

one copy to Frank R
one original to file
one copy e-mailed to Stuart
one original held hostage
one Steve Bonett

December 4, 2007

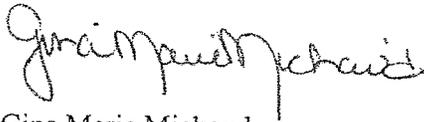
John Murray
Town Manager
Town of Acton
472 Main Street
Acton, MA 01720

Re: *Letter of Credit Agreement with AvalonBay Communities*

Dear John:

Attached are your two copies of the Letter of Credit Agreement with AvalonBay Communities.

Thank you,



Gina Marie Michaud
Development Assistant
AvalonBay Communities, Inc.

Enclosure

LETTER OF CREDIT AGREEMENT

24 THIS LETTER OF CREDIT AGREEMENT (this "Agreement") is entered into as of the day of December between Avalon Acton, Inc., a Maryland corporation ("Developer") and the Town of Acton (the "Town").

Reference is made to the following facts:

A. Developer is the holder of a comprehensive permit dated December 19, 2005 (as the same has been amended, and may hereafter be amended from time to time, the "Comprehensive Permit") from the Zoning Board of Appeals ("ZBA") for the Town pursuant to M.G.L. Chapter 40B, §§20-23. The Comprehensive Permit authorizes the construction of a 296-unit rental development with related amenities and improvements (the "Development") on an approximately 35 acre site (the "Property") more particularly described in the Comprehensive Permit. Capitalized terms used but not defined herein shall have the meanings given to them in the Comprehensive Permit.

B. Condition I.3(g) of the Comprehensive Permit (the "Condition") provides that prior to the issuance of an occupancy permit for the Development, the Developer must provide the ZBA with a performance guaranty to secure the complete construction of the Common Facilities and infrastructure for the Development. Pursuant to the Condition, the performance guaranty is to be consistent with the requirements of Sections 6.1 - 6.2 of the Town's Subdivision Rules and Regulations (the "Subdivision Regulations") and is to be released in accordance with the provisions of Sections 6.3 - 6.4 of the Subdivision Regulations, except that references to the Planning Department shall be deemed to refer to the Building Commissioner, and all references therein to the Board shall mean the ZBA.

C. The Developer is ready to begin occupancy of units in the Development, and certain Common Facilities and infrastructure, as shown and described in the plans and specifications approved as part of the Comprehensive Permit, remain to be completed. The extent of the Common Facilities and infrastructure to be completed and the estimated costs therefor are as attached on Exhibit A hereto (the "Avalon Acton Common Facilities and infrastructure - Balance to Complete as of 10/1/07") (the "Remaining Work"). In accordance with the Condition and Section 6.1.3 of the Subdivision Regulations, the Town has agreed to accept an irrevocable stand-by letter of credit (the "Letter of Credit") as the performance guaranty required under the Condition.

D. This Agreement set forth the agreement of the Developer and the Town relative to the Letter of Credit and satisfaction of the requirements of the Condition.

NOW, THEREFORE, for Ten Dollars, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Developer and the Town agree as follows:

1. Promptly upon the full execution of this Agreement, Developer shall provide to the Town the Letter of Credit in the form attached hereto as Exhibit B to secure the completion by the Developer of the Remaining Work.

2. The Remaining Work shall be completed by the Completion Date (as hereinafter defined). The ZBA may extend the Completion Date one or more times for a period of up to 180 days for each such extension, as it deems appropriate after a written request received by the ZBA not less than forty five (45) days prior to the previously scheduled completion date. Except for said 45-day period, the first such request for an extension and subsequent requests for extension may be treated as a request for an insubstantial change pursuant to 760 CMR 31.03. As used in this Agreement, the term "Completion Date" shall mean October 1, 2009, or such later date as may be agreed to by the ZBA in accordance with the provisions of this Section 2.

