entity or the Series M-2 Preferred Shares that remain outstanding may bear a new title, designation and/or be issued by a different issuer, the occurrence of any such Event shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting power of holders of Series M-2 Preferred Shares and provided further that (x) any increase in the amount of the authorized Preferred Shares or the creation or issuance of any other Series M-2 Preferred Shares, or (y) any increase in the amount of authorized Series M-2 Preferred Shares or any other Preferred Shares, in each case ranking on a parity with or junior to the Series M-2 Preferred Shares with respect to payment of distributions or the distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting powers.

The foregoing voting provisions will not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding Series M-2 Preferred Shares shall have been redeemed or called for redemption and sufficient funds shall have been deposited in trust to effect such redemption.

(7) Conversion. The Series M-2 Preferred Shares are not convertible into or exchangeable for any other property or securities of the Trust, except into Excess Shares in connection with maintaining the ability of the Trust to qualify as a REIT.

C. Restrictions on Transfer. The Series M-2 Preferred Shares shall be subject to the restrictions on transfer and ownership of Shares in Article VII of the Declaration of Trust, as supplemented below.

(1) Certain Definitions.

For purposes of the Series M-2 Preferred Shares the following terms shall have the following meanings:

"Closing Date of the Series M-2 Preferred Shares Offering" shall mean the time and date of payment for and delivery of Series M-2 Preferred Shares issued pursuant to the exchange of Series B Preference Units of Lexford Properties, L.P.

"Special Triggering Event" shall mean either (i) the redemption or purchase by the Trust of all or a portion of the outstanding shares of beneficial interest in the Trust, or (ii) a change in the value of the Series M-2 Preferred Shares relative to any other class of beneficial interest in the Trust.

(2) Special Triggering Event. If during the period commencing on the Closing Date of the Series M-2 Preferred Shares Offering and prior to the Restriction Termination Date, a Special Triggering Event (if effective) or other event or occurrence (if effective) would result in any violation of section 7.2(a) of the Trust's Declaration of Trust (or would result in the Trust being "closely held" within the meaning of Section 856(h) of the Code or would otherwise cause the Trust to fail to qualify as a REIT), then (i) the number of Series M-2 Preferred Shares (rounded up to the nearest whole share) that would (but for this section) cause any Person to Beneficially Own either Series M-2 Preferred Shares, or to Beneficially Own Series M-2 Preferred Shares and any other shares of beneficial interest in the Trust, in violation of section 7.2(a) (or would result in the Trust being "closely held" or otherwise fail to qualify as a REIT) shall constitute "Excess Shares" and shall be treated as provided in Article VII. Such designation and treatment shall be effective as of the close of business on the Business Day prior to the date of the Special Triggering Event or other event or occurrence.

(3) Ambiguity. In the case of an ambiguity in the application of any of the provisions of this section, including any definition contained in paragraph (1), the Board of Trustees shall have the power to determine the application of this section with respect to any situation based on the facts known to it (subject, however, to the provisions of Section 7.2(a)).

(4) Exclusion of Other Rights.

The Series M-2 Preferred Shares shall not have any voting powers, preferences and relative, participating, optional or other special rights, other than those specifically set forth in these terms of the Series M-2 Preferred Shares (as such terms may be amended from time to time) and in the Declaration of Trust. The Series M-2 Preferred Shares shall have no preemptive or subscription rights.

(5) Headings of Subdivisions.

The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

(6) Severability of Provisions.

If any voting powers, preferences and relative, participating, optional and other special rights of the Series M-2 Preferred Shares and qualifications, limitations and restrictions thereof set forth in these terms of the Series M-2 Preferred Shares (as such terms may be amended from time to time) is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other voting powers,

preferences and relative, participating, optional and other special rights of Series M-2 Preferred Shares and qualifications, limitations and restrictions thereof set forth in these terms of the Series M-2 Preferred Shares (as so amended), which can be given effect without the invalid, unlawful or unenforceable voting powers, preferences, and relative, participating, optional or other special rights of Series M-2 Preferred Shares and qualifications, limitations and restrictions thereof herein set forth, shall nevertheless, remain in full force and effect and no preferences or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption of the Series M-2 Preferred Shares herein set forth shall be deemed dependent upon any other such voting powers, preferences and relative, participating, optional or other special right of Series M-2 Preferred Shares and qualifications, limitations and restrictions thereof unless so expressed herein.

SECTION 13.12. Series M-3 Preferred Shares.

1. A. Certain Definitions.

Unless the context otherwise requires, the terms defined in this subparagraph A of paragraph 1 shall have, for all purposes of these terms of the Series M-3 Preferred Shares, the meanings herein specified (with terms defined in the singular having comparable meanings when used in the plural).

"Business Day" shall mean any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions in New York City are authorized or required by law, regulation or executive order to close.

"Common Shares" shall mean the common shares of beneficial interest, $.01 par value per share, of the Trust.

"Distribution Period" shall have the meaning set forth in subparagraph (3) of paragraph B.

"Junior Shares" shall have the meaning set forth in subparagraph (2) of paragraph B.

"Person" shall mean an individual, corporation, partnership, estate, trust (including a trust qualified under Section 401(a) or 501(c)(17) of the Code), a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, association, private foundation within the meaning of Section 509(a) of the Code joint stock company or other entity, and also includes a group as that term is used for purposes of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended; but does not include an underwriter which participates in a public offering of the Series M-3 Preferred Shares provided that the ownership of Series M-3 Preferred Shares by such Underwriter would not result in the Trust being "closely held" within the meaning of Section 856(h) of the Code, or would otherwise result in the Trust failing to qualify as a REIT.

"Preferred Shares" shall mean shares of beneficial interest of the Trust designated as or otherwise on a parity with the Series M-3 Preferred Shares as to distributions and

rights upon voluntary or involuntary liquidation, winding up or dissolution of the Trust as may be issued and outstanding from time to time, including Series A Preferred Shares and Series B Preferred Shares, Series C Preferred Shares, Series D Preferred Shares, Series E Preferred Shares, Series F Preferred Shares, Series G Preferred Shares, Series H Preferred Shares, Series K Preferred Shares, Series L Preferred Shares, Series M Preferred Shares, Series M-1 Preferred Shares, Series M-2 Preferred Shares, and any other shares so designated.

"Quarterly Distribution Date" shall have the meaning set forth in subparagraph (3) of paragraph B below.

"Record Date" shall have the meaning set forth in subparagraph (3) of paragraph B below.

"REIT" shall mean a Real Estate Investment Trust under Section 856 of the Code.

"Series M-3 Redemption Date" shall have the meaning set forth in subparagraph (5) of paragraph B below.

"Series M-3 Redemption Price" shall have the meaning set forth in subparagraph (5) of paragraph B below.

All other capitalized terms used but not defined herein shall have the meanings ascribed to them in the Declaration of Trust.

B. Series M-3 Preferred Shares.

(1) Number and Designation. A series of Preferred Shares, consisting of 1,000,000 Preferred Shares designated as 8.50% Series M-3 Cumulative Redeemable Preferred Shares of Beneficial Interest, $.01 par value per share (liquidation preference $50.00 per share) (the "Series M-3 Preferred Shares"), is hereby established.

(2) Ranking. In respect of rights to receive distributions and to participate in distributions or payments in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Trust, the Series M-3 Preferred Shares shall rank pari passu with any other Preferred Shares of the Trust, and will rank senior to the Common Shares and any other class or series of shares of beneficial interest of the Trust ranking, as to distributions and upon liquidation, junior (collectively, the "Junior Shares") to the Preferred Shares.

(3) Distributions. The holders of the then outstanding Series M-3 Preferred Shares shall be entitled to receive, when and as authorized by the Board of Trustees and declared by the Trust out of any funds legally available therefor, cumulative distributions at the rate of $4.25 per share per year, payable in equal amounts of $1.0625 per share quarterly in arrears in cash on the fifteenth day, or if not a Business Day, the next succeeding Business Day, of January, April, July and October in each year (each such day being hereinafter called a "Quarterly Distribution Date" and each period ending on a Quarterly Distribution Date being hereinafter called a "Distribution Period"), beginning on the first Quarterly Distribution Date following the issuance of each of the Series M-3 Preferred Shares, to shareholders of record at the close of business on such

date as shall be fixed by the Board of Trustees at the time of declaration of the distribution (the "Record Date"), which shall not be less than 10 nor more than 30 days preceding the Quarterly Distribution Date. The amount of any distribution payable for the initial Distribution Period and for any other Distribution Period shorter than a full Distribution Period shall be prorated and computed on the basis of a 360-day year of twelve 30-day months. Distributions on each Series M-3 Preferred Share shall accrue and be cumulative from and including the date of original issue thereof, whether or not (i) distributions on such shares are earned or declared or (ii) on any Quarterly Distribution Date there shall be funds legally available for the payment of distributions. Distributions paid on the Series M-3 Preferred Shares in an amount less than the total amount of such distributions at the time accrued and payable on such shares shall be allocated pro rata on a per share basis among all such shares at the time outstanding.

The amount of any distributions accrued on any Series M-3 Preferred Shares at any Quarterly Distribution Date shall be the amount of any unpaid distributions accumulated thereon, to and including such Quarterly Distribution Date, whether or not earned or declared, and the amount of distributions accrued on any Series M-3 Preferred Shares at any date other than a Quarterly Distribution Date shall be equal to the sum of the amount of any unpaid distributions accumulated thereon, to and including the last preceding Quarterly Distribution Date, whether or not earned or declared, plus an amount calculated on the basis of the annual distribution rate of $4.25 for the period after such last preceding Quarterly Distribution Date to and including the date as of which the calculation is made based on a 360-day year of twelve 30-day months.

In determining whether a distribution (other than upon voluntary or involuntary liquidation), by dividend, redemption or other acquisition of shares of beneficial interest of the Trust or otherwise, is permitted under Maryland law, amounts that would be needed, if the Trust were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of holders of Series M-3 Preferred Shares will not be added to the Trust's total liabilities.

Except as provided in these terms of the Series M-3 Preferred Shares, the Series M-3 Preferred Shares shall not be entitled to participate in the earnings or assets of the Trust.

(4) Liquidation Rights.

(a) Upon the voluntary or involuntary dissolution, liquidation or winding up of the Trust, the holders of the Series M-3 Preferred Shares then outstanding shall be entitled to receive and to be paid out of the assets of the Trust available for distribution to its shareholders, before any payment or distribution shall be made on any Junior Shares, the amount of $50.00 per Series M-3 Preferred Share, plus accrued and unpaid distributions thereon.

(b) After the payment to the holders of the Series M-3 Preferred Shares of the full preferential amounts provided for in this paragraph B, the holders of the Series M-3 Preferred Shares as such shall have no right or claim to any of the remaining assets of the Trust.

(c) If, upon any voluntary or involuntary dissolution, liquidation, or winding up of the Trust, the amounts payable with respect to the preference value of the Series M-3 Preferred Shares and any other shares of beneficial interest of the Trust ranking as to any such distribution on parity with the Series M-3 Preferred Shares are not paid in full, the holders of the Series M-3 Preferred Shares and of such other shares will share ratably in any such distribution of assets of the Trust in proportion to the full respective preference amounts to which they are entitled.

(d) Neither the sale of all or substantially all the property or business of the Trust, nor the merger or consolidation of the Trust into or with any other entity or the merger or consolidation of any other entity into or with the Trust, shall be deemed to be a dissolution, liquidation or winding up, voluntary or involuntary, for the purposes of this paragraph B.

(5) Redemption.

(a) Optional Redemption. On and after August 11, 2005, the Trust may, at its option, redeem at any time all or, from time to time, part of the issued and outstanding Series M-3 Preferred Shares at a price per share (the "Series M-3 Redemption Price"), payable in cash, of $50.00 per Series M-3 Preferred Share, together with all accrued and unpaid distributions to and including the date fixed for redemption (the "Series M-3 Redemption Date").

(b) Procedures for Redemption.

(i) Notice of any redemption will be mailed by the Trust, postage prepaid, not less than 30 days nor more than 60 days prior to the Series M-3 Redemption Date, addressed to the holders of record of the Series M-3 Preferred Shares to be redeemed at their addresses as they appear on the share transfer records of the Trust. No failure to give such notice or any defect therein or in the mailing thereof shall affect the validity of the proceedings for the redemption of any Series M-3 Preferred Shares except as to the holder to whom the Trust has failed to give notice or except as to the holder to whom notice was defective. In addition to any information required by law or by the applicable rules of any exchange upon which Series M-3 Preferred Shares may be listed or admitted to trading, such notice shall state: (a) the Series M-3 Redemption Date; (b) the Series M-3 Redemption Price; (c) the number of Series M-3 Preferred Shares to be redeemed; (d) the place or places where certificates for such shares are to be surrendered for payment of the Series M-3 Redemption Price; and (e) that distributions on the shares to be redeemed will cease to accumulate on the Series M-3 Redemption Date.

(ii) If notice has been mailed in accordance with subparagraph (5)(b)(i) above and provided that on or before the Series M-3 Redemption Date specified in such notice all funds necessary for such redemption shall have been irrevocably set aside by the Trust, separate and apart from its other funds in trust for the pro rata benefit of the holders of the Series M-3 Preferred Shares so called for redemption, so as to be, and to continue to be available therefor, then, from and after the Series M-3 Redemption Date (unless the Trust defaults in the payment of the Series M-3 Redemption Price), distributions on the Series M-3 Preferred Shares so called for redemption shall cease to accumulate, and said shares shall no longer be deemed to be outstanding and shall not have the status of Series M-3 Preferred Shares and all rights of the holders thereof as shareholders of the Trust (except the right to receive the Series M-3 Redemption Price) shall cease. Upon surrender, in accordance with said notice, of the certificates for any Series M-3 Preferred Shares so redeemed (properly endorsed or assigned for transfer, if the Trust shall so require and the notice shall so state), such Series M-3 Preferred Shares shall be redeemed by the Trust at the Series M-3 Redemption Price. In case fewer than all the Series M-3 Preferred Shares evidenced by any such certificate are redeemed, a new certificate or certificates shall be issued evidencing the unredeemed Series M-3 Preferred Shares without cost to the holder thereof.

(iii) Any funds deposited with a bank or trust company for the purpose of redeeming Series M-3 Preferred Shares shall be irrevocable except that:

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

(B) any balance of monies so deposited by the Trust and unclaimed by the holders of the Series M-3 Preferred Shares entitled thereto at the expiration of two years from the applicable Series M-3 Redemption Date shall be repaid, together with any interest or other earnings earned thereon, to the Trust, and after any such repayment, the holders of the shares entitled to the funds so repaid to the Trust shall look only to the Trust for payment without interest or other earnings.

(iv) No Series M-3 Preferred Shares may be redeemed except with funds legally available for the payment of the Series M-3 Redemption Price.

(v) Unless full accumulated distributions on all Series M-3 Preferred Shares shall have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past Distribution Periods and the then current Distribution Period, no Series M-3 Preferred Shares shall be redeemed (unless all outstanding Series M-3 Preferred Shares are simultaneously redeemed) or purchased or otherwise acquired directly or indirectly (except by conversion into or exchange for shares of beneficial interest of the Trust ranking junior to the Series M-3 Preferred Shares as to distributions and upon liquidation); provided, however, that the foregoing shall not prevent the redemption of Series M-3 Preferred Shares pursuant to Article VII of the Declaration of Trust or the purchase or acquisition of Series M-3 Preferred Shares pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding Series M-3 Preferred Shares.

(vi) If the Series M-3 Redemption Date is after a Record Date and before the related Quarterly Distribution Date, the distribution payable on such Quarterly Distribution Date shall be paid to the holder in whose name the Series M-3 Preferred Shares to be redeemed are registered at the close of business on such Record Date notwithstanding the redemption thereof between such Record Date and the related Quarterly Distribution Date or the Trust's default in the payment of the distribution due.

(vii) In case of redemption of less than all Series M-3 Preferred Shares at the time outstanding, the Series M-3 Preferred Shares to be redeemed shall be selected pro rata from the holders of record of such shares in proportion to the number of Series M-3 Preferred Shares held by such holders (with adjustments to avoid redemption of fractional shares) or by any other equitable method determined by the Trust.

(6) Voting Rights. Except as provided in these terms of the Series M-3 Preferred Shares, the holders of the Series M-3 Preferred Shares shall not be entitled to vote at any meeting of the shareholders for election of trustees or for any other purposes or otherwise to participate in any action taken by the Trust or the shareholders thereof, or to receive notice (except for such notice as required by law) of any meeting of shareholders.

(a) In any matter in which the Series M-3 Preferred Shares are entitled to vote (as expressly provided herein), including any action by written consent, each Series M-3 Preferred Share shall be entitled to 10 votes, each of which 10 votes may be directed separately by the holder thereof (or by any proxy or proxies of such holder). With respect to each Series M-3 Preferred Share, the holder thereof may designate up to 10 proxies, with each such proxy having the right to vote a whole number of votes (totaling 10 votes per Series M-3 Preferred Share).

(b) Whenever distributions on any Series M-3 Preferred Shares shall be in arrears for six or more quarterly periods, the holders of such Series M-3 Preferred Shares, voting separately as a class with all other series of Preferred Shares upon which like voting rights have been conferred and are exercisable, will be entitled to vote for the election of two additional Trustees of the Trust at a special meeting called by the holders of record of at least ten percent (10%) of any series of Preferred Shares so in arrears (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the shareholders) or at the next annual meeting of shareholders, and at each subsequent annual meeting until all distributions accumulated on such Series M-3 Preferred Shares for the past distribution periods and the then current distribution period shall have been fully paid or declared and a sum sufficient for the payment thereof set aside for payment. In such case, the entire Board of Trustees of the Trust will be increased by two Trustees.

(c) So long as any Series M-3 Preferred Shares remain outstanding, the Trust will not, without the affirmative vote or consent of the holders of at least two-thirds of the Series M-3 Preferred Shares outstanding at the time, given in person or by proxy, either in writing or at a meeting (such series voting separately as a class), (i) authorize or create, or increase the authorized or issued amount of, any class or series of shares of beneficial interest ranking senior to the Series M-3 Preferred Shares with respect to the payment of distributions or the distribution of assets upon liquidation, dissolution or winding up or reclassify any authorized shares of beneficial interest of the Trust into such shares, or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase any such shares; or (ii) amend, alter or repeal the provisions of the Trust's Declaration of Trust or the terms of the Series M-3 Preferred Shares whether by merger, consolidation or otherwise (an "Event"), so as to materially and adversely affect any right, preference, privilege or voting power of the Series M-3 Preferred Shares or the holders thereof; provided, however, with respect to the occurrence of any Events set forth in (ii) above, so long as the Series M-3 Preferred Shares remain outstanding with the terms thereof materially unchanged, taking into account that upon the occurrence of an Event, the Trust may not be the surviving entity or the Series M-3 Preferred Shares that remain outstanding may bear a new title, designation and/or be issued by a different issuer, the occurrence of any such Event shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting power of holders of Series M-3 Preferred Shares and provided further that (x) any increase in the amount of the authorized Preferred Shares or the creation or issuance of any

other Series M-3 Preferred Shares, or (y) any increase in the amount of authorized Series M-3 Preferred Shares or any other Preferred Shares, in each case ranking on a parity with or junior to the Series M-3 Preferred Shares with respect to payment of distributions or the distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting powers.

The foregoing voting provisions will not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding Series M-3 Preferred Shares shall have been redeemed or called for redemption and sufficient funds shall have been deposited in trust to effect such redemption.

(7) Conversion. The Series M-3 Preferred Shares are not convertible into or exchangeable for any other property or securities of the Trust, except into Excess Shares in connection with maintaining the ability of the Trust to qualify as a REIT.

C. Restrictions on Transfer. The Series M-3 Preferred Shares shall be subject to the restrictions on transfer and ownership of Shares in Article VII of the Declaration of Trust, as supplemented below.

(1) Certain Definitions.

For purposes of the Series M-3 Preferred Shares the following terms shall have the following meanings:

"Closing Date of the Series M-3 Preferred Shares Offering" shall mean the time and date of payment for and delivery of Series M-3 Preferred Shares issued pursuant to the exchange of Series E Preference Units of Lexford Properties, L.P.

"Special Triggering Event" shall mean either (i) the redemption or purchase by the Trust of all or a portion of the outstanding shares of beneficial interest in the Trust, or (ii) a change in the value of the Series M-3 Preferred Shares relative to any other class of beneficial interest in the Trust.

(2) Special Triggering Event. If during the period commencing on the Closing Date of the Series M-3 Preferred Shares Offering and prior to the Restriction Termination Date, a Special Triggering Event (if effective) or other event or occurrence (if effective) would result in any violation of section 7.2(a) of the Trust's Declaration of Trust (or would result in the Trust being "closely held" within the meaning of Section 856(h) of the Code or would otherwise cause the Trust to fail to qualify as a REIT), then (i) the number of Series M-3 Preferred Shares (rounded up to the nearest whole share) that would (but for this section) cause any Person to Beneficially Own either Series M-3 Preferred Shares, or to Beneficially Own Series M-3 Preferred Shares and any other shares of beneficial interest in the Trust, in violation of section 7.2(a) (or would result in the Trust being "closely held" or otherwise fail to qualify as a REIT) shall constitute "Excess Shares" and shall be treated as provided in

Article VII. Such designation and treatment shall be effective as of the close of business on the Business Day prior to the date of the Special Triggering Event or other event or occurrence.

(3) Ambiguity. In the case of an ambiguity in the application of any of the provisions of this section, including any definition contained in paragraph (1), the Board of Trustees shall have the power to determine the application of this section with respect to any situation based on the facts known to it (subject, however, to the provisions of Section 7.2(a)).

(4) Exclusion of Other Rights.

The Series M-3 Preferred Shares shall not have any voting powers, preferences and relative, participating, optional or other special rights, other than those specifically set forth in these terms of the Series M-3 Preferred Shares (as such terms may be amended from time to time) and in the Declaration of Trust. The Series M-3 Preferred Shares shall have no preemptive or subscription rights.

(5) Headings of Subdivisions.

The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

(6) Severability of Provisions.

If any voting powers, preferences and relative, participating, optional and other special rights of the Series M-3 Preferred Shares and qualifications, limitations and restrictions thereof set forth in these terms of the Series M-3 Preferred Shares (as such terms may be amended from time to time) is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other voting powers, preferences and relative, participating, optional and other special rights of Series M-3 Preferred Shares and qualifications, limitations and restrictions thereof set forth in these terms of the Series M-3 Preferred Shares (as so amended), which can be given effect without the invalid, unlawful or unenforceable voting powers, preferences, and relative, participating, optional or other special rights of Series M-3 Preferred Shares and qualifications, limitations and restrictions thereof herein set forth, shall nevertheless, remain in full force and effect and no preferences or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption of the Series M-3 Preferred Shares herein set forth shall be deemed dependent upon any other such voting powers, preferences and relative, participating, optional or other special right of Series M-3 Preferred Shares and qualifications, limitations and restrictions thereof unless so expressed herein.

SECTION 13.13. Series M-4 Preferred Shares.

1. A. Certain Definitions.

Unless the context otherwise requires, the terms defined in this subparagraph A of paragraph 1 shall have, for all purposes of these terms of the Series M-4 Preferred Shares, the

meanings herein specified (with terms defined in the singular having comparable meanings when used in the plural).

"Business Day" shall mean any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions in New York City are authorized or required by law, regulation or executive order to close.

"Common Shares" shall mean the common shares of beneficial interest, $.01 par value per share, of the Trust.

"Distribution Period" shall have the meaning set forth in subparagraph (3) of paragraph B.

"Junior Shares" shall have the meaning set forth in subparagraph (2) of paragraph B.

"Person" shall mean an individual, corporation, partnership, estate, trust (including a trust qualified under Section 401(a) or 501(c)(17) of the Code), a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, association, private foundation within the meaning of Section 509(a) of the Code joint stock company or other entity, and also includes a group as that term is used for purposes of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended; but does not include an underwriter which participates in a public offering of the Series M-4 Preferred Shares provided that the ownership of Series M-4 Preferred Shares by such Underwriter would not result in the Trust being "closely held" within the meaning of Section 856(h) of the Code, or would otherwise result in the Trust failing to qualify as a REIT.

"Preferred Shares" shall mean shares of beneficial interest of the Trust designated as or otherwise on a parity with the Series M-4 Preferred Shares as to distributions and rights upon voluntary or involuntary liquidation, winding up or dissolution of the Trust as may be issued and outstanding from time to time, including Series A Preferred Shares and Series B Preferred Shares, Series C Preferred Shares, Series D Preferred Shares, Series E Preferred Shares, Series F Preferred Shares, Series G Preferred Shares, Series H Preferred Shares, Series K Preferred Shares, Series L Preferred Shares, Series M Preferred Shares, Series M-1 Preferred Shares, Series M-2 Preferred Shares, Series M-3 Preferred Shares, Series M-4 Preferred Shares and any other shares so designated.

"Quarterly Distribution Date" shall have the meaning set forth in subparagraph (3) of paragraph B below.

"Record Date" shall have the meaning set forth in subparagraph (3) of paragraph B below.

"REIT" shall mean a Real Estate Investment Trust under Section 856 of the Code.

"Series M-4 Redemption Date" shall have the meaning set forth in subparagraph (5) of paragraph B below.

"Series M-4 Redemption Price" shall have the meaning set forth in subparagraph (5) of paragraph B below.

All other capitalized terms used but not defined herein shall have the meanings ascribed to them in the Declaration of Trust.

B. Series M-4 Preferred Shares.

(1) Number and Designation. A series of Preferred Shares, consisting of 510,000 Preferred Shares designated as 7.875% Series M-4 Cumulative Redeemable Preferred Shares of Beneficial Interest, $.01 par value per share (liquidation preference $50.00 per share) (the "Series M-4 Preferred Shares"), is hereby established.

(2) Preferred Shares Issued Without Certificate. Some or all of the Series M-4 Preferred Shares may be issued without certificates at the discretion of the officers of the Trust which may act through the transfer agent with respect to the Series M-4 Preferred Shares.

(3) Ranking. In respect of rights to receive distributions and to participate in distributions or payments in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Trust, the Series M-4 Preferred Shares shall rank pari passu with any other Preferred Shares of the Trust, and will rank senior to the Common Shares and any other class or series of shares of beneficial interest of the Trust ranking, as to distributions and upon liquidation, junior (collectively, the "Junior Shares") to the Preferred Shares.

