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

FORM 10-Q

T QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended March 31, 2009

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 001-13106

ESSEX PROPERTY TRUST, INC.

(Exact name of Registrant as Specified in its Charter)

Maryland

(State or Other Jurisdiction of Incorporation or Organization)

77-0369576

(I.R.S. Employer Identification Number)

925 East Meadow Drive

Palo Alto, California 94303

(Address of Principal Executive Offices including Zip Code)

(650) 494-3700

(Registrant's Telephone Number, Including Area Code)

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 reports), and (2) has been subject to such filing requirements for the past 90 days.

YES ☒ NO ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted 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 and post such files). YES ☐ NO ☐

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

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

(Do not check if a smaller reporting company)

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

Yes ☐ No ☒

APPLICABLE ONLY TO CORPORATE ISSUERS:

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date: **27,454,266 shares of Common Stock as of May 5, 2009 .**



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FORM 10-Q
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Part I -- Financial Information

Item 1: Condensed Financial Statements (Unaudited)

"Essex" or the "Company" means Essex Property Trust, Inc., a real estate investment trust incorporated in the State of Maryland, or where the context otherwise requires, Essex Portfolio, L.P., a limited partnership (the "Operating Partnership") in which Essex Property Trust, Inc. is the sole general partner.

The information furnished in the accompanying unaudited condensed consolidated balance sheets, statements of operations, stockholders' equity and comprehensive income and cash flows of the Company reflects all adjustments which are, in the opinion of management, necessary for a fair presentation of the aforementioned condensed consolidated financial statements for the interim periods and are normal and recurring in nature, except as otherwise noted.

The accompanying unaudited condensed consolidated financial statements should be read in conjunction with the notes to such unaudited condensed consolidated financial statements and Management's Discussion and Analysis of Financial Condition and Results of Operations herein. Additionally, these unaudited condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements included in the Company's annual report on Form 10-K for the year ended December 31, 2008.

ESSEX PROPERTY TRUST, INC. AND SUBSIDIARIES

Condensed Consolidated Balance Sheets

(Unaudited)

(Dollars in thousands, except per share amounts)

	March 31, 2009	December 31, 2008
<u>Assets</u>		
Real estate:		
Rental properties:		
Land and land improvements	\$ 681,947	\$ 683,876
Buildings and improvements	2,594,339	2,595,912
	3,276,286	3,279,788
Less accumulated depreciation	(666,552)	(640,026)
	2,609,734	2,639,762
Real estate under development	292,607	272,273
Co-investments	70,603	76,346
	2,972,944	2,988,381
Cash and cash equivalents-unrestricted	65,212	41,909
Cash and cash equivalents-restricted	13,608	12,810
Marketable securities	30,143	23,886
Funds held by 1031 exchange facilitator	-	21,424
Notes and other receivables	46,141	47,637
Prepaid expenses and other assets	18,416	17,430
Deferred charges, net	15,451	11,346
Total assets	<u>\$ 3,161,915</u>	<u>\$ 3,164,823</u>
<u>Liabilities and Equity</u>		
Mortgage notes payable	\$ 1,529,571	\$ 1,468,931
Exchangeable bonds	97,245	165,457
Lines of credit	185,000	120,000
Accounts payable and accrued liabilities	48,824	38,223
Construction payable	15,072	18,605
Dividends payable	31,618	32,124
Other liabilities	16,429	16,444
Cash flow hedge liabilities	54,825	73,129
Total liabilities	1,978,584	1,932,913
Commitments and contingencies		
Cumulative convertible preferred stock; \$.0001 par value:		
4.875% Series G - 5,980,000 issued and 3,595,716 and 5,980,000 outstanding	87,735	145,912
Stockholders' equity and noncontrolling interest:		
Common stock, \$.0001 par value, 649,702,178 shares authorized 26,059,739 and 26,395,807 shares issued and outstanding	2	2
Cumulative redeemable preferred stock; \$.0001 par value:		
7.8125% Series F - 1,000,000 shares authorized, issued and outstanding, liquidation value	25,000	25,000
Additional paid-in capital	1,045,603	1,043,985
Distributions in excess of accumulated earnings	(151,615)	(141,336)
Accumulated other comprehensive (loss) income	(58,942)	(75,424)
Total stockholders' equity	860,048	852,227
Noncontrolling interest	235,548	233,771
Total stockholders' equity and noncontrolling interest	<u>1,095,596</u>	<u>1,085,998</u>
Total liabilities and equity	<u>\$ 3,161,915</u>	<u>\$ 3,164,823</u>

See accompanying notes to the unaudited condensed consolidated financial statements.

ESSE X PROPERTY TRUST, INC. AND SUBSIDIARES
Condensed Consolidated Statements of Operations
(Unaudited)
(Dollars in thousands, except per share amounts)

	Three Months Ended March 31,	
	2009	2008
Revenues:		
Rental and other property	\$ 104,682	\$ 98,730
Management and other fees from affiliates	1,197	1,227
	<u>105,879</u>	<u>99,957</u>
Expenses:		
Property operating, excluding real estate taxes	24,265	23,654
Real estate taxes	9,113	8,096
Depreciation and amortization	29,175	26,766
Interest	20,203	21,139
General and administrative	6,233	6,625
Write-off of investment in development joint venture	5,752	-
	<u>94,741</u>	<u>86,280</u>
Earnings from operations	11,138	13,677
Gain on early retirement of debt	6,124	-
Interest and other income	3,287	2,768
Equity income in co-investments	539	6,630
Income before discontinued operations	21,088	23,075
Income (loss) from discontinued operations	2,250	(226)
Net income	23,338	22,849
Net income attributable to noncontrolling interest	(4,942)	(5,759)
Net income attributable to controlling interest	18,396	17,090
Dividends to preferred stockholders	(1,826)	(2,310)
Excess of the carrying amount of preferred stock redeemed over the cash paid to redeem preferred stock	25,695	-
Net income available to common stockholders	<u>\$ 42,265</u>	<u>\$ 14,780</u>
Per common share data:		
Basic:		
Income before discontinued operations available to common stockholders	\$ 1.53	\$ 0.61
Income (loss) from discontinued operations	0.08	(0.01)
Net income available to common stockholders	<u>\$ 1.61</u>	<u>\$ 0.60</u>
Weighted average number of common shares outstanding during the period	<u>26,224,946</u>	<u>24,747,925</u>
Diluted:		
Income before discontinued operations available to common stockholders	\$ 1.45	\$ 0.60
Income (loss) from discontinued operations	0.08	(0.01)
Net income available to common stockholders	<u>\$ 1.53</u>	<u>\$ 0.59</u>
Weighted average number of common shares outstanding during the period	<u>28,692,959</u>	<u>24,877,626</u>
Dividend per common share	<u>\$ 1.03</u>	<u>\$ 1.02</u>

See accompanying notes to the unaudited condensed consolidated financial statements.

ESSE X PROPERTY TRUST, INC. AND SUBSIDIARIES
Condensed Consolidated Statements of Stockholders' Equity, Noncontrolling Interest, and
Comprehensive Income for the three months ended March 31, 2009
(Unaudited)
(Dollars and shares in thousands)

	Series F Preferred stock Amount	Common stock Shares	Common stock Amount	Additional paid-in capital	Distributions in excess of accumulated earnings	Accumulated other comprehensive income (loss)	Noncontrolling Interest	Total
Balances at December 31, 2008 (as reported)	\$ 25,000	26,396	\$ 2	1,026,037	\$ (130,697)	(75,424)	-	844,918
Adoption of new accounting prouncements	-	-	-	17,948	(10,639)	-	233,771	241,080
Balances at December 31, 2008 (restated)	25,000	26,396	2	1,043,985	(141,336)	(75,424)	233,771	1,085,998
Comprehensive income:								
Net income	-	-	-	-	18,396	-	4,942	23,338
Change in fair value of cash flow hedges and amortization of settlements of swaps	-	-	-	-	-	16,482	1,551	18,033
Comprehensive income								41,371
Issuance of common stock under:								
Stock option plans	-	14	-	443	-	-	-	443
Equity based compensation costs	-	-	-	212	-	-	704	916
Retirement of Series G preferred stock	-	-	-	25,695	-	-	-	25,695
Retirement of common stock	-	(350)	-	(20,271)	-	-	-	(20,271)
Retirement of exchangeable bonds	-	-	-	(4,461)	-	-	-	(4,461)
Distributions to noncontrolling interest	-	-	-	-	-	-	(5,420)	(5,420)
Dividends declared	-	-	-	-	(28,675)	-	-	(28,675)
Balances at March 31, 2009	<u>\$ 25,000</u>	<u>26,060</u>	<u>\$ 2</u>	<u>\$ 1,045,603</u>	<u>\$ (151,615)</u>	<u>\$ (58,942)</u>	<u>\$ 235,548</u>	<u>\$ 1,095,596</u>

See accompanying notes to the unaudited condensed consolidated financial statements.

ESS EX PROPERTY TRUST, INC. AND SUBSIDIARIES

Condensed Consolidated Statements of Cash Flows

(Unaudited)

(Dollars in thousands)

	Three Months Ended March 31,	
	2009	2008
Net cash provided by operating activities	\$ 55,063	\$ 47,235
Cash flows used in investing activities:		
Additions to real estate:		
Acquisitions and improvements to recent acquisitions	(337)	(1,720)
Capital expenditures and redevelopment	(12,654)	(19,333)
Additions to real estate under development	(24,251)	(10,245)
Dispositions of real estate	12,395	-
Changes in restricted cash and refundable deposits	21,189	245
Purchases of marketable securities	(17,183)	(5,818)
Sales and maturities of marketable securities	12,257	3,790
Proceeds from tax credit investor	3,762	-
Advances under notes and other receivables	(725)	(784)
Collections of notes and other receivables	2,220	634
Contributions to co-investments	(270)	(285)
Distributions from co-investments	-	7,500
Net cash used in investing activities	(3,597)	(26,016)
Cash flows from financing activities:		
Borrowings under mortgage and other notes payable and lines of credit	165,504	154,834
Repayment of mortgage and other notes payable and lines of credit	(39,875)	(127,053)
Additions to deferred charges	(343)	(446)
Retirement of exchangeable bonds	(66,460)	-
Retirement of common stock	(20,271)	(13,723)
Retirement of preferred stock, Series G	(32,572)	-
Net proceeds from stock options exercised	443	651
Distributions to noncontrolling interest	(5,420)	(5,882)
Redemption of noncontrolling interest	-	(3,728)
Common and preferred stock dividends paid	(29,169)	(25,471)
Net cash used in financing activities	(28,163)	(20,818)
Net increase in cash and cash equivalents	23,303	401
Cash and cash equivalents at beginning of period	41,909	9,956
Cash and cash equivalents at end of period	\$ 65,212	\$ 10,357
Supplemental disclosure of cash flow information:		
Cash paid for interest, net of \$3.2 million and \$2.4 million capitalized in 2009 and 2008, respectively	\$ 14,853	\$ 15,879
Supplemental disclosure of noncash investing and financing activities:		
Accrual of dividends	\$ 31,618	\$ 30,880
Change in value of cash flow hedge liabilities	\$ 18,304	\$ 9,944
Change in construction payable	\$ 3,533	\$ 14,943

See accompanying notes to the unaudited condensed consolidated financial statements.

ESSEX PROPERTY TRUST, INC. AND SUBSIDIARIES
Notes to Condensed Consolidated Financial Statements
March 31, 2009 and 2008
(Unaudited)

(1) Organization and Basis of Presentation

The unaudited condensed consolidated financial statements of the Company are prepared in accordance with U.S. generally accepted accounting principles for interim financial information and in accordance with the instructions to Form 10-Q. In the opinion of management, all adjustments necessary for a fair presentation of the financial position, results of operations and cash flows for the periods presented have been included and are normal and recurring in nature, except as otherwise noted. These unaudited condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements included in the Company's annual report on Form 10-K for the year ended December 31, 2008.

All significant intercompany balances and transactions have been eliminated in the condensed consolidated financial statements.

The unaudited condensed consolidated financial statements for the three months ended March 31, 2009 and 2008 include the accounts of the Company and Essex Portfolio, L.P. (the "Operating Partnership", which holds the operating assets of the Company). See below for a description of entities consolidated by the Operating Partnership. The Company is the sole general partner in the Operating Partnership, with a 91.4% general partnership interest as of March 31, 2009. Total Operating Partnership units outstanding were 2,450,002 and 2,413,078 as of March 31, 2009 and December 31, 2008, respectively, and the redemption value of the units based on the closing price of the Company's common stock totaled \$140.5 million and \$185.2 million, as of March 31, 2009 and December 31, 2008, respectively.

As of March 31, 2009, the Company owned or had ownership interests in 132 apartment communities, (aggregating 26,862 units) (collectively, the "Communities", and individually, a "Community"), five office and commercial buildings and six active development projects (collectively, the "Portfolio"). The Communities are located in Southern California (Los Angeles, Orange, Riverside, Santa Barbara, San Diego, and Ventura counties), Northern California (the San Francisco Bay Area) and the Seattle metropolitan area.

Fund Activities

Essex Apartment Value Fund II, L.P. ("Fund II") is an investment fund formed by the Company to add value through rental growth and asset appreciation, utilizing the Company's development, redevelopment and asset management capabilities.

Fund II has eight institutional investors, and the Company, with combined partner equity commitments of \$265.9 million which were fully contributed as of 2008. The Company contributed \$75.0 million to Fund II, which represents a 28.2% interest as general partner and limited partner. Fund II utilized leverage equal to approximately 55% upon the initial acquisition of the underlying real estate. Fund II invested in apartment communities in the Company's targeted West Coast markets and, as of March 31, 2009, owned 12 apartment communities and two development projects. The Company records revenue for its asset management, property management, development and redevelopment services when earned, and promote income when realized if Fund II exceeds certain financial return benchmarks.