3. The Letter of Credit shall not expire until the ZBA, upon written request, certifies that the Remaining Work has been completed in accordance with the requirements of the Comprehensive Permit. If the Developer believes that the Remaining Work has been completed in accordance with the requirements of the Comprehensive Permit, it shall so notify the Town Clerk, the ZBA and the Building Commissioner in writing by certified mail, return receipt requested and shall request release of the Letter of Credit. If the ZBA or the Building Commissioner determines that said construction or installation has not been completed in accordance with the requirements of the Comprehensive Permit, it shall so specify in a notice sent to the Town Clerk and, by certified mail, to the Developer, that details wherein said construction or installation fails to comply with the requirements of the Comprehensive Permit. Otherwise, upon failure to so notify the Developer within forty-five (45) days after the receipt by said clerk of the statement requesting release of the Letter of Credit, all obligations under the Letter of Credit shall cease and terminate by operation of law and the Letter of Credit shall be returned and shall become void.

4. This Agreement and the obligations contained herein shall bind the Developer and its successors and assigns with respect to the Development. The Developer shall have the right to post a substitute letter of credit on substantially the same form as the one attached hereto as Exhibit B from the same financial institution or another reputable financial institution doing business in the Commonwealth of Massachusetts. If the Town receives notice from the issuing bank that it is electing not to renew the Letter of Credit prior to the completion of the Remaining Work, and Buyer does not provide to the Town a substitute letter of credit meeting the requirements of this Agreement by not later than ten (10) days preceding the expiration date of the current Letter of Credit, the Town shall have the right to draw upon the Letter of Credit and hold the proceeds as security for the Developer's completion of the Remaining Work as specified herein, and to use such cash proceeds for the completion of the Remaining Work in the case of Developer's Default (as hereinafter defined).

5. In the event of a Default by the Developer, upon not less thirty (30) days' notice to the Developer (except in the case of (b) below, in which case no such cure period shall be provided), the Town shall have the right to draw upon the Letter of Credit and to use the proceeds thereof to complete the Remaining Work. As used herein, the term Default shall mean any one or more the following: (a) failure by the Developer to complete the Remaining Work by the Completion Date; (b) the filing of a petition by, or against, Developer for bankruptcy prior to

the Completion Date; (c) the foreclosure of any mortgage on the Property; (d) the ZBA receiving notice from the issuer of the Letter of Credit that the same will be terminated prior to the Completion Date; or (e) any other condition or circumstance, that, in the reasonable opinion of the ZBA, and upon the giving of not less than thirty (30) days' notice to the Developer, constitutes a material default by the Developer in the performance of the Remaining Work in accordance with the requirements of the Comprehensive Permit. Notwithstanding the provisions of paragraphs (a) and (e) above, if Developer commences the cure of any default specified in a notice from the Town, the Town shall not draw upon the Letter of Credit so long as the Developer diligently and continuously prosecutes such cure and completes the Remaining Work prior to the Completion Date.

6. The Developer agrees not to seek any partial release or reduction in the amount of the Letter of Credit based on partial completion of the Remaining Work. Rather, upon full completion of the Remaining Work, the Developer may request that the Town consent to the full cancellation of the Letter of Credit, by sending a statement of completion and a request for cancellation by certified mail to the ZBA and the Town Clerk. The Building Commissioner, acting on the direction of the ZBA, shall have the authority to authorize the cancellation of the Letter of Credit. The Developer's statement of completion shall be accompanied by the materials specified in Section 6.4.1 of the Subdivision Regulations, except that references to (i) the "Subdivision" shall mean the "Development"; and (ii) "Streets and Ways" shall mean the Common Facilities and infrastructure required by the Comprehensive Permit. Upon completion of the Remaining Work as set forth herein or the lapse of the 45-day period specified in Section 3 above, the Town agrees to take such affirmative action as may be required to authorize the issuer to cancel the Letter of Credit.

7. Any notices and other communications hereunder shall be in writing and shall be deemed duly given: (a) when deposited with the U.S. Postal Service and mailed by registered or certified mail, return receipt requested, postage and registration or certification charges prepaid and addressed as follows:

If to Developer:

Avalon Acton, Inc.
c/o AvalonBay Communities, Inc.
51 Sleeper Street, Suite 750
Boston, MA 02210
Attn: Scott W. Dale, Vice President-Development

With a copy to:

Goulston & Storrs, PC
400 Atlantic Avenue
Boston, MA 02110
Attn: Steven Schwartz, Esq.