(4) Distributions. The holders of the then outstanding Series M-4 Preferred Shares shall be entitled to receive, when and as authorized by the Board of Trustees and declared by the Trust out of any funds legally available therefor, cumulative distributions at the rate of $3.9375 per share per year, payable in equal amounts of $.984375 per share quarterly in arrears in cash on the fifteenth day, or if not a Business Day, the next succeeding Business Day, of January, April, July and October in each year (each such day being hereinafter called a "Quarterly Distribution Date" and each period ending on a Quarterly Distribution Date being hereinafter called a "Distribution Period"), beginning on the first Quarterly Distribution Date following the issuance of the Series M-4 Preferred Shares, to shareholders of record at the close of business on such date as shall be fixed by the Board of Trustees at the time of declaration of the distribution (the "Record Date"), which shall not be less than 10 nor more than 30 days preceding the Quarterly Distribution Date. The amount of any distribution payable for the initial Distribution Period and for any other Distribution Period shorter than a full Distribution Period shall be prorated and computed on the basis of a 360-day year of twelve 30-day months. Distributions on each Series M-4 Preferred Share shall accrue and be cumulative from and including the date of original issue thereof, whether or not (i) distributions on such shares are earned or declared or (ii) on any Quarterly Distribution Date there shall be funds legally available for the payment of distributions. Distributions paid on the Series M-4 Preferred Shares in an amount less than the total amount of such distributions at the time accrued and payable on such shares shall be allocated pro rata on a per share basis among all such shares at the time outstanding.

The amount of any distributions accrued on any Series M-4 Preferred Shares at any Quarterly Distribution Date shall be the amount of any unpaid distributions accumulated thereon, to

and including such Quarterly Distribution Date, whether or not earned or declared, and the amount of distributions accrued on any Series M-4 Preferred Shares at any date other than a Quarterly Distribution Date shall be equal to the sum of the amount of any unpaid distributions accumulated thereon, to and including the last preceding Quarterly Distribution Date, whether or not earned or declared, plus an amount calculated on the basis of the annual distribution rate of $3.9375 for the period after such last preceding Quarterly Distribution Date to and including the date as of which the calculation is made based on a 360-day year of twelve 30-day months.

In determining whether a distribution (other than upon voluntary or involuntary liquidation), by dividend, redemption or other acquisition of shares of beneficial interest of the Trust or otherwise, is permitted under Maryland law, amounts that would be needed, if the Trust were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of holders of Series M-4 Preferred Shares will not be added to the Trust's total liabilities.

Except as provided in these terms of the Series M-4 Preferred Shares, the Series M-4 Preferred Shares shall not be entitled to participate in the earnings or assets of the Trust.

(5) Liquidation Rights.

(a) Upon the voluntary or involuntary dissolution, liquidation or winding up of the Trust, the holders of the Series M-4 Preferred Shares then outstanding shall be entitled to receive and to be paid out of the assets of the Trust available for distribution to its shareholders, before any payment or distribution shall be made on any Junior Shares, the amount of $50.00 per Series M-4 Preferred Share, plus accrued and unpaid distributions thereon.

(b) After the payment to the holders of the Series M-4 Preferred Shares of the full preferential amounts provided for in this paragraph B, the holders of the Series M-4 Preferred Shares as such shall have no right or claim to any of the remaining assets of the Trust.

(c) If, upon any voluntary or involuntary dissolution, liquidation, or winding up of the Trust, the amounts payable with respect to the preference value of the Series M-4 Preferred Shares and any other shares of beneficial interest of the Trust ranking as to any such distribution on parity with the Series M-4 Preferred Shares are not paid in full, the holders of the Series M-4 Preferred Shares and of such other shares will share ratably in any such distribution of assets of the Trust in proportion to the full respective preference amounts to which they are entitled.

(d) Neither the sale of all or substantially all the property or business of the Trust, nor the merger or consolidation of the Trust into or with any other entity or the merger or consolidation of any other entity into or with the Trust, shall be deemed to be a dissolution,

liquidation or winding up, voluntary or involuntary, for the purposes of this paragraph B.

(6) Redemption.

(a) Optional Redemption. On and after March 21, 2006, the Trust may, at its option, redeem at any time all or, from time to time, part of the Series M-4 Preferred Shares at a price per share (the "Series M-4 Redemption Price"), payable in cash, of $50.00 per Series M-4 Preferred Share, together with all accrued and unpaid distributions to and including the date fixed for redemption (the "Series M-4 Redemption Date").

(b) Procedures for Redemption.

(i) Notice of any redemption will be mailed by the Trust, postage prepaid, not less than 30 days nor more than 60 days prior to the Series M-4 Redemption Date, addressed to the holders of record of the Series M-4 Preferred Shares to be redeemed at their addresses as they appear on the share transfer records of the Trust. No failure to give such notice or any defect therein or in the mailing thereof shall affect the validity of the proceedings for the redemption of any Series M-4 Preferred Shares except as to the holder to whom the Trust has failed to give notice or except as to the holder to whom notice was defective. In addition to any information required by law or by the applicable rules of any exchange upon which Series M-4 Preferred Shares may be listed or admitted to trading, such notice shall state: (a) the Series M-4 Redemption Date; (b) the Series M-4 Redemption Price; (c) the number of Series M-4 Preferred Shares to be redeemed; (d) the place or places where certificates for such shares are to be surrendered for payment of the Series M-4 Redemption Price; and (e) that distributions on the shares to be redeemed will cease to accumulate on the Series M-4 Redemption Date.

(ii) If notice has been mailed in accordance with subparagraph (5)(b)(i) above and provided that on or before the Series M-4 Redemption Date specified in such notice all funds necessary for such redemption shall have been irrevocably set aside by the Trust, separate and apart from its other funds in trust for the pro rata benefit of the holders of the Series M-4 Preferred Shares so called for redemption, so as to be, and to continue to be available therefor, then, from and after the Series M-4 Redemption Date (unless the Trust defaults in the payment of the Series M-4 Redemption Price), distributions on the Series M-4 Preferred Shares so called for redemption shall cease to accumulate, and said shares shall no longer be deemed to be outstanding and shall not have the status of Series M-4 Preferred Shares and all rights of the holders thereof as shareholders of the Trust (except the right to receive the Series M-4 Redemption Price) shall cease. Upon surrender, in accordance with said notice, of the certificates for

any Series M-4 Preferred Shares so redeemed (properly endorsed or assigned for transfer, if the Trust shall so require and the notice shall so state), such Series M-4 Preferred Shares shall be redeemed by the Trust at the Series M-4 Redemption Price. In case fewer than all the Series M-4 Preferred Shares evidenced by any such certificate are redeemed, a new certificate or certificates shall be issued evidencing the unredeemed Series M-4 Preferred Shares without cost to the holder thereof.

(iii) Any funds deposited with a bank or trust company for the purpose of redeeming Series M-4 Preferred Shares shall be irrevocable except that:

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

(B) any balance of monies so deposited by the Trust and unclaimed by the holders of the Series M-4 Preferred Shares entitled thereto at the expiration of two years from the applicable Series M-4 Redemption Date shall be repaid, together with any interest or other earnings earned thereon, to the Trust, and, subject to escheat laws, after any such repayment, the holders of the shares entitled to the funds so repaid to the Trust shall look only to the Trust for payment without interest or other earnings.

(iv) No Series M-4 Preferred Shares may be redeemed except with funds legally available for the payment of the Series M-4 Redemption Price.

(v) Unless full accumulated distributions on all Series M-4 Preferred Shares shall have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past Distribution Periods and the then current Distribution Period, no Series M-4 Preferred Shares shall be redeemed (unless all outstanding Series M-4 Preferred Shares are simultaneously redeemed) or purchased or otherwise acquired directly or indirectly (except by conversion into or exchange for shares of beneficial interest of the Trust ranking junior to the Series M-4 Preferred Shares as to distributions and upon liquidation); provided, however, that the foregoing shall not prevent the redemption of Series M-4 Preferred Shares pursuant to Article VII of the Declaration of Trust or the purchase or acquisition of Series M-4 Preferred Shares pursuant

to a purchase or exchange offer made on the same terms to holders of all outstanding Series M-4 Preferred Shares.

(vi) If the Series M-4 Redemption Date is after a Record Date and before the related Quarterly Distribution Date, the distribution payable on such Quarterly Distribution Date shall be paid to the holder in whose name the Series M-4 Preferred Shares to be redeemed are registered at the close of business on such Record Date notwithstanding the redemption thereof between such Record Date and the related Quarterly Distribution Date or the Trust's default in the payment of the distribution due.

(vii) In case of redemption of less than all Series M-4 Preferred Shares at the time outstanding, the Series M-4 Preferred Shares to be redeemed shall be selected pro rata from the holders of record of such shares in proportion to the number of Series M-4 Preferred Shares held by such holders (with adjustments to avoid redemption of fractional shares) or by any other equitable method determined by the Trust.

(7) Voting Rights. Except as provided in these terms of the Series M-4 Preferred Shares, the holders of the Series M-4 Preferred Shares shall not be entitled to vote at any meeting of the shareholders for election of trustees or for any other purposes or otherwise to participate in any action taken by the Trust or the shareholders thereof, or to receive notice (except for such notice as required by law) of any meeting of shareholders.

(a) In any matter in which the Series M-4 Preferred Shares are entitled to vote (as expressly provided herein), including any action by written consent, each Series M-4 Preferred Share shall be entitled to 10 votes, each of which 10 votes may be directed separately by the holder thereof (or by any proxy or proxies of such holder). With respect to each Series M-4 Preferred Share, the holder thereof may designate up to 10 proxies, with each such proxy having the right to vote a whole number of votes (totaling 10 votes per Series M-4 Preferred Share).

(b) Whenever distributions on any Series M-4 Preferred Shares shall be in arrears for six or more quarterly periods, the holders of such Series M-4 Preferred Shares, voting separately as a class with all other series of Preferred Shares upon which like voting rights have been conferred and are exercisable, will be entitled to vote for the election of two additional Trustees of the Trust at a special meeting called by the holders of record of at least ten percent (10%) of any series of Preferred Shares so in arrears (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the shareholders) or at the next annual meeting of shareholders, and at each subsequent annual meeting until all distributions accumulated on such Series M-4 Preferred Shares for the past distribution periods and the then current

distribution period shall have been fully paid or declared and a sum sufficient for the payment thereof set aside for payment. In such case, the entire Board of Trustees of the Trust will be increased by two trustees.

(c) So long as any Series M-4 Preferred Shares remain outstanding, the Trust will not, without the affirmative vote or consent of the holders of at least two-thirds of the Series M-4 Preferred Shares outstanding at the time, given in person or by proxy, either in writing or at a meeting (such series voting separately as a class), (i) authorize or create, or increase the authorized or issued amount of, any class or series of shares of beneficial interest ranking senior to the Series M-4 Preferred Shares with respect to the payment of distributions or the distribution of assets upon liquidation, dissolution or winding up or reclassify any authorized shares of beneficial interest of the Trust into such shares, or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase any such shares; or (ii) amend, alter or repeal the provisions of the Trust's Declaration of Trust or the terms of the Series M-4 Preferred Shares whether by merger, consolidation or otherwise (an "Event"), so as to materially and adversely affect any right, preference, privilege or voting power of the Series M-4 Preferred Shares or the holders thereof; provided, however, with respect to the occurrence of any Events set forth in (ii) above, so long as the Series M-4 Preferred Shares remain outstanding with the terms thereof materially unchanged, taking into account that upon the occurrence of an Event, the Trust may not be the surviving entity or the Series M-4 Preferred Shares that remain outstanding may bear a new title, designation and/or be issued by a different issuer, the occurrence of any such Event shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting power of holders of Series M-4 Preferred Shares and provided further that (x) any increase in the amount of the authorized Preferred Shares or the creation or issuance of any other Series M-4 Preferred Shares, or (y) any increase in the amount of authorized Series M-4 Preferred Shares or any other Preferred Shares, in each case ranking on a parity with or junior to the Series M-4 Preferred Shares with respect to payment of distributions or the distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting powers.

The foregoing voting provisions will not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding Series M-4 Preferred Shares shall have been redeemed or called for redemption and sufficient funds shall have been deposited in trust to effect such redemption.

(8) Conversion. The Series M-4 Preferred Shares are not convertible into or exchangeable for any other property or securities of the Trust, except into Excess Shares in connection with maintaining the ability of the Trust to qualify as a REIT.

(9) Status of Redeemed or Reacquired Shares. All Series M-4 Preferred Shares that have been issued and redeemed or reacquired in any manner by the Trust shall become unclassified Preferred Shares available for subsequent reclassification and issuance.

C. Restrictions on Transfer. The Series M-4 Preferred Shares shall be subject to the restrictions on transfer and ownership of Shares in Article VII of the Declaration of Trust, as supplemented below.

(1) Certain Definitions.

For purposes of the Series M-4 Preferred Shares the following terms shall have the following meanings:

"Closing Date of the Series M-4 Preferred Shares Offering" shall mean the time and date of payment for and delivery of Series M-4 Preferred Shares issued pursuant to the exchange of Series G Cumulative Redeemable Preference Units of Lexford Properties, L.P.

"Special Triggering Event" shall mean either (i) the redemption or purchase by the Trust of all or a portion of the outstanding shares of beneficial interest in the Trust, or (ii) a change in the value of the Series M-4 Preferred Shares relative to any other class of beneficial interest in the Trust.

(2) Special Triggering Event. If during the period commencing on the Closing Date of the Series M-4 Preferred Shares Offering and prior to the Restriction Termination Date, a Special Triggering Event (if effective) or other event or occurrence (if effective) would result in any violation of section 7.2(a) of the Trust's Declaration of Trust (or would result in the Trust being "closely held" within the meaning of Section 856(h) of the Code or would otherwise cause the Trust to fail to qualify as a REIT), then (i) the number of Series M-4 Preferred Shares (rounded up to the nearest whole share) that would (but for this section) cause any Person to Beneficially Own either Series M-4 Preferred Shares, or to Beneficially Own Series M-4 Preferred Shares and any other shares of beneficial interest in the Trust, in violation of section 7.2(a) (or would result in the Trust being "closely held" or otherwise fail to qualify as a REIT) shall constitute "Excess Shares" and shall be treated as provided in Article VII. Such designation and treatment shall be effective as of the close of business on the Business Day prior to the date of the Special Triggering Event or other event or occurrence.

(3) Ambiguity. In the case of an ambiguity in the application of any of the provisions of this section, including any definition contained in paragraph (1), the Board of Trustees shall have the power to determine the application of this section with respect to any situation based on the facts known to it (subject, however, to the provisions of Section 7.2(a)).

(4) Exclusion of Other Rights.

The Series M-4 Preferred Shares shall not have any voting powers, preferences and relative, participating, optional or other special rights, other than those specifically set forth in these terms of the Series M-4 Preferred Shares (as such terms may be amended from time to time) and in the Declaration of Trust. The Series M-4 Preferred Shares shall have no preemptive or subscription rights.

(5) Headings of Subdivisions.

The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

(6) Severability of Provisions.

If any voting powers, preferences and relative, participating, optional and other special rights of the Series M-4 Preferred Shares and qualifications, limitations and restrictions thereof set forth in these terms of the Series M-4 Preferred Shares (as such terms may be amended from time to time) is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other voting powers, preferences and relative, participating, optional and other special rights of Series M-4 Preferred Shares and qualifications, limitations and restrictions thereof set forth in these terms of the Series M-4 Preferred Shares (as so amended), which can be given effect without the invalid, unlawful or unenforceable voting powers, preferences, and relative, participating, optional or other special rights of Series M-4 Preferred Shares and qualifications, limitations and restrictions thereof herein set forth, shall nevertheless remain in full force and effect and no preferences or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption of the Series M-4 Preferred Shares herein set forth shall be deemed dependent upon any other such voting powers, preferences and relative, participating, optional or other special right of Series M-4 Preferred Shares and qualifications, limitations and restrictions thereof unless so expressed herein.

SECTION 13.14. Series M-5 Preferred Shares.

1. A. Certain Definitions**.**

Unless the context otherwise requires, the terms defined in this subparagraph A of paragraph 1 shall have, for all purposes of these terms of the Series M-5 Preferred Shares, the meanings herein specified (with terms defined in the singular having comparable meanings when used in the plural).

"Business Day" shall mean any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions in New York City are authorized or required by law, regulation or executive order to close.

“Closing Date of the Series M-5 Preferred Shares Offering” shall have the meaning set forth in subparagraph (1) of paragraph C below.

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

“Common Shares” shall mean the common shares of beneficial interest, $.01 par value per share, of the Trust.

"Constituent Person" shall have the meaning set forth in subparagraph (7)(e) of paragraph B below.

"Conversion Price" shall mean the conversion price per Common Share for which the Series M-5 Preferred Shares are convertible, as such Conversion Price may be adjusted pursuant to subparagraph (7)(d) of paragraph (B) below. The initial conversion price shall be $ 66.19 per Common Share (equivalent to a conversion rate of 0.7554 Common Shares for each Series M-5 Preferred Share, with such Series M-5 Preferred Shares being ascribed their $50.00 liquidation value).

"Current Market Price" shall mean the current market price of publicly traded common shares or any other class of shares of beneficial interest or other security of the Trust or any other issuer for any day shall mean the last reported sales-price, regular way on such day or, if no sale takes place on such day, the average of the reported closing bid and asked prices on such day, regular way, in either case as reported on the New York Stock Exchange ("NYSE") or, if such security is not listed or admitted for trading on the NYSE, on the principal national securities exchange on which such security is listed or admitted for trading or, if not listed or admitted for trading on any national securities exchange, on the NASDAQ National Market, or, if such security is not quoted on such NASDAQ National Market, the average of the closing bid and asked prices on such day in the over-the-counter-market as reported by NASDAQ or, if bid and asked prices for such security on such day shall not have been reported through NASDAQ, the average of the bid and asked prices on such day as furnished by any NYSE member firm regularly making a market in such security selected for such purpose by the Chief Executive Officer or the Board of Trustees, or, if such security is not then currently traded on any established market and no bid and asked prices for such security on such day shall be available, the Current Market Price shall be as determined in good faith by the Chief Executive Officer or the Board of Trustees.

"Declaration of Trust" shall have the meaning set forth in Article First of these Articles Supplementary.

“Distribution Period” shall have the meaning set forth in subparagraph (3) of paragraph B below.

“Event” shall have the meaning set forth in subparagraph (6)(c) of paragraph B below.

“Fair Market Value” shall mean the average of the daily Current Market Prices for a Common Share during the five (5) consecutive Trading Days selected by the Trust commencing not more than twenty (20) Trading Days before, and ending not later than, the earlier of the day in question and the day before the "ex date" with respect to the issuance or distribution requiring such

computation. The term "ex date" when used with respect to any issuance or distribution means the first day on which the Common Shares trade regular way, without the right to receive such issuance or distribution, on the exchange or in the market, as the case may be, used to determine that day's Current Market Price.

"Issue Date" shall mean the first date on which the Series H Preference Units are issued.

“Junior Shares” shall have the meaning set forth in subparagraph (2) of paragraph B.

“Non-Electing Share” shall have the meaning set forth in subparagraph (7)(e) of paragraph B below.

“Person” shall mean an individual, corporation, partnership, estate, trust (including a trust qualified under Section 401(a) or 501(c)(17) of the Code), a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, association, private foundation within the meaning of Section 509(a) of the Code, joint stock company or other entity, and also includes a group as that term is used for purposes of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended, but does not include an underwriter which participates in a public offering of the Series M-5 Preferred Shares; provided, that the ownership of Series M-5 Preferred Shares by such Underwriter would not result in the Trust being “closely held” within the meaning of Section 856(h) of the Code, or would otherwise result in the Trust failing to qualify as a REIT.

"Preferred Shares" shall mean shares of beneficial interest of the Trust designated as or otherwise on a parity with the Series M-5 Preferred Shares as to distributions and rights upon voluntary or involuntary liquidation, winding up or dissolution of the Trust as may be issued and outstanding from time to time, including Series A Preferred Shares, Series B Preferred Shares, Series C Preferred Shares, Series D Preferred Shares, Series E Preferred Shares, Series F Preferred Shares, Series G Preferred Shares, Series H Preferred Shares, Series K Preferred Shares, Series L Preferred Shares, Series M Preferred Shares, Series M-1 Preferred Shares, Series M-2 Preferred Shares, Series M-3 Preferred Shares and Series M-4 Preferred Shares and any other shares so designated.

“Quarterly Distribution Date” shall have the meaning set forth in subparagraph (3) of paragraph B below.

“Record Date” shall have the meaning set forth in subparagraph (3) of paragraph B below.

“REIT” shall mean a Real Estate Investment Trust under Section 856 of the Code.

"Securities" shall have the meaning set forth in subparagraph (7)(d)(iii) of paragraph B below.

"Series H Preference Units" shall mean the 7.625% Series H Cumulative Convertible Redeemable Preference Units of Lexford Properties, L.P.

"Series M-5 Preferred Shares" shall have the meaning set forth in Article First of these Articles Supplementary.

“Series M-5 Redemption Date” shall have the meaning set forth in subparagraph (5) of paragraph B below.

“Series M-5 Redemption Price” shall have the meaning set forth in subparagraph (5) of paragraph B below.

“Special Triggering Event” shall have the meaning set forth in subparagraph (1) of paragraph C below.

"Trading Day" shall mean any day on which the securities in question are traded on the NYSE, or if such securities are not listed or admitted for trading on the NYSE, on the principal national securities exchange on which such securities are listed or admitted, or if not listed or admitted for trading on any national securities exchange, on the NASDAQ National Market, or if such securities are not quoted on such NASDAQ National Market, in the applicable securities market in which the securities are traded.

"Transaction" shall have the meaning set forth in subparagraph (7)(e) of paragraph B below.

"Transfer Agent" shall mean Fleet National Bank, which may act through its affiliate, EquiServe Limited Partnership, or such other agent or agents of the Trust as may be designated by the Board of Trustees or their designee as the transfer agent for the Series M-5 Preferred Shares.

"Trust" shall have the meaning set forth in Article First of these Articles Supplementary.

All other capitalized terms used but not defined herein shall have the meanings ascribed to them in the Declaration of Trust.

B. Series M-5 Preferred Shares

(1) Number and Designation. A series of Preferred Shares, consisting of 190,000 Preferred Shares designated as 7.625% Series M-5 Convertible Cumulative Redeemable Preferred Shares of Beneficial Interest, $.01 par value per share (liquidation preference $50.00 per share) (the “Series M-5 Preferred Shares”), is hereby established.

(2) Ranking. In respect of rights to receive distributions and to participate in distributions or payments in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Trust, the Series M-5 Preferred Shares shall rank pari passu with any other Preferred Shares of the Trust, and will rank senior to the Common Shares and any other class or series of shares of beneficial interest of the Trust ranking, as to distributions and upon liquidation, junior (collectively, the "Junior Shares") to the Preferred Shares.

(3) Distributions. The holders of the then outstanding Series M-5 Preferred Shares shall be entitled to receive, when and as authorized by the Board of Trustees and declared by the Trust out of any funds legally available therefor, cumulative distributions at the rate of $3.8125 per share per year, payable in equal amounts of $.953125 per share quarterly in arrears in cash on the fifteenth day, or if not a Business Day, the next succeeding Business Day, of January, April, July and October in each year (each such day being hereinafter called a "Quarterly Distribution Date" and each period ending on a Quarterly Distribution Date being hereinafter called a "Distribution Period"), beginning on the first Quarterly Distribution Date following the issuance of the Series M-5 Preferred Shares, to shareholders of record at the close of business on such date as shall be fixed by the Board of Trustees at the time of declaration of the distribution (the "Record Date"), which shall not be less than 10 nor more than 30 days preceding the Quarterly Distribution Date. The amount of any distribution payable for the initial Distribution Period and for any other Distribution Period shorter than a full Distribution Period shall be pro-rated and computed on the basis of a 360-day year of twelve 30-day months. Distributions on each Series M-5 Preferred Share shall accrue and be cumulative from and including the date of original issue thereof, whether or not (i) distributions on such shares are earned or declared or (ii) on any Quarterly Distribution Date there shall be funds legally available for the payment of distributions. Distributions paid on the Series M-5 Preferred Shares in an amount less than the total amount of such distributions at the time accrued and payable on such shares shall be allocated pro rata on a per share basis among all such shares at the time outstanding.

The amount of any distributions accrued on any Series M-5 Preferred Shares at any Quarterly Distribution Date shall be the amount of any unpaid distributions accumulated thereon, to and including such Quarterly Distribution Date, whether or not earned or declared, and the amount of distributions accrued on any Series M-5 Preferred Shares at any date other than a Quarterly Distribution Date shall be equal to the sum of the amount of any unpaid distributions accumulated thereon, to and including the last preceding Quarterly Distribution Date, whether or not earned or declared, plus an amount calculated on the basis of the annual distribution rate of $3.8125 for the period after such last preceding Quarterly Distribution Date to and including the date as of which the calculation is made based on a 360-day year of twelve 30-day months.

In determining whether a distribution (other than upon voluntary or involuntary liquidation), by dividend, redemption or other acquisition of shares of beneficial interest of the Trust or otherwise, is permitted under Maryland law, amounts that would be needed, if the Trust were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of holders of Series M-5 Preferred Shares will not be added to the Trust's total liabilities.

Except as provided in these terms of the Series M-5 Preferred Shares, the Series M-5 Preferred Shares shall not be entitled to participate in the earnings or assets of the Trust.

(4) Liquidation Rights.

(a) Upon the voluntary or involuntary dissolution, liquidation or winding up of the Trust, the holders of the Series M-5 Preferred Shares then outstanding shall be entitled to receive and to be paid out of the assets of the Trust available for distribution to its shareholders, before any payment or

distribution shall be made on any Junior Shares, the amount of $50.00 per Series M-5 Preferred Share, plus accrued and unpaid distributions thereon.

(b) After the payment to the holders of the Series M-5 Preferred Shares of the full preferential amounts provided for in this paragraph B, the holders of the Series M-5 Preferred Shares as such shall have no right or claim to any of the remaining assets of the Trust.

(c) If, upon any voluntary or involuntary dissolution, liquidation or winding up of the Trust, the amounts payable with respect to the preference value of the Series M-5 Preferred Shares and any other shares of beneficial interest of the Trust ranking as to any such distribution on parity with the Series M-5 Preferred Shares are not paid in full, the holders of the Series M-5 Preferred Shares and of such other shares will share ratably in any such distribution of assets of the Trust in proportion to the full respective preference amounts to which they are entitled.

(d) Neither the sale of all or substantially all of the property or business of the Trust, nor the merger or consolidation of the Trust into or with any other entity or the merger or consolidation of any other entity into or with the Trust, shall be deemed to be a dissolution, liquidation or winding up, voluntary or involuntary, for purposes of this paragraph B.

(5) Redemption.

(a) Optional Redemption. On and after March 23, 2006, the Trust may, at its option, redeem at any time all or, from time to time, part of the Series M-5 Preferred Shares at a price per share (the "Series M-5 Redemption Price"), payable in cash, of $50.00 per Series M-5 Preferred Share, together with all accrued and unpaid distributions to and including the date fixed for redemption (the "Series M-5 Redemption Date"), subject to the provisions of paragraph 7 herein.

(b) Procedures for Redemption.