Marketable Securities

Marketable securities consist primarily of U.S. treasury or agency securities and REIT unsecured bonds. The Company has classified U.S. treasury and agency securities as held-to-maturity securities, and the Company reports these securities at amortized cost. The Company has classified the REIT bonds as available for sale and the Company reports these securities at fair value, based on quoted market prices (Level 1 as defined by FAS 157 as discussed in Note 8), and any unrealized gain or loss is recorded as other comprehensive income (loss). Realized gains and losses and interest income are included in interest and other income on the condensed consolidated statement of operations. Amortization of unearned discounts on both held to maturity and available for sale securities is included in interest income.

Variable Interest Entities

In accordance with Financial Accounting Standards Board ("FASB") Interpretation No. 46 Revised ("FIN 46R"), "*Consolidation of Variable Interest Entities, an Interpretation of ARB No. 51*", the Company consolidates 19 DownREIT limited partnerships (comprising twelve communities), a development project, an office building that is subject to loans made by the Company, and 55 low income housing units. Total DownREIT units outstanding were 1,148,510 as of March 31, 2009 and December 31, 2008, and the redemption value of the units based on the closing price of the Company's common stock totaled \$65.9 million and \$88.1 million, as of March 31, 2009 and December 31, 2008, respectively. The Company consolidates these entities because it is deemed the primary beneficiary under FIN 46R. The consolidated total assets and liabilities related to these variable interest entities ("VIEs"), net of intercompany eliminations, were approximately \$275.9 million and \$178.1 million, respectively, as of March 31, 2009 and \$256.0 million and \$169.1 million, respectively, as of December 31, 2008. Interest holders in VIEs consolidated by the Company are allocated net income equal to the cash payments made to those interest holders for services rendered or distributions from cash flow. The remaining results of operations are generally allocated to the Company. As of March 31, 2009 and December 31, 2008, the Company did not have any VIE's of which it was not deemed to be the primary beneficiary.

Stock-Based Compensation

The Company accounts for share based compensation using the fair value method of accounting. The estimated fair value of stock options granted by the Company is being amortized over the vesting period of the stock options. The estimated grant date fair values of the long term incentive plan units (discussed in Note 13, “Stock Based Compensation Plans,” in the Company’s Form 10-K for the year ended December 31, 2008) are being amortized over the expected service periods.

Stock-based compensation expense for options and restricted stock totaled \$0.2 million for the three months ended March 31, 2009 and 2008, respectively. The intrinsic value of the stock options exercised during the three months ended March 31, 2009 and 2008 totaled \$0.3 million and \$0.6 million, respectively. As of March 31, 2009, the intrinsic value of the stock options outstanding and fully vested totaled \$0.8 million. As of March 31, 2009, total unrecognized compensation cost related to unvested share-based compensation granted under the stock option and restricted stock plans totaled \$3.1 million. The cost is expected to be recognized over a weighted-average period of 2 to 4 years for the stock option plans and is expected to be recognized straight-line over 7 years for the restricted stock awards.

The Company has adopted an incentive program involving the issuance of Series Z and Series Z-1 Incentive Units (collectively referred to as “Z Units”) of limited partnership interest in the Operating Partnership. Stock-based compensation expense for Z Units totaled \$0.4 million for the three months ended March 31, 2009 and 2008, respectively.

Stock-based compensation capitalized for stock options, restricted stock awards, and the Z Units totaled \$0.2 million for the three months ended March 31, 2009 and 2008. As of March 31, 2009 the intrinsic value of the Z Units subject to conversion totaled \$16.2 million. As of March 31, 2009, total unrecognized compensation cost related to Z Units subject to conversion in the future granted under the Z Units totaled \$6.2 million. The unamortized cost is expected to be recognized over the next 2 to 10 years subject to the achievement of the stated performance criteria.

Stock-based compensation expense for the Outperformance Plan, (the “OPP”) adopted in December 2007 totaled approximately \$0.3 million for three months ended March 31, 2009 and 2008, respectively. Total unrecognized compensation cost less an estimate for forfeitures related to the OPP totaled \$3.8 million and \$4.1 million as of March 31, 2009 and December 31, 2008, respectively. The unamortized cost is recognized over the expected service period of five years for senior officers and three years for non-employee directors.

Accounting Estimates and Reclassifications

The preparation of condensed consolidated financial statements, in accordance with U.S. generally accepted accounting principles, requires the Company to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses and related disclosures of contingent assets and liabilities. On an on-going basis, the Company evaluates its estimates, including those related to acquiring, developing and assessing the carrying values of its real estate properties, its investments in and advances to joint ventures and affiliates, its notes receivables and its qualification as a Real Estate Investment Trust (“REIT”). The Company bases its estimates on historical experience, current market conditions, and on various other assumptions that are believed to be reasonable under the circumstances. Actual results may vary from those estimates and those estimates could be different under different assumptions or conditions.

Reclassifications for discontinued operations and noncontrolling interest have been made to prior year statements of operations balances in order to conform to current year presentation. Such reclassifications have no impact on reported earnings, cash flows, total assets or total liabilities.

New Accounting Pronouncements and the Resulting Restatements of Previously Reported Amounts

In December 2007, the FASB issued SFAS No. 160, “*Noncontrolling Interests in Consolidated Financial Statements*” (“FAS 160”). FAS 160 establishes accounting and reporting standards that require the ownership interests in subsidiaries held by parties other than the parent be clearly identified, labeled, and presented in the consolidated statement of financial position within equity, but separate from the parent’s equity; the amount of consolidated net income attributable to the parent and to the noncontrolling interest be clearly identified and presented on the face of the consolidated statement of income; changes in a parent’s ownership interest while the parent retains its controlling financial interest in its subsidiary be accounted for consistently; when a subsidiary is deconsolidated, any retained noncontrolling equity investment in the former subsidiary be initially measured at fair value; and entities provide sufficient disclosures that clearly identify and distinguish between the interests of the parent and the interests of the noncontrolling owners. FAS 160 is effective for fiscal years beginning on or after December 15, 2008. As summarized in the table below, the accompanying condensed consolidated financial statements have been restated to record the impact of adoption of FAS 160.

In May 2008, the FASB issued FASB staff position APB 14-1, “Accounting for Convertible Debt Instruments That May be Settled in cash upon Conversion (Including Partial Cash Settlement)” (“APB 14-1”). APB 14-1 requires the issuer of certain convertible debt instruments that may be settled in cash (or other assets) upon conversion separately account for the liability (debt) and equity (conversion option) components of the instruments in a manner that reflects the issuer’s nonconvertible debt borrowing rate. APB 14-1 requires the initial debt proceeds from the sale of a company’s convertible debt instrument to be allocated between the liability component and the equity component. The resulting debt discount will be amortized over the period during which the debt is expected to be outstanding (i.e., through the first optional redemption dates) as additional non-cash interest expense. APB 14-1 is effective for fiscal years, and interim periods within those fiscal years, beginning on or after December 15, 2008. Accounting for the Company’s \$225.0 million exchangeable bonds (the “Bonds”) with a coupon rate of 3.625% due November 2025, which were issued in the fourth quarter of 2005, was impacted by APB 14-1. During the fourth quarter of 2008, the Company repurchased \$53.3 million of the Bonds, and during the first quarter of 2009 the Company repurchased an additional \$71.3 million of the Bonds.

On January 1, 2009, the Company retrospectively adopted APB 14-1 for the Bonds. The Company estimated that the market interest rate for the debt only portion of the Bonds as of the date of issuance was 5.75%, compared to the coupon rate of 3.625%. The Company computed the estimated fair value of the debt portion of the Bonds as the present value of the expected cash flows discounted at 5.75%. The difference between the fair value of the debt portion of the Bonds and the carrying value as previously reported was added to additional paid in capital as of the date of issuance. The discount on the debt is amortized over the period from issuance to the date of the first call option by the holders of the Bonds which occurs in November 2010 resulting in non-cash interest expense in addition to the interest expense calculated based on the coupon rate. This resulted in a non-cash interest charge of \$0.6 million and \$1.0 million for the first quarter of 2009 and 2008, respectively. APB 14-1 requires that the fair value of the debt portion of any bonds that are retired early be estimated to calculate the gain on retirement. The difference between the estimated fair value of the debt portion of the Bonds and the APB 14-1 carrying value of the debt portion of the Bonds is recorded as gain on early retirement of debt and additional paid in capital is reduced to reflect the remaining portion of the total amount paid to retire the Bonds. This resulted in increasing the gains previously reported for the year ended December 31, 2008 related to early retirements of Bonds by \$0.5 million. This adjustment along with the non-cash interest charges for the period from issuance of the Bonds through December 31, 2008 resulted in a net reduction of equity, including the portion allocated to noncontrolling interests, as summarized in the table below.

The following is a summary of the impact to the December 31, 2008 balance sheet and first quarter of 2008 statement of operations from amounts previously reported to amounts included in the accompanying condensed consolidated financial statements as a result of the retrospective adoption of FAS 160 and APB 14-1:

	As Reported December 31, 2008	Adoption of FAS 160	Adoption of APB 14-1	Restated December 31, 2008
Selected balance sheet data:				
Exchangeable bonds	\$ 171,716	\$ -	\$ (6,259)	\$ 165,457
Minority interest	234,821	(233,771)	(1,050)	-
Additional paid-in capital	1,026,037	-	17,948	1,043,985
Distributions in excess of accumulated earnings	(130,697)	-	(10,639)	(141,336)
Noncontrolling interest	-	233,771	-	233,771

	As Reported (1) Q1 2008	Adoption of FAS 160	Adoption of APB 14-1	Restated Q1 2008
Selected income statement data:				
Interest expense	\$ 20,130	\$ -	\$ 1,009	\$ 21,139
Noncontrolling interest	5,843	-	(84)	5,759
Earnings per diluted share	0.63	-	(0.04)	0.59

(1) As reported balances are adjusted for discontinued operations.

In December 2007, the FASB issued revised SFAS No. 141, “*Business Combinations*” (“FAS 141(R)”). FAS 141(R) establishes principles and requirements for how the acquirer recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed, and any noncontrolling interest in the acquiree; recognizes and measures the goodwill acquired in the business combination or a gain from a bargain purchase; and determines what information to disclose to enable users of the financial statements to evaluate the nature and financial effects of the business combination. FAS 141(R) is effective for business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008. The adoption of this standard on January 1, 2009 did not have any impact on the Company’s consolidated financial position, results of operations or cash flows as it relates only to business combinations for the Company that take place on or after January 1, 2009.

(2) Significant Transactions

(a) Dispositions

During the first quarter, the Company sold Carlton Heights Villas, a 70-unit community located in Santee, California for \$6.9 million and recognized a gain of approximately \$1.6 million. Also in the first quarter, the Company sold Grand Regency, a 60-unit property in Escondido, California for \$5.0 million and recognized a gain of approximately \$0.9 million.

(b) Debt and Financing Activities

During the first quarter, the Company repurchased \$71.3 million of 3.625% exchangeable bonds at a discount to par value and recognized a gain of \$6.1 million.

During the first quarter, the Company obtained fixed rate mortgage loans totaling \$81.9 million, including the following:

- \$48.9 million loan secured by Avondale, at a rate of 6.11%, which matures in March 2019.
- \$23.0 million loan secured by Stevenson Place, at a rate of 6.35%, which matures in March 2019.
- \$10.0 million 2nd deed of trust loan secured by Esplanade, at a rate of 6.25%, which matures in August 2015.

Additionally, during the first quarter, the Company paid-off \$17.0 million in maturing loans including:

- Two mortgage loans secured by Monterra del Rey with fixed rates of 7.0% and 5.2%, respectively, maturing in May 2009 for an aggregate amount of \$10.0 million.
- One mortgage loan secured by Mariner's Place with a fixed rate of 7.3% maturing in April 2009 for \$3.8 million.
- A Belmont Station construction bridge loan maturing in June 2009 for \$3.2 million.

(c) Equity

In February 2009, the Company, under its stock repurchase program, repurchased 350,000 shares of common stock for \$20.3 million at an average price of \$57.89.

During the first quarter, the Company repurchased \$58.2 million of its Series G Cumulative Convertible Preferred Stock at a 46.6% discount to its carrying value, and the excess of the carrying value over the cash paid to redeem the Series G Preferred Stock totaled \$25.7 million.

(3) Co-investments

The Company has joint venture investments in a number of co-investments, which are accounted for under the equity method. The joint ventures own and operate apartment communities. The following table details the Company's co-investments (dollars in thousands):

	<u>March 31, 2009</u>	<u>December 31, 2008</u>
Investments in joint ventures accounted for under the equity method of accounting:		
Limited partnership interest of 27.2% and general partner interest of 1% in Essex Apartment Value Fund II, L.P. ("Fund II")	\$ 70,103	\$ 70,469
Development joint venture	-	5,377
	<u>70,103</u>	<u>75,846</u>
Investments accounted for under the cost method of accounting:		
Series A Preferred Stock interest in Multifamily Technology Solutions, Inc	500	500
Total co-investments	<u>\$ 70,603</u>	<u>\$ 76,346</u>

During 2006, the Company made a contribution to a development with a joint venture partner totaling \$3.4 million, and over the past three years the Company made additional contributions and capitalized costs to this joint venture totaling \$2.4 million for a total investment of \$5.8 million. This joint venture was to obtain entitlements and make option payments towards the purchase of land parcels in Marina del Rey, California for a proposed development project. During the first quarter of 2009, the Company wrote-off its investment in the joint venture development project for \$5.8 million, and the write-off of these costs is included in the accompanying consolidated condensed statements of operations.

The combined summarized balance sheet for co-investments, which are accounted for under the equity method, is as follows (dollars in thousands).