If to the Town:

Zoning Board of Appeals
Town of Acton
472 Main Street
Acton, Massachusetts 01720
Attn: Zoning Board of Appeals

With copies to:

Town Manager
Town of Acton
472 Main Street
Acton, Massachusetts 01720

Town Clerk
Town of Acton
472 Main Street
Acton, Massachusetts 01720

and

Stephen D. Anderson, Esq.
Anderson & Kreiger LLP
One Canal Park, Suite 200
Cambridge, Massachusetts 02141

(b) when deposited with a reputable overnight delivery service for overnight delivery addressed to the same parties specified in subparagraph (a) above, or (c) upon actual delivery when delivered by hand during usual business hours addressed to the same parties specified in subparagraph (a) above, except that either party may by written notice to the other designate another address which shall thereupon become the effective address of such party for the purposes of this paragraph.

8. Each party represents and warrants to the other that it is duly authorized to enter into this Agreement and to perform its obligations contained herein. This Agreement may not be modified except by a written instrument executed by both parties.

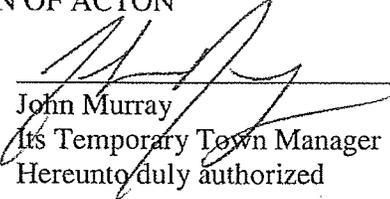
WITNESS the execution hereof, under seal as of the date first written above.

AVALON ACTON, INC

By: 

Scott W. Dale
Its Vice President - Development
Hereunto duly authorized

TOWN OF ACTON

By: 

John Murray
Its Temporary Town Manager
Hereunto duly authorized

EXHIBIT A

Remaining Work

**Avalon Acton
Common Facilities and Infrastructure - Balance to Complete as of 10/1/07**

Item	Totals		% Complete	Balance to Complete		Notes
	Quantity	Cost		Quantity	Cost	
Wastewater Treatment and Disposal Facilities	6270 LF	\$608,400	90%	627 LF	\$60,840	Cost is for collection system only; treatment plant is 100% complete.
Public Water Supply Facilities	8500 LF	\$716,133	75%	2125 LF	\$179,033	Includes all water mains and services.
Base and Binder Course for Roadways, Driveways, Sidewalks, and Parking Areas	39,200 SY	\$383,700	60%	15,680 SY	\$153,480	
Stormwater Management and Drainage Facilities	10,100 LF	\$1,082,779	65%	3,535 LF	\$371,973	
Electrical Utilities	6,600 LF	\$414,200	60%	2,640 LF	\$165,680	Includes duct bank, conduit, and secondary cable costs; utility providers have been paid in full for costs of primary cable and transformers.
Emergency Access Facilities	NA	NA	NA	NA	NA	Included in base and binder course #.
TOTAL					\$931,006	

EXHIBIT B

FORM OF LETTER OF CREDIT

[LETTERHEAD OF BANK]
IRREVOCABLE LETTER OF CREDIT NO. _____

DATE: _____

BENEFICIARY:
TOWN OF ACTON

APPLICANT: AVALON ACTON, INC.

ISSUING BANK

BANK OF AMERICA, N.A.
1 FLEET WAY
PA6-580-02-30
SCRANTON, PA 18507-1999

AMOUNT: NOT EXCEEDING USD
\$1,033,326.00 (ONE MILLION THIRTY THREE
THOUSAND THREE HUNDRED TWENTY SIX
and 00/100 DOLLARS)

EXPIRATION
_____, 200__ AT OUR
COUNTERS

GENTLEMEN/LADIES:

WE HEREBY OPEN OUR IRREVOCABLE LETTER OF CREDIT NO. _____ IN YOUR FAVOR.

CREDIT AVAILABLE WITH BANK OF AMERICA, N.A. BY PAYMENT OF BENEFICIARY'S DRAFT(S) AT
SIGHT DRAWN ON BANK OF AMERICA, N.A..