(i) Notice of any redemption will be mailed by the Trust, postage prepaid, or sent via overnight delivery service, not less than 30 days nor more than 60 days prior to the Series M-5 Redemption Date, addressed to the holders of record of the Series M-5 Preferred Shares to be redeemed at their addresses as they appear on the share transfer records of the Trust. No failure to give such notice or any defect therein or in the mailing thereof shall affect the validity of the proceedings for the redemption of any Series M-5 Preferred Shares except as to the holder to whom the Trust has failed to give notice or except as to the holder to whom notice was defective. In addition to any information required by law or by the applicable rules of any exchange upon which Series M-5 Preferred Shares may be listed or admitted to trading, such notice shall state: (a) the Series M-5 Redemption Date; (b) the Series

M-5 Redemption Price; (c) the number of Series M-5 Preferred Shares to be redeemed; (d) the place or places where certificates for such shares are to be surrendered for payment of the Series M-5 Redemption Price; and (e) that distributions on the shares to be redeemed will cease to accumulate on the Series M-5 Redemption Date.

(ii) If notice has been mailed in accordance with subparagraph (5)(b)(i) above and provided that on or before the Series M-5 Redemption Date specified in such notice all funds necessary for such redemption shall have been irrevocably set aside by the Trust, separate and apart from its other funds in trust for the pro rata benefit of the holders of the Series M-5 Preferred Shares so called for redemption, so as to be, and to continue to be available therefor, then, from and after the Series M-5 Redemption Date (unless the Trust defaults in the payment of the Series M-5 Redemption Price), distributions on the Series M-5 Preferred Shares so called for redemption shall cease to accumulate, and said shares shall no longer be deemed to be outstanding and shall not have the status of Series M-5 Preferred Shares and all rights of the holders thereof as shareholders of the Trust (except the right to receive the Series M-5 Redemption Price) shall cease. If payment of the Series M-5 Preferred Shares is improperly withheld or refused and not paid by the Trust, distributions on such Series M-5 Preferred Shares will continue to accumulate from the original redemption date to the date of payment, in which case the actual payment date will be considered the date fixed for redemption for purposes of calculating the applicable Series M-5 Redemption Price. Upon surrender, in accordance with said notice, of the certificates for any Series M-5 Preferred Shares so redeemed (properly endorsed or assigned for transfer, if the Trust shall so require and the notice shall so state), such Series M-5 Preferred Shares shall be redeemed by the Trust at the Series M-5 Redemption Price. In case fewer than all the Series M-5 Preferred Shares evidenced by any such certificate are redeemed, a new certificate or certificates shall be issued evidencing the unredeemed Series M-5 Preferred Shares without cost to the holder thereof.

(iii) Any funds deposited with a bank or trust company for the purpose of redeeming Series M-5 Preferred Shares shall be irrevocable except that:

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

(B) any balance of monies so deposited by the Trust and unclaimed by the holders of the Series M-5 Preferred Shares entitled thereto at the expiration of two years from the applicable Series M-5 Redemption Date shall be repaid, together with any

interest or other earnings earned thereon, to the Trust, and after any such repayment, the holders of the shares entitled to the funds so repaid to the Trust shall look only to the Trust for payment without interest or other earnings.

(iv) No Series M-5 Preferred Shares may be redeemed except with funds legally available for the payment of the Series M-5 Redemption Price.

(v) Unless full accumulated distributions on all Series M-5 Preferred Shares shall have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past Distribution Periods and the then current Distribution Period, no Series M-5 Preferred Shares shall be redeemed (unless all outstanding Series M-5 Preferred Shares are simultaneously redeemed) or purchased or otherwise acquired directly or indirectly (except by conversion into or exchange for shares of beneficial interest of the Trust ranking junior to the Series M-5 Preferred Shares as to distributions and upon liquidation); provided, however, that the foregoing shall not prevent the redemption of Series M-5 Preferred Shares pursuant to Article VII of the Declaration of Trust or the purchase or acquisition of Series M-5 Preferred Shares.

(vi) If the Series M-5 Redemption Date is after a Record Date and before the related Quarterly Distribution Date, the distribution payable on such Quarterly Distribution Date shall be paid to the holder in whose name the Series M-5 Preferred Shares to be redeemed are registered at the close of business on such Record Date notwithstanding the redemption thereof between such Record Date and the related Quarterly Distribution Date or the Trust's default in the payment of the distribution due.

(vii) In case of redemption of less than all Series M-5 Preferred Shares at the time outstanding, the Series M-5 Preferred Shares to be redeemed shall be selected pro rata from the holders of record of such shares in proportion to the number of Series M-5 Preferred Shares held by such holders (with adjustments to avoid redemption of fractional shares) or by any other equitable method determined by the Trust.

(6) Voting Rights. Except as provided in these terms of the Series M-5 Preferred Shares, the holders of the Series M-5 Preferred Shares shall not be entitled to vote at any meeting of the shareholders for election of trustees or for any other purposes or otherwise to participate in any action taken by the Trust or the shareholders thereof, or to receive notice (except for such notice as required by law) of any meeting of shareholders.

(a) In any matter in which the Series M-5 Preferred Shares are entitled to vote (as expressly provided herein), including any action by written consent, each Series M-5 Preferred Share shall be entitled to 10 votes, each of which 10 votes may be directed separately by the holder thereof (or by any proxy or

proxies of such holder). With respect to each Series M-5 Preferred Share, the holder thereof may designate up to 10 proxies, with each such proxy having the right to vote a whole number of votes (totaling 10 votes per Series M-5 Preferred Share).

(b) Whenever distributions on any Series M-5 Preferred Shares shall be in arrears for six or more quarterly periods, the holders of such Series M-5 Preferred Shares, voting separately as a class with all other series of Preferred Shares upon which like voting rights have been conferred and are exercisable, will be entitled to vote for the election of two additional Trustees of the Trust at a special meeting called by the holders of record of at least ten percent (10%) of any series of Preferred Shares so in arrears (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the shareholders) or at the next annual meeting of shareholders, and at each subsequent annual meeting until all distributions accumulated on such Series M-5 Preferred Shares for the past distribution periods and the then current distribution period shall have been fully paid or declared and a sum sufficient for the payment thereof set aside for payment. In such case, the entire Board of Trustees of the Trust will be increased by two Trustees.

(c) So long as any Series M-5 Preferred Shares remain outstanding, the Trust will not, without the affirmative vote or consent of the holders of at least two-thirds of the Series M-5 Preferred Shares outstanding at the time, given in person or by proxy, either in writing or at a meeting (such series voting separately as a class), (i) authorize or create, or increase the authorized or issued amount of, any class or series of shares of beneficial interest ranking senior to the Series M-5 Preferred Shares with respect to the payment of distributions or the distribution of assets upon liquidation, dissolution or winding up or reclassify any authorized shares of beneficial interest of the Trust into such shares, or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase any such shares; or (ii) amend, alter or repeal the provisions of the Trust's Declaration of Trust or the terms of the Series M-5 Preferred Shares whether by merger, consolidation or otherwise (an "Event"), so as to materially and adversely affect any right, preference, privilege or voting power of the Series M-5 Preferred Shares or the holders thereof; provided, however, with respect to the occurrence of any Events set forth in (ii) above, so long as the Series M-5 Preferred Shares remain outstanding with the terms thereof materially unchanged, taking into account that upon the occurrence of an Event, the Trust may not be the surviving entity or the Series M-5 Preferred Shares that remain outstanding may bear a new title, designation and/or be issued by a different issuer, the occurrence of any such Event shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting power of holders of Series M-5 Preferred Shares and provided further that (x) any increase in the amount of the authorized Preferred Shares or the creation or issuance of any other Series M-5 Preferred Shares, or (y) any increase in the amount of authorized Series M-5 Preferred Shares or any other Preferred Shares, in each case

ranking on a parity with or junior to the Series M-5 Preferred Shares with respect to payment of distributions or the distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting powers.

The foregoing voting provisions will not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding Series M-5 Preferred Shares shall have been redeemed or called for redemption and sufficient funds shall have been deposited in trust to effect such redemption.

(7) Conversion. Holders of Series M-5 Preferred Shares shall have the right to convert all or a portion of such shares into Common Shares, as follows:

(a) Subject to and upon compliance with the provisions of this subparagraph (7), a holder of Series M-5 Preferred Shares shall have the right, at his or her option, at any time after March 23, 2011 to convert such shares into the number of fully paid and non-assessable Common Shares obtained by dividing the aggregate liquidation preference of such shares by the Conversion Price (as in effect at the time and on the date provided for in the last paragraph of subsection (b) of this subparagraph (7)) by surrendering such shares to be converted, such surrender to be made in the manner provided in subsection (b) of this subparagraph (7); provided, however, that a holder of Series M-5 Preferred Shares shall have the right to convert such shares as provided above, at his or her option, at any time subsequent to such shares being called for redemption pursuant to subparagraph (5), which right to convert such shares upon a call for redemption shall terminate at the close of business on the fifth Business Day preceding the Series M-5 Redemption Date fixed for such redemption, unless the Trust shall default in making payment of the Common Shares and any cash payable upon such redemption under subparagraph (5) hereof, in which case the holders will retain the conversion rights provided herein, and provided further that, prior to such time as the Series M-5 Preferred Shares have been registered for resale with the United States Securities and Exchange Commission and listed for trading on the NYSE or the NASDAQ National Market, the Series M-5 Preferred Shares shall be convertible in whole, but not in part, with respect to all of the outstanding Series M-5 Preferred Shares.

(b) In order to exercise the conversion right, the holder of each Series M-5 Preferred Share to be converted shall surrender the certificate representing such share, duly endorsed or assigned to the Trust or in blank, at the office of the Transfer Agent, accompanied by written notice to the Trust that the holder thereof elects to convert such Series M-5 Preferred Share delivered to the Trust by (a) fax and (b) certified mail postage prepaid or overnight delivery to: Equity Residential Properties Trust, Two North Riverside Plaza, Suite 400, Chicago, Illinois 60606, Attention: Bruce C. Strohm, facsimile number (312) 454-0039. Unless the shares issuable on conversion are to be issued in the same name as the name in which such Series M-5 Preferred Share is registered, each share surrendered for conversion shall be accompanied by instruments of transfer, in form satisfactory to the Trust, duly executed by the holder or such holder's duly authorized attorney and an amount sufficient to pay any transfer

or similar tax (or evidence reasonably satisfactory to the Trust demonstrating that such taxes have been paid).

Holders of Series M-5 Preferred Shares at the close of business on a distribution payment record date shall be entitled to receive the distribution payable on such shares on the corresponding Quarterly Distribution Date notwithstanding the conversion thereof following such distribution payment record date and prior to such Quarterly Distribution Date. However, Series M-5 Preferred Shares surrendered for conversion during the period between the close of business on any distribution payment record date and the opening of business on the corresponding Quarterly Distribution Date (except shares converted after the issuance of notice of redemption with respect to a Series M-5 Redemption Date during such period or coinciding with such Quarterly Distribution Date, such Series M-5 Preferred Shares being entitled to such distribution on the Quarterly Distribution Date) must be accompanied by payment of a pro rata portion of the distribution payable on such shares on such Quarterly Distribution Date equal to the product of (i) the amount of the quarterly distribution multiplied by (ii) a fraction, the numerator of which is the number of days beginning on the date of surrender of such Series M-5 Preferred Shares as provided in the preceding paragraph and ending on the Quarterly Distribution Date, and the denominator of which is 90. A holder of Series M-5 Preferred Shares on a distribution payment record date who (or whose transferees) tenders any such shares for conversion into Common Shares on such Quarterly Distribution Date will receive the distribution payable by the Trust on such Series M-5 Preferred Shares on such date, and the converting holder need not include payment of the amount of such distribution upon surrender of Series M-5 Preferred Shares for conversion. Except as provided above, the Trust shall make no payment or allowance for unpaid distributions, whether or not in arrears, on converted shares or for distributions on the Common Shares issued upon such conversion.

As promptly as practicable after the surrender of certificates representing Series M-5 Preferred Shares as aforesaid, the Trust shall issue and shall deliver at such office to such holder, or on his or her written order, a certificate or certificates for the number of full Common Shares issuable upon the conversion of such shares in accordance with the provisions of this subparagraph (7), and any fractional interest in respect of a Common Share arising upon such conversion shall be settled as provided in subsection (c) of this subparagraph (7).

Each conversion shall be deemed to have been effected immediately prior to the close of business on the date on which the certificates for Series M-5 Preferred Shares shall have been surrendered and such notice (and if applicable, payment of an amount equal to the distribution payable on such shares) received by the Trust as aforesaid, and the person or persons in whose name or names any certificate or certificates for Common Shares shall be issuable upon such conversion shall be deemed to have become the holder or holders of record of the shares represented thereby at such time on such date, and such conversion shall be at the Conversion Price in effect at such time and on such date unless the share transfer books of the Trust shall be closed on that date, in which event such person or persons shall be deemed to have become such holder or holders of record at the close of business on the next succeeding day on which such

share transfer books are open, but such conversion shall be at the Conversion Price in effect on the date on which such shares have been surrendered and such notice received by the Trust.

(c) No fractional shares or scrip representing fractions of Common Shares shall be issued upon conversion of the Series M-5 Preferred Shares. Instead of any fractional interest in a Common Share that would otherwise be deliverable upon the conversion of a share of Series M-5 Preferred Shares, the Trust shall pay to the holder of such share an amount in cash based upon the Current Market Price of the Common Shares on the Trading Day immediately preceding the date of conversion. If more than one Series M-5 Preferred Share shall be surrendered for conversion at one time by the same holder, the number of full Common Shares issuable upon conversion thereof shall be computed on the basis of the aggregate number of Series M-5 Preferred Shares so surrendered.

(d) The Conversion Price shall be adjusted from time to time as follows:

(i) If the Trust shall after the Issue Date (A) pay a distribution or make a distribution on its shares of beneficial interest in Common Shares, (B) subdivide its outstanding Common Shares into a greater number of shares, (C) combine its outstanding Common Shares into a smaller number of shares, or (D) issue any shares of beneficial interest by reclassification of its Common Shares, the Conversion Price in effect at the opening of business on the day following the date fixed for the determination of shareholders entitled to receive such distribution or at the opening of business on the day following the day on which such subdivision, combination or reclassification becomes effective, as the case may be, shall be adjusted so that the holder of any Series M-5 Preferred Shares thereafter surrendered for conversion shall be entitled to receive the number of Common Shares that such holder would have owned or have been entitled to receive after the happening of any of the events described above had such shares been converted immediately prior to the record date in the case of a distribution or the effective date in the case of a subdivision, combination or reclassification. An adjustment made pursuant to this subsection (i) shall become effective immediately after the opening of business on the day next following the record date (except as provided in paragraph (h) below) in the case of a distribution and shall become effective immediately after the opening of business on the day next following the effective date in the case of a subdivision, combination or reclassification.

(ii) If the Trust shall issue after the Issue Date rights, options or warrants to all holders of Common Shares entitling them (for a period expiring within 45 days after the record date mentioned below) to subscribe for or purchase Common Shares at a price per share less than the Fair Market Value per Common Share on the record date for the determination of shareholders entitled to receive such rights, options or warrants, then the Conversion Price in effect at the opening of business on the day next following such record date shall be adjusted to equal the price determined by multiplying (I) the Conversion Price in effect

immediately prior to the opening of business on the day following the date fixed for such determination by (II) a fraction, the numerator of which shall be the sum of (A) the number of Common Shares outstanding on the close of business on the date fixed for such determination and (B) the number of shares that the aggregate proceeds to the Trust from the exercise of such rights, options or warrants for Common Shares would purchase at such Fair Market Value, and the denominator of which shall be the sum of (A) the number of Common Shares outstanding on the close of business on the date fixed for such determination and (B) the number of additional Common Shares offered for subscription or purchase pursuant to such rights, options or warrants. Such adjustment shall become effective immediately after the opening of business on the day next following such record date (except as provided in subsection (h) below). In determining whether any rights, options or warrants entitle the holders of Common Shares to subscribe for or purchase Common Shares at less than the Fair Market Value, there shall be taken into account any consideration received by the Trust upon issuance and upon exercise of such rights, options or warrants, the value of such consideration, if other than cash, to be determined by the Chief Executive Officer or the Board of Trustees.

(iii) If the Trust shall distribute to all holders of its Common Shares any shares of beneficial interest of the Trust (other than Common Shares) or evidence of its indebtedness or assets (excluding cash distributions paid out of the total equity applicable to Common Shares, including revaluation equity, less the amount of stated capital attributable to Common Shares, determined on the basis of the most recent annual and quarterly consolidated cost basis balance sheets of the Trust and its consolidated subsidiaries available at the time of the declaration of the distribution) or rights or warrants to subscribe for or purchase any of its securities (excluding those rights and warrants issued to all holders of Common Shares entitling them for a period expiring within 45 days after the record date referred to in subsection (ii) above to subscribe for or purchase Common Shares, which rights and warrants are referred to in and treated under subsection (ii) above) (any of the foregoing being hereinafter in this subsection (iii) called the "Securities"), then in each case the Conversion Price shall be adjusted so that it shall equal the price determined by multiplying (I) the Conversion Price in effect immediately prior to the close of business on the date fixed for the determination of shareholders entitled to receive such distribution by (II) a fraction, the numerator of which shall be the Fair Market Value per Common Share on the record date mentioned below less the then fair market value (as determined by the Chief Executive Officer or the Board of Trustees, whose determination shall be conclusive) of the portion of the shares of beneficial interest or assets or evidences of indebtedness so distributed or of such rights or warrants applicable to one Common Share, and the denominator of which shall be the Fair Market Value per Common Share on the record date mentioned below. Such adjustment shall become effective immediately at the opening of business on the Business Day next following (except as provided in subsection (h) below) the record date for the determination of shareholders entitled to receive such distribution. For the purposes of this subsection (iii), the distribution of a Security, which is distributed not only to the holders of the Common Shares on the date fixed for the determination of shareholders entitled to such distribution of such Security, but also is distributed

with each Common Share delivered to a Person converting a Series M-5 Preferred Share after such determination date, shall not require an adjustment of the Conversion Price pursuant to this subsection (iii); provided that on the date, if any, on which a person converting a Series M-5 Preferred Share would no longer be entitled to receive such Security with a Common Share (other than as a result of the termination of all such Securities), a distribution of such Securities shall be deemed to have occurred, and the Conversion Price shall be adjusted as provided in this subsection (iii) (and such day shall be deemed to be "the date fixed for the determination of the shareholders entitled to receive such distribution" and "the record date" within the meaning of the two preceding sentences).

(iv) No adjustment in the Conversion Price shall be required unless such adjustment would require a cumulative increase or decrease of at least 1% in such price; provided, however, that any adjustments that by reason of this subsection (iv) are not required to be made shall be carried forward and taken into account in any subsequent adjustment until made; and provided, further, that any adjustment shall be required and made in accordance with the provisions of this subparagraph (7) (other than this subsection (iv)) not later than such time as may be required in order to preserve the tax-free nature of a distribution to the holders of Common Shares. Notwithstanding any other provisions of this subparagraph (7), the Trust shall not be required to make any adjustment of the Conversion Price for the issuance of any Common Shares pursuant to any plan providing for the reinvestment of distributions or interest payable on securities of the Trust and the investment of additional optional amounts in Common Shares under such plan. All calculations under this subparagraph (7) shall be made to the nearest cent with ($.005 being rounded upward) or to the nearest one-tenth of a share (with .05 of a share being rounded upward), as the case may be. Anything in this subsection (d) to the contrary notwithstanding, the Trust shall be entitled, to the extent permitted by law, to make such reductions in the Conversion Price, in addition to those required by this subsection (d), as it in its discretion shall determine to be advisable in order that any share distributions, subdivision of shares, reclassification or combination of shares, distribution of rights, options or warrants to purchase shares or securities, or a distribution of other assets (other than cash distributions) hereafter made by the Trust to its shareholders shall not be taxable.

(e) If the Trust shall be a party to any transaction (including, without limitation, a merger, consolidation, statutory share exchange, self tender offer for all or substantially all of the Common Shares, sale of all or substantially all of the Trust's assets or recapitalization of the Common Shares and excluding any transaction as to which subsection (d)(i) of this subparagraph (7) applied) (each of the foregoing being referred to herein as a "Transaction"), in each case as a result of which Common Shares shall be converted into the right to receive shares, stock, securities or other property (including cash or any combination thereof), each Series M-5 Preferred Share which is not converted into the right to receive shares, stock, securities or other property in connection with such Transaction shall thereafter be convertible into the kind and amount of shares, stock, securities and other property (including cash or any combination thereof) receivable upon the consummation of such Transaction by a

holder of that number of Common Shares into which one Series M-5 Preferred Share was convertible immediately prior to such Transaction, assuming such holder of Common Shares (i) is not a Person with which the Trust consolidated or into which the Trust merged or which merged into the Trust or to which such sale or transfer was made, as the case may be (a "Constituent Person"), or an affiliate of a Constituent Person and (ii) failed to exercise his or her rights of the election, if any, as to the kind or amount of shares, stock, securities and other property (including cash) receivable upon such Transaction (provided that if the kind or amount of shares, stock, securities and other property (including cash) receivable upon such Transaction is not the same for each Common Share of the Trust held immediately prior to such Transaction by other than a Constituent Person or an affiliate thereof and in respect of which such rights of election shall not have been exercised (the "Non-Electing Share"), then for purposes of this paragraph (e) the kind and amount of shares, securities and other property (including cash) receivable upon such Transaction by each Non-Electing Share shall be deemed to be the kind and amount so receivable per share by a plurality of the Non-Electing Shares). The Trust shall not be a party to any Transaction unless the terms of such Transaction are consistent with the provisions of this subsection (e), and it shall not consent or agree to the occurrence of any Transaction until the Trust has entered into an agreement with the successor or purchasing entity, as the case may be, for the benefit of the holders of the Series M-5 Preferred Shares that will contain provisions enabling the holders of the Series M-5 Preferred Shares that remain outstanding after such Transaction to convert into the consideration received by holders of Common Shares at the Conversion Price in effect immediately prior to such Transaction. The provisions of this subsection (e) shall similarly apply to successive Transactions.

(f) If:

(i) the Trust shall declare a distribution on the Common Shares (other than in cash out of the total equity applicable to Common Shares, including revaluation equity, less the amount of stated capital attributable to Common Shares, determined on the basis of the most recent annual and quarterly consolidated cost basis balance sheets of the Trust and its consolidated subsidiaries available at the time of the declaration of the distribution); or

(ii) the Trust shall authorize the granting to the holders of the Common Shares of rights or warrants to subscribe for or purchase any shares of any class or any other rights or warrants; or

(iii) there shall be any reclassifications of the Common Shares (other than an event to which subsection (d)(i) of this subparagraph (7) applied) or any consolidation or merger to which the Trust is a party and for which approval of any shareholders of the Trust is required, or a statutory share exchange involving the conversion or exchange of Common Shares into securities or other property, or a self tender offer by the Trust for all or substantially all of its outstanding Common Shares, or the sale or transfer of all or substantially all of the assets of the Trust as an entity and for which approval of any stockholder of the Trust is required; or

(iv) there shall occur the voluntary or involuntary liquidation, dissolution or winding up of the Trust,

then the Trust shall cause to be filed with the Transfer Agent and shall cause to be mailed to the holders of the Series M-5 Preferred Shares at their addresses as shown on the share records of the Trust, as promptly as possible, but at least 15 days prior to the applicable date hereinafter specified, a notice stating (A) the date on which a record is to be taken for the purpose of such distribution or rights or warrants, or, if a record is not to be taken, the date as of which the holders of Common Shares of record to be entitled to such distribution or rights or warrants are to be determined or (B) the date on which such reclassification, consolidation, merger, statutory share exchange, sale, transfer, liquidation, dissolution or winding up is expected to become effective, and the date as of which it is expected that holders of Common Shares of record shall be entitled to exchange their Common Shares for securities or other property, if any, deliverable upon such reclassification, consolidation, merger, statutory share exchange, sale, transfer, liquidation, dissolution or winding up. Failure to give or receive such notice or any defect therein shall not affect the legality or validity of the proceedings described in this subparagraph (7).

(g) Whenever the Conversion Price is adjusted as herein provided, the Trust shall promptly file with the Transfer Agent and the Depository an officer's certificate setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment, which certificate shall be conclusive evidence of the correctness of such adjustment absent manifest error. Promptly after delivery of such certificate, the Trust shall prepare a notice of such adjustment of the Conversion Price setting forth the adjusted Conversion Price and the effective date such adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Price to the holder of each Series M-5 Preferred Share at such holder's last address as shown on the share records of the Trust.

(h) In any case in which subsection (d) of this subparagraph (7) provides that an adjustment shall become effective on the date next following the record date for an event, the Trust may defer until the occurrence of such event (A) issuing to the holder of any Series M-5 Preferred Shares converted after such record date and before the occurrence of such event the additional Common Shares issuable upon such conversion by reason of the adjustment required by such event over and above the Common Shares issuable upon such conversion before giving effect to such adjustment and (B) fractionalizing any Series M-5 Preferred Share and/or paying to such holder any amount of cash in lieu of any fraction pursuant to subsection (c) of this subparagraph (7).

(i) There shall be no adjustment of the Conversion Price in case of the issuance of any shares of beneficial interest of the Trust in a reorganization, acquisition or other similar transaction except as specifically set forth in this subparagraph (7). If any action or Transaction would require adjustment of the Conversion Price pursuant to more than one subsection of this subparagraph (7), only

one adjustment shall be made, and such adjustment shall be the amount of adjustment that has the highest absolute value.

(j) If the Trust shall take any action affecting the Common Shares, other than action described in this subparagraph (7), that in the opinion of the Board of Trustees would materially adversely affect the conversion rights of the holders of the Series M-5 Preferred Shares, the Conversion Price for the Series M-5 Preferred Shares may be adjusted, to the extent permitted by law, in such manner, if any, and at such time, as the Board of Trustees, in its sole discretion, may determine to be equitable in the circumstances.

(k) The Trust covenants that it will at all times reserve and keep available, free from preemptive rights, out of the aggregate of its authorized but issued Common Shares, for the purpose of affecting conversion of the Series M-5 Preferred Shares, the full number of Common Shares deliverable upon the conversion of all outstanding Series M-5 Preferred Shares not theretofore converted. For purposes of this subsection (k), the number of Common Shares that shall be deliverable upon the conversion of all outstanding Series M-5 Preferred Shares shall be computed as if at the time of computation all such outstanding shares were held by a single holder.

The Trust covenants that any Common Shares issued upon conversion of the Series M-5 Preferred Shares shall be validly issued, fully paid and non-assessable. Before taking any action that would cause an adjustment reducing the Conversion Price below the then-par value of the Common Shares deliverable upon conversion of the Series M-5 Preferred Shares, the Trust will take any action that, in the opinion of its counsel, may be necessary in order that the Trust may validly and legally issue fully paid and nonassessable Common Shares at such adjusted Conversion Price.

The Trust shall endeavor to list the Common Shares required to be delivered upon conversion of the Series M-5 Preferred Shares, prior to such delivery, upon each national securities exchange, if any, upon which the outstanding Common Shares are listed at the time of such delivery.

Prior to the delivery of any securities that the Trust shall be obligated to deliver upon conversion of the Series M-5 Preferred Shares, the Trust shall endeavor to comply with all federal and state laws and regulations thereunder requiring the registration of such securities with, or any approval of or consent to the delivery thereof by any governmental authority.