	March 31, 2009	December 31, 2008
Balance sheets:		
Rental properties and real estate under development	\$ 502,775	\$ 526,906
Other assets	44,547	40,877
	<u>547,322</u>	<u>567,783</u>
Total assets	<u>\$ 547,322</u>	<u>\$ 567,783</u>
Mortgage notes and construction payable	\$ 315,530	\$ 308,853
Other liabilities	11,249	8,481
Partners' equity	220,543	250,449
	<u>547,322</u>	<u>567,783</u>
Total liabilities and partners' equity	<u>\$ 547,322</u>	<u>\$ 567,783</u>
Company's share of equity	<u>\$ 70,103</u>	<u>\$ 75,846</u>

The combined summarized statement of operations for co-investments, which are accounted for under the equity method, is as follows (dollars in thousands).

	Three Months Ended March 31, 2009	2008
Statements of operations:		
Property revenues	\$ 12,003	\$ 10,997
Property operating expenses	(4,330)	(4,187)
Net property operating income	7,673	6,810
Interest expense	(2,192)	(2,706)
Depreciation and amortization	(3,612)	(3,025)
	<u>1,869</u>	<u>1,079</u>
Total net income	<u>\$ 1,869</u>	<u>\$ 1,079</u>
Company's share of operating net income	539	312
Company's preferred interest/gain - Mt. Vista	-	6,318
Company's share of net income	<u>\$ 539</u>	<u>\$ 6,630</u>

In January 2008, the Company received \$7.5 million and recognized \$6.3 million of preferred interest in the joint venture which is included in equity income in co-investments from the repayment of its investment in Mountain Vista Apartments, LLC.

(4) Notes and Other Receivables

Notes receivables secured by real estate, and other receivables consist of the following as of March 31, 2009 and December 31, 2008 (dollars in thousands):

	March 31, 2009	December 31, 2008
Note receivable, secured, bearing interest at LIBOR + 3.69%, due June 2009	7,317	7,325
Note receivable, secured, bearing interest at LIBOR + 2.95%, due December 2010	12,500	14,043
Note receivable, secured, bearing interest at 8.0%, due November 2010	971	965
Note receivable, secured, bearing interest at LIBOR + 4.75%, due March 2011	7,326	7,294
Note receivable, secured, bearing interest at 6.5%, due August 2011	4,070	4,070
Non-performing - note receivable, secured	12,748	12,748
Other receivables	1,209	1,192
	<u>\$ 46,141</u>	<u>\$ 47,637</u>

In September 2007, the Company originated a loan to the owners of an apartment community under development in Vancouver, Washington, with a maturity date of February 2009. The proceeds from the loan refinanced the property and are providing funding for the completion of the 146-unit apartment community. In July 2008, the Company ceased recording interest income and issued a notice of monetary default to the borrower, and the borrower filed for bankruptcy. During the fourth quarter of 2008, the Company recorded a loan loss reserve in the amount of \$0.7 million on this non-performing note receivable. The Company expects the note will be settled through the foreclosure or sale of the property.

In the first quarter of 2009, the borrower on the bridge loan secured by 301 Ocean Avenue a 47-unit apartment community located in Santa Monica, California made a principal payment of \$1.6 million to pay down the loan to \$12.5 million and the Company extended the maturity of the loan until December 2010.

(5) Related Party Transactions

Management and other fees from affiliates includes management, promote, development and redevelopment fees from related parties of \$1.2 million for the quarters ended March 31, 2009 and 2008. As discussed in Note 3, in January 2008, the Company received \$7.5 million from an investment held in an affiliate of TMMC and recognized \$6.3 million of preferred income which is included in equity income from co-investments.

(6) Segment Information

The Company defines its reportable operating segments as the three geographical regions in which its apartment communities are located: Southern California, Northern California and Seattle Metro. Excluded from segment revenues are properties classified in discontinued operations, management and other fees from affiliates, and interest and other income. Non-segment revenues and net operating income included in the following schedule also consist of revenue generated from commercial properties which are primarily office buildings. Other non-segment assets include co-investments, real estate under development, cash and cash equivalents, marketable securities, notes receivable, other assets and deferred charges. The revenues, net operating income, and assets for each of the reportable operating segments are summarized as follows for the three months ended March 31, 2009 and 2008 (dollars in thousands):

	Three Months Ended March 31,	
	2009	2008
Revenues:		
Southern California	\$ 53,531	\$ 52,493
Northern California	30,861	28,629
Seattle Metro	19,118	16,929
Other real estate assets	1,172	679
Total property revenues	<u>\$ 104,682</u>	<u>\$ 98,730</u>
Net operating income:		
Southern California	\$ 36,527	\$ 36,033
Northern California	21,397	19,047
Seattle Metro	12,686	11,374
Other real estate assets	694	526
Total net operating income	<u>71,304</u>	<u>66,980</u>
Depreciation and amortization	(29,175)	(26,766)
Interest expense	(20,203)	(21,139)
General and administrative	(6,233)	(6,625)
Write-off of development joint venture	(5,752)	-
Management and other fees from affiliates	1,197	1,227
Gain on early retirement of debt	6,124	-
Interest and other income	3,287	2,768
Equity income from co-investments	539	6,630
Income before discontinued operations	<u>\$ 21,088</u>	<u>\$ 23,075</u>
	March 31, 2009	December 31, 2008
Assets:		
Southern California	\$ 1,267,671	\$ 1,291,850
Northern California	847,196	850,170
Seattle Metro	429,177	431,041
Other real estate assets	65,690	66,701
Net reportable operating segments - real estate assets	<u>2,609,734</u>	<u>2,639,762</u>
Real estate under development	292,607	272,273
Cash and cash equivalents	78,820	54,719
Marketable securities	30,143	23,886
Funds held by 1031 exchange facilitator	-	21,424
Notes and other receivables	46,141	47,637
Other non-segment assets	104,470	105,122
Total assets	<u>\$ 3,161,915</u>	<u>\$ 3,164,823</u>

(7) Net Income Per Common Share

(Amounts in thousands, except per share and unit data)

	Three Months Ended March 31, 2009			Three Months Ended March 31, 2008		
		Weighted- average Common Shares	Per Common Share Amount		Weighted- average Common Shares	Per Common Share Amount
	Income			Income		
Basic:						
Income from continuing operations available to common stockholders	\$ 40,184	26,225	\$ 1.53	\$ 14,956	24,748	\$ 0.61
Income (loss) from discontinued operations available to common stockholders	2,081	26,225	0.08	(176)	24,748	(0.01)
	<u>42,265</u>		<u>\$ 1.61</u>	<u>14,780</u>		<u>\$ 0.60</u>
Effect of Dilutive Securities (1)	-	2,468		-	130	
Diluted:						
Income from continuing operations available to common stockholders (1)	41,814	28,693	\$ 1.45	14,956	24,878	\$ 0.60
Income (loss) from discontinued operations available to common stockholders	2,250	28,693	0.08	(176)	24,878	(0.01)
	<u>\$ 44,064</u>		<u>\$ 1.53</u>	<u>\$ 14,780</u>		<u>\$ 0.59</u>

- (1) Weighted convertible limited partnership units of 2,161,964 and vested Series Z incentive units of 282,783 for the three months ended March 31, 2009 were included in the determination of diluted EPS, and convertible limited partnership units of 2,271,295 and vested Series Z incentive units of 249,684 for the three months ended March 31, 2008, were not included in the determination of diluted EPS because they were anti-dilutive. The Company has the ability and intent to redeem DownREIT limited partnership units for cash and does not consider them to be common stock equivalents.

On or after November 1, 2020, the holders of the exchangeable notes may exchange, at the then applicable exchange rate, the notes for cash and, at the Company's option, a portion of the notes may be exchanged for Essex common stock; the current exchange rate is \$103.25 per share of Essex common stock. The exchangeable notes will also be exchangeable prior to November 1, 2020, but only upon the occurrence of certain specified events. During the three months ended March 31, 2009 and 2008 the weighted average common stock price did not exceed the \$103.25 strike price and therefore common stock issuable upon exchange of the exchangeable notes was not included in the diluted share count as the effect was anti-dilutive. The treasury method was used to determine the shares to be added to the denominator for the calculation of earnings per diluted share.

Stock options of 102,290 and 160,252 for the three months ended March 31, 2009 and 2008, respectively, were not included in the diluted earnings per share calculation because the exercise price of the options were greater than the average market price of the common shares for the three months ended and, therefore, were anti-dilutive.

3,595,716 and 5,980,000 shares of cumulative convertible preferred stock Series G have been excluded from diluted earnings per share for the three months ended March 31, 2009 and 2008, respectively, as the effect was anti-dilutive.

(8) Derivative Instruments and Hedging Activities

The Company adopted FAS 157, "Fair Value Measurements" as of January 1, 2008, which provides guidance on using fair value to measure assets and liabilities. The Company values forward-starting interest rate swaps and interest rate caps at fair value, and based on the fair value hierarchy of valuation techniques described in FAS 157, the Company has elected to use fair values determined by Level 2. Level 2 valuation methodology is determined based on inputs other than quoted prices in active markets for identical assets or liabilities the Company has the ability to access as included in Level 1 valuation methodology that are observable for the asset or liability, either directly or indirectly. Level 2 inputs include quoted prices for similar assets and liabilities in active markets and inputs other than quoted prices observable for the asset or liability, such as interest rates and yield curves observable at commonly quoted intervals. The Company's assessment of the significance of a particular input to the fair value measurement in its entirety requires judgment, and considers factors specific to the asset or liability.

As of March 31, 2009 the Company had seven forward-starting interest rate swap contracts totaling a notional amount of \$375.0 million with interest rates ranging from 5.1% to 5.9% and settlements dates ranging from November 2010 to October 2011. These derivatives qualify for hedge accounting as they are expected to economically hedge the cash flows associated with future financing of debt between 2010 and

2011. The Company had twelve interest rate cap contracts totaling a notional amount of \$183.4 million that qualify for hedge accounting as they effectively limit the Company's exposure to interest rate risk by providing a ceiling on the underlying variable interest rate for the Company's \$233.1 million of tax exempt variable rate debt. The aggregate carrying value of the forward-starting interest rate swap contracts was a net liability of \$55.0 million and the aggregate carrying value of the interest rate cap contracts was an asset of \$0.1 million. The overall fair value of the derivatives increased \$18.3 million during the three months ended March 31, 2009 to a net liability of \$54.8 million as of March 31, 2009, and the derivative liability was recorded in cash flow hedge liabilities in the Company's condensed consolidated financial statements. The changes in the fair values of the derivatives are reflected in comprehensive (loss) income in the Company's condensed consolidated financial statements. No hedge ineffectiveness on cash flow hedges was recognized during the quarter ended March 31, 2009 and 2008.

(9) Discontinued Operations

In the normal course of business, the Company will receive offers for sale of its communities, either solicited or unsolicited. For those offers that are accepted, the prospective buyer will usually require a due diligence period before consummation of the transaction. It is not unusual for matters to arise that result in the withdrawal or rejection of the offer during this process. Essex classifies real estate as "held for sale" when all criteria under SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets" ("SFAS 144") have been met.

In the first quarter of 2009, the Company sold Carlton Heights Villas, a 70-unit property located in Santee, California for \$6.9 million resulting in a \$1.6 million gain and Grand Regency, a 60-unit property in Escondido, California, for \$5.0 million resulting in a \$0.9 million gain.

In the fourth quarter of 2008, the Company sold Coral Gardens, a 200-unit property located in El Cajon, California for \$19.8 million, and in the third quarter of 2008, the Company sold Cardiff by the Sea Apartments, located in Cardiff, California for \$71.0 million and St. Cloud Apartments, located in Houston, Texas for \$8.8 million. The operations for these sold communities are included in discontinued operations for the three months ended March 31, 2008.

The components of discontinued operations are outlined below and include the results of operations for the respective periods that the Company owned such assets, as described above (dollars in thousands).

	Three Months Ended March 31,	
	2009	2008
Rental revenues	\$ 157	\$ 2,746
Property operating expenses	(103)	(1,229)
Interest expense	-	(775)
Depreciation and amortization	(29)	(968)
Income (loss) from real estate sold	25	(226)
Gain on sale	2,472	-
Internal disposition costs (1)	(247)	-
Income (loss) from discontinued operations	<u>\$ 2,250</u>	<u>\$ (226)</u>

(1) Internal disposition costs relate to a disposition incentive program established to pay incremental bonuses for the sale of certain of the Company's communities that are part of the program.

(10) Commitments and Contingencies

The Company is subject to various lawsuits in the normal course of its business operations. Such lawsuits are not expected to have a material adverse effect on the Company's financial condition, results of operations or cash flows.

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

The following discussion should be read in conjunction with our Condensed Consolidated Financial Statements and accompanying Notes thereto included elsewhere herein and with our 2008 Annual Report on Form 10-K for the year ended December 31, 2008 and our Current Report on Form 10-Q for the quarter ended March 31, 2009.

The Company is a fully integrated Real Estate Investment Trust ("REIT"), and its property revenues are generated primarily from apartment community operations. Our investment strategy has two components: constant monitoring of existing markets, and evaluation of new markets to identify areas with the characteristics that underlie rental growth. Our strong financial condition supports our investment strategy by enhancing our ability to quickly shift our acquisition, development, and disposition activities to markets that will optimize the performance of the portfolio.

As of March 31, 2009, we had ownership interests in 132 apartment communities, comprising 26,862 apartment units. Our apartment communities are located in the following major West Coast regions:

Southern California (Los Angeles, Orange, Riverside, Santa Barbara, San Diego and Ventura counties)

Northern California (the San Francisco Bay Area)

Seattle Metro (Seattle metropolitan area)

As of March 31, 2009, we also had ownership interests in five office and commercial buildings (with approximately 215,840 square feet).

As of March 31, 2009, our consolidated development pipeline, excluding development projects owned by Fund II, was comprised of four development projects, three predevelopment projects and four land parcels held for future development aggregating 2,200 units, with total incurred costs of \$292.6 million. The estimated remaining project costs of active development projects were \$112.8 million for total estimated project costs of \$279.6 million.

