MASON, GRIFFIN & PIERSON
A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW

MEMORANDUM

To: Mayor and Council of Princeton

From: Edwin W. Schmierer, Esq.

Date: March 4, 2014

Re: AvalonBay Communities, Inc. Developer's Agreement

The AvalonBay Communities, Inc. application to redevelop the former hospital site received preliminary and final major site plan approval from the Princeton Planning Board on July 25, 2013 (see File No. PB1313-047P). The Planning Board memorialized this approval by resolution dated August 12, 2013.

One of the conditions of the Planning Board approval was to require AvalonBay Communities, Inc. to enter into a developer's agreement with Princeton addressing issues related to their development project. Those issues concern stormwater management, landscaping, circulation and parking, public art, the construction of a pocket park and the demolition of the hospital structures.

Over the past several months, the Princeton staff has met with representatives of AvalonBay Communities, Inc. to negotiate this agreement. The agreement is now finalized and attached.

At your meeting on March 10, 2014, there will be a presentation by Ira L. Whitman, PE, Ph.D, the Princeton-hired LSRP with regard to environmental issues related to the former incinerator site on the Property. Following that discussion, if the Mayor and Council accept the terms and conditions of the developer's agreement, it would be appropriate to adopt the attached resolution authorizing its execution.

EWS:kaj

cc: Robert W. Bruschi, Administrator
Kathryn Monzo, Assistant Administrator
Linda S. McDermott, Municipal Clerk
Robert V. Kiser, P.E., Municipal Engineer
Jack West, Land Use Engineer
Lee O. Solow, Planning Director

PRINCETON

COUNTY OF MERCER **STATE OF NEW JERSEY**

RESOLUTION

WHEREAS, AvalonBay Communities, Inc. has received approval from the Princeton Planning Board to redevelop the former University Medical Center at Princeton property (Block 21.02, Lot 1 and Block 7101, Lots 8-14, Princeton Tax Map); and

WHEREAS, said approval was granted by the Princeton Planning Board on July 25, 2013 (see file no. PB1313-047P); and

WHEREAS, the Princeton Planning Board memorialized this approval by the adoption of a resolution on August 12, 2013 setting forth conditions of approval; and

WHEREAS, one of those conditions requires AvalonBay Communities, Inc. to enter into a developer's agreement with Princeton to address issues related to the redevelopment of the hospital site; and

WHEREAS, Princeton wishes to authorize the execution of said developer's agreement.

NOW THEREFORE, be it resolved by the Mayor and Council of Princeton as follows:

1. The Mayor and Clerk of Princeton are hereby authorized and directed to execute on behalf of Princeton a developer's agreement with AvalonBay Communities, Inc. for the property referenced hereinabove. The developer's agreement authorized for execution is on file in the office of the municipal clerk and may be inspected during regular office hours.

2. A certified true copy of this resolution upon its adoption shall be furnished to AvalonBay Communities, Inc., Attn: Jon Vogel, Woodbridge Place, 517 Route One South, Suite 5500, Iselin, New Jersey, 08830.

CERTIFICATION

I, Linda S. McDermott, Clerk of Princeton, do hereby certify that the foregoing Resolution was considered and adopted by the Princeton Council at its regular meeting held on the 10th day of March, 2014.

_____
Linda S. McDermott, Clerk
Princeton

DEVELOPER'S AGREEMENT

THIS AGREEMENT ("**AGREEMENT**") dated this day of , 2014, by and between **PRINCETON**, a municipal corporation of the State of New Jersey, with offices located 400 Witherspoon Street, Princeton, New Jersey 08540 (hereinafter referred to as the "**PRINCETON**") and **AVALONBAY COMMUNITIES, INC.**, a corporation organized under the Laws of the State of Maryland, with offices located at Woodbridge Place, 517 Route 1 South, Suite 5500, Iselin, New Jersey 08830 (hereinafter referred to as "**DEVELOPER**").