(l) The Trust will pay any and all documentary stamp or similar issue or transfer taxes payable in respect of the issue or delivery of Common Shares or other securities or property on conversion of the Series M-5 Preferred Shares pursuant hereto; provided, however, that the Trust shall not be required to pay any tax that may be payable in respect of any transfer involved in the issue or delivery of Common Shares or other securities or property in a name other than that of title holder of the Series M-5 Preferred Shares to be converted, and no such issue or delivery shall be made unless and until the person requesting such issue or delivery has paid to the

Trust the amount of any such tax or established, to the reasonable satisfaction of the Trust, that such tax has been paid.

(m) In addition to the foregoing adjustments, the Company will be permitted to make such reductions in the Conversion Price as it considers to be advisable in order that any event treated for federal income tax purposes as a dividend of stock or stock rights will not be taxable to the holders of the Common Shares.

C. Restrictions on Transfer. The Series M-5 Preferred Shares shall be subject to the restrictions on transfer and ownership of Shares in Article VII of the Declaration of Trust, as supplemented below.

(1) Certain Definitions.

For purposes of the Series M-5 Preferred Shares the following terms shall have the following meanings:

"Closing Date of the Series M-5 Preferred Shares Offering" shall mean the time and date of payment for and delivery of Series M-5 Preferred Shares issued pursuant to the conversion of Series H Preference Units.

"Special Triggering Event" shall mean either (i) the redemption or purchase by the Trust of all or a portion of the outstanding shares of beneficial interest in the Trust, or (ii) a change in the value of the Series M-5 Preferred Shares relative to any other class of beneficial interest in the Trust.

(2) Special Triggering Event. If during the period commencing on the Closing Date of the Series M-5 Preferred Shares Offering and prior to the Restriction Termination Date, a Special Triggering Event (if effective) or other event or occurrence (if effective) would result in any violation of section 7.2(a) of the Trust's Declaration of Trust (or would result in the Trust being "closely held" within the meaning of Section 856(h) of the Code or would otherwise cause the Trust to fail to qualify as a REIT), then (i) the number of Series M-5 Preferred Shares (rounded up to the nearest whole share) that would (but for this section) cause any Person to Beneficially Own either Series M-5 Preferred Shares, or to Beneficially Own Series M-5 Preferred Shares and any other shares of beneficial interest in the Trust, in violation of section 7.2(a) (or would result in the Trust being "closely held" or otherwise fail to qualify as a REIT) shall constitute "Excess Shares" and shall be treated as provided in Article VII. Such designation and treatment shall be effective as of the close of business on the Business Day prior to the date of the Special Triggering Event or other event or occurrence.

(3) Ambiguity. In the case of an ambiguity in the application of any of the provisions of this section, including any definition contained in paragraph (1), the Board of Trustees shall have the power to determine the application of this section with respect to any situation based on the facts known to it (subject, however, to the provisions of Section 7.2(a)).

(4) Exclusion of Other Rights.

The Series M-5 Preferred Shares shall not have any voting powers, preferences and relative, participating, optional or other special rights, other than those specifically set forth in these terms of the Series M-5 Preferred Shares (as such terms may be amended from time to time) and in the Declaration of Trust. The Series M-5 Preferred Shares shall have no preemptive or subscription rights.

(5) Headings of Subdivisions.

The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

(6) Severability of Provisions.

If any voting powers, preferences and relative, participating, optional and other special rights of the Series M-5 Preferred Shares and qualifications, limitations and restrictions thereof set forth in these terms of the Series M-5 Preferred Shares (as such terms may be amended from time to time) is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other voting powers, preferences and relative, participating, optional and other special rights of Series M-5 Preferred Shares and qualifications, limitations and restrictions thereof set forth in these terms of the Series M-5 Preferred Shares (as so amended), which can be given effect without the invalid, unlawful or unenforceable voting powers, preferences, and relative, participating, optional or other special rights of Series M-5 Preferred Shares and qualifications, limitations and restrictions thereof herein set forth, shall nevertheless, remain in full force and effect and no preferences or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption of the Series M-5 Preferred Shares herein set forth shall be deemed dependent upon any other such voting powers, preferences and relative, participating, optional or other special rights of Series M-5 Preferred Shares and qualifications, limitations and restrictions thereof unless so expressed herein.

SECTION 13.15. Series M-6 Preferred Shares.

1. A. Certain Definitions.

Unless the context otherwise requires, the terms defined in this subparagraph A of paragraph 1 shall have, for all purposes of these terms of the Series M-6 Preferred Shares, the meanings herein specified (with terms defined in the singular having comparable meanings when used in the plural).

"Business Day" shall mean any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions in New York City are authorized or required by law, regulation or executive order to close.

"Closing Date of the Series M-6 Preferred Shares Offering" shall have the meaning set forth in subparagraph (1) of paragraph C below.

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

“Common Shares” shall mean the common shares of beneficial interest, $.01 par value per share, of the Trust.

"Constituent Person" shall have the meaning set forth in subparagraph (7)(e) of paragraph B below.

"Conversion Price" shall mean the conversion price per Common Share for which the Series M-6 Preferred Shares are convertible, as such Conversion Price may be adjusted pursuant to subparagraph (7)(d) of paragraph (B) below. The initial conversion price shall be $68.76 per Common Share (equivalent to a conversion rate of 0.7271 Common Shares for each Series M-6 Preferred Share, with such Series M-6 Preferred Shares being ascribed their $50.00 liquidation value).

"Current Market Price" shall mean the current market price of publicly traded common shares or any other class of shares of beneficial interest or other security of the Trust or any other issuer for any day shall mean the last reported sales-price, regular way on such day or, if no sale takes place on such day, the average of the reported closing bid and asked prices on such day, regular way, in either case as reported on the New York Stock Exchange ("NYSE") or, if such security is not listed or admitted for trading on the NYSE, on the principal national securities exchange on which such security is listed or admitted for trading or, if not listed or admitted for trading on any national securities exchange, on the NASDAQ National Market, or, if such security is not quoted on such NASDAQ National Market, the average of the closing bid and asked prices on such day in the over-the-counter-market as reported by NASDAQ or, if bid and asked prices for such security on such day shall not have been reported through NASDAQ, the average of the bid and asked prices on such day as furnished by any NYSE member firm regularly making a market in such security selected for such purpose by the Chief Executive Officer or the Board of Trustees, or, if such security is not then currently traded on any established market and no bid and asked prices for such security on such day shall be available, the Current Market Price shall be as determined in good faith by the Chief Executive Officer or the Board of Trustees.

"Declaration of Trust" shall have the meaning set forth in Article First of these Articles Supplementary.

“Distribution Period” shall have the meaning set forth in subparagraph (3) of paragraph B below.

“Event” shall have the meaning set forth in subparagraph (6)(c) of paragraph B below.

“Fair Market Value” shall mean the average of the daily Current Market Prices for a Common Share during the five (5) consecutive Trading Days selected by the Trust commencing not more than twenty (20) Trading Days before, and ending not later than, the earlier of the day in question and the day before the "ex date" with respect to the issuance or distribution requiring such computation. The term "ex date" when used with respect to any issuance or distribution means the first day on which the Common Shares trade regular way, without the right to receive such issuance or distribution, on the exchange or in the market, as the case may be, used to determine that day's Current Market Price.

"Issue Date" shall mean the first date on which the Series I Preference Units are issued.

“Junior Shares” shall have the meaning set forth in subparagraph (2) of paragraph B.

“Non-Electing Share” shall have the meaning set forth in subparagraph (7)(e) of paragraph B below.

“Person” shall mean an individual, corporation, partnership, estate, trust (including a trust qualified under Section 401(a) or 501(c)(17) of the Code), a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, association, private foundation within the meaning of Section 509(a) of the Code, joint stock company or other entity, and also includes a group as that term is used for purposes of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended, but does not include an underwriter which participates in a public offering of the Series M-6 Preferred Shares; provided, that the ownership of Series M-6 Preferred Shares by such Underwriter would not result in the Trust being “closely held” within the meaning of Section 856(h) of the Code, or would otherwise result in the Trust failing to qualify as a REIT.

"Preferred Shares" shall mean shares of beneficial interest of the Trust designated as or otherwise on a parity with the Series M-6 Preferred Shares as to distributions and rights upon voluntary or involuntary liquidation, winding up or dissolution of the Trust as may be issued and outstanding from time to time, including Series A Preferred Shares, Series B Preferred Shares, Series C Preferred Shares, Series D Preferred Shares, Series E Preferred Shares, Series F Preferred Shares, Series G Preferred Shares, Series H Preferred Shares, Series K Preferred Shares, Series L Preferred Shares, Series M Preferred Shares, Series M-1 Preferred Shares, Series M-2 Preferred Shares, Series M-3 Preferred Shares, Series M-4 Preferred Shares and Series M-5 Preferred Shares and any other shares so designated.

“Quarterly Distribution Date” shall have the meaning set forth in subparagraph (3) of paragraph B below.

“Record Date” shall have the meaning set forth in subparagraph (3) of paragraph B below.

“REIT” shall mean a Real Estate Investment Trust under Section 856 of the Code.

"Securities" shall have the meaning set forth in subparagraph (7)(d)(iii) of paragraph B below.

"Series I Preference Units" shall mean the 7.625% Series I Cumulative Convertible Redeemable Preference Units of Lexford Properties, L.P.

"Series M-6 Preferred Shares" shall have the meaning set forth in Article First of these Articles Supplementary.

“Series M-6 Redemption Date” shall have the meaning set forth in subparagraph (5) of paragraph B below.

“Series M-6 Redemption Price” shall have the meaning set forth in subparagraph (5) of paragraph B below.

“Special Triggering Event” shall have the meaning set forth in subparagraph (1) of paragraph C below.

"Trading Day" shall mean any day on which the securities in question are traded on the NYSE, or if such securities are not listed or admitted for trading on the NYSE, on the principal national securities exchange on which such securities are listed or admitted, or if not listed or admitted for trading on any national securities exchange, on the NASDAQ National Market, or if such securities are not quoted on such NASDAQ National Market, in the applicable securities market in which the securities are traded.

"Transaction" shall have the meaning set forth in subparagraph (7)(e) of paragraph B below.

"Transfer Agent" shall mean Fleet National Bank, which may act through its affiliate, EquiServe Trust Company, N.A., or such other agent or agents of the Trust as may be designated by the Board of Trustees or their designee as the transfer agent for the Series M-6 Preferred Shares.

"Trust" shall have the meaning set forth in Article First of these Articles Supplementary.

All other capitalized terms used but not defined herein shall have the meanings ascribed to them in the Declaration of Trust.

B. Series M-6 Preferred Shares.

(1) Number and Designation. A series of Preferred Shares, consisting of 270,000 Preferred Shares designated as 7.625% Series M-6 Convertible Cumulative Redeemable Preferred Shares of Beneficial Interest, $.01 par value per share (liquidation preference $50.00 per share) (the “Series M-6 Preferred Shares”), is hereby established.

(2) Ranking. In respect of rights to receive distributions and to participate in distributions or payments in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Trust, the Series M-6 Preferred Shares shall rank pari passu with any other Preferred Shares of the Trust, and will rank senior to the Common Shares and any other class or series of shares of beneficial interest of the Trust ranking, as to distributions and upon liquidation, junior (collectively, the "Junior Shares") to the Preferred Shares.

(3) Distributions. The holders of the then outstanding Series M-6 Preferred Shares shall be entitled to receive, when and as authorized by the Board of Trustees and declared by the Trust out of any funds legally available therefor, cumulative distributions at the rate of $3.8125 per share per year, payable in equal amounts of $.953125 per share quarterly in arrears in cash on the

fifteenth day, or if not a Business Day, the next succeeding Business Day, of January, April, July and October in each year (each such day being hereinafter called a "Quarterly Distribution Date" and each period ending on a Quarterly Distribution Date being hereinafter called a "Distribution Period"), beginning on the first Quarterly Distribution Date following the issuance of the Series M-6 Preferred Shares, to shareholders of record at the close of business on such date as shall be fixed by the Board of Trustees at the time of declaration of the distribution (the "Record Date"), which shall not be less than 10 nor more than 30 days preceding the Quarterly Distribution Date. The amount of any distribution payable for the initial Distribution Period and for any other Distribution Period shorter than a full Distribution Period shall be pro-rated and computed on the basis of a 360-day year of twelve 30-day months. Notwithstanding anything to the contrary set forth herein, if and when the holders of the Series I Lexford Preference Units exercise their right to convert the Series I Lexford Preference Units into Series M-6 Preferred Shares, the amount of any distribution payable for the initial Distribution Period shall include any and all amounts of distributions accrued but not yet paid on the Series I Lexford Preference Units in accordance with Section 9(B)(ii) of the Other Securities Term Sheet and Joinder to Amended and Restated Limited Partnership Agreement of Lexford Properties, L.P. Distributions on each Series M-6 Preferred Share shall accrue and be cumulative from and including the date of original issue thereof, whether or not (i) distributions on such shares are earned or declared or (ii) on any Quarterly Distribution Date there shall be funds legally available for the payment of distributions. Distributions paid on the Series M-6 Preferred Shares in an amount less than the total amount of such distributions at the time accrued and payable on such shares shall be allocated pro rata on a per share basis among all such shares at the time outstanding.

The amount of any distributions accrued on any Series M-6 Preferred Shares at any Quarterly Distribution Date shall be the amount of any unpaid distributions accumulated thereon, to and including such Quarterly Distribution Date, whether or not earned or declared, and the amount of distributions accrued on any Series M-6 Preferred Shares at any date other than a Quarterly Distribution Date shall be equal to the sum of the amount of any unpaid distributions accumulated thereon, to and including the last preceding Quarterly Distribution Date, whether or not earned or declared, plus an amount calculated on the basis of the annual distribution rate of $3.8125 for the period after such last preceding Quarterly Distribution Date to and including the date as of which the calculation is made based on a 360-day year of twelve 30-day months.

In determining whether a distribution (other than upon voluntary or involuntary liquidation), by dividend, redemption or other acquisition of shares of beneficial interest of the Trust or otherwise, is permitted under Maryland law, amounts that would be needed, if the Trust were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of holders of Series M-6 Preferred Shares will not be added to the Trust's total liabilities.

Except as provided in these terms of the Series M-6 Preferred Shares, the Series M-6 Preferred Shares shall not be entitled to participate in the earnings or assets of the Trust.

(4) Liquidation Rights.

(a) Upon the voluntary or involuntary dissolution, liquidation or winding up of the Trust, the holders of the Series M-6 Preferred Shares then outstanding shall be entitled to receive and to be paid out of the assets of the Trust available for distribution to its shareholders, before any payment or

distribution shall be made on any Junior Shares, the amount of $50.00 per Series M-6 Preferred Share, plus accrued and unpaid distributions thereon.

(b) After the payment to the holders of the Series M-6 Preferred Shares of the full preferential amounts provided for in this paragraph B, the holders of the Series M-6 Preferred Shares as such shall have no right or claim to any of the remaining assets of the Trust.

(c) If, upon any voluntary or involuntary dissolution, liquidation or winding up of the Trust, the amounts payable with respect to the preference value of the Series M-6 Preferred Shares and any other shares of beneficial interest of the Trust ranking as to any such distribution on parity with the Series M-6 Preferred Shares are not paid in full, the holders of the Series M-6 Preferred Shares and of such other shares will share ratably in any such distribution of assets of the Trust in proportion to the full respective preference amounts to which they are entitled.

(d) Neither the sale of all or substantially all of the property or business of the Trust, nor the merger or consolidation of the Trust into or with any other entity or the merger or consolidation of any other entity into or with the Trust, shall be deemed to be a dissolution, liquidation or winding up, voluntary or involuntary, for purposes of this paragraph B.

(5) Redemption.

(a) Optional Redemption. On and after June 22, 2006, the Trust may, at its option, redeem at any time all or, from time to time, part of the Series M-6 Preferred Shares at a price per share (the "Series M-6 Redemption Price"), payable in cash, of $50.00 per Series M-6 Preferred Share, together with all accrued and unpaid distributions to and including the date fixed for redemption (the "Series M-6 Redemption Date"), subject to the provisions of paragraph 7 herein.

(b) Procedures for Redemption.

(i) Notice of any redemption will be mailed by the Trust, postage prepaid, or sent via overnight delivery service, not less than 30 days nor more than 60 days prior to the Series M-6 Redemption Date, addressed to the holders of record of the Series M-6 Preferred Shares to be redeemed at their addresses as they appear on the share transfer records of the Trust. No failure to give such notice or any defect therein or in the mailing thereof shall affect the validity of the proceedings for the redemption of any Series M-6 Preferred Shares except as to the holder to whom the Trust has failed to give notice or except as to the holder to whom notice was defective. In addition to any information required by law or by the applicable rules of any exchange upon which Series M-6 Preferred Shares may be listed or admitted to trading, such notice shall state: (a) the Series M-6 Redemption Date; (b) the Series M-6

Redemption Price; (c) the number of Series M-6 Preferred Shares to be redeemed; (d) the place or places where certificates for such shares are to be surrendered for payment of the Series M-6 Redemption Price; and (e) that distributions on the shares to be redeemed will cease to accumulate on the Series M-6 Redemption Date.

(ii) If notice has been mailed in accordance with subparagraph (5)(b)(i) above and provided that on or before the Series M-6 Redemption Date specified in such notice all funds necessary for such redemption shall have been irrevocably set aside by the Trust, separate and apart from its other funds in trust for the pro rata benefit of the holders of the Series M-6 Preferred Shares so called for redemption, so as to be, and to continue to be available therefor, then, from and after the Series M-6 Redemption Date (unless the Trust defaults in the payment of the Series M-6 Redemption Price), distributions on the Series M-6 Preferred Shares so called for redemption shall cease to accumulate, and said shares shall no longer be deemed to be outstanding and shall not have the status of Series M-6 Preferred Shares and all rights of the holders thereof as shareholders of the Trust (except the right to receive the Series M-6 Redemption Price) shall cease. If payment of the Series M-6 Preferred Shares is improperly withheld or refused and not paid by the Trust, distributions on such Series M-6 Preferred Shares will continue to accumulate from the original redemption date to the date of payment, in which case the actual payment date will be considered the date fixed for redemption for purposes of calculating the applicable Series M-6 Redemption Price. Upon surrender, in accordance with said notice, of the certificates for any Series M-6 Preferred Shares so redeemed (properly endorsed or assigned for transfer, if the Trust shall so require and the notice shall so state), such Series M-6 Preferred Shares shall be redeemed by the Trust at the Series M-6 Redemption Price. In case fewer than all the Series M-6 Preferred Shares evidenced by any such certificate are redeemed, a new certificate or certificates shall be issued evidencing the unredeemed Series M-6 Preferred Shares without cost to the holder thereof.

(iii) Any funds deposited with a bank or trust company for the purpose of redeeming Series M-6 Preferred Shares shall be irrevocable except that:

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

(B) any balance of monies so deposited by the Trust and unclaimed by the holders of the Series M-6 Preferred Shares entitled thereto at the expiration of two years from the applicable Series M-6 Redemption Date shall

be repaid, together with any interest or other earnings earned thereon, to the Trust, and after any such repayment, the holders of the shares entitled to the funds so repaid to the Trust shall look only to the Trust for payment without interest or other earnings.

(iv) No Series M-6 Preferred Shares may be redeemed except with funds legally available for the payment of the Series M-6 Redemption Price.

(v) Unless full accumulated distributions on all Series M-6 Preferred Shares shall have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past Distribution Periods and the then current Distribution Period, no Series M-6 Preferred Shares shall be redeemed (unless all outstanding Series M-6 Preferred Shares are simultaneously redeemed) or purchased or otherwise acquired directly or indirectly (except by conversion into or exchange for shares of beneficial interest of the Trust ranking junior to the Series M-6 Preferred Shares as to distributions and upon liquidation); provided, however, that the foregoing shall not prevent the redemption of Series M-6 Preferred Shares pursuant to Article VII of the Declaration of Trust or the purchase or acquisition of Series M-6 Preferred Shares.

(vi) If the Series M-6 Redemption Date is after a Record Date and before the related Quarterly Distribution Date, the distribution payable on such Quarterly Distribution Date shall be paid to the holder in whose name the Series M-6 Preferred Shares to be redeemed are registered at the close of business on such Record Date notwithstanding the redemption thereof between such Record Date and the related Quarterly Distribution Date or the Trust's default in the payment of the distribution due.

(vii) In case of redemption of less than all Series M-6 Preferred Shares at the time outstanding, the Series M-6 Preferred Shares to be redeemed shall be selected pro rata from the holders of record of such shares in proportion to the number of Series M-6 Preferred Shares held by such holders (with adjustments to avoid redemption of fractional shares) or by any other equitable method determined by the Trust.

(6) Voting Rights. Except as provided in these terms of the Series M-6 Preferred Shares, the holders of the Series M-6 Preferred Shares shall not be entitled to vote at any meeting of the shareholders for election of trustees or for any other purposes or otherwise to participate in any action taken by the Trust or the shareholders thereof, or to receive notice (except for such notice as required by law) of any meeting of shareholders.

(a) In any matter in which the Series M-6 Preferred Shares are entitled to vote (as expressly provided herein), including any action by written consent, each Series M-6 Preferred Share shall be entitled to 10 votes, each of which 10 votes may be directed separately by the holder thereof (or by any proxy or proxies of such

holder). With respect to each Series M-6 Preferred Share, the holder thereof may designate up to 10 proxies, with each such proxy having the right to vote a whole number of votes (totaling 10 votes per Series M-6 Preferred Share).

(b) Whenever distributions on any Series M-6 Preferred Shares shall be in arrears for six or more quarterly periods, the holders of such Series M-6 Preferred Shares, voting separately as a class with all other series of Preferred Shares upon which like voting rights have been conferred and are exercisable, will be entitled to vote for the election of two additional Trustees of the Trust at a special meeting called by the holders of record of at least ten percent (10%) of any series of Preferred Shares so in arrears (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the shareholders) or at the next annual meeting of shareholders, and at each subsequent annual meeting until all distributions accumulated on such Series M-6 Preferred Shares for the past distribution periods and the then current distribution period shall have been fully paid or declared and a sum sufficient for the payment thereof set aside for payment. In such case, the entire Board of Trustees of the Trust will be increased by two Trustees.

(c) So long as any Series M-6 Preferred Shares remain outstanding, the Trust will not, without the affirmative vote or consent of the holders of at least two-thirds of the Series M-6 Preferred Shares outstanding at the time, given in person or by proxy, either in writing or at a meeting (such series voting separately as a class), (i) authorize or create, or increase the authorized or issued amount of, any class or series of shares of beneficial interest ranking senior to the Series M-6 Preferred Shares with respect to the payment of distributions or the distribution of assets upon liquidation, dissolution or winding up or reclassify any authorized shares of beneficial interest of the Trust into such shares, or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase any such shares; or (ii) amend, alter or repeal the provisions of the Trust's Declaration of Trust or the terms of the Series M-6 Preferred Shares whether by merger, consolidation or otherwise (an "Event"), so as to materially and adversely affect any right, preference, privilege or voting power of the Series M-6 Preferred Shares or the holders thereof; provided, however, with respect to the occurrence of any Events set forth in (ii) above, so long as the Series M-6 Preferred Shares remain outstanding with the terms thereof materially unchanged, taking into account that upon the occurrence of an Event, the Trust may not be the surviving entity or the Series M-6 Preferred Shares that remain outstanding may bear a new title, designation and/or be issued by a different issuer, the occurrence of any such Event shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting power of holders of Series M-6 Preferred Shares and provided further that (x) any increase in the amount of the authorized Preferred Shares or the creation or issuance of any other Series M-6 Preferred Shares, or (y) any increase in the amount of authorized Series M-6 Preferred Shares or any other Preferred Shares, in each case ranking on a parity with or junior to the Series M-6 Preferred Shares with respect to payment of distributions or the distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting powers.

The foregoing voting provisions will not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding Series M-6 Preferred Shares shall have been redeemed or called for redemption and sufficient funds shall have been deposited in trust to effect such redemption.

(7) Conversion. Holders of Series M-6 Preferred Shares shall have the right to convert all or a portion of such shares into Common Shares, as follows:

(a) Subject to and upon compliance with the provisions of this subparagraph (7), a holder of Series M-6 Preferred Shares shall have the right, at his or her option, at any time after June 22, 2011 to convert such shares into the number of fully paid and non-assessable Common Shares obtained by dividing the aggregate liquidation preference of such shares by the Conversion Price (as in effect at the time and on the date provided for in the last paragraph of subsection (b) of this subparagraph (7)) by surrendering such shares to be converted, such surrender to be made in the manner provided in subsection (b) of this subparagraph (7); provided, however, that a holder of Series M-6 Preferred Shares shall have the right to convert such shares as provided above, at his or her option, at any time subsequent to such shares being called for redemption pursuant to subparagraph (5), which right to convert such shares upon a call for redemption shall terminate at the close of business on the fifth Business Day preceding the Series M-6 Redemption Date fixed for such redemption, unless the Trust shall default in making payment of the Common Shares and any cash payable upon such redemption under subparagraph (5) hereof, in which case the holders will retain the conversion rights provided herein, and provided further that, prior to such time as the Series M-6 Preferred Shares have been registered for resale with the United States Securities and Exchange Commission and listed for trading on the NYSE or the NASDAQ National Market, the Series M-6 Preferred Shares shall be convertible in whole, but not in part, with respect to all of the outstanding Series M-6 Preferred Shares.

(b) In order to exercise the conversion right, the holder of each Series M-6 Preferred Share to be converted shall surrender the certificate representing such share, duly endorsed or assigned to the Trust or in blank, at the office of the Transfer Agent, accompanied by written notice to the Trust that the holder thereof elects to convert such Series M-6 Preferred Share delivered to the Trust by (a) fax and (b) certified mail postage prepaid or overnight delivery to: Equity Residential Properties Trust, Two North Riverside Plaza, Suite 400, Chicago, Illinois 60606, Attention: Bruce C. Strohm, facsimile number (312) 454-0039. Unless the shares issuable on conversion are to be issued in the same name as the name in which such Series M-6 Preferred Share is registered, each share surrendered for conversion shall be accompanied by instruments of transfer, in form satisfactory to the Trust, duly executed by the holder or such holder's duly authorized attorney and an amount sufficient to pay any transfer or similar tax (or evidence reasonably satisfactory to the Trust demonstrating that such taxes have been paid).

Holders of Series M-6 Preferred Shares at the close of business on a distribution payment record date shall be entitled to receive the distribution payable on such shares on the corresponding Quarterly Distribution Date notwithstanding the conversion thereof following such distribution payment record date and prior to such Quarterly Distribution Date. However, Series M-6 Preferred Shares surrendered for conversion during the period between the close of business on any distribution payment record date and the opening of business on the corresponding Quarterly Distribution Date (except shares converted after the issuance of notice of redemption with respect to a Series M-6 Redemption Date during such period or coinciding with such Quarterly Distribution Date, such Series M-6 Preferred Shares being entitled to such distribution on the Quarterly Distribution Date) must be accompanied by payment of a pro rata portion of the distribution payable on such shares on such Quarterly Distribution Date equal to the product of (i) the amount of the quarterly distribution multiplied by (ii) a fraction, the numerator of which is the number of days beginning on the date of surrender of such Series M-6 Preferred Shares as provided in the preceding paragraph and ending on the Quarterly Distribution Date, and the denominator of which is 90. A holder of Series M-6 Preferred Shares on a distribution payment record date who (or whose transferees) tenders any such shares for conversion into Common Shares on such Quarterly Distribution Date will receive the distribution payable by the Trust on such Series M-6 Preferred Shares on such date, and the converting holder need not include payment of the amount of such distribution upon surrender of Series M-6 Preferred Shares for conversion. Except as provided above, the Trust shall make no payment or allowance for unpaid distributions, whether or not in arrears, on converted shares or for distributions on the Common Shares issued upon such conversion.