The Company's consolidated apartment communities are as follows:

	As of March 31, 2009		As of March 31, 2008	
	Apartment Units	%	Apartment Units	%
Southern California	12,370	51%	12,725	53%
Northern California	6,457	27%	6,361	26%
Seattle Metro	5,338	22%	5,005	21%
Total	24,165	100%	24,091	100%

Co-investments including Fund II communities and communities included in discontinued operations are not included in the table above for both years presented above.

Comparison of the Three Months Ended March 31, 2009 to the Three Months Ended March 31, 2008

Our average financial occupancies for the Company's stabilized apartment communities or "Quarterly Same-Property" (stabilized properties consolidated by the Company for the quarters ended March 31, 2009 and 2008) increased 110 basis points to 97.0% as of March 31, 2009 from 95.9% as of March 31, 2008. Financial occupancy is defined as the percentage resulting from dividing actual rental revenue by total possible rental revenue. Actual rental revenue represents contractual rental revenue pursuant to leases without considering delinquency and concessions. Total possible rental revenue represents the value of all apartment units, with occupied units valued at contractual rental rates pursuant to leases and vacant units valued at estimated market rents. We believe that financial occupancy is a meaningful measure of occupancy because it considers the value of each vacant unit at its estimated market rate. Financial occupancy may not completely reflect short-term trends in physical occupancy and financial occupancy rates as disclosed by other REITs may not be comparable to our calculation of financial occupancy.

The regional breakdown of the Company's Quarterly Same-Property portfolio for financial occupancy for the quarter ended March 31, 2009 and 2008 is as follows:

	Three months ended March 31,	
	2009	2008
Southern California	96.5%	95.1%
Northern California	97.6%	96.7%
Seattle Metro	97.3%	96.8%

The following table provides a breakdown of revenue amounts, including revenues attributable to the Quarterly Same-Property portfolio:

	Number of Properties	Three Months Ended March 31,		Dollar Change	Percentage Change
		2009	2008		
Property Revenues (dollars in thousands)					
Same-Property:					
Southern California	58	\$ 47,945	\$ 48,054	\$ (109)	(0.2) %
Northern California	26	27,010	25,725	1,285	5.0
Seattle Metro	24	15,654	15,053	601	4.0
Total Same-Property revenues	108	90,609	88,832	1,777	2.0
Non-Same Property Revenues (1)		14,073	9,898	4,175	42.2
Total property revenues		\$ 104,682	\$ 98,730	\$ 5,952	6.0%

(1) Includes two communities acquired after January 1, 2008, eight redevelopment communities, two development communities, and three commercial buildings.

Quarterly Same-Property Revenues increased by \$1.8 million or 2.0% to \$90.6 million in the first quarter of 2009 from \$88.8 million in the first quarter of 2008. The increase in the first quarter of 2009 was primarily attributable to increased occupancy of 110 basis points or \$0.9 million, from 95.9% for the first quarter of 2008 to 97.0% for the first quarter of 2009. Although scheduled rents increased 2.8% in Northern California and 2.3% in the Seattle Metro area, these increases in scheduled rent were offset by a 2.2% decrease in scheduled rents for Southern California and the overall scheduled rents for the aggregate Quarterly Same-Property portfolio were flat at an average rental rate of \$1,402 per unit for the two quarters. Ratio utility billing system ("RUBS") income and other income increased \$0.6 million, rent concessions decreased \$0.2 million and bad debt expense was consistent between quarters. The Company expects that total Same-Property revenues will decrease in the second quarter of 2009 from the same period in 2008, due to an expected decrease in scheduled rents compared to the same period in 2008.

Quarterly Non-Same Property Revenues increased by \$4.2 million or 42.2% to \$14.1 million in the first quarter of 2009 from \$9.9 million in the first quarter of 2008. The increase was primarily due to two new communities acquired since January 1, 2008, two development communities in lease-up and eight communities that are in redevelopment and classified in non-same property results.

Real estate taxes increased \$1.0 million or 12.5% for the quarter over 2008, primarily due to the acquisition of two new properties, the lease-up of two development properties and an estimated 14% increase in real estate taxes in the Seattle Metro area.

Depreciation expense increased by \$2.4 million or 9.0% for the first quarter of 2009 compared to the first quarter of 2008, primarily due to the acquisition of two new communities, the lease-up of two development properties, and the capitalization of approximately \$88.0 million of additions to rental properties, including \$55.5 million spent on redevelopment and revenue generating capital expenditures during 2008.

Write-off of investment in development joint venture of \$5.8 million for the first quarter of 2009 related to the write-off the full amount of the Company's investment in a predevelopment joint venture project in Southern California.

Gain on early retirement of debt was \$6.1 million for the first quarter of 2009 compared to \$0 in the first quarter of 2008, due to the repurchase of \$71.3 million of 3.625% exchangeable bonds at a discount to par value.

Equity income in co-investments decreased by \$6.1 million to \$0.5 million from \$6.6 million in 2008, due to the fact that in the first quarter of 2008, the Company recognized \$6.3 million of preferred income from the retirement of the Company's investment in the Mountain Vista, LLC joint venture.

Income from discontinued operations for the first quarter of 2009 includes operating results of Carlton Heights and Grand Regency which were sold during the quarter for a combined gain of \$2.5 million. Discontinued operations for the first quarter of 2008 includes the operating results for those two properties as well as Cardiff by the Sea, St. Cloud and Coral Gardens, which were sold in the third and fourth quarters of 2008.

Liquidity and Capital Resources

In June 2008, Standard and Poor's ("S&P") reaffirmed its corporate credit rating of BBB/Stable for Essex Property Trust, Inc. and Essex Portfolio L.P.

At March 31, 2009, the Company had \$65.2 million of unrestricted cash and cash equivalents and \$30.1 million in marketable securities. We believe that cash flows generated by our operations, existing cash balances, availability under existing lines of credit, access to capital markets and the ability to generate cash gains from the disposition of real estate and marketable securities held available for sale are sufficient to meet all of our reasonably anticipated cash needs during 2009. The timing, source and amounts of cash flows provided by financing activities and used in investing activities are sensitive to changes in interest rates and other fluctuations in the capital markets environment, which can affect our plans for acquisitions, dispositions, development and redevelopment activities.

The Company has a \$200.0 million unsecured line of credit and, as of March 31, 2009, there was \$45.0 million outstanding balance on the line at an average interest rate of 2.7%. This facility matures in March 2010. The underlying interest rate on this line is based on a tiered rate structure tied to an S&P rating on the credit facility (currently BBB-) at LIBOR plus 0.8%. We also have a \$150.0 million credit facility from Freddie Mac, which is expandable to \$250.0 million at any time during the first two years and which matures in December 2013. This line is secured by ten apartment communities. As of March 31, 2009, we had \$140.0 million outstanding under this line of credit at an average interest rate of 2.0%. The underlying interest rate on this line is between 99 and 150 basis points over the Freddie Mac Reference Rate and the interest rate is subject to change by the lender in November 2011. In March 2009, the Company did not renew upon maturity a \$10.0 million unsecured revolving line of credit. The Company's line of credit agreements contain debt covenants related to limitations on indebtedness and liabilities, maintenance of minimum levels of consolidated earnings before depreciation, interest and amortization and maintenance of minimum tangible net worth. The Company was in compliance with the line of credit covenants as of March 31, 2009 and December 31, 2008.

The Company may from time to time sell shares of common stock into the existing trading market at current market prices as well as through negotiated transactions under its Controlled Equity Offering ("CEO") program with Cantor Fitzgerald & Co. ("Cantor"). During the first quarters of 2009 and 2008, no shares were sold under CEO program. In May 2009, the Company's Board of Directors approved the sale of an additional 7.5 million shares of common stock under the CEO program. Pursuant to this approval, the Company entered in a sales agreement with Cantor on May 6, 2009, for the sale of such 7.5 million shares pursuant to the CEO program. A copy of the sales agreement has been filed as Exhibit 10.2 to this Form 10-Q.

In August 2007, the Company's Board of Directors authorized a stock repurchase plan to allow the Company to acquire shares in an aggregate of up to \$200.0 million. The program supersedes the common stock repurchase plan that Essex announced on May 16, 2001. In February 2009 the Company repurchased 350,000 shares of common stock for \$20.3 million at an average price of \$57.89 per share. Since the inception of the stock repurchase plan, the Company has repurchased and retired 816,659 shares for \$66.6 million at an average price of \$81.56 per share, including commissions, as of March 31, 2009. After the Series G Preferred Stock repurchases described below, the Company has authorization to repurchase an additional \$101.0 million under the stock repurchase plan.

In 2006, the Company sold 5,980,000 shares of 4.875% Series G Cumulative Convertible Preferred Stock (the "Series G Preferred Stock") for net proceeds of \$145.9 million. Holders may convert Series G Preferred Stock into shares of the Company's common stock subject to certain conditions. The conversion rate was initially 0.1830 shares of common stock per the \$25 share liquidation preference, which is equivalent to an initial conversion price of approximately \$136.62 per share of common stock (the conversion rate will be subject to adjustment upon the occurrence of specified events). On or after July 31, 2011, the Company may, under certain circumstances, cause some or all of the Series G Preferred Stock to be converted into shares of common stock at the then prevailing conversion rate.

During the first quarter of 2009, the Company repurchased \$58.2 million of its Series G Preferred Stock at a discount to carrying value, and the excess of the carrying value over the cash paid to redeem the Series G Preferred Stock totaling \$25.7 million. As of March 31, 2009, the carrying value of the Series G Preferred Stock outstanding totaled \$87.7 million. The Company may continue to repurchase Series G Preferred Stock.

In 2005 the Company, through its Operating Partnership, issued \$225.0 million of outstanding exchangeable senior notes (the "Bonds") with a coupon of 3.625% due 2025. The Bonds are senior unsecured obligations of the Operating Partnership, and are fully and unconditionally guaranteed by the Company. On or after November 1, 2020, the Bonds will be exchangeable at the option of the holder into cash and, in certain circumstances at Essex's option, shares of the Company's common stock at an initial exchange price of \$103.25 per share subject to certain adjustments. The Bonds will also be exchangeable prior to November 1, 2020, but only upon the occurrence of certain specified events. On or after November 4, 2010, the Operating Partnership may redeem all or a portion of the Notes at a redemption price equal to the principal amount plus accrued and unpaid interest (including additional interest, if any). Bond holders may require the Operating Partnership to repurchase all or a portion of the Bonds at a purchase price equal to the principal amount plus accrued and unpaid interest (including additional interest, if any) on the Bonds on November 1, 2010, November 1, 2015 and November 1, 2020.

During the fourth quarter of 2008 the Company repurchased \$53.3 million of these Bonds at a discount to par value, and during the first quarter of 2009, the Company repurchased an additional \$71.3 million of these Bonds at a discount to par value and recognized a gain of \$6.1 million on cash paid of \$66.5 million. As of March 31, 2009, the carrying value of the Bonds outstanding totaled \$97.2 million. The Company may continue to repurchase Bonds.

As of March 31, 2009, the Company's mortgage notes payable totaled \$1.5 billion which consisted of \$1.3 billion in fixed rate debt with interest rates varying from 4.86% to 8.18% and maturity dates ranging from 2010 to 2020 and \$233.1 million of tax-exempt variable rate demand bonds with a weighted average interest rate of 2.5%. The tax-exempt variable rate demand bonds have maturity dates ranging from 2020 to 2039, and \$183.4 million are subject to interest rate caps.

The Company pays quarterly dividends from cash available for distribution. Until it is distributed, cash available for distribution is invested by the Company primarily in short-term investment grade securities or is used by the Company to reduce balances outstanding under its line of credit.

The Company's current financing activities have been impacted by the instability and tightening in the credit markets which has led to an increase in spreads and pricing of secured and unsecured debt. Our strong balance sheet, the established relationships with our unsecured line of credit bank group, the secured line of credit with Freddie Mac and access to Fannie Mae and Freddie Mac secured debt financing have provided some insulation to us from the turmoil being experienced by many other real estate companies. The Company has benefited from borrowing from Fannie Mae and Freddie Mac, and there are no assurances that these entities will lend to the Company in the future. The Company has experienced more restrictive loan to value and debt service coverage ratio limits and an expansion in credit spreads. Continued turmoil in the capital markets could negatively impact the Company's ability to make acquisitions, develop communities, obtain new financing, and refinance existing borrowing at competitive rates.

Derivative Activity

As of March 31, 2009 the Company had seven forward-starting interest rate swap contracts totaling a notional amount of \$375.0 million with interest rates ranging from 5.1% to 5.9% and settlements dates ranging from November 2010 to October 2011. These derivatives qualify for hedge accounting as they are expected to economically hedge the cash flows associated with future financing of debt between 2010 and 2011. The Company had twelve interest rate cap contracts totaling a notional amount of \$183.4 million that qualify for hedge accounting as they effectively limit the Company's exposure to interest rate risk by providing a ceiling on the underlying variable interest rate for the Company's \$233.1 million of tax exempt variable rate debt. The aggregate carrying value of the forward-starting interest rate swap contracts was a net liability of \$55.0 million. The aggregate carrying value of the interest rate cap contracts was an asset of \$0.1 million and the overall fair value of the derivatives increased \$18.3 million during the three months ended March 31, 2009 to a net liability of \$54.8 million as of March 31, 2009, and the derivative liability was recorded in cash flow hedge liabilities in the Company's condensed consolidated financial statements. The changes in the fair values of the derivatives are reflected in comprehensive (loss) income in the Company's condensed consolidated financial statements. No hedge ineffectiveness on cash flow hedges was recognized during the quarter ended March 31, 2009 and 2008.

Development and Predevelopment Pipeline

The Company defines development activities as new properties that are being constructed, or are newly constructed and, in the case of development communities, are in a phase of lease-up and have not yet reached stabilized operations. As of March 31, 2009, excluding development projects owned by Fund II, the Company had four development projects comprised of 704 units for an estimated cost of \$279.6 million, of which \$112.8 million remains to be expended. The Company has approximately \$59.5 million undrawn on a construction loan to fund the joint venture Joule Broadway development project with approximately \$63.6 million in estimated costs to complete the project.