DRAFTS MUST BE ACCOMPANIED BY:

1. THE ORIGINAL LETTER OF CREDIT AND ALL AMENDMENTS, IF ANY.
2. A DATED STATEMENT PURPORTEDLY SIGNED BY AN AUTHORIZED OFFICER / REPRESENTATIVE OF THE BENEFICIARY ON BENEFICIARY'S LETTERHEAD READING AS FOLLOWS.

QUOTE

THE UNDERSIGNED IS ENTITLED TO DRAW UPON THIS LETTER OF CREDIT IN ACCORDANCE WITH THE TERMS OF THAT CERTAIN LETTER OF CREDIT AGREEMENT BETWEEN AVALON ACTON, INC. AND THE TOWN OF ACTON, DATED AS OF [DATE OF AGREEMENT]. A DEFAULT UNDER SAID LETTER OF CREDIT AGREEMENT HAS OCCURRED AND THE UNDERSIGNED IS ENTITLED TO DRAW UPON THIS LETTER OF CREDIT PURSUANT TO SAID AGREEMENT.
UNQUOTE

PARTIAL DRAWINGS ARE NOT PERMITTED.

REFERENCE TO ANY DOCUMENT, INSTRUMENTS OR AGREEMENTS OTHER THAN THE CREDIT FACILITY IS FOR IDENTIFICATION PURPOSES ONLY AND SUCH DOCUMENT, INSTRUMENT OR AGREEMENT WILL NOT BE INCORPORATED INTO THE TERMS OF THE LETTER OF CREDIT.

DRAFT(S) MUST STATE "DRAWN UNDER BANK OF AMERICA, N.A., STANDBY LETTER OF CREDIT NUMBER _____ DATED _____, 200__."

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE DEEMED AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR PERIOD(S) OF ONE (1) YEAR EACH FROM THE CURRENT EXPIRY DATE HEREOF, OR ANY FUTURE EXPIRATION DATE, UNLESS AT LEAST SIXTY (60) DAYS PRIOR TO ANY EXPIRATION DATE, WE NOTIFY YOU BY REGISTERED MAIL AT THE ABOVE LISTED ADDRESS THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT RENEWED FOR ANY SUCH ADDITIONAL PERIOD.

ANY SUCH NOTICE SHALL BE EFFECTIVE WHEN SENT BY US AND UPON SUCH NOTICE TO YOU, YOU MAY DRAW AT ANY TIME PRIOR TO THE THEN CURRENT EXPIRATION DATE, UP TO THE FULL AMOUNT THEN AVAILABLE HEREUNDER, AGAINST YOUR DRAFT(S) DRAWN ON US AT SIGHT AND THE ORIGINAL OF THIS LETTER OF CREDIT AND ALL AMENDMENTS THERETO, ACCOMPANIED BY YOUR PURPORTEDLY SIGNED STATEMENT ON YOUR LETTERHEAD STATING THAT YOU ARE IN RECEIPT OF BANK OF AMERICA, N.A.'S NOTICE OF NONRENEWAL UNDER LETTER OF CREDIT NO. _____ AND THE APPLICANT'S OBLIGATION TO YOU REMAINS.

DRAFTS AND DOCUMENTS MAY BE PRESENTED AT OUR OFFICE ADDRESSED: BANK OF AMERICA, N.A., NEW YORK, NY, ATTN: TRADE OPERATIONS, STANDBY UNIT.

COMMUNICATIONS WITH RESPECT TO THIS LETTER OF CREDIT SHALL BE IN WRITING AND SHALL BE ADDRESSED TO US AT, ONE FLEET WAY, SCRANTON PA 18507, ATTN: TRADE SERVICES DEPARTMENT - STANDBY UNIT, PHONE: 1-800-370-7519, SPECIFICALLY REFERRING TO THE NUMBER OF THIS LETTER OF CREDIT.

EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, THIS CREDIT IS ISSUED SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES (ISP98), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590.

IF YOU REQUIRE ANY ASSISTANCE OR HAVE ANY QUESTIONS REGARDING THIS TRANSACTION, PLEASE CALL 800-370-7519

VERY TRULY YOURS,

AUTHORIZED SIGNATORY