As promptly as practicable after the surrender of certificates representing Series M-6 Preferred Shares as aforesaid, the Trust shall issue and shall deliver at such office to such holder, or on his or her written order, a certificate or certificates for the number of full Common Shares issuable upon the conversion of such shares in accordance with the provisions of this subparagraph (7), and any fractional interest in respect of a Common Share arising upon such conversion shall be settled as provided in subsection (c) of this subparagraph (7).

Each conversion shall be deemed to have been effected immediately prior to the close of business on the date on which the certificates for Series M-6 Preferred Shares shall have been surrendered and such notice (and if applicable, payment of an amount equal to the distribution payable on such shares) received by the Trust as aforesaid, and the person or persons in whose name or names any certificate or certificates for Common Shares shall be issuable upon such conversion shall be deemed to have become the holder or holders of record of the shares represented thereby at such time on such date, and such conversion shall be at the Conversion Price in effect at such time and on such date unless the share transfer books of the Trust shall be closed on that date, in which event such person or persons shall be deemed to have become such holder or holders of record at the close of business on the next succeeding day on which such share transfer books are open, but such conversion shall be at the Conversion Price in effect on the date on which such shares have been surrendered and such notice received by the Trust.

(c) No fractional shares or scrip representing fractions of Common Shares shall be issued upon conversion of the Series M-6 Preferred Shares. Instead of any fractional interest in a Common Share that would otherwise be deliverable upon the conversion of a share of Series M-6 Preferred Shares, the Trust shall pay to the holder of such share an amount in cash based upon the Current Market Price of the Common Shares on the Trading Day immediately preceding the date of conversion. If more than one Series M-6 Preferred Share shall be surrendered for conversion at one time by the same holder, the number of full Common Shares issuable upon conversion thereof shall be computed on the basis of the aggregate number of Series M-6 Preferred Shares so surrendered.

(d) The Conversion Price shall be adjusted from time to time as follows:

(i) If the Trust shall after the Issue Date (A) pay a distribution or make a distribution on its shares of beneficial interest in Common Shares, (B) subdivide its outstanding Common Shares into a greater number of shares, (C) combine its outstanding Common Shares into a smaller number of shares, or (D) issue any shares of beneficial interest by reclassification of its Common Shares, the Conversion Price in effect at the opening of business on the day following the date fixed for the determination of shareholders entitled to receive such distribution or at the opening of business on the day following the day on which such subdivision, combination or reclassification becomes effective, as the case may be, shall be adjusted so that the holder of any Series M-6 Preferred Shares thereafter surrendered for conversion shall be entitled to receive the number of Common Shares that such holder would have owned or have been entitled to receive after the happening of any of the events described above had such shares been converted immediately prior to the record date in the case of a distribution or the effective date in the case of a subdivision, combination or reclassification. An adjustment made pursuant to this subsection (i) shall become effective immediately after the opening of business on the day next following the record date (except as provided in paragraph (h) below) in the case of a distribution and shall become effective immediately after the opening of business on the day next following the effective date in the case of a subdivision, combination or reclassification.

(ii) If the Trust shall issue after the Issue Date rights, options or warrants to all holders of Common Shares entitling them (for a period expiring within 45 days after the record date mentioned below) to subscribe for or purchase Common Shares at a price per share less than the Fair Market Value per Common Share on the record date for the determination of shareholders entitled to receive such rights, options or warrants, then the Conversion Price in effect at the opening of business on the day next following such record date shall be adjusted to equal the price determined by multiplying (I) the Conversion Price in effect immediately prior to the opening of business on the day following the date fixed for such determination by (II) a fraction, the numerator of which shall be the sum of (A) the number of Common Shares outstanding on the close of business on the date fixed for such determination and (B) the number of shares that the aggregate proceeds to

the Trust from the exercise of such rights, options or warrants for Common Shares would purchase at such Fair Market Value, and the denominator of which shall be the sum of (A) the number of Common Shares outstanding on the close of business on the date fixed for such determination and (B) the number of additional Common Shares offered for subscription or purchase pursuant to such rights, options or warrants. Such adjustment shall become effective immediately after the opening of business on the day next following such record date (except as provided in subsection (h) below). In determining whether any rights, options or warrants entitle the holders of Common Shares to subscribe for or purchase Common Shares at less than the Fair Market Value, there shall be taken into account any consideration received by the Trust upon issuance and upon exercise of such rights, options or warrants, the value of such consideration, if other than cash, to be determined by the Chief Executive Officer or the Board of Trustees.

(iii) If the Trust shall distribute to all holders of its Common Shares any shares of beneficial interest of the Trust (other than Common Shares) or evidence of its indebtedness or assets (excluding cash distributions paid out of the total equity applicable to Common Shares, including revaluation equity, less the amount of stated capital attributable to Common Shares, determined on the basis of the most recent annual and quarterly consolidated cost basis balance sheets of the Trust and its consolidated subsidiaries available at the time of the declaration of the distribution) or rights or warrants to subscribe for or purchase any of its securities (excluding those rights and warrants issued to all holders of Common Shares entitling them for a period expiring within 45 days after the record date referred to in subsection (ii) above to subscribe for or purchase Common Shares, which rights and warrants are referred to in and treated under subsection (ii) above) (any of the foregoing being hereinafter in this subsection (iii) called the "Securities"), then in each case the Conversion Price shall be adjusted so that it shall equal the price determined by multiplying (I) the Conversion Price in effect immediately prior to the close of business on the date fixed for the determination of shareholders entitled to receive such distribution by (II) a fraction, the numerator of which shall be the Fair Market Value per Common Share on the record date mentioned below less the then fair market value (as determined by the Chief Executive Officer or the Board of Trustees, whose determination shall be conclusive) of the portion of the shares of beneficial interest or assets or evidences of indebtedness so distributed or of such rights or warrants applicable to one Common Share, and the denominator of which shall be the Fair Market Value per Common Share on the record date mentioned below. Such adjustment shall become effective immediately at the opening of business on the Business Day next following (except as provided in subsection (h) below) the record date for the determination of shareholders entitled to receive such distribution. For the purposes of this subsection (iii), the distribution of a Security, which is distributed not only to the holders of the Common Shares on the date fixed for the determination of shareholders entitled to such distribution of such Security, but also is distributed with each Common Share delivered to a Person converting a Series M-6 Preferred Share after such determination date, shall not require an adjustment of the Conversion Price pursuant to this subsection (iii); provided that on the date, if any, on which a person converting a Series M-6 Preferred Share would no longer be entitled to receive

such Security with a Common Share (other than as a result of the termination of all such Securities), a distribution of such Securities shall be deemed to have occurred, and the Conversion Price shall be adjusted as provided in this subsection (iii) (and such day shall be deemed to be "the date fixed for the determination of the shareholders entitled to receive such distribution" and "the record date" within the meaning of the two preceding sentences).

(iv) No adjustment in the Conversion Price shall be required unless such adjustment would require a cumulative increase or decrease of at least 1% in such price; provided, however, that any adjustments that by reason of this subsection (iv) are not required to be made shall be carried forward and taken into account in any subsequent adjustment until made; and provided, further, that any adjustment shall be required and made in accordance with the provisions of this subparagraph (7) (other than this subsection (iv)) not later than such time as may be required in order to preserve the tax-free nature of a distribution to the holders of Common Shares. Notwithstanding any other provisions of this subparagraph (7), the Trust shall not be required to make any adjustment of the Conversion Price for the issuance of any Common Shares pursuant to any plan providing for the reinvestment of distributions or interest payable on securities of the Trust and the investment of additional optional amounts in Common Shares under such plan. All calculations under this subparagraph (7) shall be made to the nearest cent with ($.005 being rounded upward) or to the nearest one-tenth of a share (with .05 of a share being rounded upward), as the case may be. Anything in this subsection (d) to the contrary notwithstanding, the Trust shall be entitled, to the extent permitted by law, to make such reductions in the Conversion Price, in addition to those required by this subsection (d), as it in its discretion shall determine to be advisable in order that any share distributions, subdivision of shares, reclassification or combination of shares, distribution of rights, options or warrants to purchase shares or securities, or a distribution of other assets (other than cash distributions) hereafter made by the Trust to its shareholders shall not be taxable.

(e) If the Trust shall be a party to any transaction (including, without limitation, a merger, consolidation, statutory share exchange, self tender offer for all or substantially all of the Common Shares, sale of all or substantially all of the Trust's assets or recapitalization of the Common Shares and excluding any transaction as to which subsection (d)(i) of this subparagraph (7) applied) (each of the foregoing being referred to herein as a "Transaction"), in each case as a result of which Common Shares shall be converted into the right to receive shares, stock, securities or other property (including cash or any combination thereof), each Series M-6 Preferred Share which is not converted into the right to receive shares, stock, securities or other property in connection with such Transaction shall thereafter be convertible into the kind and amount of shares, stock, securities and other property (including cash or any combination thereof) receivable upon the consummation of such Transaction by a holder of that number of Common Shares into which one Series M-6 Preferred Share was convertible immediately prior to such Transaction, assuming such holder of Common Shares (i) is not a Person with which the Trust consolidated or into which the Trust merged or which merged into the Trust or to which such sale or transfer was

made, as the case may be (a "Constituent Person"), or an affiliate of a Constituent Person and (ii) failed to exercise his or her rights of the election, if any, as to the kind or amount of shares, stock, securities and other property (including cash) receivable upon such Transaction (provided that if the kind or amount of shares, stock, securities and other property (including cash) receivable upon such Transaction is not the same for each Common Share of the Trust held immediately prior to such Transaction by other than a Constituent Person or an affiliate thereof and in respect of which such rights of election shall not have been exercised (the "Non-Electing Share"), then for purposes of this paragraph (e) the kind and amount of shares, securities and other property (including cash) receivable upon such Transaction by each Non-Electing Share shall be deemed to be the kind and amount so receivable per share by a plurality of the Non-Electing Shares). The Trust shall not be a party to any Transaction unless the terms of such Transaction are consistent with the provisions of this subsection (e), and it shall not consent or agree to the occurrence of any Transaction until the Trust has entered into an agreement with the successor or purchasing entity, as the case may be, for the benefit of the holders of the Series M-6 Preferred Shares that will contain provisions enabling the holders of the Series M-6 Preferred Shares that remain outstanding after such Transaction to convert into the consideration received by holders of Common Shares at the Conversion Price in effect immediately prior to such Transaction. The provisions of this subsection (e) shall similarly apply to successive Transactions.

(f) If:

(i) the Trust shall declare a distribution on the Common Shares (other than in cash out of the total equity applicable to Common Shares, including revaluation equity, less the amount of stated capital attributable to Common Shares, determined on the basis of the most recent annual and quarterly consolidated cost basis balance sheets of the Trust and its consolidated subsidiaries available at the time of the declaration of the distribution); or

(ii) the Trust shall authorize the granting to the holders of the Common Shares of rights or warrants to subscribe for or purchase any shares of any class or any other rights or warrants; or

(iii) there shall be any reclassifications of the Common Shares (other than an event to which subsection (d)(i) of this subparagraph (7) applied) or any consolidation or merger to which the Trust is a party and for which approval of any shareholders of the Trust is required, or a statutory share exchange involving the conversion or exchange of Common Shares into securities or other property, or a self tender offer by the Trust for all or substantially all of its outstanding Common Shares, or the sale or transfer of all or substantially all of the assets of the Trust as an entity and for which approval of any stockholder of the Trust is required; or

(iv) there shall occur the voluntary or involuntary liquidation, dissolution or winding up of the Trust, then the Trust shall cause to be

filed with the Transfer Agent and shall cause to be mailed to the holders of the Series M-6 Preferred Shares at their addresses as shown on the share records of the Trust, as promptly as possible, but at least 15 days prior to the applicable date hereinafter specified, a notice stating (A) the date on which a record is to be taken for the purpose of such distribution or rights or warrants, or, if a record is not to be taken, the date as of which the holders of Common Shares of record to be entitled to such distribution or rights or warrants are to be determined or (B) the date on which such reclassification, consolidation, merger, statutory share exchange, sale, transfer, liquidation, dissolution or winding up is expected to become effective, and the date as of which it is expected that holders of Common Shares of record shall be entitled to exchange their Common Shares for securities or other property, if any, deliverable upon such reclassification, consolidation, merger, statutory share exchange, sale, transfer, liquidation, dissolution or winding up. Failure to give or receive such notice or any defect therein shall not affect the legality or validity of the proceedings described in this subparagraph (7).

(g) Whenever the Conversion Price is adjusted as herein provided, the Trust shall promptly file with the Transfer Agent and the Depository an officer's certificate setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment, which certificate shall be conclusive evidence of the correctness of such adjustment absent manifest error. Promptly after delivery of such certificate, the Trust shall prepare a notice of such adjustment of the Conversion Price setting forth the adjusted Conversion Price and the effective date such adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Price to the holder of each Series M-6 Preferred Share at such holder's last address as shown on the share records of the Trust.

(h) In any case in which subsection (d) of this subparagraph (7) provides that an adjustment shall become effective on the date next following the record date for an event, the Trust may defer until the occurrence of such event (A) issuing to the holder of any Series M-6 Preferred Shares converted after such record date and before the occurrence of such event the additional Common Shares issuable upon such conversion by reason of the adjustment required by such event over and above the Common Shares issuable upon such conversion before giving effect to such adjustment and (B) fractionalizing any Series M-6 Preferred Share and/or paying to such holder any amount of cash in lieu of any fraction pursuant to subsection (c) of this subparagraph (7).

(i) There shall be no adjustment of the Conversion Price in case of the issuance of any shares of beneficial interest of the Trust in a reorganization, acquisition or other similar transaction except as specifically set forth in this subparagraph (7). If any action or Transaction would require adjustment of the Conversion Price pursuant to more than one subsection of this subparagraph (7), only one adjustment shall be made, and such adjustment shall be the amount of adjustment that has the highest absolute value.

(j) If the Trust shall take any action affecting the Common Shares, other than action described in this subparagraph (7), that in the opinion of the Board of Trustees would materially adversely affect the conversion rights of the holders of the Series M-6 Preferred Shares, the Conversion Price for the Series M-6 Preferred Shares may be adjusted, to the extent permitted by law, in such manner, if any, and at such time, as the Board of Trustees, in its sole discretion, may determine to be equitable in the circumstances.

(k) The Trust covenants that it will at all times reserve and keep available, free from preemptive rights, out of the aggregate of its authorized but issued Common Shares, for the purpose of affecting conversion of the Series M-6 Preferred Shares, the full number of Common Shares deliverable upon the conversion of all outstanding Series M-6 Preferred Shares not theretofore converted. For purposes of this subsection (k), the number of Common Shares that shall be deliverable upon the conversion of all outstanding Series M-6 Preferred Shares shall be computed as if at the time of computation all such outstanding shares were held by a single holder.

The Trust covenants that any Common Shares issued upon conversion of the Series M-6 Preferred Shares shall be validly issued, fully paid and non-assessable. Before taking any action that would cause an adjustment reducing the Conversion Price below the then-par value of the Common Shares deliverable upon conversion of the Series M-6 Preferred Shares, the Trust will take any action that, in the opinion of its counsel, may be necessary in order that the Trust may validly and legally issue fully paid and nonassessable Common Shares at such adjusted Conversion Price.

The Trust shall endeavor to list the Common Shares required to be delivered upon conversion of the Series M-6 Preferred Shares, prior to such delivery, upon each national securities exchange, if any, upon which the outstanding Common Shares are listed at the time of such delivery.

Prior to the delivery of any securities that the Trust shall be obligated to deliver upon conversion of the Series M-6 Preferred Shares, the Trust shall endeavor to comply with all federal and state laws and regulations thereunder requiring the registration of such securities with, or any approval of or consent to the delivery thereof by any governmental authority.

(l) The Trust will pay any and all documentary stamp or similar issue or transfer taxes payable in respect of the issue or delivery of Common Shares or other securities or property on conversion of the Series M-6 Preferred Shares pursuant hereto; provided, however, that the Trust shall not be required to pay any tax that may be payable in respect of any transfer involved in the issue or delivery of Common Shares or other securities or property in a name other than that of title holder of the Series M-6 Preferred Shares to be converted, and no such issue or delivery shall be made unless and until the person requesting such issue or delivery has paid to the Trust the amount of any such tax or established, to the reasonable satisfaction of the Trust, that such tax has been paid.

(m) In addition to the foregoing adjustments, the Company will be permitted to make such reductions in the Conversion Price as it considers to be advisable in order that any event treated for federal income tax purposes as a dividend of stock or stock rights will not be taxable to the holders of the Common Shares.

C. Restrictions on Transfer. The Series M-6 Preferred Shares shall be subject to the restrictions on transfer and ownership of Shares in Article VII of the Declaration of Trust, as supplemented below.

(1) Certain Definitions.

For purposes of the Series M-6 Preferred Shares the following terms shall have the following meanings:

"Closing Date of the Series M-6 Preferred Shares Offering" shall mean the time and date of payment for and delivery of Series M-6 Preferred Shares issued pursuant to the conversion of Series I Preference Units.

"Special Triggering Event" shall mean either (i) the redemption or purchase by the Trust of all or a portion of the outstanding shares of beneficial interest in the Trust, or (ii) a change in the value of the Series M-6 Preferred Shares relative to any other class of beneficial interest in the Trust.

(2) Special Triggering Event. If during the period commencing on the Closing Date of the Series M-6 Preferred Shares Offering and prior to the Restriction Termination Date, a Special Triggering Event (if effective) or other event or occurrence (if effective) would result in any violation of section 7.2(a) of the Trust's Declaration of Trust, then (i) the number of Series M-6 Preferred Shares (rounded up to the nearest whole share) that would (but for this section) cause any Person to Beneficially Own either Series M-6 Preferred Shares, or to Beneficially Own Series M-6 Preferred Shares and any other shares of beneficial interest in the Trust, in violation of section 7.2(a) shall be treated as provided in Article VII. Such treatment shall be effective as of the close of business on the Business Day prior to the date of the Special Triggering Event or other event or occurrence.

(3) Ambiguity. In the case of an ambiguity in the application of any of the provisions of this section, including any definition contained in paragraph (1), the Board of Trustees shall have the power to determine the application of this section with respect to any situation based on the facts known to it (subject, however, to the provisions of Section 7.2(a)).

(4) Exclusion of Other Rights.

The Series M-6 Preferred Shares shall not have any voting powers, preferences and relative, participating, optional or other special rights, other than those specifically set forth in these terms of the Series M-6 Preferred Shares (as such terms may be amended from time to time) and in the Declaration of Trust. The Series M-6 Preferred Shares shall have no preemptive or subscription rights.

(5) Headings of Subdivisions.

The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

(6) Severability of Provisions.

If any voting powers, preferences and relative, participating, optional and other special rights of the Series M-6 Preferred Shares and qualifications, limitations and restrictions thereof set forth in these terms of the Series M-6 Preferred Shares (as such terms may be amended from time to time) is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other voting powers, preferences and relative, participating, optional and other special rights of Series M-6 Preferred Shares and qualifications, limitations and restrictions thereof set forth in these terms of the Series M-6 Preferred Shares (as so amended), which can be given effect without the invalid, unlawful or unenforceable voting powers, preferences, and relative, participating, optional or other special rights of Series M-6 Preferred Shares and qualifications, limitations and restrictions thereof herein set forth, shall nevertheless, remain in full force and effect and no preferences or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption of the Series M-6 Preferred Shares herein set forth shall be deemed dependent upon any other such voting powers, preferences and relative, participating, optional or other special rights of Series M-6 Preferred Shares and qualifications, limitations and restrictions thereof unless so expressed herein.

SECTION 13.16. Series M-7 Preferred Shares.

1. A. Certain Definitions**.**

Unless the context otherwise requires, the terms defined in this subparagraph A of paragraph 1 shall have, for all purposes of these terms of the Series M-7 Preferred Shares, the meanings herein specified (with terms defined in the singular having comparable meanings when used in the plural).

“Business Day” shall mean any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions in New York City are authorized or required by law, regulation or executive order to close.

“Closing Date of the Series M-7 Preferred Shares Offering” shall have the meaning set forth in subparagraph (1) of paragraph C below.

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

“Common Shares” shall mean the common shares of beneficial interest, $.01 par value per share, of the Trust.

"Constituent Person" shall have the meaning set forth in subparagraph (7)(e) of paragraph B below.

"Conversion Price" shall mean the conversion price per Common Share for which the Series M-7 Preferred Shares are convertible, as such Conversion Price may be adjusted pursuant to subparagraph (7)(d) of paragraph (B) below. The initial conversion price shall be $35.44 per Common Share (equivalent to a conversion rate of 1.4108 Common Shares for each Series M-7 Preferred Share, with such Series M-7 Preferred Shares being ascribed their $50.00 liquidation value).

"Current Market Price" shall mean the current market price of publicly traded common shares or any other class of shares of beneficial interest or other security of the Trust or any other issuer for any day shall mean the last reported sales-price, regular way on such day or, if no sale takes place on such day, the average of the reported closing bid and asked prices on such day, regular way, in either case as reported on the New York Stock Exchange ("NYSE") or, if such security is not listed or admitted for trading on the NYSE, on the principal national securities exchange on which such security is listed or admitted for trading or, if not listed or admitted for trading on any national securities exchange, on the NASDAQ National Market, or, if such security is not quoted on such NASDAQ National Market, the average of the closing bid and asked prices on such day in the over-the-counter-market as reported by NASDAQ or, if bid and asked prices for such security on such day shall not have been reported through NASDAQ, the average of the bid and asked prices on such day as furnished by any NYSE member firm regularly making a market in such security selected for such purpose by the Chief Executive Officer or the Board of Trustees, or, if such security is not then currently traded on any established market and no bid and asked prices for such security on such day shall be available, the Current Market Price shall be as determined in good faith by the Chief Executive Officer or the Board of Trustees.

"Declaration of Trust" shall have the meaning set forth in Article First of these Articles Supplementary.

“Distribution Period” shall have the meaning set forth in subparagraph (3) of paragraph B below.

“Event” shall have the meaning set forth in subparagraph (6)(c) of paragraph B below.

“Fair Market Value” shall mean the average of the daily Current Market Prices for a Common Share during the five (5) consecutive Trading Days selected by the Trust commencing not more than twenty (20) Trading Days before, and ending not later than, the earlier of the day in question and the day before the "ex date" with respect to the issuance or distribution requiring such computation. The term "ex date" when used with respect to any issuance or distribution means the first day on which the Common Shares trade regular way, without the right to receive such issuance or distribution, on the exchange or in the market, as the case may be, used to determine that day's Current Market Price.

"Issue Date" shall mean the first date on which the Series J Preference Units are issued.

“Junior Shares” shall have the meaning set forth in subparagraph (2) of paragraph B.

“Non-Electing Share” shall have the meaning set forth in subparagraph (7)(e) of paragraph B below.

“Person” shall mean an individual, corporation, partnership, estate, trust (including a trust qualified under Section 401(a) or 501(c)(17) of the Code), a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, association, private foundation within the meaning of Section 509(a) of the Code, joint stock company or other entity, and also includes a group as that term is used for purposes of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended, but does not include an underwriter which participates in a public offering of the Series M-7 Preferred Shares; provided, that the ownership of Series M-7 Preferred Shares by such Underwriter would not result in the Trust being “closely held” within the meaning of Section 856(h) of the Code, or would otherwise result in the Trust failing to qualify as a REIT.

"Preferred Shares" shall mean shares of beneficial interest of the Trust designated as or otherwise on a parity with the Series M-7 Preferred Shares as to distributions and rights upon voluntary or involuntary liquidation, winding up or dissolution of the Trust as may be issued and outstanding from time to time, including Series B Preferred Shares, Series C Preferred Shares, Series D Preferred Shares, Series E Preferred Shares, Series G Preferred Shares, Series H Preferred Shares, Series K Preferred Shares, Series L Preferred Shares, Series M Preferred Shares, Series M-1 Preferred Shares, Series M-2 Preferred Shares, Series M-3 Preferred Shares, Series M-4 Preferred Shares, Series M-5 Preferred Shares and Series M-6 Preferred Shares and any other shares so designated.

“Quarterly Distribution Date” shall have the meaning set forth in subparagraph (3) of paragraph B below.

“Record Date” shall have the meaning set forth in subparagraph (3) of paragraph B below.

“REIT” shall mean a Real Estate Investment Trust under Section 856 of the Code.

"Securities" shall have the meaning set forth in subparagraph (7)(d)(iii) of paragraph B below.

"Series J Preference Units" shall mean the 7.625% Series J Cumulative Convertible Redeemable Preference Units of Lexford Properties, L.P.

"Series M-7 Preferred Shares" shall have the meaning set forth in Article First of these Articles Supplementary.

“Series M-7 Redemption Date” shall have the meaning set forth in subparagraph (5) of paragraph B below.

“Series M-7 Redemption Price” shall have the meaning set forth in subparagraph (5) of paragraph B below.

“Special Triggering Event” shall have the meaning set forth in subparagraph (1) of paragraph C below.

"Trading Day" shall mean any day on which the securities in question are traded on the NYSE, or if such securities are not listed or admitted for trading on the NYSE, on the principal national securities exchange on which such securities are listed or admitted, or if not listed or admitted for trading on any national securities exchange, on the NASDAQ National Market, or if such securities are not quoted on such NASDAQ National Market, in the applicable securities market in which the securities are traded.

"Transaction" shall have the meaning set forth in subparagraph (7)(e) of paragraph B below.

"Transfer Agent" shall mean Fleet National Bank, which may act through its affiliate, EquiServe Trust Company, N.A., or such other agent or agents of the Trust as may be designated by the Board of Trustees or their designee as the transfer agent for the Series M-7 Preferred Shares.

"Trust" shall have the meaning set forth in Article First of these Articles Supplementary.

All other capitalized terms used but not defined herein shall have the meanings ascribed to them in the Declaration of Trust.

B. Series M-7 Preferred Shares

(1) Number and Designation. A series of Preferred Shares, consisting of 230,000 Preferred Shares designated as 7.625% Series M-7 Convertible Cumulative Redeemable Preferred Shares of Beneficial Interest, $.01 par value per share (liquidation preference $50.00 per share) (the “Series M-7 Preferred Shares”), is hereby established.

(2) Ranking. In respect of rights to receive distributions and to participate in distributions or payments in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Trust, the Series M-7 Preferred Shares shall rank pari passu with any other Preferred Shares of the Trust, and will rank senior to the Common Shares and any other class or series of shares of beneficial interest of the Trust ranking, as to distributions and upon liquidation, junior (collectively, the "Junior Shares") to the Preferred Shares.