FACTUAL RECITALS:

1. The **DEVELOPER** is the contract purchaser of certain real property formerly occupied by the University Medical Center at Princeton and designated as Block 21.02, Lot 1 and Block 7101, Lots 8-14, Princeton Tax Map (hereinafter referred to as "**PROPERTY**").
2. The **DEVELOPER** intends to construct two hundred eighty (280) units of rental housing in several buildings on the **PROPERTY** (hereinafter referred to as "**PROJECT**" or "**DEVELOPMENT**").
3. The **PROJECT** has received the following development approvals: Preliminary and Final Major Site Plan approval with variances: In the Matter of the Application AvalonBay Communities, Inc. for preliminary and final major site plan approval with variances: File No. PB1313-047P. Said approvals were granted by the Princeton Planning Board on July 25, 2013 with the Resolution of Memorialization adopted August 12, 2013.
4. The **PROJECT** is shown on plans ("**SITE PLAN**") entitled: "Preliminary and Final Major Site Plan for Avalon Princeton, Lot 1, Block 21.02 and Lots 8-14, Block 7101",

prepared by Jelena Balorda-Barone, P.E., Maser Consulting, dated June 16, 2013 and revised through July 8, 2013 (consisting of Sheets 1-14).

5. The approval for the **PROJECT** sets forth various conditions. The Land Development Ordinances for the former Township of Princeton ("Code of the Township of Princeton, New Jersey, 1968", Chapter 10B) and the former of Borough of Princeton ("Code of the Borough of Princeton, New Jersey, 1972, Chapter 17A) (both hereinafter referred to as the "**CODE**") set forth various requirements for land development within the **PRINCETON** community. The parties intend in this **AGREEMENT** to set forth the terms and conditions of a Developer's Construction Agreement as provided for and required by said **CODES**.

NOW, THEREFORE, in consideration of the above and the mutual undertaking set forth hereinbelow, the parties hereto agree to the following terms, covenants and conditions:

A. <u>Utilities</u>:

The following utilities will be made available to the **DEVELOPMENT**:

1. Electricity and natural gas provided by Public Service Electric & Gas Company;
2. Telephone service provided by carrier of **DEVELOPER's** choice.
3. Public water provided by New Jersey American Water Company.
4. Public sewer with a connection to the Stony Brook Regional Sewerage Treatment Plant.
5. All utilities shall be connected through the existing services. All utilities serving a particular unit and/or structure within the **DEVELOPMENT** shall be installed and operable, and approved by the **PRINCETON** Engineer prior to issuance of

the Certificate of Occupancy, be it temporary or unconditional, for the particular structure or dwelling. All utilities installed underground.

B. Landscaping:

Prior to a Building Permit be issued, the final landscape plan shall be prepared by the **DEVELOPER** for the **DEVELOPMENT** and submitted to the **PRINCETON** Planning Board's Landscape Subcommittee for final review and approval and shall satisfy the conditions for same as set forth in paragraph 17A of the aforementioned Resolution of Memorialization dated August 12, 2013.

C. Stormwater:

The **DEVELOPER** shall confirm the quantity of area of their site disturbance within **PRINCETON**; incorporate the quantity of disturbance into their Soil Erosion and Sediment Control Plan which shall be administratively reviewed and approved by the **PRINCETON** Engineer. Inlet/drainage protection shall be provided for the existing trench drain and inlet within the existing driveway and shall be incorporated into the **DEVELOPER's** Soil Erosion and Sediment Control Plan. The **PROJECT** limits of said Plan shall be extended to include this area.

D. Circulation and Parking:

1. The Reciprocal Access Easement regarding the use of the parking garage, access drives and sidewalks has been administratively reviewed and approved by the Planning Board Attorney.
2. Publically accessible open space, sidewalks and paths shall be open and available to the public. The **DEVELOPER** may adopt reasonable rules and regulations pertaining to the public access to the open space within the Development that is to be

accessible to the public with said rules and regulations being administratively reviewed by the **PRINCETON** Director of Planning. As used in this subparagraph, the publically accessible open space, sidewalks and paths shall be the open space and the passageways for pedestrians set forth on pages 10-11 of the Resolution of Memorialization adopted August 12, 2013. The interior courtyard within Building 1 shall not be considered publically accessible open space.