The Company defines the predevelopment pipeline as new properties in negotiation or in the entitlement process with a high likelihood of becoming development activities. As of March 31, 2009, the Company had three development communities aggregating 1,104 units that were classified as predevelopment projects. The estimated total cost of the predevelopment pipeline at March 31, 2009 was \$372.8 million, of which \$271.1 million remains to be expended. The Company may also acquire land for future development purposes. The Company owned four land parcels held for future development aggregating 392 units as of March 31, 2009. The Company had incurred \$24.1 million in costs related to these four land parcels as of March 31, 2009.

The Company expects to fund the development pipeline by using a combination of some or all of the following sources: its working capital, amounts available on its lines of credit, net proceeds from public and private equity and debt issuances, and proceeds from the disposition of properties, if any.

Redevelopment

The Company defines redevelopment activities as existing properties owned or recently acquired, which have been targeted for additional investment by the Company with the expectation of increased financial returns through property improvement. The Company's redevelopment strategy strives to improve the financial and physical aspects of the Company's redevelopment apartment communities and to target at least a 7 to 9 percent return on the incremental renovation investment. Many of the Company's properties are older and in excellent neighborhoods, providing lower density with large floor plans that represent attractive redevelopment opportunities. During redevelopment, apartment units may not be available for rent and, as a result, may have less than stabilized operations. As of March 31, 2009, the Company had nine redevelopment communities aggregating 2,631 apartment units with estimated redevelopment costs of \$128.0 million, of which approximately \$52.9 million remains to be expended.

Alternative Capital Sources

Fund II has eight institutional investors, and the Company, with combined partner equity commitments of \$265.9 million that were fully contributed as of 2008. The Company contributed \$75.0 million to Fund II, which represents a 28.2% interest as general partner and limited partner. Fund II utilized leverage equal to approximately 55% upon the initial acquisition of the underlying real estate. Fund II invested in apartment communities in the Company's targeted West Coast markets and, as of March 31, 2009, owned twelve apartment communities and two development projects. The Company records revenue for its asset management, property management, development and redevelopment services when earned, and promote income when realized if Fund II exceeds certain financial return benchmarks.

Contractual Obligations and Commercial Commitments

The following table summarizes the maturation or due dates of our contractual obligations and other commitments at March 31, 2009, and the effect these obligations could have on our liquidity and cash flow in future periods:

(In thousands)	2009	2010 and 2011	2012 and 2013	Thereafter	Total
Mortgage notes payable	\$ 14,548	\$ 302,412	\$ 223,459	\$ 989,152	\$ 1,529,571
Exchangeable bonds	-	97,245	-	-	97,245
Lines of credit	-	45,000	140,000	-	185,000
Interest on indebtedness	69,448	151,824	111,443	247,506	580,221
Development commitments	60,100	52,700	-	-	112,800
Redevelopment commitments	30,000	22,938	-	-	52,938
	<u>\$ 174,096</u>	<u>\$ 672,119</u>	<u>\$ 474,902</u>	<u>\$ 1,236,658</u>	<u>\$ 2,557,775</u>

Critical Accounting Policies and Estimates

The preparation of consolidated financial statements, in accordance with U.S. generally accepted accounting principles requires the Company to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses and related disclosures of contingent assets and liabilities. We define critical accounting policies as those accounting policies that require our management to exercise their most difficult, subjective and complex judgments. Our critical accounting policies relate principally to the following key areas: (i) consolidation under applicable accounting standards for entities that are not wholly owned; (ii) assessing the carrying values of our real estate properties and investments in and advances to joint ventures and affiliates; (iii) internal cost capitalization; and (iv) qualification as a REIT. The Company bases its estimates on historical experience, current market conditions, and on various other assumptions that are believed to be reasonable under the circumstances. Actual results may differ from those estimates made by management.

The Company's critical accounting policies and estimates have not changed materially from information reported in Note 2, "Summary of Critical and Significant Accounting Policies," in the Company's Annual Report on Form 10-K for the year ended December 31, 2008.

Forward Looking Statements

Certain statements in this "Management's Discussion and Analysis of Financial Condition and Results of Operations," and elsewhere in this quarterly report on Form 10-Q which are not historical facts may be considered forward looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities and Exchange Act of 1934, as amended, including statements regarding the Company's expectations, hopes, intentions, beliefs and strategies regarding the future. Forward looking statements include statements regarding the Company's expectations as to the total projected costs of predevelopment, development and redevelopment projects, beliefs as to our ability to meet our cash needs during 2009 and to provide for dividend payments in accordance with REIT requirements, as to the Quarterly Same-Property revenues in the second quarter of 2009, expectations as to the sources for funding the Company's development pipeline and statements regarding the Company's financing activities.

Such forward-looking statements involve known and unknown risks, uncertainties and other factors including, but not limited to, that the Company will fail to achieve its business objectives, that the total projected costs of current predevelopment, development and redevelopment projects exceed expectations, that such development and redevelopment projects will not be completed, that development and redevelopment projects and acquisitions will fail to meet expectations, that estimates of future income from an acquired property may prove to be inaccurate, that future cash flows will be inadequate to meet operating requirements and/or will be insufficient to provide for dividend payments in accordance with REIT requirements, that there may be a downturn in the markets in which the Company's properties are located, that the terms of any refinancing may not be as favorable as the terms of existing indebtedness, as well as those risks, special considerations, and other factors discussed in Item 1A, "Risk Factors," in Part II "Other Information" in this current report on Form 10-Q for the quarter ended March 31, 2009 and those discussed in Item 1A, "Risk Factors," of the Company's Annual Report on Form 10-K for the year ended December 31, 2008, and those risk factors and special considerations set forth in the Company's other filings with the Securities and Exchange Commission (the "SEC") which may cause the actual results, performance or achievements of the Company to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. All forward-looking statements are made as of the date hereof, and the Company assumes no obligation to update this information.

Funds from Operations ("FFO")

FFO is a financial measure that is commonly used in the REIT industry. The Company presents funds from operations as a supplemental performance measure. FFO is not used by the Company as, nor should it be considered to be, an alternative to net earnings computed under GAAP as an indicator the Company's operating performance or as an alternative to cash from operating activities computed under GAAP as an indicator of the Company's ability to fund its cash needs.

FFO is not meant to represent a comprehensive system of financial reporting and does not present, nor does intend it to present, a complete picture of its financial condition and operating performance. The Company believes that net earnings computed under GAAP remain the primary measure of performance and that FFO is only meaningful when it is used in conjunction with net earnings. Further, the Company believes that its consolidated financial statements, prepared in accordance with GAAP, provide the most meaningful picture of its financial condition and its operating performance.

In calculating FFO, the Company follows the definition for this measure published by the National Association of REITs ("NAREIT"), which is a REIT trade association. The Company believes that, under the NAREIT FFO definition, the two most significant adjustments made to net income are (i) the exclusion of historical cost depreciation and (ii) the exclusion of gains and losses from the sale of previously depreciated properties. The Company agrees that these two NAREIT adjustments are useful to investors for the following reasons:

(a) historical cost accounting for real estate assets in accordance with GAAP assumes, through depreciation charges, that the value of real estate assets diminishes predictably over time. NAREIT stated in its White Paper on Funds from Operations "since real estate asset values have historically risen or fallen with market conditions, many industry investors have considered presentations of operating results for real estate companies that use historical cost accounting to be insufficient by themselves." Consequently, NAREIT's definition of FFO reflects the fact that real estate, as an asset class, generally appreciates over time and depreciation charges required by GAAP do not reflect the underlying economic realities.

(b) REITs were created as a legal form of organization in order to encourage public ownership of real estate as an asset class through investment in firms that were in the business of long-term ownership and management of real estate. The exclusion, in NAREIT's definition of FFO, of gains and losses from the sales of previously depreciated operating real estate assets allows investors and analysts to readily identify the operating results of the long-term assets that form the core of a REIT's activity and assists in comparing those operating results between periods.

Management believes that it has consistently applied the NAREIT definition of FFO to all periods presented. However, there is judgment involved and other REITs' calculation of FFO may vary from the NAREIT definition for this measure, and thus their disclosure of FFO may not be comparable to the Company's calculation.

The following table sets forth the Company's calculation of FFO for the three months ended March 31, 2009 and 2008 (in thousands except for per share data):

	Three Months Ended March 31,	
	2009	2008
Net income available to common stockholders	\$ 42,265	\$ 14,780
Adjustments:		
Depreciation and amortization	29,204	27,734
Gains not included in FFO, net of disposition costs (1)	(2,225)	-
Noncontrolling interest and co-investments (2)	2,563	2,312
Funds from operations	\$ 71,807	\$ 44,826
Funds from operations per share - diluted	\$ 2.50	\$ 1.64
Weighted average number shares outstanding diluted (3)	28,692,959	27,398,605

- (1) Internal disposition costs relate to a disposition incentive program established to pay incremental bonuses totaling \$247,000 as of March 31, 2009, for the sale of certain of the Company's communities that are part of the program.
- (2) Amount includes the following: (i) noncontrolling interest related to Operating Partnership units, and (ii) add back of depreciation expense from unconsolidated co-investments and less depreciation attributable to third-party ownership of consolidated co-investments.
- (3) Assumes conversion of all dilutive outstanding operating partnership interests in the Operating Partnership.

Item 3: Quantitative and Qualitative Disclosures About Market Risks

Interest Rate Hedging Activities

The Company's objective in using derivatives is to add stability to interest expense and to manage its exposure to interest rate movements or other identified risks. To accomplish this objective, the Company primarily uses interest rate swaps as part of its cash flow hedging strategy. Interest rate swaps designated as cash flow hedges involve the receipt of variable-rate amounts in exchange for fixed-rate payments over the life of the agreements without exchange of the underlying principal amount. As of March 31, 2009, we had entered into seven forward-starting swap contracts to mitigate the risk of changes in the interest-related cash outflows on forecasted issuance of long-term debt. The forward-starting swaps are cash flow hedges of the variability in ten years of forecasted interest payments associated with the future financings of debt between 2010 and 2011. The Company had twelve interest rate cap contracts totaling a notional amount of \$183.4 million that qualify for hedge accounting as they effectively limit the Company's exposure to interest rate risk by providing a ceiling on the underlying variable interest rate for the Company's \$233.1 million of tax exempt variable rate debt. All derivative instruments are designated as cash flow hedges, and the Company does not have any fair value hedges as of March 31, 2009.

The following table summarizes the notional amount, carrying value, and estimated fair value of our derivative instruments used to hedge interest rates as of March 31, 2009. The notional amount represents the aggregate amount of a particular security that is currently hedged at one time, but does not represent exposure to credit, interest rates or market risks. The table also includes a sensitivity analysis to demonstrate the impact on our derivative instruments from an increase or decrease in 10-year Treasury bill interest rates by 50 basis points, as of March 31, 2009.

(Dollars in thousands)	Notional Amount	Maturity Date Range	Carrying and Estimate Fair Value	+ 50 Basis Points	- 50 Basis Points
Cash flow hedges:					
Interest rate forward-starting swaps	\$ 375,000	2010-2011	\$ (54,959)	\$ (37,384)	\$ (73,681)
Interest rate caps	183,359	2009-2013	134	293	42
Total cash flow hedges	\$ 558,359	2009-2013	\$ (54,825)	\$ (37,091)	\$ (73,639)

Interest Rate Sensitive Liabilities

The Company is exposed to interest rate changes primarily as a result of its lines of credit and long-term tax exempt variable rate debt. The Company's interest rate risk management objective is to limit the impact of interest rate changes on earnings and cash flows and to lower its overall borrowing costs. To achieve its objectives the Company borrows primarily at fixed rates and may enter into derivative financial instruments such as interest rate swaps, caps and treasury locks in order to mitigate its interest rate risk on a related financial instrument. The Company does not enter into derivative or interest rate transactions for speculative purposes.

The Company's interest rate risk is monitored using a variety of techniques. The table below presents the principal amounts and weighted average interest rates by year of expected maturity to evaluate the expected cash flows. Management has estimated that the fair value of the Company's \$1.38 billion of fixed debt at March 31, 2009 is approximately \$1.36 billion and the fair value of the Company's \$248.1 million of variable rate debt at March 31, 2009 is \$272.7 million based on the terms of existing mortgage notes payable and variable rate demand notes compared to those available in the marketplace.

For the Years Ended	2009	2010 ⁽¹⁾	2011 ⁽²⁾	2012	2013	Thereafter	Total	Fair value
(In thousands)								
Fixed rate debt	\$ -	249,049	150,084	31,642	191,817	756,044	\$1,378,636	\$1,364,987
Average interest rate	-	7.3%	6.4%	5.4%	5.8%	5.6%		
Variable rate debt	\$ 14,548	-	524	-	-	233,108 ⁽³⁾	\$ 248,180	\$ 272,680
Average interest	2.2%	-	4.0%	-	-	2.5%		

(1) \$150 million covered by three forward-starting swaps with fixed rates ranging from 5.099% to 5.824%, with a settlement date on or before January 1, 2011.

(2) \$125 million covered by forward-starting swaps with fixed rates ranging from 5.655% to 5.8795%, with a settlement date on or before February 1, 2011. \$50 million covered by a forward-starting swap with a fixed rate of 5.535%, with a settlement date on or before July, 1 2011. \$50 million covered by a forward-starting swap with a fixed rate of 5.343%, with a settlement date on or before October 1, 2011. The Company intends to encumber certain unencumbered assets during 2011 in conjunction with the settlement of these forward-starting swaps.

(3) \$183.4 million subject to interest rate caps.

The table incorporates only those exposures that exist as of March 31, 2009; it does not consider those exposures or positions that could arise after that date. As a result, our ultimate realized gain or loss, with respect to interest rate fluctuations and hedging strategies, would depend on the exposures that arise during the period.