(3) Distributions. The holders of the then outstanding Series M-7 Preferred Shares shall be entitled to receive, when and as authorized by the Board of Trustees and declared by the Trust out of any funds legally available therefor, cumulative distributions at the rate of $3.8125 per share per year, payable in equal amounts of $.953125 per share quarterly in arrears in cash on the fifteenth day, or if not a Business Day, the next succeeding Business Day, of January, April, July and October in each year (each such day being hereinafter called a "Quarterly Distribution Date" and each period ending on a Quarterly Distribution Date being hereinafter called a "Distribution Period"), beginning on the first Quarterly Distribution Date following the issuance of the Series M-7 Preferred Shares, to shareholders of record at the close of business on such date as shall be fixed by the Board of Trustees at the time of declaration of the distribution (the "Record Date"), which shall not be less

than 10 nor more than 30 days preceding the Quarterly Distribution Date. The amount of any distribution payable for the initial Distribution Period and for any other Distribution Period shorter than a full Distribution Period shall be pro-rated and computed on the basis of a 360-day year of twelve 30-day months. Notwithstanding anything to the contrary set forth herein, if and when the holders of the Series J Lexford Preference Units exercise their right to convert the Series J Lexford Preference Units into Series M-7 Preferred Shares, the amount of any distribution payable for the initial Distribution Period shall include any and all amounts of distributions accrued but not yet paid on the Series J Lexford Preference Units in accordance with Section 9(B)(ii) of the Other Securities Term Sheet and Joinder to Amended and Restated Limited Partnership Agreement of Lexford Properties, L.P. Distributions on each Series M-7 Preferred Share shall accrue and be cumulative from and including the date of original issue thereof, whether or not (i) distributions on such shares are earned or declared or (ii) on any Quarterly Distribution Date there shall be funds legally available for the payment of distributions. Distributions paid on the Series M-7 Preferred Shares in an amount less than the total amount of such distributions at the time accrued and payable on such shares shall be allocated pro rata on a per share basis among all such shares at the time outstanding.

The amount of any distributions accrued on any Series M-7 Preferred Shares at any Quarterly Distribution Date shall be the amount of any unpaid distributions accumulated thereon, to and including such Quarterly Distribution Date, whether or not earned or declared, and the amount of distributions accrued on any Series M-7 Preferred Shares at any date other than a Quarterly Distribution Date shall be equal to the sum of the amount of any unpaid distributions accumulated thereon, to and including the last preceding Quarterly Distribution Date, whether or not earned or declared, plus an amount calculated on the basis of the annual distribution rate of $3.8125 for the period after such last preceding Quarterly Distribution Date to and including the date as of which the calculation is made based on a 360-day year of twelve 30-day months.

In determining whether a distribution (other than upon voluntary or involuntary liquidation), by dividend, redemption or other acquisition of shares of beneficial interest of the Trust or otherwise, is permitted under Maryland law, amounts that would be needed, if the Trust were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of holders of Series M-7 Preferred Shares will not be added to the Trust's total liabilities.

Except as provided in these terms of the Series M-7 Preferred Shares, the Series M-7 Preferred Shares shall not be entitled to participate in the earnings or assets of the Trust.

(4) Liquidation Rights.

(a) Upon the voluntary or involuntary dissolution, liquidation or winding up of the Trust, the holders of the Series M-7 Preferred Shares then outstanding shall be entitled to receive and to be paid out of the assets of the Trust available for distribution to its shareholders, before any payment or distribution shall be made on any Junior Shares, the amount of $50.00 per Series M-7 Preferred Share, plus accrued and unpaid distributions thereon.

(b) After the payment to the holders of the Series M-7 Preferred Shares of the full preferential amounts provided for in this paragraph B, the holders of

the Series M-7 Preferred Shares as such shall have no right or claim to any of the remaining assets of the Trust.

(c) If, upon any voluntary or involuntary dissolution, liquidation or winding up of the Trust, the amounts payable with respect to the preference value of the Series M-7 Preferred Shares and any other shares of beneficial interest of the Trust ranking as to any such distribution on parity with the Series M-7 Preferred Shares are not paid in full, the holders of the Series M-7 Preferred Shares and of such other shares will share ratably in any such distribution of assets of the Trust in proportion to the full respective preference amounts to which they are entitled.

(d) Neither the sale of all or substantially all of the property or business of the Trust, nor the merger or consolidation of the Trust into or with any other entity or the merger or consolidation of any other entity into or with the Trust, shall be deemed to be a dissolution, liquidation or winding up, voluntary or involuntary, for purposes of this paragraph B.

(5) Redemption.

(a) Optional Redemption. On and after December 14, 2006, the Trust may, at its option, redeem at any time all or, from time to time, part of the Series M-7 Preferred Shares at a price per share (the "Series M-7 Redemption Price"), payable in cash, of $50.00 per Series M-7 Preferred Share, together with all accrued and unpaid distributions to and including the date fixed for redemption (the "Series M-7 Redemption Date"), subject to the provisions of paragraph 7 herein.

(b) Procedures for Redemption.

(i) Notice of any redemption will be mailed by the Trust, postage prepaid, or sent via overnight delivery service, not less than 30 days nor more than 60 days prior to the Series M-7 Redemption Date, addressed to the holders of record of the Series M-7 Preferred Shares to be redeemed at their addresses as they appear on the share transfer records of the Trust. No failure to give such notice or any defect therein or in the mailing thereof shall affect the validity of the proceedings for the redemption of any Series M-7 Preferred Shares except as to the holder to whom the Trust has failed to give notice or except as to the holder to whom notice was defective. In addition to any information required by law or by the applicable rules of any exchange upon which Series M-7 Preferred Shares may be listed or admitted to trading, such notice shall state: (a) the Series M-7 Redemption Date; (b) the Series M-7 Redemption Price; (c) the number of Series M-7 Preferred Shares to be redeemed; (d) the place or places where certificates for such shares are to be surrendered for payment of the Series M-7 Redemption Price; and (e) that distributions on the shares to be redeemed will cease to accumulate on the Series M-7 Redemption Date.

(ii) If notice has been mailed in accordance with subparagraph (5)(b)(i) above and provided that on or before the Series M-7 Redemption Date specified in such notice all funds necessary for such redemption shall have been irrevocably set aside by the Trust, separate and apart from its other funds in trust for the pro rata benefit of the holders of the Series M-7 Preferred Shares so called for redemption, so as to be, and to continue to be available therefor, then, from and after the Series M-7 Redemption Date (unless the Trust defaults in the payment of the Series M-7 Redemption Price), distributions on the Series M-7 Preferred Shares so called for redemption shall cease to accumulate, and said shares shall no longer be deemed to be outstanding and shall not have the status of Series M-7 Preferred Shares and all rights of the holders thereof as shareholders of the Trust (except the right to receive the Series M-7 Redemption Price) shall cease. If payment of the Series M-7 Preferred Shares is improperly withheld or refused and not paid by the Trust, distributions on such Series M-7 Preferred Shares will continue to accumulate from the original redemption date to the date of payment, in which case the actual payment date will be considered the date fixed for redemption for purposes of calculating the applicable Series M-7 Redemption Price. Upon surrender, in accordance with said notice, of the certificates for any Series M-7 Preferred Shares so redeemed (properly endorsed or assigned for transfer, if the Trust shall so require and the notice shall so state), such Series M-7 Preferred Shares shall be redeemed by the Trust at the Series M-7 Redemption Price. In case fewer than all the Series M-7 Preferred Shares evidenced by any such certificate are redeemed, a new certificate or certificates shall be issued evidencing the unredeemed Series M-7 Preferred Shares without cost to the holder thereof.

(iii) Any funds deposited with a bank or trust company for the purpose of redeeming Series M-7 Preferred Shares shall be irrevocable except that:

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

(B) any balance of monies so deposited by the Trust and unclaimed by the holders of the Series M-7 Preferred Shares entitled thereto at the expiration of two years from the applicable Series M-7 Redemption Date shall be repaid, together with any interest or other earnings earned thereon, to the Trust, and after any such repayment, the holders of the shares entitled to the funds so repaid to the Trust shall look only to the Trust for payment without interest or other earnings.

(iv) No Series M-7 Preferred Shares may be redeemed except with funds legally available for the payment of the Series M-7 Redemption Price.

(v) Unless full accumulated distributions on all Series M-7 Preferred Shares shall have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past Distribution Periods and the then current Distribution Period, no Series M-7 Preferred Shares shall be redeemed (unless all outstanding Series M-7 Preferred Shares are simultaneously redeemed) or purchased or otherwise acquired directly or indirectly (except by conversion into or exchange for shares of beneficial interest of the Trust ranking junior to the Series M-7 Preferred Shares as to distributions and upon liquidation); provided, however, that the foregoing shall not prevent the redemption of Series M-7 Preferred Shares pursuant to Article VII of the Declaration of Trust or the purchase or acquisition of Series M-7 Preferred Shares.

(vi) If the Series M-7 Redemption Date is after a Record Date and before the related Quarterly Distribution Date, the distribution payable on such Quarterly Distribution Date shall be paid to the holder in whose name the Series M-7 Preferred Shares to be redeemed are registered at the close of business on such Record Date notwithstanding the redemption thereof between such Record Date and the related Quarterly Distribution Date or the Trust's default in the payment of the distribution due.

(vii) In case of redemption of less than all Series M-7 Preferred Shares at the time outstanding, the Series M-7 Preferred Shares to be redeemed shall be selected pro rata from the holders of record of such shares in proportion to the number of Series M-7 Preferred Shares held by such holders (with adjustments to avoid redemption of fractional shares) or by any other equitable method determined by the Trust.

(6) Voting Rights. Except as provided in these terms of the Series M-7 Preferred Shares, the holders of the Series M-7 Preferred Shares shall not be entitled to vote at any meeting of the shareholders for election of trustees or for any other purposes or otherwise to participate in any action taken by the Trust or the shareholders thereof, or to receive notice (except for such notice as required by law) of any meeting of shareholders.

(a) In any matter in which the Series M-7 Preferred Shares are entitled to vote (as expressly provided herein), including any action by written consent, each Series M-7 Preferred Share shall be entitled to 10 votes, each of which 10 votes may be directed separately by the holder thereof (or by any proxy or proxies of such holder). With respect to each Series M-7 Preferred Share, the holder thereof may designate up to 10 proxies, with each such proxy having the right to vote a whole number of votes (totaling 10 votes per Series M-7 Preferred Share).

(b) Whenever distributions on any Series M-7 Preferred Shares shall be in arrears for six or more quarterly periods, the holders of such Series M-7 Preferred Shares, voting separately as a class with all other series of Preferred Shares upon which like voting rights have been conferred and are exercisable, will be entitled to vote for the election of two additional Trustees of the Trust at a special meeting called by the holders of record of at least ten percent (10%) of any series of Preferred Shares so in arrears (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the shareholders) or at the next annual meeting of shareholders, and at each subsequent annual meeting until all distributions accumulated on such Series M-7 Preferred Shares for the past distribution periods and the then current distribution period shall have been fully paid or declared and a sum sufficient for the payment thereof set aside for payment. In such case, the entire Board of Trustees of the Trust will be increased by two Trustees.

(c) So long as any Series M-7 Preferred Shares remain outstanding, the Trust will not, without the affirmative vote or consent of the holders of at least two-thirds of the Series M-7 Preferred Shares outstanding at the time, given in person or by proxy, either in writing or at a meeting (such series voting separately as a class), (i) authorize or create, or increase the authorized or issued amount of, any class or series of shares of beneficial interest ranking senior to the Series M-7 Preferred Shares with respect to the payment of distributions or the distribution of assets upon liquidation, dissolution or winding up or reclassify any authorized shares of beneficial interest of the Trust into such shares, or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase any such shares; or (ii) amend, alter or repeal the provisions of the Trust's Declaration of Trust or the terms of the Series M-7 Preferred Shares whether by merger, consolidation or otherwise (an "Event"), so as to materially and adversely affect any right, preference, privilege or voting power of the Series M-7 Preferred Shares or the holders thereof; provided, however, with respect to the occurrence of any Events set forth in (ii) above, so long as the Series M-7 Preferred Shares remain outstanding with the terms thereof materially unchanged, taking into account that upon the occurrence of an Event, the Trust may not be the surviving entity or the Series M-7 Preferred Shares that remain outstanding may bear a new title, designation and/or be issued by a different issuer, the occurrence of any such Event shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting power of holders of Series M-7 Preferred Shares and provided further that (x) any increase in the amount of the authorized Preferred Shares or the creation or issuance of any other Series M-7 Preferred Shares, or (y) any increase in the amount of authorized Series M-7 Preferred Shares or any other Preferred Shares, in each case ranking on a parity with or junior to the Series M-7 Preferred Shares with respect to payment of distributions or the distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting powers.

The foregoing voting provisions will not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding Series M-7 Preferred Shares shall have been redeemed or called for redemption and sufficient funds shall have been deposited in trust to effect such redemption.

(7) Conversion. Holders of Series M-7 Preferred Shares shall have the right to convert all or a portion of such shares into Common Shares, as follows:

(a) Subject to and upon compliance with the provisions of this subparagraph (7), a holder of Series M-7 Preferred Shares shall have the right, at his or her option, at any time after December 14, 2011 to convert such shares into the number of fully paid and non-assessable Common Shares obtained by dividing the aggregate liquidation preference of such shares by the Conversion Price (as in effect at the time and on the date provided for in the last paragraph of subsection (b) of this subparagraph (7)) by surrendering such shares to be converted, such surrender to be made in the manner provided in subsection (b) of this subparagraph (7); provided, however, that a holder of Series M-7 Preferred Shares shall have the right to convert such shares as provided above, at his or her option, at any time subsequent to such shares being called for redemption pursuant to subparagraph (5), which right to convert such shares upon a call for redemption shall terminate at the close of business on the fifth Business Day preceding the Series M-7 Redemption Date fixed for such redemption, unless the Trust shall default in making payment of the Common Shares and any cash payable upon such redemption under subparagraph (5) hereof, in which case the holders will retain the conversion rights provided herein, and provided further that, prior to such time as the Series M-7 Preferred Shares have been registered for resale with the United States Securities and Exchange Commission and listed for trading on the NYSE or the NASDAQ National Market, the Series M-7 Preferred Shares shall be convertible in whole, but not in part, with respect to all of the outstanding Series M-7 Preferred Shares.

(b) In order to exercise the conversion right, the holder of each Series M-7 Preferred Share to be converted shall surrender the certificate representing such share, duly endorsed or assigned to the Trust or in blank, at the office of the Transfer Agent, accompanied by written notice to the Trust that the holder thereof elects to convert such Series M-7 Preferred Share delivered to the Trust by (a) fax and (b) certified mail postage prepaid or overnight delivery to: Equity Residential Properties Trust, Two North Riverside Plaza, Suite 400, Chicago, Illinois 60606, Attention: Bruce C. Strohm, facsimile number (312) 454-0039. Unless the shares issuable on conversion are to be issued in the same name as the name in which such Series M-7 Preferred Share is registered, each share surrendered for conversion shall be accompanied by instruments of transfer, in form satisfactory to the Trust, duly executed by the holder or such holder's duly authorized attorney and an amount sufficient to pay any transfer or similar tax (or evidence reasonably satisfactory to the Trust demonstrating that such taxes have been paid).

Holders of Series M-7 Preferred Shares at the close of business on a distribution payment record date shall be entitled to receive the distribution payable on such shares on the corresponding Quarterly Distribution Date notwithstanding the conversion thereof following such distribution payment record date and prior to such Quarterly Distribution Date. However, Series M-7 Preferred Shares surrendered for conversion during the period between the close of business on any distribution payment record date and the opening of business on the corresponding Quarterly Distribution Date (except shares converted after the issuance of notice of redemption with respect to a Series M-7 Redemption Date during such period or coinciding with such Quarterly Distribution Date, such Series M-7 Preferred Shares being entitled to such distribution on the Quarterly Distribution Date) must be accompanied by payment of a pro rata portion of the distribution payable on such shares on such Quarterly Distribution Date equal to the product of (i) the amount of the quarterly distribution multiplied by (ii) a fraction, the numerator of which is the number of days beginning on the date of surrender of such Series M-7 Preferred Shares as provided in the preceding paragraph and ending on the Quarterly Distribution Date, and the denominator of which is 90. A holder of Series M-7 Preferred Shares on a distribution payment record date who (or whose transferees) tenders any such shares for conversion into Common Shares on such Quarterly Distribution Date will receive the distribution payable by the Trust on such Series M-7 Preferred Shares on such date, and the converting holder need not include payment of the amount of such distribution upon surrender of Series M-7 Preferred Shares for conversion. Except as provided above, the Trust shall make no payment or allowance for unpaid distributions, whether or not in arrears, on converted shares or for distributions on the Common Shares issued upon such conversion.

As promptly as practicable after the surrender of certificates representing Series M-7 Preferred Shares as aforesaid, the Trust shall issue and shall deliver at such office to such holder, or on his or her written order, a certificate or certificates for the number of full Common Shares issuable upon the conversion of such shares in accordance with the provisions of this subparagraph (7), and any fractional interest in respect of a Common Share arising upon such conversion shall be settled as provided in subsection (c) of this subparagraph (7).

Each conversion shall be deemed to have been effected immediately prior to the close of business on the date on which the certificates for Series M-7 Preferred Shares shall have been surrendered and such notice (and if applicable, payment of an amount equal to the distribution payable on such shares) received by the Trust as aforesaid, and the person or persons in whose name or names any certificate or certificates for Common Shares shall be issuable upon such conversion shall be deemed to have become the holder or holders of record of the shares represented thereby at such time on such date, and such conversion shall be at the Conversion Price in effect at such time and

on such date unless the share transfer books of the Trust shall be closed on that date, in which event such person or persons shall be deemed to have become such holder or holders of record at the close of business on the next succeeding day on which such share transfer books are open, but such conversion shall be at the Conversion Price in effect on the date on which such shares have been surrendered and such notice received by the Trust.

(c) No fractional shares or scrip representing fractions of Common Shares shall be issued upon conversion of the Series M-7 Preferred Shares. Instead of any fractional interest in a Common Share that would otherwise be deliverable upon the conversion of a share of Series M-7 Preferred Shares, the Trust shall pay to the holder of such share an amount in cash based upon the Current Market Price of the Common Shares on the Trading Day immediately preceding the date of conversion. If more than one Series M-7 Preferred Share shall be surrendered for conversion at one time by the same holder, the number of full Common Shares issuable upon conversion thereof shall be computed on the basis of the aggregate number of Series M-7 Preferred Shares so surrendered.

(d) The Conversion Price shall be adjusted from time to time as follows:

(i) If the Trust shall after the Issue Date (A) pay a distribution or make a distribution on its shares of beneficial interest in Common Shares, (B) subdivide its outstanding Common Shares into a greater number of shares, (C) combine its outstanding Common Shares into a smaller number of shares, or (D) issue any shares of beneficial interest by reclassification of its Common Shares, the Conversion Price in effect at the opening of business on the day following the date fixed for the determination of shareholders entitled to receive such distribution or at the opening of business on the day following the day on which such subdivision, combination or reclassification becomes effective, as the case may be, shall be adjusted so that the holder of any Series M-7 Preferred Shares thereafter surrendered for conversion shall be entitled to receive the number of Common Shares that such holder would have owned or have been entitled to receive after the happening of any of the events described above had such shares been converted immediately prior to the record date in the case of a distribution or the effective date in the case of a subdivision, combination or reclassification. An adjustment made pursuant to this subsection (i) shall become effective immediately after the opening of business on the day next following the record date (except as provided in paragraph (h) below) in the case of a distribution and shall become effective immediately after the opening of business on the day next following the effective date in the case of a subdivision, combination or reclassification.

(ii) If the Trust shall issue after the Issue Date rights, options or warrants to all holders of Common Shares entitling them (for a period expiring within 45 days after the record date mentioned below) to subscribe for or purchase Common Shares at a price per share less than the Fair Market Value

per Common Share on the record date for the determination of shareholders entitled to receive such rights, options or warrants, then the Conversion Price in effect at the opening of business on the day next following such record date shall be adjusted to equal the price determined by multiplying (I) the Conversion Price in effect immediately prior to the opening of business on the day following the date fixed for such determination by (II) a fraction, the numerator of which shall be the sum of (A) the number of Common Shares outstanding on the close of business on the date fixed for such determination and (B) the number of shares that the aggregate proceeds to the Trust from the exercise of such rights, options or warrants for Common Shares would purchase at such Fair Market Value, and the denominator of which shall be the sum of (A) the number of Common Shares outstanding on the close of business on the date fixed for such determination and (B) the number of additional Common Shares offered for subscription or purchase pursuant to such rights, options or warrants. Such adjustment shall become effective immediately after the opening of business on the day next following such record date (except as provided in subsection (h) below). In determining whether any rights, options or warrants entitle the holders of Common Shares to subscribe for or purchase Common Shares at less than the Fair Market Value, there shall be taken into account any consideration received by the Trust upon issuance and upon exercise of such rights, options or warrants, the value of such consideration, if other than cash, to be determined by the Chief Executive Officer or the Board of Trustees.

(iii) If the Trust shall distribute to all holders of its Common Shares any shares of beneficial interest of the Trust (other than Common Shares) or evidence of its indebtedness or assets (excluding cash distributions paid out of the total equity applicable to Common Shares, including revaluation equity, less the amount of stated capital attributable to Common Shares, determined on the basis of the most recent annual and quarterly consolidated cost basis balance sheets of the Trust and its consolidated subsidiaries available at the time of the declaration of the distribution) or rights or warrants to subscribe for or purchase any of its securities (excluding those rights and warrants issued to all holders of Common Shares entitling them for a period expiring within 45 days after the record date referred to in subsection (ii) above to subscribe for or purchase Common Shares, which rights and warrants are referred to in and treated under subsection (ii) above) (any of the foregoing being hereinafter in this subsection (iii) called the "Securities"), then in each case the Conversion Price shall be adjusted so that it shall equal the price determined by multiplying (I) the Conversion Price in effect immediately prior to the close of business on the date fixed for the determination of shareholders entitled to receive such distribution by (II) a fraction, the numerator of which shall be the Fair Market Value per Common Share on the record date mentioned below less the then fair market value (as determined by the Chief Executive Officer or the Board of Trustees, whose determination shall be conclusive) of the portion of the shares of beneficial interest or assets or evidences of indebtedness so distributed or of such rights or warrants applicable to one

Common Share, and the denominator of which shall be the Fair Market Value per Common Share on the record date mentioned below. Such adjustment shall become effective immediately at the opening of business on the Business Day next following (except as provided in subsection (h) below) the record date for the determination of shareholders entitled to receive such distribution. For the purposes of this subsection (iii), the distribution of a Security, which is distributed not only to the holders of the Common Shares on the date fixed for the determination of shareholders entitled to such distribution of such Security, but also is distributed with each Common Share delivered to a Person converting a Series M-7 Preferred Share after such determination date, shall not require an adjustment of the Conversion Price pursuant to this subsection (iii); provided that on the date, if any, on which a person converting a Series M-7 Preferred Share would no longer be entitled to receive such Security with a Common Share (other than as a result of the termination of all such Securities), a distribution of such Securities shall be deemed to have occurred, and the Conversion Price shall be adjusted as provided in this subsection (iii) (and such day shall be deemed to be "the date fixed for the determination of the shareholders entitled to receive such distribution" and "the record date" within the meaning of the two preceding sentences).

(iv) No adjustment in the Conversion Price shall be required unless such adjustment would require a cumulative increase or decrease of at least 1% in such price; provided, however, that any adjustments that by reason of this subsection (iv) are not required to be made shall be carried forward and taken into account in any subsequent adjustment until made; and provided, further, that any adjustment shall be required and made in accordance with the provisions of this subparagraph (7) (other than this subsection (iv)) not later than such time as may be required in order to preserve the tax-free nature of a distribution to the holders of Common Shares. Notwithstanding any other provisions of this subparagraph (7), the Trust shall not be required to make any adjustment of the Conversion Price for the issuance of any Common Shares pursuant to any plan providing for the reinvestment of distributions or interest payable on securities of the Trust and the investment of additional optional amounts in Common Shares under such plan. All calculations under this subparagraph (7) shall be made to the nearest cent with ($.005 being rounded upward) or to the nearest one-tenth of a share (with .05 of a share being rounded upward), as the case may be. Anything in this subsection (d) to the contrary notwithstanding, the Trust shall be entitled, to the extent permitted by law, to make such reductions in the Conversion Price, in addition to those required by this subsection (d), as it in its discretion shall determine to be advisable in order that any share distributions, subdivision of shares, reclassification or combination of shares, distribution of rights, options or warrants to purchase shares or securities, or a distribution of other assets (other than cash distributions) hereafter made by the Trust to its shareholders shall not be taxable.

(e) If the Trust shall be a party to any transaction (including, without limitation, a merger, consolidation, statutory share exchange, self tender offer for all or substantially all of the Common Shares, sale of all or substantially all of the Trust's assets or recapitalization of the Common Shares and excluding any transaction as to which subsection (d) (i) of this subparagraph (7) applied) (each of the foregoing being referred to herein as a "Transaction"), in each case as a result of which Common Shares shall be converted into the right to receive shares, stock, securities or other property (including cash or any combination thereof), each Series M-7 Preferred Share which is not converted into the right to receive shares, stock, securities or other property in connection with such Transaction shall thereafter be convertible into the kind and amount of shares, stock, securities and other property (including cash or any combination thereof) receivable upon the consummation of such Transaction by a holder of that number of Common Shares into which one Series M-7 Preferred Share was convertible immediately prior to such Transaction, assuming such holder of Common Shares (i) is not a Person with which the Trust consolidated or into which the Trust merged or which merged into the Trust or to which such sale or transfer was made, as the case may be (a "Constituent Person"), or an affiliate of a Constituent Person and (ii) failed to exercise his or her rights of the election, if any, as to the kind or amount of shares, stock, securities and other property (including cash) receivable upon such Transaction (provided that if the kind or amount of shares, stock, securities and other property (including cash) receivable upon such Transaction is not the same for each Common Share of the Trust held immediately prior to such Transaction by other than a Constituent Person or an affiliate thereof and in respect of which such rights of election shall not have been exercised (the "Non-Electing Share"), then for purposes of this paragraph (e) the kind and amount of shares, securities and other property (including cash) receivable upon such Transaction by each Non-Electing Share shall be deemed to be the kind and amount so receivable per share by a plurality of the Non-Electing Shares). The Trust shall not be a party to any Transaction unless the terms of such Transaction are consistent with the provisions of this subsection (e), and it shall not consent or agree to the occurrence of any Transaction until the Trust has entered into an agreement with the successor or purchasing entity, as the case may be, for the benefit of the holders of the Series M-7 Preferred Shares that will contain provisions enabling the holders of the Series M-7 Preferred Shares that remain outstanding after such Transaction to convert into the consideration received by holders of Common Shares at the Conversion Price in effect immediately prior to such Transaction. The provisions of this subsection (e) shall similarly apply to successive Transactions.