3. The **DEVELOPER** shall make a reasonable effort to obtain approval from the owner of Block 7101, Lot 15, Princeton Tax Map in order to provide a minimum four (4') foot width sidewalk from Henry Avenue to the proposed **DEVELOPMENT** as approved by the Land Use Engineer. The **DEVELOPER's** Attorney shall inform the **PRINCETON** Attorney with regard to efforts made to satisfy this requirement.
4. The **DEVELOPER** shall provide for up to an additional seventy-five (75) bicycle storage spaces within the parking garage if, in the determination of the **PRINCETON** Planning Director and Land Use Engineer that bicycle storage spaces as proposed by the **DEVELOPER** prove to be inadequate. The heretofore described 75 bicycle storage spaces shall be in addition to the 109 bicycle storage spaces depicted within the buildings in the Site Plan.
5. All handicapped sidewalks shall be ADA compliant.
6. Prior to a Building Permit being issued, the **DEVELOPER** shall be required to submit a Construction Traffic/Hauling Plan for review and approval by the **PRINCETON** Police and the Land Use Engineer.
7. The **DEVELOPER** shall provide to the **PRINCETON** Land Use Engineer prior to the issuance of a Certificate of Occupancy a copy of a certification to be issued by the

DEVELOPER's engineer to the **DEVELOPER** with regard to the structural integrity of the existing garage structure.

8. The **DEVELOPER** shall satisfy all other remaining circulation and parking conditions in accordance with the provisions of paragraph 17C of the Resolution of Memorialization dated August 12, 2013.

E. <u>Public Art</u>:

Although this is not a condition within the Resolution of Memorialization adopted August 12, 2013, **PRINCETON** acknowledges that the **DEVELOPER** has volunteered to contribute the sum of seventy-five thousand ($75,000.00) dollars to the Princeton Arts Council to provide for the installation of artwork within the **DEVELOPMENT**. This contribution shall be made prior to the issuance of any building permits for the **DEVELOPMENT**. The **DEVELOPER** has volunteered to work with the advisory group that has been established through the Princeton Arts Council to determine the nature and scope of the artwork to be acquired. **PRINCETON** recommends that such artwork be installed within the pocket park shown on the **SITE PLAN** and/or along Witherspoon Street and not in the internal courtyards of the **DEVELOPMENT**. If the **DEVELOPER** and the Princeton Arts Council wish to install the artwork at another location, they shall discuss the matter with **PRINCETON**. The artwork shall be installed after construction of the **DEVELOPMENT** is complete.

F. <u>Pocket Park</u>:

A component of the **PROJECT**'s open space shall involve the construction of a pocket park at the corner of Witherspoon Street and Franklin Avenue as reflected on the approved **SITE PLAN**. This pocket park is intended to be open to the public. Prior to finalizing the plans for the pocket park, the Planning Board's Landscape Subcommittee shall review and approve: (1)

the selection of the play equipment to be installed in the play area; (2) the selection of the surfacing for the play area; (3) the color and pattern of the concrete/stamped concrete and pedestrian pavers to be incorporated into the pocket park. The **DEVELOPER** shall be solely responsible for the costs of the initial installation of the foregoing, and **PRINCETON** shall be solely responsible for the costs of any future installations of the foregoing, which shall be subject to the **DEVELOPER's** prior written approval. The pocket park shall be maintained by the **DEVELOPER, and** the **DEVELOPER** shall continue to be obligated to maintain any future replacement of the foregoing. The pocket park will be open between dawn and dusk and the prohibited uses within the pocket park shall be the same as for other parks and reservations in **PRINCETON** set forth in Section 16-13 of the "Code of the Township of Princeton, New Jersey, 1968". There shall be no smoking permitted in the pocket park. **PRINCETON** and the **DEVELOPER** shall mutually agree upon the name of the pocket park, provided the parties wish to name it. In lieu of a dedication and acceptance of the pocket park, the **DEVELOPER** and **PRINCETON** shall enter into an Easement in the future as reviewed and approved by **PRINCETON** regarding this pocket park, which shall be recorded and shall incorporate the provisions of this paragraph and shall also include provisions permitting Princeton to conduct maintenance of the pocket park at **DEVELOPER's** cost if the **DEVELOPER** fails to properly maintain the pocket park.