Item 4 : Controls and Procedures

As of March 31, 2009, we carried out an evaluation, under the supervision and with the participation of management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures pursuant to Rules 13a-15 of the Securities Exchange Act of 1934, as amended. Based upon that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures are effective in timely alerting management to material information relating to the Company that is required to be included in our periodic filings with the Securities and Exchange Commission. There were no changes in the Company's internal control over financial reporting, that occurred during the quarter ended March 31, 2009, that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

Part II -- Other Information

Item 1 : Legal Proceedings

Recently there has been an increasing number of lawsuits against owners and managers of apartment communities alleging personal injury and property damage caused by the presence of mold in residential real estate. Some of these lawsuits have resulted in substantial monetary judgments or settlements. The Company has been sued for mold related matters and has settled some, but not all, of such matters. Insurance carriers have reacted to mold related liability awards by excluding mold related claims from standard policies and pricing mold endorsements at prohibitively high rates. The Company has, however, purchased pollution liability insurance, which includes some coverage for mold. The Company has adopted policies for promptly addressing and resolving reports of mold when it is detected, and to minimize any impact mold might have on residents of the property. The Company believes its mold policies and proactive response to address any known existence, reduces its risk of loss from these cases. There can be no assurances that the Company has identified and responded to all mold occurrences, but the Company promptly addresses all known reports of mold. Liabilities resulting from such mold related matters are not expected to have a material adverse effect on the Company's financial condition, results of operations or cash flows. As of March 31, 2009, no potential liabilities for mold and other environmental liabilities are quantifiable and an estimate of possible loss cannot be made.

The Company carries comprehensive liability, fire, extended coverage and rental loss insurance for each of the Company's communities. Insured risks for comprehensive liability covers claims in excess of \$25,000 per incident, and property insurance covers losses in excess of a \$5.0 million deductible per incident. There are, however, certain types of extraordinary losses, such as, for example, losses for terrorism and earthquake, for which the Company does not have insurance. Substantially all of the Properties are located in areas that are subject to earthquakes.

The Company is subject to various other lawsuits in the normal course of its business operations. Such lawsuits could have a material adverse effect on the Company's financial condition, results of operations or cash flows.

Item IA: Risk Factors

In evaluating all forward-looking statements, you should specifically consider various factors that may cause actual results to vary from those contained in the forward-looking statements. Many factors affect the Company's actual financial performance and may cause the Company's future results to be different from past performance or trends. These factors include those set forth under the caption "Risk Factors" in Item IA of the Company's Annual Report on Form 10-K for the year ended December 31, 2008 as filed with the SEC and available at www.sec.gov, and the following, which supplements the risk factors listed under the caption "Risk Factors" in the Company's Annual Report on Form 10-K:

Development and Redevelopment Activities

The Company pursues development and redevelopment projects of apartment communities from time to time. These investments generally require various government and other approvals, the receipt of which cannot be assured. The Company's development and redevelopment activities generally entail certain risks, including the following:

- funds may be expended and management's time devoted to projects that may not be completed;
- construction costs of a project may exceed original estimates possibly making the project economically unfeasible;
- projects may be delayed due to, among other things, adverse weather conditions;
- occupancy rates and rents at a completed project may be less than anticipated; and
- expenses at a completed development project may be higher than anticipated.

These risks may reduce the funds available for distribution to the Company's stockholders. Further, the development and redevelopment of properties is also subject to the general risks associated with real estate investments.

Interest Rate Fluctuations

The Company monitors changes in interest rates and believes that it is well positioned from both a liquidity and interest rate risk perspective. The immediate effect of significant and rapid interest rate increases would result in higher interest expense on the Company's variable interest rate debt. The effect of prolonged interest rate increases could negatively impact the Company's ability to make acquisitions and develop properties and the Company's ability to refinance existing borrowings at acceptable rates and negatively impact the current dividend rate.

Credit Markets

The current instability and tightening in the credit markets has led to an increase in spreads and pricing of secured and unsecured debt, and the effect of prolonged tightening in the credit markets could negatively impact the Company's ability to make acquisitions, develop properties and refinance existing borrowings at acceptable rates.

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

Purchases of Equity Securities

Period	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Total Amount that May Yet be Purchased Under the Plans or Programs
2/11/09 to 2/17/09	350,000(1)	\$ 57.89	350,000	\$ 133,396,647
1/15/09 to 3/11/09	2,384,284(2)	\$ 13.62	2,384,284	\$ 100,979,242

(1) The Company repurchased 350,000 shares of the Company's common stock.

(2) The Company repurchased 2,384,284 shares of the Company's Series G Cumulative Convertible Preferred Stock.

In August 2007, the Company's Board of Directors authorized a stock repurchase plan to allow the Company to acquire shares in an aggregate of up to \$200 million. The program supersedes the common stock repurchase plan that the Company announced on May 16, 2001. In February 2009 the Company repurchased 350,000 shares of common stock for \$20.3 million at an average price of \$57.89. During the first quarter of 2009, under the authorization of the stock repurchase plan the Company repurchased \$58.2 million in liquidation value (\$25 per share liquidation value) of 4.875% Series G Cumulative Convertible Preferred Stock at a discount to par value for cash and commissions paid of \$32.6 million.

Item 6: Exhibits

A. Exhibits

- 10.2 Sixteenth Amendment to the First Amended and Restated Agreement of Limited Partnership of Essex Portfolio, L.P., filed as Exhibit 10.2 to Form 8-K, filed on April 7, 2009, and incorporated herein by reference.
- [10.3](#) Controlled Equity Offering Sales Agreement by and between Essex Property Trust, Inc. and Cantor Fitzgerald & Co., dated May 6, 2009.
- [12.1](#) Ratio of Earnings to Fixed Charges
- [31.1](#) Certification of Keith R. Guericke, Chief Executive Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- [31.2](#) Certification of Michael T. Dance, Chief Financial Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- [32.1](#) Certification of Keith R. Guericke, Chief Executive Officer, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- [32.2](#) Certification of Michael T. Dance, Chief Financial Officer, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

SIG NATURE

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

ESSEX PROPERTY TRUST, INC.
(Registrant)

Date: May 6, 2009

By: /S/ MICHAEL T. DANCE

Michael T. Dance
Executive Vice President, Chief Financial Officer
(Authorized Officer, Principal Financial Officer)

By: /S/ BRYAN G. HUNT

Bryan G. Hunt
Vice President, Chief Accounting Officer

ESSEX PROPERTY TRUST, INC.
7,500,000 SHARES

CONTROLLED EQUITY OFFERING SM

SALES AGREEMENT

May 6, 2009

CANTOR FITZGERALD & CO.
499 Park Avenue
New York, New York 10022

Ladies and Gentlemen:

ESSEX PROPERTY TRUST, INC., a Maryland corporation (the “**Company**”), confirms its agreement (this “**Agreement**”) with Cantor Fitzgerald & Co. (“**CF&Co.**”), as follows:

1. Issuance and Sale of Shares. The Company agrees that, from time to time during the term of this Agreement, on the terms and subject to the conditions set forth herein, it may issue and sell through CF&Co, acting as agent and/or principal, (a) up to 7,500,000 shares of the Company’s common stock, par value \$0.0001 per share (the “**Common Stock**”); and (b) such preferred stock as the Company may subsequently designate (the “**Preferred Stock**”; and together with the Common Stock, the “**Shares**”). Notwithstanding anything to the contrary contained herein, the parties hereto agree that compliance with the limitation set forth in this Section 1 on the number of Shares issued and sold under this Agreement shall be the sole responsibility of the Company, and CF&Co shall have no obligation in connection with such compliance. The issuance and sale of Shares through CF&Co will be effected pursuant to the Registration Statement (as defined below) filed by the Company and declared effective by the Securities and Exchange Commission (the “**Commission**”), although nothing in this Agreement shall be construed as requiring the Company to use the Registration Statement (as defined below) to issue the Shares.

The Company has filed, in accordance with the provisions of the Securities Act of 1933, as amended, and the rules and regulations thereunder (collectively, the “**Securities Act**”), with the Commission a registration statement on Form S-3 (File No. 333-141726), including a base prospectus, relating to certain securities, including the Shares, to be issued from time to time by the Company, and which incorporates by reference documents that the Company has filed or will file in accordance with the provisions of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (collectively, the “**Exchange Act**”). The Company has prepared a prospectus supplement specifically relating to the Shares (the “**Prospectus Supplement**”) to the base prospectus included as part of such registration statement. The Company has furnished to CF&Co, for use by CF&Co, copies of the prospectus included as part of such registration statement, as supplemented by the Prospectus Supplement, relating to the Shares. Except where the context otherwise requires, such registration statement, as amended when it became effective, including all documents filed as part thereof or incorporated by reference therein, and including any information contained in a Prospectus (as defined below) subsequently filed with the Commission pursuant to Rule 424(b) under the Securities Act or deemed to be a part of such registration statement pursuant to Rule 430B or 462(b) of the Securities Act, is herein called the “**Registration Statement**.” The base prospectus, including all documents incorporated therein by reference, included in the Registration Statement, as it may be supplemented by the Prospectus Supplement, in the form in which such prospectus and/or Prospectus Supplement have most recently been filed by the Company with the Commission pursuant to Rule 424(b) under the Securities Act, together with any “issuer free writing prospectus,” as defined in Rule 433 of the Securities Act Regulations (“Rule 433”), relating to the Shares that (i) is required to be filed with the Commission by the Company or (ii) is exempt from filing pursuant to Rule 433(d)(5)(i), in each case in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company’s records pursuant to Rule 433(g), is herein called the “**Prospectus**.” Any reference herein to the Registration Statement, the Prospectus or any amendment or supplement thereto shall be deemed to refer to and include the documents incorporated by reference therein, and any reference herein to the terms “amend,” “amendment” or “supplement” with respect to the Registration Statement or the Prospectus shall be deemed to refer to and include the filing after the execution hereof of any document with the Commission deemed to be incorporated by reference therein. For purposes of this Agreement, all references to the Registration Statement, the Prospectus or to any amendment or supplement thereto shall be deemed to include any copy filed with the Commission pursuant to either the Electronic Data Gathering Analysis and Retrieval System or Interactive Data Electronic Applications (collectively “**IDEA**”).

2. Placements. Each time that the Company wishes to issue and sell the Shares hereunder (each, a “ **Placement** ”), it will notify CF&Co by email notice (or other method mutually agreed to in writing by the parties) (a “ **Placement Notice** ”) containing the parameters in accordance with which it desires the Shares to be sold, which shall at a minimum include the number of Shares to be issued (the “ **Placement Shares** ”), the time period during which sales are requested to be made, any limitation on the number of Shares that may be sold in any one Trading Day (as defined in Section 3) and any minimum price below which sales may not be made, a form of which containing such minimum sales parameters necessary is attached hereto as **Schedule 1**. The Placement Notice shall originate from any of the individuals from the Company set forth on **Schedule 2** (with a copy to each of the other individuals from the Company listed on such schedule), and shall be addressed to each of the individuals from CF&Co set forth on **Schedule 2**, as such **Schedule 2** may be amended from time to time. The Placement Notice shall be effective upon receipt by CF&Co unless and until (i) in accordance with the notice requirements set forth in Section 4, CF&Co declines to accept the terms contained therein for any reason, in its sole discretion, (ii) the entire amount of the Placement Shares have been sold, (iii) in accordance with the notice requirements set forth in Section 4, the Company suspends or terminates the Placement Notice, (iv) the Company issues a subsequent Placement Notice with parameters superseding those on the earlier dated Placement Notice, or (v) the Agreement has been terminated under the provisions of **Section 11**. The amount of any discount, commission or other compensation to be paid by the Company to CF&Co in connection with the sale of the Placement Shares shall be calculated in accordance with the terms set forth in **Schedule 3**. It is expressly acknowledged and agreed that neither the Company nor CF&Co will have any obligation whatsoever with respect to a Placement or any Placement Shares unless and until the Company delivers a Placement Notice to CF&Co and CF&Co does not decline such Placement Notice pursuant to the terms set forth above, and then only upon the terms specified therein and herein. In the event of a conflict between the terms of this Agreement and the terms of a Placement Notice, the terms of the Placement Notice will control.

3. Sale of Placement Shares by CF&Co. Subject to the terms and conditions herein set forth, upon the Company's issuance of a Placement Notice, and unless the sale of the Placement Shares described therein has been declined, suspended, or otherwise terminated in accordance with the terms of this Agreement, CF&Co., for the period specified in the Placement Notice, will use its commercially reasonable efforts consistent with its normal trading and sales practices and applicable state and federal laws, rules and regulations and the rules of the New York Stock Exchange (the "**NYSE**") to sell such Placement Shares up to the amount specified, and otherwise in accordance with the terms of such Placement Notice. CF&Co will provide written confirmation to the Company (including by email correspondence to each of the individuals of the Company set forth on Schedule 2, if receipt of such correspondence is actually acknowledged by any of the individuals to whom the notice is sent, other than via auto-reply) no later than the opening of the Trading Day (as defined below) immediately following the Trading Day on which it has made sales of Placement Shares hereunder setting forth the number of Placement Shares sold on such day, the compensation payable by the Company to CF&Co pursuant to Section 2 with respect to such sales, and the Net Proceeds (as defined below) payable to the Company, with an itemization of the deductions made by CF&Co (as set forth in Section 5(a)) from the gross proceeds that it receives from such sales. CF&Co may sell Placement Shares by any method permitted by law deemed to be an "at the market" offering as defined in Rule 415 of the Securities Act, including without limitation sales made directly on the NYSE, on any other existing trading market for the Common Stock or to or through a market maker. CF&Co may also sell Placement Shares in privately negotiated transactions. The Company acknowledges and agrees that (i) there can be no assurance that CF&Co will be successful in selling Placement Shares, and (ii) CF&Co will incur no liability or obligation to the Company or any other person or entity if it does not sell Placement Shares for any reason other than a failure by CF&Co to use its commercially reasonable efforts consistent with its normal trading and sales practices to sell such Placement Shares as required under this Section 3. For the purposes hereof, "**Trading Day**" means any day on which the Company's Common Stock is purchased and sold on the principal market on which the Common Stock is listed or quoted.