(f) If:

(i) the Trust shall declare a distribution on the Common Shares (other than in cash out of the total equity applicable to Common Shares, including revaluation equity, less the amount of stated capital attributable to

Common Shares, determined on the basis of the most recent annual and quarterly consolidated cost basis balance sheets of the Trust and its consolidated subsidiaries available at the time of the declaration of the distribution); or

(ii) the Trust shall authorize the granting to the holders of the Common Shares of rights or warrants to subscribe for or purchase any shares of any class or any other rights or warrants; or

(iii) there shall be any reclassifications of the Common Shares (other than an event to which subsection (d)(i) of this subparagraph (7) applied) or any consolidation or merger to which the Trust is a party and for which approval of any shareholders of the Trust is required, or a statutory share exchange involving the conversion or exchange of Common Shares into securities or other property, or a self tender offer by the Trust for all or substantially all of its outstanding Common Shares, or the sale or transfer of all or substantially all of the assets of the Trust as an entity and for which approval of any stockholder of the Trust is required; or

(iv) there shall occur the voluntary or involuntary liquidation, dissolution or winding up of the Trust, then the Trust shall cause to be filed with the Transfer Agent and shall cause to be mailed to the holders of the Series M-7 Preferred Shares at their addresses as shown on the share records of the Trust, as promptly as possible, but at least 15 days prior to the applicable date hereinafter specified, a notice stating (A) the date on which a record is to be taken for the purpose of such distribution or rights or warrants, or, if a record is not to be taken, the date as of which the holders of Common Shares of record to be entitled to such distribution or rights or warrants are to be determined or (B) the date on which such reclassification, consolidation, merger, statutory share exchange, sale, transfer, liquidation, dissolution or winding up is expected to become effective, and the date as of which it is expected that holders of Common Shares of record shall be entitled to exchange their Common Shares for securities or other property, if any, deliverable upon such reclassification, consolidation, merger, statutory share exchange, sale, transfer, liquidation, dissolution or winding up. Failure to give or receive such notice or any defect therein shall not affect the legality or validity of the proceedings described in this subparagraph (7).

(g) Whenever the Conversion Price is adjusted as herein provided, the Trust shall promptly file with the Transfer Agent and the Depository an officer's certificate setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment, which certificate shall be conclusive evidence of the correctness of such adjustment absent manifest error. Promptly after delivery of such certificate, the Trust shall prepare a notice of such adjustment of the Conversion Price setting forth the adjusted Conversion Price and the effective date such adjustment becomes effective and shall mail such notice of such adjustment

of the Conversion Price to the holder of each Series M-7 Preferred Share at such holder's last address as shown on the share records of the Trust.

(h) In any case in which subsection (d) of this subparagraph (7) provides that an adjustment shall become effective on the date next following the record date for an event, the Trust may defer until the occurrence of such event (A) issuing to the holder of any Series M-7 Preferred Shares converted after such record date and before the occurrence of such event the additional Common Shares issuable upon such conversion by reason of the adjustment required by such event over and above the Common Shares issuable upon such conversion before giving effect to such adjustment and (B) fractionalizing any Series M-7 Preferred Share and/or paying to such holder any amount of cash in lieu of any fraction pursuant to subsection (c) of this subparagraph (7).

(i) There shall be no adjustment of the Conversion Price in case of the issuance of any shares of beneficial interest of the Trust in a reorganization, acquisition or other similar transaction except as specifically set forth in this subparagraph (7). If any action or Transaction would require adjustment of the Conversion Price pursuant to more than one subsection of this subparagraph (7), only one adjustment shall be made, and such adjustment shall be the amount of adjustment that has the highest absolute value.

(j) If the Trust shall take any action affecting the Common Shares, other than action described in this subparagraph (7), that in the opinion of the Board of Trustees would materially adversely affect the conversion rights of the holders of the Series M-7 Preferred Shares, the Conversion Price for the Series M-7 Preferred Shares may be adjusted, to the extent permitted by law, in such manner, if any, and at such time, as the Board of Trustees, in its sole discretion, may determine to be equitable in the circumstances.

(k) The Trust covenants that it will at all times reserve and keep available, free from preemptive rights, out of the aggregate of its authorized but issued Common Shares, for the purpose of affecting conversion of the Series M-7 Preferred Shares, the full number of Common Shares deliverable upon the conversion of all outstanding Series M-7 Preferred Shares not theretofore converted. For purposes of this subsection (k), the number of Common Shares that shall be deliverable upon the conversion of all outstanding Series M-7 Preferred Shares shall be computed as if at the time of computation all such outstanding shares were held by a single holder.

The Trust covenants that any Common Shares issued upon conversion of the Series M-7 Preferred Shares shall be validly issued, fully paid and non-assessable. Before taking any action that would cause an adjustment reducing the Conversion Price below the then-par value of the Common Shares deliverable upon conversion of the Series M-7 Preferred Shares, the Trust will take any action that, in the opinion of its counsel, may be necessary in order

that the Trust may validly and legally issue fully paid and nonassessable Common Shares at such adjusted Conversion Price.

The Trust shall endeavor to list the Common Shares required to be delivered upon conversion of the Series M-7 Preferred Shares, prior to such delivery, upon each national securities exchange, if any, upon which the outstanding Common Shares are listed at the time of such delivery.

Prior to the delivery of any securities that the Trust shall be obligated to deliver upon conversion of the Series M-7 Preferred Shares, the Trust shall endeavor to comply with all federal and state laws and regulations thereunder requiring the registration of such securities with, or any approval of or consent to the delivery thereof by any governmental authority.

(l) The Trust will pay any and all documentary stamp or similar issue or transfer taxes payable in respect of the issue or delivery of Common Shares or other securities or property on conversion of the Series M-7 Preferred Shares pursuant hereto; provided, however, that the Trust shall not be required to pay any tax that may be payable in respect of any transfer involved in the issue or delivery of Common Shares or other securities or property in a name other than that of title holder of the Series M-7 Preferred Shares to be converted, and no such issue or delivery shall be made unless and until the person requesting such issue or delivery has paid to the Trust the amount of any such tax or established, to the reasonable satisfaction of the Trust, that such tax has been paid.

(m) In addition to the foregoing adjustments, the Company will be permitted to make such reductions in the Conversion Price as it considers to be advisable in order that any event treated for federal income tax purposes as a dividend of stock or stock rights will not be taxable to the holders of the Common Shares.

C. Restrictions on Transfer. The Series M-7 Preferred Shares shall be subject to the restrictions on transfer and ownership of Shares in Article VII of the Declaration of Trust, as supplemented below.

(1) Certain Definitions.

For purposes of the Series M-7 Preferred Shares the following terms shall have the following meanings:

"Closing Date of the Series M-7 Preferred Shares Offering" shall mean the time and date of payment for and delivery of Series M-7 Preferred Shares issued pursuant to the conversion of Series J Preference Units.

"Special Triggering Event" shall mean either (i) the redemption or purchase by the Trust of all or a portion of the outstanding shares of beneficial interest in the Trust, or (ii) a change

in the value of the Series M-7 Preferred Shares relative to any other class of beneficial interest in the Trust.

(2) Special Triggering Event. If during the period commencing on the Closing Date of the Series M-7 Preferred Shares Offering and prior to the Restriction Termination Date, a Special Triggering Event (if effective) or other event or occurrence (if effective) would result in any violation of section 7.2(a) of the Trust's Declaration of Trust, then (i) the number of Series M-7 Preferred Shares (rounded up to the nearest whole share) that would (but for this section) cause any Person to Beneficially Own either Series M-7 Preferred Shares, or to Beneficially Own Series M-7 Preferred Shares and any other shares of beneficial interest in the Trust, in violation of section 7.2(a) shall be treated as provided in Article VII. Such treatment shall be effective as of the close of business on the Business Day prior to the date of the Special Triggering Event or other event or occurrence.

(3) Ambiguity. In the case of an ambiguity in the application of any of the provisions of this section, including any definition contained in paragraph (1), the Board of Trustees shall have the power to determine the application of this section with respect to any situation based on the facts known to it (subject, however, to the provisions of Section 7.2(a)).

(4) Exclusion of Other Rights.

The Series M-7 Preferred Shares shall not have any voting powers, preferences and relative, participating, optional or other special rights, other than those specifically set forth in these terms of the Series M-7 Preferred Shares (as such terms may be amended from time to time) and in the Declaration of Trust. The Series M-7 Preferred Shares shall have no preemptive or subscription rights.

(5) Headings of Subdivisions.

The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

(6) Severability of Provisions.

If any voting powers, preferences and relative, participating, optional and other special rights of the Series M-7 Preferred Shares and qualifications, limitations and restrictions thereof set forth in these terms of the Series M-7 Preferred Shares (as such terms may be amended from time to time) is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other voting powers, preferences and relative, participating, optional and other special rights of Series M-7 Preferred Shares and qualifications, limitations and restrictions thereof set forth in these terms of the Series M-7 Preferred Shares (as so amended), which can be given effect without the invalid, unlawful or unenforceable voting powers, preferences, and relative, participating, optional or other special rights of Series M-7 Preferred Shares and qualifications, limitations and restrictions thereof herein set forth, shall nevertheless, remain in full force and effect and no preferences or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption of the Series M-7 Preferred Shares herein set forth shall be deemed dependent upon any other such voting powers, preferences and

relative, participating, optional or other special rights of Series M-7 Preferred Shares and qualifications, limitations and restrictions thereof unless so expressed herein.

SECTION 13.17. Series N Preferred Shares.

A. Certain Definitions.

Unless the context otherwise requires, the terms defined in this paragraph A shall have, for all purposes of the Series N Articles Supplementary, the meanings herein specified (with terms defined in the singular having comparable meanings when used in the plural).

"Business Day" shall mean any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions in New York City are authorized or required by law, regulation or executive order to close.

"Closing Date of the Series N Preferred Shares Offering" shall have the meaning set forth in subparagraph (1) of paragraph C below.

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

"Common Shares" shall mean the common shares of beneficial interest, $.01 par value per share, of the Trust.

"Declaration of Trust" shall have the meaning set forth in Article First of the Series N Articles Supplementary.

"Distribution Period" shall have the meaning set forth in subparagraph (4) of paragraph B below.

"Event" shall have the meaning set forth in subparagraph (7)(c) of paragraph B below.

"Junior Shares" shall have the meaning set forth in subparagraph (3) of paragraph B below.

"Parity Shares" shall have the meaning set forth in subparagraph (3) of paragraph B below.

"Person" shall mean an individual, corporation, partnership, estate, trust (including a trust qualified under Section 401(a) or 501(c)(17) of the Code), a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, association, private foundation within the meaning of Section 509(a) of the Code, joint stock company or other entity, and also includes a group as that term is used for purposes of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended; but does not include an underwriter which participates in a public offering of the Series N Preferred Shares provided that the ownership of Series N Preferred Shares by such Underwriter would not result in the Trust being "closely held" within the meaning of Section 856(h) of the Code, or would otherwise result in the Trust failing to qualify as a REIT.

"Preferred Shares" shall mean preferred shares of beneficial interest of the Trust designated as or otherwise on a parity with the Series N Preferred Shares as to distributions and rights upon voluntary or involuntary dissolution, liquidation or winding up of the Trust as may be issued and outstanding from time to time, including Series B Preferred Shares, Series C Preferred Shares, Series D Preferred Shares, Series E Preferred Shares, Series G Preferred Shares, Series H Preferred Shares, Series K Preferred Shares, Series L Preferred Shares, Series M Preferred Shares, Series M-1 Preferred Shares, Series M-2 Preferred Shares, Series M-3 Preferred Shares, Series M-4 Preferred Shares, Series M-5 Preferred Shares, Series M-6 Preferred Shares, and Series M-7 Preferred Shares and any other shares so designated.

"Quarterly Distribution Date" shall have the meaning set forth in subparagraph (4) of paragraph B below.

"Record Date" shall have the meaning set forth in subparagraph (4) of paragraph B below.

"REIT" shall mean a real estate investment trust under Section 856 of the Code.

"Series N Preferred Shares" shall have the meaning set forth in subparagraph (1) of paragraph B below.

"Series N Redemption Date" shall have the meaning set forth in subparagraph (6)(a) of paragraph B below.

"Series N Redemption Price" shall have the meaning set forth in subparagraph (6)(a) of paragraph B below.

"Special Triggering Event" shall have the meaning set forth in subparagraph (1) of paragraph C below.

"Trust" shall have the meaning set forth in Article First of the Series N Articles Supplementary.

All other capitalized terms used but not defined shall have the meanings ascribed to them in the Declaration of Trust.

B. Series N Preferred Shares.

(1) Number. A series of Preferred Shares, consisting of 600,000 Preferred Shares designated as 6.48% Series N Cumulative Redeemable Preferred Shares of Beneficial Interest, $.01 par value per share (liquidation preference $250.00 per share) (the "Series N Preferred Shares") is hereby established.

(2) Preferred Shares Issued Without Certificate. Some or all of the Series N Preferred Shares may be issued without certificates at the discretion of the officers of the Trust which may act through the transfer agent with respect to the Series N Preferred Shares.

(3) Ranking. In respect of rights to receive distributions and to participate in distributions or payments in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Trust, the Series N Preferred Shares shall rank (i) senior to the Common Shares and any other class or series of shares of beneficial interest of the Trust ranking, as to distributions and upon liquidation, junior (collectively, the "Junior Shares") to the Preferred Shares, (ii) *pari passu* with any other Preferred Shares of the Trust and any other class or series of shares of beneficial interest of the Trust ranking, as to distributions and upon liquidation, *pari passu* (collectively, the "Parity Shares") with the Preferred Shares, and (iii) junior to any class or series of shares of beneficial interest of the Trust ranking, as to distributions and upon liquidation, senior to the Preferred Shares (when and if issued).

(4) Distributions. (a) The holders of the then outstanding Series N Preferred Shares shall be entitled to receive, when and as authorized by the Board of Trustees and declared by the Trust out of any funds legally available therefor, cumulative distributions at the rate of $16.20 per share per year, payable in equal amounts of $4.05 per share quarterly in arrears in cash on the fifteenth day, or if not a Business Day, the next succeeding Business Day, of January, April, July and October in each year (each such day being hereinafter called a "Quarterly Distribution Date" and each period ending on a Quarterly Distribution Date being hereinafter called a "Distribution Period"), beginning on October 15, 2003, to shareholders of record at the close of business on the first day of the calendar month in which such Quarterly Distribution Date falls or such other date as shall be fixed by the Board of Trustees at the time of declaration of the distribution (the "Record Date"), which shall not be less than 10 nor more than 45 days preceding the Quarterly Distribution Date. The amount of any distribution payable for the initial Distribution Period and for any other Distribution Period shorter than or longer than a Distribution Period shall be prorated and computed on the basis of a 360-day year of twelve 30-day months. Distributions on each Series N Preferred Share shall accrue and be cumulative from the date of original issue thereof, whether or not (i) distributions on such shares are earned or declared or (ii) on any Quarterly Distribution Date there shall be funds legally available for the payment of distributions. Distributions paid on the Series N Preferred Shares in an amount less than the total amount of such distributions at the time accrued and payable on such shares shall be allocated pro rata on a per share basis among all such shares at the time outstanding. Accrued but unpaid distributions on the Series N Preferred Shares will not bear interest and holders of the Series N Preferred Shares will not be entitled to any distributions in excess of full cumulative distributions as described herein. Any distribution payment made on the Series N Preferred Shares shall first be credited against the earliest accrued but unpaid distribution due with respect to such shares which remains payable.

(b) The amount of any distributions accrued on any Series N Preferred Shares at any Quarterly Distribution Date shall be the amount of any unpaid distributions accumulated thereon, to and including such Quarterly Distribution Date, whether or not earned or declared, and the amount of distributions accrued on any Series N Preferred Shares at any date other than a Quarterly Distribution Date shall be equal to the sum of the amount of any unpaid distributions accumulated thereon, to and including the last preceding Quarterly Distribution Date, whether or not earned or declared, plus an amount calculated on the basis of the annual distribution rate of $16.20 for the period after such last preceding Quarterly Distribution Date to and including the date as of which the calculation is made based on a 360-day year of twelve 30-day months.

(c) In determining whether a distribution (other than upon voluntary or involuntary liquidation), by dividend, redemption or other acquisition of shares of beneficial interest of the Trust or otherwise, is permitted under Maryland law, amounts that would be needed, if the Trust were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of holders of Series N Preferred Shares will not be added to the Trust's total liabilities.

(d) Except as provided in the Series N Articles Supplementary, the Series N Preferred Shares shall not be entitled to participate in the earnings or assets of the Trust.

(e) If, for any taxable year, the Trust elects to designate as "capital gain dividends" (as defined in Section 857 of the Code), any portion (the "Capital Gains Amount") of the total dividends (within the meaning of the Code) paid (or treated as paid for federal income tax purposes) in such taxable year to holders of all classes of capital stock (the "Total Dividends"), then the portion of the Capital Gains Amount that shall be allocable to holders of Series N Preferred Shares shall be the Capital Gains Amount multiplied by a fraction, the numerator of which will be the total dividends paid (or treated as paid for federal income tax purposes) to the holders of the Series N preferred shares for the taxable year and the denominator of which shall be the Total Dividends.

(f) So long as any Series N Preferred Shares are outstanding, no distributions, except as described in the immediately following sentence, shall be declared or paid or set apart for payment on any class or series of Parity Shares for any period unless full cumulative distributions have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for such payment on the Series N Preferred Shares for all Distribution Periods terminating on or prior to the distribution payment date for such class or series of Parity Shares. When distributions are not paid in full or a sum sufficient for such payment is not set apart, as aforesaid, all distributions declared upon Series N Preferred Shares and all distributions declared upon any other class or series of Parity Shares shall be declared ratably in proportion to the respective amounts of distributions accumulated and unpaid on the Series N Preferred Shares and accumulated and unpaid on such Parity Shares.

(g) No distributions on Series N Preferred Shares shall be authorized by the Board of Trustees or be paid or set apart for payment by the Trust at such time as the terms and provisions of any agreement of the Trust, including any agreement relating to its indebtedness, prohibits such authorization, payment or setting apart for payment or provides that such authorization, payment or setting apart for payment would constitute a breach thereof or a default thereunder, or if such authorization or payment shall be restricted or prohibited by law.

(5) Liquidation Rights.

(a) Upon the voluntary or involuntary dissolution, liquidation or winding up of the Trust, the holders of the Series N Preferred Shares then outstanding shall be entitled to receive and to be paid out of the assets of the Trust available for distribution to its shareholders, before any payment or distribution shall be made on any Junior Shares, the amount of $250.00 per Series N Preferred Share, plus accrued and unpaid distributions thereon.

(b) After the payment to the holders of the Series N Preferred Shares of the full preferential amounts provided for in this paragraph B, the holders of the Series N Preferred Shares as such shall have no right or claim to any of the remaining assets of the Trust.

(c) If, upon any voluntary or involuntary dissolution, liquidation, or winding up of the Trust, the amounts payable with respect to the preference value of the Series N Preferred Shares and any other shares of beneficial interest of the Trust ranking as to any such distribution on a parity with the Series N Preferred Shares are not paid in full, the holders of the Series N Preferred Shares and of such other shares will share ratably in any such distribution of assets of the Trust in proportion to the full respective preference amounts to which they are entitled.

(d) Neither the sale, lease, transfer or conveyance of all or substantially all the property or business of the Trust, nor the merger or consolidation of the Trust into or with any other entity or the merger or consolidation of any other entity into or with the Trust, shall be deemed to be a dissolution, liquidation or winding up, voluntary or involuntary, for the purposes of this paragraph B.

(6) Redemption.

(a) Optional Redemption. The Series N Preferred Shares shall not be redeemable by the Trust prior to June 19, 2008. On and after June 19, 2008 the Trust may, at its option, redeem at any time all or, from time to time, part of the Series N Preferred Shares at a price per share (the "Series N Redemption Price"), payable in cash, of $250.00 per Series N Preferred Share, together with all accrued and unpaid distributions to and including the date fixed for redemption (the "Series N Redemption Date"), without interest, to the extent the Trust has funds legally available for redemption.

(b) Procedures for Redemption.

(i) Notice of any redemption will be mailed by the Trust, postage prepaid, or sent via overnight delivery service, not less than 30 days nor more than 60 days prior to the Series N Redemption Date, addressed to the holders of record of the Series N Preferred Shares to be redeemed at their addresses as they appear on the share transfer records of the Trust. No failure to give such notice or any defect therein or in the mailing thereof shall affect the validity of the proceedings for the redemption of any Series N Preferred Shares except as to the holder to whom the Trust has failed to give notice or except as to the holder to whom notice was defective. In addition to any information required by law or by the applicable rules of any exchange upon which Series N Preferred Shares may be listed or admitted to trading, such notice shall state: (A) the Series N Redemption Date; (B) the Series N Redemption Price; (C) the number of Series N Preferred Shares to be redeemed; (D) the place or places where certificates for such shares are to be surrendered for payment of the Series N Redemption Price; and (E) that distributions on the shares to be redeemed will cease to accumulate on the Series N Redemption Date.

(ii) If notice has been mailed in accordance with subparagraph (5)(b)(i) above and provided that on or before the Series N Redemption Date specified in such notice all funds necessary for such redemption shall have been irrevocably set aside by the Trust, separate and apart from its other funds for the pro rata benefit of the holders of the Series N Preferred Shares so called

for redemption, so as to be, and to continue to be available therefor, then, from and after the Series N Redemption Date (unless the Trust defaults in the payment of the Series N Redemption Price), distributions on the Series N Preferred Shares so called for redemption shall cease to accumulate, and said shares shall no longer be deemed to be outstanding and shall not have the status of Series N Preferred Shares and all rights of the holders thereof as shareholders of the Trust (except the right to receive the Series N Redemption Price) shall cease. Upon surrender, in accordance with said notice, of the certificates for any certificated Series N Preferred Shares so redeemed (properly endorsed or assigned for transfer, if the Trust shall so require and the notice shall so state), such Series N Preferred Shares shall be redeemed by the Trust at the Series N Redemption Price. In case fewer than all the Series N Preferred Shares evidenced by any such certificate are redeemed, a new certificate or certificates shall be issued evidencing the unredeemed Series N Preferred Shares without cost to the holder thereof.

(iii) Any funds deposited with a bank or trust company for the purpose of redeeming Series N Preferred Shares shall be irrevocable except that:

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

(B) any balance of monies so deposited by the Trust and unclaimed by the holders of the Series N Preferred Shares entitled thereto at the expiration of two years from the applicable Series N Redemption Date shall be repaid, together with any interest or other earnings earned thereon, to the Trust, subject to escheat laws, and after any such repayment, the holders of the shares entitled to the funds so repaid to the Trust shall look only to the Trust for payment without interest or other earnings.

(iv) No Series N Preferred Shares may be redeemed except with funds legally available for the payment of the Series N Redemption Price.

(v) Unless full accumulated distributions on all Series N Preferred Shares shall have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past Distribution Periods and the then current Distribution Period, no Series N Preferred Shares shall be redeemed (unless all outstanding Series N Preferred Shares are simultaneously redeemed) or purchased or otherwise acquired directly or indirectly (except by conversion into or exchange for shares of beneficial interest of the Trust ranking junior to the Series N Preferred Shares as to distributions and upon liquidation); provided, however, that the foregoing shall not prevent the redemption of Series N Preferred Shares pursuant to Article VII of the Declaration of Trust or the purchase or acquisition of Series N Preferred Shares pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding Series N Preferred Shares.

(vi) If the Series N Redemption Date is after a Record Date and before the related Quarterly Distribution Date, the distribution payable on such Quarterly

Distribution Date shall be paid on the Series N Redemption Date to the holder in whose name the Series N Preferred Shares to be redeemed are registered at the close of business on such Record Date notwithstanding the redemption thereof between such Record Date and the related Quarterly Distribution Date or the Trust's default in the payment of the distribution due.

(vii) In case of redemption of less than all Series N Preferred Shares at the time outstanding, the Series N Preferred Shares to be redeemed shall be selected pro rata from the holders of record of such shares in proportion to the number of Series N Preferred Shares held by such holders (with adjustments to avoid redemption of fractional shares) or by any other equitable method determined by the Trust. If fewer than all the Series N Preferred Shares represented by any certificate are redeemed, then new certificates representing the unredeemed shares shall be issued without charges to the holder thereof.

(7) Voting Rights. Except as required by law and as provided in the Series N Articles Supplementary, the holders of the Series N Preferred Shares shall not be entitled to vote at any meeting of the shareholders for election of trustees or for any other purposes or otherwise to participate in any action taken by the Trust or the shareholders thereof, or to receive notice (except for such notice as required by law) of any meeting of shareholders.

(a) In any matter in which the Series N Preferred Shares are entitled to vote (as expressly provided herein), including any action by written consent, each Series N Preferred Share shall be entitled to 10 votes, each of which 10 votes may be directed separately by the holder thereof (or by any proxy or proxies of such holder). With respect to each Series N Preferred Share, the holder thereof may designate up to 10 proxies, with each such proxy having the right to vote a whole number of votes (totaling 10 votes per Series N Preferred Share).

(b) Whenever distributions on any Series N Preferred Shares shall be in arrears for six or more quarterly periods, the holders of such Series N Preferred Shares, voting separately as a class with all other series of Preferred Shares upon which like voting rights have been conferred and are exercisable, will be entitled to vote for the election of two additional Trustees of the Trust at a special meeting called by the holders of record of at least ten percent (10%) of any series of Preferred Shares so in arrears (or such other number of holders as may be specifically provided for in the terms establishing the voting powers of such series and unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the shareholders) or at the next annual meeting of shareholders, and at each subsequent annual meeting until all distributions accumulated on such Series N Preferred Shares for the past distribution periods and the then current distribution period shall have been fully paid or declared and a sum sufficient for the payment thereof set aside for payment. In such case, the entire Board of Trustees of the Trust will be increased by two Trustees.

(c) So long as any Series N Preferred Shares remain outstanding, the Trust will not, without the affirmative vote or consent of the holders of at least two-thirds of the Series N Preferred Shares outstanding at the time, given in person or by proxy, either in writing or at a meeting (such series voting separately as a class), (i) authorize or create, or increase the authorized or issued amount of, any class or series of shares of beneficial interest ranking senior to the Series N Preferred Shares with respect to the payment of distributions or to the distribution of assets upon liquidation, dissolution or winding up of the Trust or reclassify any authorized shares of beneficial interest of the Trust into such shares, or create, authorize or issue any obligation or security convertible into or

evidencing the right to purchase any such shares; or (ii) amend, alter or repeal the provisions of the Declaration of Trust or the Series N Articles Supplementary, as such Articles Supplementary may be amended from time to time, whether by merger, consolidation or otherwise (an "Event"), so as to materially and adversely affect any right, preference, privilege or voting power of the Series N Preferred Shares or the holders thereof; provided, however, with respect to the occurrence of any of the Events set forth in (ii) above, so long as the Series N Preferred Shares remain outstanding with the terms thereof materially unchanged, taking into account that upon the occurrence of an Event, the Trust may not be the surviving entity or the Series N Preferred Shares that remain outstanding may bear a new title, designation and/or be issued by a different issuer, the occurrence of any such Event shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting power of holders of Series N Preferred Shares and provided further that (x) any increase in the amount of the authorized Preferred Shares or the creation or issuance of any other Preferred Shares, or (y) any increase in the amount of authorized Series N Preferred Shares or any other Preferred Shares, in each case ranking on a parity with or junior to the Series N Preferred Shares with respect to payment of distributions or the distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting powers.