G. <u>Demolition</u>:

1. The **DEVELOPER** shall demolish the existing structures on the **PROPERTY**, except as set forth in the **SITE PLAN**.
2. The **DEVELOPER** shall obtain a Demolition Permit from the **PRINCETON** Construction Official pursuant to *N.J.A.C.* 5:23-2.17 and comply with all of the terms

and conditions as required by said Construction Official and the New Jersey Uniform Construction Code. Demolition will take place during the hours permitted by municipal ordinance. No construction work on Sunday. Explosives will not be used as a part of the demolition plan. If there are complaints by members of the public regarding the hours of construction, the **DEVELOPER** agrees to work with **PRINCETON** to address such complaints.

3. The **DEVELOPER** shall prepare and submit to the **PRINCETON** construction official and the **PRINCETON** Engineer a formal demolition plan setting forth the nature and scope of the demolition work. The demolition shall be conducted in a fashion so that no debris or other material will adversely impact or damage any of the surrounding residential properties nor the **PRINCETON** right-of-ways. **PRINCETON** hereby agrees the requirement for site plan approval pursuant to Section 17A-173 of the "Code of the Borough of Princeton, New Jersey, 1974" is satisfied.

4. **PRINCETON** shall permit the **DEVELOPER** to commence demolition upon the following: (a) the demolition plan being approved by the **PRINCETON** Engineer pursuant to paragraph K.10 of this **AGREEMENT**; (b) completion of the neighborhood meeting referenced below in this subparagraph; and (c) the posting of the performance guarantee for the demolition work pursuant to paragraph P of this **AGREEMENT**. The demolition plan shall provide for the removal of all asbestos and underground storage tank(s) including the existing fueling facility on the **PROPERTY**. The plan shall also include dust control methods. The demolition plan has been presented to the Mayor and Council of **PRINCETON** for review.

Thereafter, the **DEVELOPER** shall join with **PRINCETON** in hosting a neighborhood meeting prior to the beginning of the demolition work.

5. Notwithstanding the foregoing, the **DEVELOPER** may begin the asbestos removal and underground storage tank removal prior to the neighborhood meeting, which shall be promptly scheduled following the approval by the Council of this **AGREEMENT**. **DEVELOPER** shall be permitted to commence asbestos removal upon compliance with all federal, state and local laws, regulations and ordinances related to same.
6. If at any point, any municipal street needs to be closed for a period of time during demolition, the **DEVELOPER** shall obtain approval from the **PRINCETON** Engineer and Police Department and be responsible for traffic control and safety.
7. The removal of asbestos as a part of the demolition process shall comply with the requirements of *N.J.A.C.* 5:23-8.1.
8. While the demolition is underway, the **DEVELOPER** shall provide periodic status reports to the Mayor and Council of **PRINCETON** as deemed appropriate by the **DEVELOPER** and **PRINCETON**.
9. The approved demolition plan is attached hereto and made a part hereof as Exhibit "A".

H. <u>Harris Road Properties</u>:

The **DEVELOPER** and **PRINCETON** hereby acknowledge the current zoning of the properties on the westerly side of Harris Road to be as follows: R-4 for the two lots in the former Princeton Borough; R-8 for the lots within the former Princeton Township; and G-1 Overlay Zone for one lot and portions of several of the other lots within the former Princeton Township. It is the intention of the **DEVELOPER** to develop or market its properties on the

west side of Harris Road for residential purposes. It is the intention of the **DEVELOPER** and **PRINCETON** to keep these properties zoned for their current use and nothing in this **AGREEMENT** shall be construed to obligate **PRINCETON** to rezone these properties for any other use. The **DEVELOPER** may apply to **PRINCETON** to change lot lines to accommodate the existing garage structure, access and loading area, consistent with the land use approval granted by the Planning Board.

I. <u>Bus Shelter</u>:

If approved by NJ Transit, the **DEVELOPER** shall be responsible for constructing and installing a bus shelter on Witherspoon Street. **PRINCETON** acknowledges that the bus shelter is within the jurisdiction of NJ Transit and, if NJ Transit approves the bus shelter, the details of the bus shelter, including its final location, shall be reviewed by the **PRINCETON** Engineer and the **PRINCETON** Planning Director. Once the bus shelter is installed, **PRINCETON** will adopt an Ordinance officially designating a bus stop at the shelter location. The shelter location shall also have a bike rack and benches.