4. Suspension of Sales. The Company or CF&Co may, upon notice to the other party in writing (including by email correspondence to each of the individuals of the other party set forth on Schedule 2, if receipt of such correspondence is actually acknowledged by any of the individuals to whom the notice is sent, other than via auto-reply) or by telephone (confirmed immediately by verifiable facsimile transmission or email correspondence to each of the individuals of the other party set forth on Schedule 2), suspend any sale of Placement Shares; *provided, however*, that such suspension shall not affect or impair either party's obligations with respect to any Placement Shares sold hereunder prior to the receipt of such notice. Each of the Parties agrees that no such notice under this Section 4 shall be effective against the other unless it is made to one of the individuals named on Schedule 2 hereto, as such schedule may be amended from time to time.

5. Settlement.

(a) Settlement of Placement Shares . Unless otherwise specified in the applicable Placement Notice, settlement for sales of Placement Shares will occur on the third (3rd) Trading Day (or such earlier day as is industry practice for regular-way trading) following the date on which such sales are made (each, a “ **Settlement Date** ” and the first such settlement date, the “ **First Delivery Date** ”). The amount of proceeds to be delivered to the Company on a Settlement Date against receipt of the Placement Shares sold (the “ **Net Proceeds** ”) will be equal to the aggregate sales price received by CF&Co at which such Placement Shares were sold, after deduction for (i) CF&Co’s commission, discount or other compensation for such sales payable by the Company pursuant to Section 2 hereof, (ii) any other amounts due and payable by the Company to CF&Co hereunder pursuant to Section 7(g) (Expenses) hereof, and (iii) any transaction fees imposed by any governmental or self-regulatory organization in respect of such sales.

(b) Delivery of Placement Shares . On or before each Settlement Date, the Company will, or will cause its transfer agent to, electronically transfer the Placement Shares being sold by crediting CF&Co’s or its designee’s account (provided CF&Co shall have given the Company written notice of such designee prior to the Settlement Date) at The Depository Trust Company through its Deposit and Withdrawal at Custodian System or by such other means of delivery as may be mutually agreed upon by the parties hereto which in all cases shall be freely tradeable, transferable, registered shares in good deliverable form. On each Settlement Date, CF&Co will deliver the related Net Proceeds in same day funds to an account designated by the Company on, or prior to, the Settlement Date. The Company agrees that if the Company, or its transfer agent (if applicable), defaults in its obligation to deliver Placement Shares on a Settlement Date, that in addition to and in no way limiting the rights and obligations set forth in Section 9(a) (Indemnification and Contribution) hereto, it will (i) hold CF&Co harmless against any loss, claim, damage, or expense (including reasonable legal fees and expenses), as incurred, arising out of or in connection with such default by the Company and (ii) pay to CF&Co any commission, discount, or other compensation to which it would otherwise have been entitled absent such default.

6. Representations and Warranties of the Company . The Company represents and warrants to, and agrees with, CF&Co that as of the date of this Agreement and as of each Representation Date (as defined in Section 7(m) below) on which a certificate is required to be delivered pursuant to Section 7(m) of this Agreement, as the case may be:

(a) Compliance with Registration Requirements . The Registration Statement and any Rule 462(b) Registration Statement have been declared effective by the Commission under the Securities Act. The Company has complied to the Commission’s satisfaction with all requests of the Commission for additional or supplemental information. No stop order suspending the effectiveness of the Registration Statement or any Rule 462(b) Registration Statement is in effect and no proceedings for such purpose have been instituted or are pending or, to the best knowledge of the Company, are contemplated or threatened by the Commission.

(b) No Misstatement or Omission . The Prospectus when filed complied and, as amended or supplemented, if applicable, will comply in all material respects with the Securities Act. Each of the Registration Statement, any Rule 462(b) Registration Statement and any post-effective amendment thereto, at the time it became effective, complied and, as of each of the Settlement Dates, if any, will comply in all material respects with the Securities Act and did not and, as of each of the Settlement Dates, if any, will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. The Prospectus, as amended or supplemented, as of its date, did not and, as of each of the Settlement Dates, if any, will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The representations and warranties set forth in the two immediately preceding sentences do not apply to statements in or omissions from the Registration Statement, any Rule 462(b) Registration Statement, or any post-effective amendment thereto, or the Prospectus, or any amendments or supplements thereto, made in reliance upon and in conformity with information relating to CF&Co furnished to the Company in writing by CF&Co expressly for use therein. There are no contracts or other documents required to be described in the Prospectus or to be filed as exhibits to the Registration Statement which have not been described or filed as required.

(c) Offering Materials Furnished to CF&Co. The Company has delivered to CF&Co one complete copy of the Registration Statement and a copy of each consent and certificate of experts filed as a part thereof, and conformed copies of the Registration Statement (without exhibits) and the Prospectus, as amended or supplemented, in such quantities and at such places as CF&Co has reasonably requested.

(d) Distribution of Offering Material By the Company. The Company has not distributed and will not distribute, prior to the later of the Closing Date and the completion of CF&Co's distribution of the Shares, any offering material in connection with the offering and sale of the Shares other than the Prospectus or the Registration Statement.

(e) The Sales Agreement. This Agreement has been duly authorized, executed and delivered by, and is a valid and binding agreement of, the Company, enforceable in accordance with its terms, except as rights to indemnification hereunder may be limited by applicable law and except as the enforcement hereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors or by general equitable principles.

(f) Authorization of the Shares. The Shares to be sold by CF&Co, acting as agent and/or principal for the Company, have been duly authorized for issuance and sale pursuant to this Agreement and, when issued and delivered by the Company to CF&Co pursuant to this Agreement, will be validly issued, fully paid and nonassessable.

(g) No Applicable Registration or Other Similar Rights. There are no persons with registration or other similar rights to have any equity or debt securities registered for sale under the Registration Statement or included in the offering contemplated by this Agreement, except for such rights as have been duly waived.

(h) No Material Adverse Change. Except as otherwise disclosed in the Prospectus, subsequent to the respective dates as of which information is given in the Prospectus: (i) there has been no material adverse change, or any development that could reasonably be expected to result in a material adverse change, in the condition, financial or otherwise, or in the earnings, business, operations or prospects, whether or not arising from transactions in the ordinary course of business, of the Company and its subsidiaries, considered as one entity (any such change is called a “**Material Adverse Change**”); (ii) the Company and its subsidiaries, considered as one entity, have not incurred any material liability or obligation, indirect, direct or contingent, not in the ordinary course of business nor entered into any material transaction or agreement not in the ordinary course of business; and (iii) there has been no dividend or distribution of any kind declared, paid or made by the Company or, except for regular quarterly dividends publicly announced by the Company or dividends paid to the Company or other subsidiaries, any of its subsidiaries on any class of capital stock or repurchase or redemption by the Company or any of its subsidiaries of any class of capital stock.

(i) Independent Accountants . KPMG LLP, who have expressed their opinion with respect to the financial statements (which term as used in this Agreement includes the related notes thereto) and supporting schedules filed with the Commission or incorporated by reference as a part of the Registration Statement and included in the Prospectus, is an independent registered public accounting firm as required by the Securities Act and the Exchange Act.

(j) Preparation of the Financial Statements . The financial statements filed with the Commission as a part of or incorporated within the Registration Statement and included in the Prospectus present fairly the consolidated financial position of the Company and its subsidiaries as of and at the dates indicated and the results of their operations and cash flows for the periods specified. The supporting schedules included in or incorporated in the Registration Statement present fairly the information required to be stated therein. Such financial statements and supporting schedules have been prepared in conformity with generally accepted accounting principles as applied in the United States applied on a consistent basis throughout the periods involved, except as may be expressly stated in the related notes thereto. No other financial statements or supporting schedules are required to be included in or incorporated in the Registration Statement. The financial data set forth or incorporated in the Prospectus under the captions “Ratio of Earnings to Fixed Charges” and “Selected Financial Data” fairly present the information set forth therein on a basis consistent with that of the audited financial statements contained, incorporated or deemed to be incorporated in the Registration Statement.

(k) Incorporation and Good Standing of the Company and its Subsidiaries . The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Maryland and is in good standing with the State Department of Assessments and Taxation of Maryland and has corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Prospectus and to enter into and perform its obligations under this Agreement. Essex Portfolio, L.P. is the Company’s only significant subsidiary (as defined in Rule 1-02 (w) of Regulation S-X of the Exchange Act) (the “ **Significant Subsidiary** ”). The Significant Subsidiary has been duly organized and is validly existing as a partnership in good standing under the laws of the jurisdiction of its organization and has the requisite power and authority to own, lease and operate its properties and to conduct its business as described in the Prospectus. Each of the Company and the Significant Subsidiary is duly qualified as a foreign corporation or foreign partnership to transact business and is in good standing in the State of California and each other jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except for such jurisdictions (other than the State of California) where the failure to so qualify or to be in good standing would not, individually or in the aggregate, result in a Material Adverse Change. Except as described in the Prospectus, all of the issued and outstanding partnership interests in the Significant Subsidiary have been duly authorized and validly issued and are fully paid and nonassessable. The partnership interests in the Significant Subsidiary that are owned by the Company are free and clear of any security interest, mortgage, pledge, lien, encumbrance or claim. The Company does not own or control, directly or indirectly, any corporation, association or other entity other than the subsidiaries listed in Exhibit 21.1 to the Company’s Annual Report on Form 10-K for the most recently ended fiscal year and other than (i) those subsidiaries not required to be listed on Exhibit 21.1 by Item 601 of Regulation S-K under the Exchange Act and (ii) those subsidiaries formed since the last day of the most recently ended fiscal year.

(l) Capital Stock Matters. The Shares conforms in all material respects to the description thereof contained in the Prospectus. All of the issued and outstanding shares of Common Stock and Preferred Stock have been duly authorized and validly issued, are fully paid and nonassessable and have been issued in compliance with federal and state securities laws. None of the outstanding shares of Common Stock and Preferred Stock were issued in violation of any preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase securities of the Company. There are no authorized or outstanding options, warrants, preemptive rights, rights of first refusal or other rights to purchase, or equity or debt securities convertible into or exchangeable or exercisable for, any capital stock of the Company or any of its subsidiaries other than those accurately described in all material respects in the Prospectus. The description of the Company's stock option, stock bonus and other stock plans or arrangements, and the options or other rights granted thereunder, set forth in the Prospectus accurately and fairly presents in all material respects the information required to be shown with respect to such plans, arrangements, options and rights.

(m) Non-Contravention of Existing Instruments; No Further Authorizations or Approvals Required. Neither the Company nor any of its subsidiaries is in violation of its charter or by-laws or is in default (or, with the giving of notice or lapse of time, would be in default) ("**Default**") under any indenture, mortgage, loan or credit agreement, note, contract, franchise, lease or other instrument to which the Company or any of its subsidiaries is a party or by which it or any of them may be bound, or to which any of the property or assets of the Company or any of its subsidiaries is subject (each, an "**Existing Instrument**"), except for such Defaults as would not, individually or in the aggregate, result in a Material Adverse Change. The Company's execution, delivery and performance of this Agreement and consummation of the transactions contemplated hereby and by the Prospectus (i) have been duly authorized by all necessary corporate action and will not result in any violation of the provisions of the charter or by-laws of the Company or any subsidiary, (ii) will not conflict with or constitute a breach of, or Default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company or any of its subsidiaries pursuant to, or require the consent of any other party to, any Existing Instrument, except for such conflicts, breaches, Defaults, liens, charges or encumbrances as would not, individually or in the aggregate, result in a Material Adverse Change and (iii) will not result in any violation of any law, administrative regulation or administrative or court decree applicable to the Company or any subsidiary. No consent, approval, authorization or other order of, or registration or filing with, any court or other governmental or regulatory authority or agency, is required for the Company's execution, delivery and performance of this Agreement and consummation of the transactions contemplated hereby and by the Prospectus, except such as have been obtained or made by the Company and are in full force and effect under the Securities Act, applicable state securities or blue sky laws and from the NASD.

(n) No Material Actions or Proceedings. Except as disclosed in the Prospectus, there are no legal or governmental actions, suits or proceedings pending or, to the best of the Company's knowledge, threatened (i) against or affecting the Company or any of its subsidiaries, (ii) which has as the subject thereof any officer or director of, or property owned or leased by, the Company or any of its subsidiaries or (iii) relating to environmental or discrimination matters, where in any such case (A) there is a reasonable possibility that such action, suit or proceeding might be determined adversely to the Company or such subsidiary and (B) any such action, suit or proceeding, if so determined adversely, would reasonably be expected to result in a Material Adverse Change or adversely affect the consummation of the transactions contemplated by this Agreement. No material labor dispute with the employees of the Company or any of its subsidiaries exists or, to the best of the Company's knowledge, is threatened or imminent.

(o) All Necessary Permits, etc. The Company and each subsidiary possess such valid and current certificates, authorizations or permits issued by the appropriate state, federal or foreign regulatory agencies or bodies necessary to conduct their respective businesses, other than those the failure to possess or own would not result in a Material Adverse Change, and neither the Company nor any subsidiary has received any notice of proceedings relating to the revocation or modification of, or non-compliance with, any such certificate, authorization or permit which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, could result in a Material Adverse Change.

(p) Tax Law Compliance. The Company and its consolidated subsidiaries have filed all necessary federal, state and foreign income, property and franchise tax returns and have paid all taxes required to be paid by any of them and, if due and payable, any related or similar assessment, fine or penalty levied against any of them except as may be being contested in good faith and by appropriate proceedings. The Company has made adequate charges, accruals and reserves in the applicable financial statements referred to in Section 1 (i) above in respect of all federal, state and foreign income, property and franchise taxes for all periods as to which the tax liability of the Company or any of its consolidated subsidiaries has not been finally determined.