The foregoing voting provisions will not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding Series N Preferred Shares shall have been redeemed or called for redemption and sufficient funds shall have been deposited in trust to effect such redemption.

(8) Conversion. The Series N Preferred Shares are not convertible into or exchangeable for any other property or securities of the Trust, except into Excess Shares in connection with maintaining the ability of the Trust to qualify as a REIT.

(9) Status of Redeemed or Reacquired Shares. All Series N Preferred Shares that have been issued and redeemed or reacquired in any manner by the Trust shall become unclassified Preferred Shares available for subsequent reclassification and issuance.

C. Restrictions on Transfer.

The Series N Preferred Shares shall be subject to the restrictions on transfer and ownership of Shares in Article VII of the Declaration of Trust, as supplemented below.

(1) Certain Definitions. For purposes of the Series N Preferred Shares, any capitalized terms used but not defined in this paragraph C shall have the meanings ascribed to them in the Declaration of Trust and, furthermore, the following terms shall have the following meanings:

"Closing Date of the Series N Preferred Shares Offering" shall mean the time and date of payment for and delivery of Series N Preferred Shares (or depositary shares relating thereto) issued pursuant to the Trust's effective registration statement relating to such Series N Preferred Shares (or depositary shares relating thereto) filed under the Securities Act of 1933, as amended.

"Special Triggering Event" shall mean either (i) the redemption or purchase by the Trust of all or a portion of the outstanding shares of beneficial interest in the Trust, or (ii) a change

in the value of the Series N Preferred Shares relative to any other class of beneficial interest in the Trust.

(2) Special Triggering Event. If during the period commencing on the Closing Date of the Series N Preferred Shares Offering and prior to the Restriction Termination Date, a Special Triggering Event (if effective) or other event or occurrence (if effective) would result in any violation of section 7.2(a) of the Declaration of Trust (or would result in the Trust being "closely held" within the meaning of Section 856(h) of the Code or would otherwise cause the Trust to fail to qualify as a REIT), then (i) the number of Series N Preferred Shares (rounded up to the nearest whole share) that would (but for this section) cause any Person to Beneficially Own either Series N Preferred Shares, or to Beneficially Own Series N Preferred Shares and any other shares of beneficial interest in the Trust, in violation of section 7.2(a) of the Declaration of Trust (or would result in the Trust being "closely held" or otherwise fail to qualify as a REIT) shall constitute "Excess Shares" and shall be treated as provided in Article VII of the Declaration of Trust. Such designation and treatment shall be effective as of the close of business on the Business Day prior to the date of the Special Triggering Event or other event or occurrence.

(3) Ambiguity. In the case of an ambiguity in the application of any of the provisions of this section, including any definition contained in paragraph (1), the Board of Trustees shall have the power to determine the application of this section with respect to any situation based on the facts known to it (subject, however, to the provisions of Section 7.2(a) of the Declaration of Trust).

(4) Exclusion of Other Rights.

The Series N Preferred Shares shall not have any voting powers, preferences and relative, participating, optional or other special rights, other than those specifically set forth in the Series N Articles Supplementary (as such Articles Supplementary may be amended from time to time) and in the Declaration of Trust. The Series N Preferred Shares shall have no preemptive or subscription rights.

(5) Headings of Subdivisions.

The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

(6) Severability of Provisions.

If any voting powers, preferences and relative, participating, optional and other special rights of the Series N Preferred Shares and qualifications, limitations and restrictions thereof set forth in the Series N Articles Supplementary (as such Articles Supplementary may be amended from time to time) is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other voting powers, preferences and relative, participating, optional and other special rights of Series N Preferred Shares and qualifications, limitations and restrictions thereof set forth in the Series N Articles Supplementary (as so amended) which can be given effect without the invalid, unlawful or unenforceable voting powers, preferences and relative, participating, optional or other special rights of Series N Preferred Shares and qualifications, limitations and restrictions thereof herein set forth shall, nevertheless, remain in full force and effect and no preferences or other rights, voting

powers, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption of the Series N Preferred Shares herein set forth shall be deemed dependent upon any other such voting powers, preferences and relative, participating, optional or other special right of Series N Preferred Shares and qualifications, limitations and restrictions thereof unless so expressed herein.

THIRD: The name and address of the Trust's current resident agent is set forth in Section 1.2 of the foregoing restatement of the charter.

FOURTH: The number of trustees of the Trust is eleven; the names of those currently in office are as follows:

Samuel Zell
Bruce W. Duncan
John W. Alexander
Charles L. Atwood
Stephen O. Evans
James D. Harper
Boone A. Knox
Desiree G. Rogers
Sheli Z. Rosenberg
Gerald A. Spector
B. Joseph White

FIFTH: The foregoing restatement of the Declaration of Trust has been approved by a majority of the Board of Trustees.

SIXTH: The Declaration of Trust is not amended by these Articles of Restatement.

The undersigned Chief Executive Officer and President acknowledges these Articles of Restatement to be the trust act of the Trust and as to all matters or facts required to be verified under oath, the undersigned Chief Executive Officer and President acknowledges that to the best of his knowledge, information and belief, these matters and facts are true in all material respects and that this statement is made under the penalties for perjury.

IN WITNESS WHEREOF, the Trust has caused these Articles to be signed in its name and on its behalf by its Chief Executive Officer and President and attested to by its Secretary on this 9th day of December, 2004.

ATTEST: EQUITY RESIDENTIAL

/s/ Bruce C. Strohm
Bruce C. Strohm
Secretary

By: /s/ Bruce W. Duncan
Bruce W. Duncan
Chief Executive Officer and
President

Exhibit 10.3

VIVMARK RESIDENTIAL
EXECUTIVE RETENTION AWARD AGREEMENT

This Executive Retention Award Agreement (the "Award Agreement") is made as of August 17, 2026 (the "Grant Date") between Vivmark Residential, a Maryland real estate investment trust (the "Company") and [●] (the "Grantee").

RECITALS

A. The Company, acting pursuant to authorization from its Board of Trustees and its Compensation Committee (the "Compensation Committee"), hereby grants the Grantee an Executive Retention Award ("Award") as of the Grant Date and as more fully set forth on Schedule A.

B. One half (50%) of the Award will vest on August 17, 2029 (the "Vesting Date"), subject to the Grantee's continued employment through such date (the "Time-Vesting Award"), except as otherwise specified in this Award Agreement. The remaining half (50%) of the Award will vest based on the Company's achievement of performance goals further described in Section 1 (the "Performance-Vesting Award") for the period beginning on the Grant Date and ending on the Vesting Date (the "Performance Period").

C. Each of the Time-Vesting Award and Performance-Vesting Award may be issued in the form of Restricted Shares and/or Restricted Units, at the Grantee's election. Restricted Shares are unvested common shares of beneficial interest of the Company. Restricted Units are a special class of interest in ERP Operating Limited Partnership ("ERP"), the Company's operating partnership. Both Restricted Shares and Restricted Units are subject to vesting and other tax considerations. Each Restricted Unit is convertible, under certain conditions, into one OP Unit, which is a class of partnership interest in ERP that can be exchanged for a common share in the Company. Any Restricted Units issued under the Time-Vesting Award will be known as the Series 2026G Restricted Units and are issued subject to the terms and conditions contained in the Certificate of Designation of Series 2026G Restricted Units of ERP Operating Limited Partnership dated of even date herewith; any Restricted Units issued under the Performance-Vesting Award will be known as the Series 2026H Restricted Units and are issued subject to the terms and conditions contained in the Certificate of Designation of Series 2026H Restricted Units of ERP Operating Limited Partnership dated of even date herewith.

D. The Award, issued pursuant to the Company's 2019 Share Incentive Plan ("2019 Share Plan"), references a target number of Restricted Shares and/or Restricted Units. The Grantee previously made an election to have the Award settled after the end of the Performance Period in the form of either Restricted Shares and/or Restricted Units. To the extent that the Grantee elected to receive Restricted Units, the Restricted Units are being issued as of the date hereof at the maximum 200% of the target amount with respect to the Performance-Vesting Award and 100% of the target amount with respect to the Time-Vesting Award, with the ultimate number of Restricted Units subject to the Performance-Vesting Award to be retained by Grantee subject to final determination at the end of the Performance Period as provided in Section 3(b). To the extent that the Grantee elected to receive Restricted Shares, the Restricted Shares are being issued as of

the date hereof with respect to the Time-Vesting Award, and with respect to the Performance-Vesting Award, such shares are not being issued as of the date hereof, but the Award will be settled after the end of the Performance Period as provided in Section 3(b).

NOW, THEREFORE, the Company and the Grantee agree as follows:

1. **Performance Metrics**

The following "Performance Metrics" will determine the actual number of Restricted Shares and/or Restricted Units the Grantee may earn pursuant to the Performance-Vesting Award at the end of the Performance Period:

a. Total Synergies: A percentage of 50% of the target Performance-Vesting Award will be earned based on the Company's total achievement of gross overhead and Net Operating Income (NOI) synergies as follows:

Total Synergies achieved with respect to gross overhead expense and NOI:	Percentage of 50% Earned:
Less than $150 million	0%
$150 million ("threshold")	50%
$175 million ("target")	100%
$225 million ("maximum")	200%

The achievement of this metric shall be determined in the aggregate at the end of the Performance Period.

b. Operating Margin Improvement Relative to the Company's Beginning Same Store NOI Margin: A percentage of 25% of the target Performance-Vesting Award will be earned based on the Company's improvement of its operating margin, relative to its same store NOI as of a beginning date to be determined by the Compensation Committee pursuant to Section 1(e), as follows:

Operating Margin Improvement:	Percentage of 25% Earned:
Less than 50 basis points	0%
50 basis points ("threshold")	50%
100 basis points ("target")	100%
200 basis points ("maximum")	200%

The achievement of this metric shall be adjusted to take into account market rent growth during the Performance Period and determined in the aggregate at the end of the Performance Period.

c. Development Rights Pipeline: 12.5% of the target Performance-Vesting Award will be earned based on the Company's Development Rights Pipeline, in terms of Total Capital Cost in the aggregate measured at the end of the Performance Period, as follows:

Development Rights Pipeline:	Percentage of 12.5% Earned:
Less than $5,000,000,000	0%
$5,000,000,000 ("threshold")	50%
$6,000,000,000 ("target")	100%
$7,000,000,000 ("maximum")	200%

d. Development Starts: 12.5% of the target Performance-Vesting Award will be earned based on the Company's Development Starts, in terms of cumulative Total Capital Cost in starts over the course of the Performance Period, as follows:

Development Starts:	Percentage of 12.5% Earned:
Less than $4,000,000,000	0%
$4,000,000,000 ("threshold")	50%
$6,000,000,000 ("target")	100%
$8,000,000,000 ("maximum")	200%

e. No later than December 31, 2026, the Compensation Committee in its sole discretion will establish specific definitions and calculation methods that apply to the foregoing Performance Metrics, and provide notice to Grantee thereof. This Award Agreement shall be deemed to be amended by such determination by the Compensation Committee without further action of any parties hereto.

f. For results between threshold and target, or between target and maximum, the appropriate percentage of the target Award earned shall be based on interpolation. Performance against each metric is also measured separately from the others. As an example:

Total Synergies (50% of Award)	Operating Margin Improvement (25% of Award)	Development Rights Pipeline (12.5% of Award)	Development Starts (12.5% of Award)
Result = $150 million Equal to the average = 100% of target Pct of 50% earned = 100% 50% x 100% = **50%**	Result = 127 basis points 127 basis points = 127% of target Pct of 25% earned = 127% 25% x 127% = **31.75%**	Result = $6B $6B = 100% of target Pct of 12.5% earned = 100% 12.5% x 100% = 1**2.5%**	Result = $6B $6B = 100% of target Pct of 12.5% earned = 100% 12.5% x 100% = 1**2.5%**
Final Calculation of Award = 50% + 31.75% + 12.5% + 12.5% = 106.75% of Target			

2. **Adjustments**

The Compensation Committee shall make equitable adjustments to the Award granted hereunder and/or the Performance Metrics contained herein to take into account any extraordinary, unusual or non-recurring corporate events affecting the Company as described in Section 14 of the 2019 Share Plan (such as spin-offs, stock splits, reverse splits, special dividends, recapitalizations,

reclassifications and similar events), so that the total value of the Award shall not be changed by such events. Furthermore, the Compensation Committee shall make equitable adjustments to the Award granted hereunder and/or the Performance Metrics contained herein to take into account any other significant or unforeseen events which occur, so that the total value of the Award shall not be changed by such events. The Compensation Committee has discretion in how the required adjustments are determined as long as they are done equitably.

3. **Vesting and Issuance**

a. Time-Vesting Award. The Company as promptly as practicable following the Vesting Date shall (i) for awarded Restricted Shares, cause the Grantee to retain the Restricted Shares in respect of the Time-Vesting Award, and (ii) for awarded Restricted Units, cause the Grantee to retain the Restricted Units in respect of the Time-Vesting Award.

b. Performance-Vesting Award. The Compensation Committee as promptly as practicable (but in no event later than 45 days) following the conclusion of the Performance Period shall (i) determine the Company's performance over the Performance Period as compared against the Performance Metrics described above, (ii) for awarded Restricted Shares, determine and issue to the Grantee the number of resulting Restricted Shares in settlement of the Performance-Vesting Award, (iii) for awarded Restricted Units, determine the actual number of Restricted Units that are retained by the Grantee in respect of the Performance-Vesting Award, and (iv) make any dividend equivalent payments and cash distributions required pursuant to Section 6(a) and/or 6(b). Any Restricted Units the Grantee was awarded that are in excess of the actual resulting number at the end of the Performance Period, as determined by the Compensation Committee, shall be forfeited and become null and void. Fractional shares and units will not be issued, with any securities issued as an Award rounded down to the nearest whole amount.

c. Notwithstanding the foregoing, if the vesting date occurs within a trading lockout imposed by the Company, the vesting date for grantees subject to Section 16 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), at the time of vesting will be automatically extended to the first business day after expiration of the lockout.

4. **Change in Control**

a. Time-Vesting Award. If a Change in Control occurs at any time prior to the Vesting Date, the Time-Vesting Award shall remain outstanding and vest on the Vesting Date, subject to Grantee's continued employment, except as provided in Section 5.

b. Performance-Vesting Award. If a Change in Control occurs at any time prior to the end of the Performance Period, the Performance-Vesting Award shall be valued at the greater of (i) target level of performance and (ii) actual performance with respect to the Performance Metrics as though the Performance Period had ended on the date of the Change in Control. While the valuation of the Performance-Vesting Award shall be fixed in the event of a Change in Control, the Performance-Vesting Award shall remain outstanding and unvested until the Vesting Date, subject to Grantee's continued employment, except as provided in Section 5.

c. Dividend equivalent payments and distributions payable pursuant to Section 6 would be paid at the time of the Change in Control, based on the actual number of Restricted Shares issued and/or Restricted Units retained.

5. **Termination of Employment**

a. Qualifying Termination. In the event of an involuntary termination of Grantee's employment by the Company without Cause or Grantee's resignation for Good Reason (each, as defined below), or due to Death or Disability, all in cases prior to the Vesting Date (a "Qualifying Termination"), (i) the Time-Vesting Award shall accelerate and vest in full effective as of the termination date and (ii) the Performance-Vesting Award shall remain outstanding and eligible to vest in full following the completion of the Performance Period based on Company's performance against the Performance Metrics.

b. For purposes of this Award Agreement:

(i) A termination of employment for "Cause" shall be deemed to occur if the Grantee has been convicted of a felony involving fraud or dishonesty or a termination that is evidenced by a resolution adopted in good faith by at least two-thirds of the Board of Trustees that the Grantee: (1) intentionally and continually failed substantially to perform the Grantee's reasonably assigned duties with the Company (other than a failure resulting from the Grantee's incapacity due to physical or mental illness or from the Grantee's assignment of duties that would constitute "Good Reason" as hereinafter defined) which failure continued for a period of at least thirty (30) days after a written notice of demand for substantial performance has been delivered to the Grantee specifying the manner in which the Grantee has failed substantially to perform or (2) intentionally engaged in conduct which is demonstrably and materially injurious to the Company; provided, however, that no termination of the Grantee's employment shall be for Cause as set forth in clause (2) above until (x) there shall have been delivered to the Grantee a copy of a written notice setting forth that the Grantee was guilty of the conduct set forth in clause (2) and specifying the particulars thereof in detail and (y) the Grantee shall have been provided an opportunity to be heard in person by the Board of Trustees (with the assistance of the Grantee's counsel if the Grantee so desires). Neither an act nor a failure to act, on the Grantee's part shall be considered "intentional" unless the Grantee has acted or failed to act with a lack of good faith and with a lack of reasonable belief that the Grantee's action or failure to act was in the best interest of the Company. For the avoidance of doubt, no failure to perform by the Grantee after a notice of termination is given by the Grantee shall constitute Cause for purposes of this Award Agreement.

(ii) "Good Reason" shall mean the occurrence of any of the following without Grantee's advance written consent: (1) a change in the Grantee's status, position or responsibilities (including reporting responsibilities) which, in the Grantee's reasonable judgment, represents a substantial adverse change from the Grantee's status, position or responsibilities as in effect as of the Grant Date or at any time thereafter; the assignment to the Grantee of any duties or responsibilities which, in the Grantee's reasonable judgment, are inconsistent with the Grantee's status, title, position or responsibilities as in

effect as of the Grant Date or at any time thereafter; or any removal of the Grantee from or failure to reappoint or reelect the Grantee to any of offices or positions held by the Grantee, except in connection with the termination of Grantee's employment for Disability, Cause, as a result of the Grantee's death or by the Grantee other than for Good Reason; (2) a reduction in the Grantee's base salary or any failure to pay the Grantee any compensation or benefits to which the Grantee is entitled within five days of written notice thereof; (3) the Company's requiring the Grantee to be based at any place outside a thirty (30)-mile radius from the Grantee's principal location of business, except for reasonably required travel on the Company's business which is not materially greater than such travel requirements as of the Grant Date; (4) the failure by the Company to provide the Grantee with compensation and benefits, in the aggregate, at least equal (in terms of benefit levels and/or reward opportunities which opportunities will be evaluated in light of the performance requirements therefor) to those provided for under each other employee compensation and benefit plan, program and practice in which the Grantee was participating as of the Grant Date or at any time thereafter; (5) any material breach by the Company of any provision of this Award Agreement or any employment agreement or offer letter between the Company and the Grantee; or (6) any purported termination of the Grantee's employment for Cause by the Company which does not comply with the terms provided under the definition set forth above. Notwithstanding the foregoing, if the Grantee has waived the right to assert "Good Reason" with respect to the terms of Grantee's employment with the Company on or around the Grant Date, such waiver shall control with respect to such terms.

c. If a Grantee's employment terminates prior to vesting of the Award for any reason other than pursuant to a Qualifying Termination (including, for the avoidance of doubt, Grantee's retirement), any unvested Awards shall be forfeited, unless the Compensation Committee determines otherwise. For the avoidance of doubt, if a Grantee incurs a Qualifying Termination after the end of the Performance Period but prior to final determination and settlement of the Performance-Vesting Award, the Performance-Vesting Award will be valued and settled in the normal course as provided in Sections 3(b) and 4(b).

6. **Dividend Equivalent Payments/Cash Distributions**

a. With respect to a Performance-Vesting Award granted to the Grantee that will be settled in the form of Restricted Shares after the end of the Performance Period, the Company shall not pay the Grantee any dividends on such Performance-Vesting Award. Once the number of resulting Restricted Shares has been determined by the Compensation Committee after the end of the Performance Period pursuant to Section 3(b), the Company shall make a payment without interest to the Grantee in an amount equal to the amount of any and all dividends that would have been paid on those Restricted Shares had they been outstanding and entitled to dividends during the period from the grant date of the Award to the date of issuance, except to the extent such dividends have already been taken into account in adjustments made to the target number of Restricted Shares as required by Section 2 for purposes of ensuring that the total value of the Award has not changed. This payment will be considered compensation for all purposes, and will be received by the Grantee in its capacity as an employee, and not in such person's capacity as a shareholder.

b. With respect to any Restricted Units granted subject to a Performance-Vesting Award, the Company shall cause ERP to pay the Grantee a distribution in the amount of ten percent (10%) of any and all cash distributions ("Partial Distributions") paid on OP Units during the period from the grant date to the date of final determination of resulting Restricted Units. Partial Distributions are non-forfeitable when paid, whether or not the underlying Restricted Units are eventually retained pursuant to the terms of this Award Agreement. Once the number of resulting Restricted Units has been determined by the Compensation Committee at the end of the Performance Period pursuant to Section 3(b), ERP shall promptly make a payment in cash without interest to the Grantee in the amount of any and all cash distributions that would have been paid on those resulting Restricted Units had they been outstanding and entitled to full distributions during the period from the grant date of the Award to the date of such determination, less any previously paid Partial Distributions, except to the extent any such distributions have already been taken into account in adjustments made to the target number of Restricted Units as required by Section 2 for purposes of ensuring that the total value of the Award has not changed.

c. From the Grant Date and until and including the Vesting Date, the Grantee shall be entitled to receive all dividend payments and distributions with respect to the Restricted Units and Restricted Shares subject to the Time-Vesting Award, at the same time and in the same form as declared and paid to holders of outstanding Shares generally.

d. It is the intention of this Award Agreement, subject to the discretion of the Compensation Committee to make equitable adjustments, that the dividend equivalent payments and distributions payable to grantees under Section 6 should normally take into account dividends and distributions that have been or would have been typically and customarily paid on issued Restricted Shares and retained Restricted Units had the determination of the number of Restricted Shares issued and Restricted Units retained hereunder been finalized as of close of business on the Vesting Date.

7. **Notices**

Any notice to be given under the terms of this Award Agreement to the Company shall be addressed to the Company in care of its Secretary, and any notice to be given to the Grantee shall be addressed to the address as set forth in the Company's records. Either party may hereafter designate a different address for notices to be given to it or him or her.

8. **Titles; Interpretation**

Titles and captions are provided herein for convenience only and are not to serve as a basis for interpretation or construction of this Award Agreement. Capitalized terms used but not defined herein shall have the respective meanings ascribed thereto in the 2019 Share Plan or as the context otherwise reasonably indicates. The Compensation Committee shall have the exclusive discretion and authority to conclusively construe and interpret this Award Agreement, and to decide any and all questions of fact, interpretation, definition, computation or administration. The determinations of the Compensation Committee shall be binding on all parties.

9. **Amendment**

This Award Agreement may be amended only by a writing executed by the parties hereto which specifically states that it is amending this Award Agreement.

10. **Governing Law**

The laws of the State of Maryland shall govern the interpretation, validity, administration, enforcement and performance of the terms of this Award Agreement regardless of the law that might be applied under principles of conflicts of laws.

11. **Counterparts**

This Award Agreement may be executed in multiple counterparts, and on separate counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Any counterpart or other signature hereupon delivered by electronic means (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com) shall be deemed for all purposes as constituting good and valid execution and delivery of this Award Agreement by such party.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned have caused this Award Agreement to be executed as of the aforesaid date.

VIVMARK RESIDENTIAL

By:

The foregoing Award Agreement is hereby accepted and the terms and conditions thereof hereby agreed to by the undersigned.

GRANTEE

SCHEDULE A

Name of Grantee	[●]
Aggregate grant date value of the Award	$[●]
Restricted Units subject to Time-Vesting Award	[●]
Restricted Shares subject to Time-Vesting Award	[●]
Vesting Date	August 17, 2029
Target number of Restricted Units subject to Performance-Vesting Award	[●] 200% of this target number, or [●] Restricted Units, will be issued to the Grantee, subject to the Compensation Committee's determination of the Company's performance results for the Performance Period and the determination of the resulting number of retained Restricted Units.
Target number of Restricted Shares subject to Performance-Vesting Award	[●]
Performance Period	August 17, 2026 to August 17, 2029

(Schedule A to Executive Retention Award Agreement)

Exhibit 31.1

Vivmark Residential
CERTIFICATIONS

I, Benjamin W. Schall, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Vivmark Residential;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

    a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

    a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

    b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 9, 2026

/s/ Benjamin W. Schall
Benjamin W. Schall
Chief Executive Officer

Exhibit 31.2

Vivmark Residential
CERTIFICATIONS

I, Kevin P. O'Shea, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Vivmark Residential;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

    a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

    a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

    b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 9, 2026

/s/ Kevin P. O'Shea
Kevin P. O'Shea
Chief Financial Officer

Exhibit 31.3

ERP Operating Limited Partnership
CERTIFICATIONS

I, Benjamin W. Schall, certify that:

1. I have reviewed this quarterly report on Form 10-Q of ERP Operating Limited Partnership;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 9, 2026

/s/ Benjamin W. Schall
Benjamin W. Schall
Chief Executive Officer of Registrant's General Partner

Exhibit 31.4

ERP Operating Limited Partnership
CERTIFICATIONS

I, Kevin P. O'Shea, certify that:

1. I have reviewed this quarterly report on Form 10-Q of ERP Operating Limited Partnership;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 9, 2026

/s/ Kevin P. O'Shea
Kevin P. O'Shea
Chief Financial Officer of Registrant's General Partner

Exhibit 32.1

Vivmark Residential
CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Vivmark Residential (the "Company") on Form 10-Q for the period ending September 30, 2026 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Benjamin W. Schall, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Benjamin W. Schall
Benjamin W. Schall
Chief Executive Officer
November 9, 2026

Exhibit 32.2

Vivmark Residential
CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Vivmark Residential (the "Company") on Form 10-Q for the period ending September 30, 2026 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Kevin P. O'Shea, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Kevin P. O'Shea
Kevin P. O'Shea
Chief Financial Officer
November 9, 2026

Exhibit 32.3

ERP Operating Limited Partnership
CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of ERP Operating Limited Partnership (the "Operating Partnership") on Form 10-Q for the period ending September 30, 2026 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Benjamin W. Schall, Chief Executive Officer of Vivmark Residential, general partner of the Operating Partnership, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Operating Partnership.

/s/ Benjamin W. Schall
Benjamin W. Schall
Chief Executive Officer
of Registrant's General Partner
November 9, 2026

Exhibit 32.4

ERP Operating Limited Partnership
CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of ERP Operating Limited Partnership (the "Operating Partnership") on Form 10-Q for the period ending September 30, 2026 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Kevin P. O'Shea, Chief Financial Officer of Vivmark Residential, general partner of the Operating Partnership, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Operating Partnership.

/s/ Kevin P. O'Shea
Kevin P. O'Shea
Chief Financial Officer
of Registrant's General Partner
November 9, 2026