J. <u>Construction Parking</u>:

Pursuant to the Resolution of Memorialization Condition D(10)(d) and (e), the **DEVELOPER** shall identify where construction and delivery vehicles and contractors' vehicles will park on-site and direct the contractors and those making deliveries to park their vehicles either on-site or at locations approved by the **PRINCETON** Engineer. The **DEVELOPER** shall include provisions in its contracts with all subcontractors who will be working on-site and those making deliveries to the **PROPERTY** requiring that employees park in the parking garage or elsewhere on the site as identified by the **DEVELOPER** or off-site as approved by the **PRINCETON** Engineer. The **DEVELOPER** shall make every reasonable effort to have

contractors, workers and those making deliveries to the **PROPERTY** not park on public streets. The **DEVELOPER** shall prepare and submit for approval to the **PRINCETON** Engineer a Construction Parking Plan. This Plan may include off-site parking. This requirement shall be applicable to all work on the project (demolition and construction phases).

K. Environmental Compliance:

During the demolition and construction phase of the **PROJECT**, the **DEVELOPER** shall comply with all applicable Federal, State and local environmental regulations, including the implementation of a Soil Erosion and Sediment Control Plan.

Environmental compliance shall include the following in addition to the requirements provided in the demolition plan attached hereto as **Exhibit "A"**:

1. Should any environmental contamination or waste be discovered during the redevelopment of the **PROPERTY,** the **DEVELOPER** shall be responsible for complying with all applicable laws and regulations.
2. All monitoring wells shall be sealed consistent with NJDEP regulations.
3. Prior to a certificate of occupancy being issued, all abandoned underground storage tanks (UST) and their associated piping shall be removed. Soil samples shall be required to be taken beneath the tanks when they are removed. If any of these samples are found to contain contaminants in concentrations that exceed NJDEP standards, the **DEVELOPER** shall immediately notify **PRINCETON** and appropriate remediation shall be completed as required by NJDEP with reports provided to the Land Use Engineer and the **PRINCETON** Environmental Consultant. A licensed site remediation professional or his or her designee (LSRP) shall be required to monitor soil conditions for contamination from underground storage tanks

and ensure removal follows NJDEP regulations. If required, the LSRP shall issue a Response Action Outcome in accordance with the NJDEP regulations.

4. If evidence of a potential septic system is discovered during demolition or construction, the Land Use Engineer shall be immediately notified and such condition shall be addressed in accordance with NJDEP guidelines.
5. The gas filling station and all related equipment on the **PROPERTY** shall be removed in accordance with NJDEP regulations.
6. Any asbestos abatement shall be conducted prior to and during building demolition in accordance with applicable laws and regulations. A person qualified in the management and handling of asbestos contained material shall report to the Land Use Engineer during asbestos removal.
7. The existing fence and concrete pad that previously enclosed and supported the above ground oxygen tank on the property shall be removed.
8. During construction or demolition, the site shall be monitored by the Land Use Engineer or his or her designee and as required by the applicant's LSRP with regard to soil conditions related to potential contamination on the **PROPERTY**.
9. The **DEVELOPER** shall exercise reasonable efforts to abide by the contents of the Green Development Information Statement as attached to the Planning Board Resolution of Memorialization dated August 12, 2013 including designing the **DEVELOPMENT** to qualify as a LEED for Homes to a Silver level and to obtain certification for Energy Star v3 provided that the New Jersey state incentives remain at current levels for this program. The **DEVELOPER** however will not be required to undergo the certification process for LEED for Homes. The **DEVELOPER** shall

file with the Municipal Engineer periodic reports evidencing compliance with this requirement.

10. Prior to the issuance of a demolition permit in accordance with paragraph G herein above, a site demolition and construction plan shall be submitted for review and approval by the Land Use Engineer.

L. Affordable Housing Development Fees:

Since the **PROJECT** contains the construction of fifty-six (56) affordable rental units, the **DEVELOPER** is not required to make a contribution to **PRINCETON** for residential affordable housing development fees. The affordable housing units will be constructed and marketed in accordance with all COAH, UHAC and local ordinance requirements. At least 13% of the units shall be affordable to very low income households as defined by the Fair Housing Act and COAH regulations. Deed restrictions shall be for 30 years.

M. Preconstruction Road Conditions:

Prior to commencing construction, the **DEVELOPER** shall video all of the municipal roads surrounding the **PROPERTY** and those to be utilized providing access to and from the **PROPERTY** in order to determine the condition of said municipal roads prior to construction. This obligation to video shall be for the following municipal roads: (1) all municipal roads adjacent to the **PROPERTY**, which are Harris Road, Franklin Avenue, Henry Street and Witherspoon Street; (2) and the municipal roads within **PRINCETON** along the route(s) the **DEVELOPER** will use from State Highway Route 206 and State Highway Route 27 for construction vehicle access to/from the **PROPERTY**. Said municipal roads will be inspected by **PRINCETON** prior to the completion of construction. It shall be the responsibility of the **DEVELOPER** to repair and restore said municipal roads to the condition they were in prior to

construction excepting for ordinary wear and tear, if the damage to the municipal roads was likely caused by construction vehicles related to the **PROJECT** as reasonably determined by the **PRINCETON** Engineer. This repair and restoration shall be undertaken and completed prior to the release of the **DEVELOPER's** performance bond.

N. Recycling and Reuse:

The **DEVELOPER** shall comply with all applicable recycling requirements. While compliance with LEED criteria for a LEED rating is required only "to the extent practical" the **DEVELOPER** shall exercise reasonable efforts to design the **PROJECT** to qualify as a LEED for Homes to a Silver level although the **DEVELOPER** is not required to undertake the certification process as provided for hereinabove.

O. Noise:

Construction work by the **DEVELOPER** shall be limited to hours permitted by municipal ordinance with no work on Sunday and will comply with the requirements of the **PRINCETON** noise ordinance standards. Any relocated air vents/blowers or all HVAC equipment shall also comply with **PRINCETON** Noise Ordinance standards. The **DEVELOPER**'s demolition plan (see **Exhibit "A"** attached) shall also comply with this requirement.

P. Performance Bond:

Pursuant to *N.J.S.A.* 40:55D-53.a(1), the **DEVELOPER** shall provide to **PRINCETON** a performance guarantee in an amount not-to-exceed one hundred twenty (120%) percent of the site improvement costs of the **PROJECT**, which is attached hereto as **Exhibit "B"**. This bond shall be posted prior to commencement of site construction and the obligations of the parties with respect to the performance guarantee shall conform to the requirements of the Municipal

Land Use Law. In **AVALONBAY's** discretion, **AVALONBAY** may chose to provide a performance guarantee for the demolition of the site separate and distinct from the performance guarantee for the site improvement costs of the **PROJECT**. The amount of the performance guarantee for the demolition is as set forth in **Exhibit "C"** attached hereto and incorporated herein as if set forth at length. The performance guarantee for the demolition may be in the form of a letter of credit and shall be governed as a performance guarantee pursuant to the provisions of the Municipal Land Use Law, *N.J.S.A.* 40:55D-53.a(1).

Q. Maintenance Guarantee:

Pursuant to *N.J.S.A.* 40:55D-53.a(2), after final acceptance of any improvements by **PRINCETON**, the **DEVELOPER** shall post a maintenance guarantee for two (2) years in an amount not-to-exceed fifteen (15%) percent of the cost of the improvement(s) accepted by **PRINCETON**. The obligations of the parties with respect to the maintenance guarantee shall conform to the Municipal Land Use Law.

R. Inspection Fees:

Pursuant to *N.J.S.A.* 40:55D-53.h, the **DEVELOPER** shall provide to **PRINCETON** a deposit for inspection fees for the inspection of the demolition and construction of improvements on the **PROPERTY**. The obligations of the parties with respect to the inspection fees shall conform to the Municipal Land Use Law.

S. Developer Representation On Site:

The **DEVELOPER** shall have an authorized representative on site or available by phone during demolition and construction as provided for hereinabove 24 hours a day and seven days a week. This representative shall be identified to the **PRINCETON** Engineer. This representative shall have the authority to correct any defect and to correct any unsafe conditions as noted by the

PRINCETON Engineer, Construction Official, Health Officer, Police Department, or their authorized representatives.

T. Permits:

The **DEVELOPER** shall obtain and maintain in its possession all local, State and Federal permits and approvals required to construct the **PROJECT** not later than December 31 of each year the **PROJECT** remains under construction.

U. Resolution of Memorialization Compliance:

The **DEVELOPER** shall satisfy all conditions of approval as set forth in the Resolution of Memorialization dated August 12, 2013. Nothing in this Agreement shall modify the conditions of approval set forth therein.

V. Enforcement:

The parties retain all rights under the law to enforce the terms of this Agreement.

W. Phased Occupancy:

DEVELOPER intends to seek temporary certificates of occupancies for portions of the buildings within the **DEVELOPMENT** while other portions of the building are still under construction. **PRINCETON** has no objection to such a phased occupancy of the buildings. The **PRINCETON ENGINEER** and the Princeton Fire Marshall and Construction Official shall establish parameters for the phased occupancy of the **DEVELOPMENT** after the issuance of the building permit and shall cooperate with the **DEVELOPER** in ensuring that such adequate safety precautions are provided to ensure that there is no danger to health and safety to the public and the occupants of the buildings. Notwithstanding the foregoing, nothing in this Agreement shall relieve the **DEVELOPER** from satisfying the requirements of the Uniform Construction

Code and from obtaining a temporary certificate of occupancy from the Princeton Construction Code Official.

X. Additional Approvals:

The **DEVELOPER** shall obtain the following additional approvals:

1. Mercer County Planning Board (already received)
2. Mercer County Soil Conservation District
3. Delaware and Raritan Canal Commission
4. Princeton Sewer Operating Committee
5. Stonybrook Regional Sewerage Authority
6. NJDEP Request For Authorization (RFA)
7. NJDEP Treatment Works Approval

Y. Amendments to Agreement:

Except as herein otherwise specifically provided, no subsequent alterations, amendments, changes or additions to this Agreement shall be binding upon either party unless reduced to a writing and signed by each party.

Z. Successors and Assigns Bound:

All of the terms and conditions herein contained shall be for and shall inure to the benefit of and shall be binding upon the respective parties hereto and their successors and assigns.

AA. Notices:

All notices hereunder shall be in writing given by personal delivery or by certified mail, return receipt requested, postage prepaid, addressed as follows:

1. **As to the DEVELOPER:**

AvalonBay Communities, Inc.
Woodbridge Place
517 Route 1 South
Suite 3500
Iselin, NJ 08830

and

AvalonBay Communities, Inc.
Attn: Jon Vogel
275 7th Ave - 25th Floor
New York, NY 10001

William M. McLaughlin
Executive VP of Development
and Construction
AvalonBay Communities, Inc.
51 Sleeper Street, Suite 750
Boston, MA 02210

and

Ted Schulman
General Counsel
AvalonBay Communities, Inc.
Ballston Tower
Arlington, VA 22203

with a copy to:

Robert A. Kasuba, Esq.
Bisgaier & Hoff, LLC
21 Tanner Street
Haddonfield, NJ 08033

2. **As to PRINCETON:**

Princeton Administrator
400 Witherspoon Street
Princeton, NJ 08540

with copies to:

Municipal Attorney
Mason, Griffin & Pierson, P.C.
101 Poor Farm Road
Princeton, NJ 08540

and

Municipal Engineer
400 Witherspoon Street
Princeton, NJ 08540

or such other addresses and to the attention of such other persons as may be designated from time to time in writing.

BB. Authorized Act:

All parties hereto agree that the execution of this Agreement is the authorized act of each of the respective parties hereto.

IN WITNESS WHEREOF, the parties have hereunto caused this document to be signed and hereby bind their assigns, heirs, successors in interest and executors the day and year first written above.

ATTEST:

PRINCETON

_____
Linda S. McDermott, Clerk

By:_____
Liz Lempert, Mayor

AVALONBAY COMMUNITIES, INC.

_____

By:_____