(q) Company is a REIT. Commencing with the Company's taxable year beginning January 1, 1994, the Company has been organized and has operated in conformity with the requirements for qualification as a "real estate investment trust," and its organization and proposed method of operation will enable it to meet the requirements for the qualification and taxation as a "real estate investment trust" under the Internal Revenue Code of 1986, as amended (the "**Code**").

(r) Company Not an "Investment Company". The Company has been advised of the rules and requirements under the Investment Company Act of 1940, as amended (the "**Investment Company Act**"). The Company is not, and after receipt of payment for the Shares will not be, an "investment company" within the meaning of Investment Company Act and will conduct its business in a manner so that it will not become subject to the Investment Company Act.

(s) Insurance. Except as otherwise described in the Prospectus, each of the Company and its subsidiaries are insured by insurers of recognized financial responsibility with policies in such amounts and with such deductibles and covering such risks as are generally deemed prudent and customary for the business for which it is engaged including, but not limited to, policies covering real and personal property owned or leased by the Company and its subsidiaries against theft, damage, destruction and acts of vandalism. The Company has no reason to believe that it or any subsidiary will not be able (i) to renew its existing insurance coverage as and when such policies expire or (ii) to obtain comparable coverage from similar institutions as may be necessary or appropriate to conduct its business as now conducted and at a cost that would not result in a Material Adverse Change.

(t) No Price Stabilization or Manipulation. The Company has not taken and will not take, directly or indirectly, any action designed to or that might be reasonably expected to cause or result in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Shares.

(u) Related Party Transactions. There are no business relationships or related-party transactions involving the Company or any subsidiary or any other person required to be described in the Prospectus which have not been described as required.

(v) Exchange Act Compliance. The documents incorporated or deemed to be incorporated by reference in the Prospectus, at the time they were or hereafter are filed with the Commission, complied and will comply in all material respects with the requirements of the Exchange Act, and, when read together with the other information in the Prospectus, at the Closing Dates, will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(w) No Unlawful Contributions or Other Payments. Neither the Company nor any of its subsidiaries nor, to the best of the Company's knowledge, any employee or agent of the Company or any subsidiary, has made any contribution or other payment to any official of, or candidate for, any federal, state or foreign office in violation of any law or of the character required to be disclosed in the Prospectus.

(x) Company's Accounting System. The Company maintains a system of accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles as applied in the United States and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(y) Title to Properties. Except as otherwise disclosed in the Prospectus and except as would not have a material adverse effect on the condition, financial or otherwise, or on the earnings, business affairs or business prospects of the Company and its subsidiaries considered as one enterprise: (i) all properties and assets described in the Prospectus are owned with good and marketable title by the Company, its subsidiaries and/or a joint venture or partnership in which any such party is a participant (a "**Related Entity**"); (ii) all of the leases under which any of the Company, its subsidiaries or, to the knowledge of the Company, Related Entities holds or uses real properties or assets as a lessee are in full force and effect, and neither the Company, nor any of its subsidiaries or, to the knowledge of the Company, Related Entities is in material default in respect of any of the terms or provisions of any of such leases and no claim has been asserted by anyone adverse to any such party's rights as lessee under any of such leases, or affecting or questioning any such party's right to the continued possession or use of the leased property or assets under any such leases; (iii) all liens, charges, encumbrances, claims or restrictions on or affecting the properties and assets of any of the Company, its subsidiaries or Related Entities which are required to be disclosed in the Prospectus are disclosed therein; (iv) neither the Company, nor any of its subsidiaries or, to the knowledge of the Company, Related Entities nor any lessee of any portion of any such party's properties is in default under any of the leases pursuant to which any of the Company, its subsidiaries or, to the knowledge of the Company, Related Entities leases its properties and neither the Company, nor any of its subsidiaries or Related Entities knows of any event which, but for the passage of time or the giving of notice, or both, would constitute a default under any of such leases; (v) no tenant under any of the leases pursuant to which any of the Company, or its subsidiaries or, to the knowledge of the Company, Related Entities leases its properties has an option or right of first refusal to purchase the premises demised under such lease; (vi) each of the properties of any of the Company or its subsidiaries or to the knowledge of the Company, Related Entities complies with all applicable codes and zoning laws and regulations; and (vii) neither the Company nor any of its subsidiaries has knowledge of any pending or threatened condemnation, zoning change or other proceeding or action that will in any manner affect the size of, use of, improvements on, construction on, or access to the properties of any of the Company, or its subsidiaries or Related Entities.

(z) Title Insurance. Title insurance in favor of the mortgagee or the Company, its subsidiaries and/or their Related Entities is maintained with respect to each property owned by any such entity in an amount at least equal to (a) the cost of acquisition of such property or (b) the cost of construction of such property (measured at the time of such construction), except, in each case, where the failure to maintain such title insurance would not have a material adverse effect on the condition, financial or otherwise, or on the earnings, business affairs or business prospects of the Company and its subsidiaries considered as one enterprise.

(aa) No Convertible Mortgages. Except as described in the Prospectus, the mortgages and deeds of trust encumbering the properties and assets described in the Prospectus are not convertible nor does any of the Company, or its subsidiaries hold a participating interest therein.

(bb) Valid Partnerships. Each of the partnership and joint venture agreements to which the Company or any of its subsidiaries is a party, and which relates to real property described in the Prospectus, has been duly authorized, executed and delivered by such applicable party and constitutes the valid agreement thereof, enforceable in accordance with its terms, except as limited by (a) the effect of bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to or affecting the rights or remedies of creditors or (b) the effect of general principles of equity, whether enforcement is considered in a proceeding in equity or at law, and the discretion of the court before which any proceeding therefor may be brought, and the execution, delivery and performance of any of such agreements did not, at the time of execution and delivery, and does not constitute a breach of, or default under, the charter or bylaws of such party or any material contract, lease or other instrument to which such party is a party or by which its properties may be bound or any law, administrative regulation or administrative or court order or decree, except for such breaches or defaults that would not result in a Material Adverse Change.

(cc) Hazardous Materials. Except as otherwise described in the Prospectus, none of the Company, or any of its subsidiaries has any knowledge of (a) the unlawful presence of any hazardous substances, hazardous materials, toxic substances or waste materials (collectively, “**Hazardous Materials**”) on any of the properties owned by it or the Related Entities, or (b) any unlawful spills, releases, discharges or disposal, of Hazardous Materials that have occurred or are presently occurring off such properties as a result of any construction on or operation and use of such properties which presence or occurrence would have a material adverse effect on the condition, financial or otherwise, or on the earnings, business affairs or business prospects of the Company and its subsidiaries considered as one enterprise; and in connection with the construction on or operation and use of the properties owned by the Company, its subsidiaries and Related-Entities, each of the Company, and its subsidiaries represents that, if any, it has no knowledge of any material failure to comply with all applicable foreign local, state and federal environmental laws, regulations, ordinances and administrative and judicial orders relating to the generation, recycling, reuse, sale, storage, handling, transport and disposal of any Hazardous Materials, except for such failures that would not result in a Material Adverse Change.

(dd) Compliance with Environmental Laws. Except as otherwise described in the Prospectus, and except as would not, individually or in the aggregate, result in a Material Adverse Change (i) neither the Company nor any of its subsidiaries is in violation of any federal, state, local or foreign law or regulation relating to pollution or protection of human health or the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata) or wildlife, including without limitation, laws and regulations relating to emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, petroleum and petroleum products (collectively, “**Materials of Environmental Concern**”), or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Materials of Environment Concern (collectively, “**Environmental Laws**”), which violation includes, but is not limited to, noncompliance with any permits or other governmental authorizations required for the operation of the business of the Company or its subsidiaries under applicable Environmental Laws, or noncompliance with the terms and conditions thereof, nor has the Company or any of its subsidiaries received any written communication, whether from a governmental authority, citizens group, employee or otherwise, that alleges that the Company or any of its subsidiaries is in violation of any Environmental Law; (ii) there is no claim, action or cause of action filed with a court or governmental authority, no investigation with respect to which the Company has received written notice, and no written notice by any person or entity alleging potential liability for investigatory costs, cleanup costs, governmental responses costs, natural resources damages, property damages, personal injuries, attorneys’ fees or penalties arising out of, based on or resulting from the presence, or release into the environment, of any Materials of Environmental Concern at any location owned, leased or operated by the Company or any of its subsidiaries, now or in the past (collectively, “**Environmental Claims**”), pending or, to the best of the Company’s knowledge, threatened against the Company or any of its subsidiaries or any person or entity whose liability for any Environmental Claim the Company or any of its subsidiaries has retained or assumed either contractually or by operation of law; and (iii) to the best of the Company’s knowledge, there are no past or present actions, activities, circumstances, conditions, events or incidents, including, without limitation, the release, emission, discharge, presence or disposal of any Material of Environmental Concern, that reasonably could result in a violation of any Environmental Law or form the basis of a potential Environmental Claim against the Company or any of its subsidiaries or against any person or entity whose liability for any Environmental Claim the Company or any of its subsidiaries has retained or assumed either contractually or by operation of law.

(ee) Periodic Review of Costs of Environmental Compliance. The description set forth under the caption “The Company’s Portfolio may have unknown environmental liabilities” in Part IA of the Company’s Annual Report on Form 10-K for the year ended December 31, 2008 accurately describes the Company’s investigation of the compliance of its properties with Environmental Laws. On the basis of such review and the amount of its established reserves, the Company has reasonably concluded that such associated costs and liabilities would not, individually or in the aggregate, result in a Material Adverse Change.

(ff) Brokers. There is no broker, finder or other party that is entitled to receive from the Company any brokerage or finder’s fee or other fee or commission as a result of any transactions contemplated by this Agreement.

(gg) No Outstanding Loans or Other Indebtedness. Except as described in the Prospectus, there are no outstanding loans, advances (except normal advances for business expenses in the ordinary course of business) or guarantees or indebtedness by the Company to or for the benefit of any of the officers or directors of the Company or any of the members of any of them.

(hh) No Reliance. The Company has not relied upon CF&Co or legal counsel for CF&Co for any legal, tax or accounting advice in connection with the offering and sale of the Placement Shares.

(ii) CF&Co Purchases. The Company acknowledges and agrees that CF&Co has informed the Company that CF&Co may, to the extent permitted under the Securities Act and the Exchange Act, purchase and sell shares of Common Stock for its own account while this Agreement is in effect, *provided, that* (i) no such purchase or sales shall take place while a Placement Notice is in effect (except to the extent CF&Co may engage in sales of Placement Shares purchased or deemed purchased from the Company as a “riskless principal” or in a similar capacity) and (ii) the Company shall not be deemed to have authorized or consented to any such purchases or sales by CF&Co.

(jj) Compliance with Laws. The Company has not been advised, and has no reason to believe, that it and each of its subsidiaries are not conducting business in compliance with all applicable laws, rules and regulations of the jurisdictions in which it is conducting business, except where failure to be so in compliance would not result in a Material Adverse Change.

Any certificate signed by an officer of the Company and delivered to CF&Co or to counsel for CF&Co shall be deemed to be a representation and warranty by the Company to CF&Co as to the matters set forth therein.

The Company acknowledges that CF&Co and, for purposes of the opinions to be delivered pursuant to Section 7 hereof, counsel to the Company and counsel to CF&Co, will rely upon the accuracy and truthfulness of the foregoing representations and hereby consents to such reliance.

7. Covenants of the Company. The Company covenants and agrees with CF&Co that:

(a) Registration Statement Amendments. After the date of this Agreement and during any period in which a Prospectus relating to any Placement Shares is required to be delivered by CF&Co under the Securities Act (including in circumstances where such requirement may be satisfied pursuant to Rule 172 under the Securities Act), (i) the Company will notify CF&Co promptly of the time when any subsequent amendment to the Registration Statement, other than documents incorporated by reference, has been filed with the Commission and/or has become effective or any subsequent supplement to the Prospectus has been filed and of any request by the Commission for any amendment or supplement to the Registration Statement or Prospectus or for additional information, (ii) the Company will prepare and file with the Commission, promptly upon CF&Co's request, any amendments or supplements to the Registration Statement or Prospectus that, in CF&Co's reasonable opinion, may be necessary or advisable in connection with the distribution of the Placement Shares by CF&Co (*provided, however*, that the failure of CF&Co to make such request shall not relieve the Company of any obligation or liability hereunder, or affect CF&Co's right to rely on the representations and warranties made by the Company in this Agreement); (iii) the Company will not file any amendment or supplement to the Registration Statement or Prospectus, other than documents incorporated by reference, relating to the Placement Shares or a security convertible into the Placement Shares unless a copy thereof has been submitted to CF&Co within a reasonable period of time before the filing and CF&Co has not reasonably objected thereto (*provided, however*, that the failure of CF&Co to make such objection shall not relieve the Company of any obligation or liability hereunder, or affect CF&Co's right to rely on the representations and warranties made by the Company in this Agreement) and the Company will furnish to CF&Co at the time of filing thereof a copy of any document that upon filing is deemed to be incorporated by reference into the Registration Statement or Prospectus, except for those documents available via EDGAR; and (iv) the Company will cause each amendment or supplement to the Prospectus, other than documents incorporated by reference, to be filed with the Commission as required pursuant to the applicable paragraph of Rule 424(b) of the Securities Act.

(b) Notice of Commission Stop Orders. The Company will advise CF&Co, promptly after it receives notice or obtains knowledge thereof, of the issuance or threatened issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement, of the suspension of the qualification of the Placement Shares for offering or sale in any jurisdiction, or of the initiation or threatening of any proceeding for any such purpose; and it will promptly use its commercially reasonable efforts to prevent the issuance of any stop order or to obtain its withdrawal if such a stop order should be issued.

(c) Delivery of Prospectus; Subsequent Changes. During any period in which a Prospectus relating to the Placement Shares is required to be delivered by CF&Co under the Securities Act with respect to a pending sale of the Placement Shares, (including in circumstances where such requirement may be satisfied pursuant to Rule 172 under the Securities Act), the Company will comply with all requirements imposed upon it by the Securities Act, as from time to time in force, and to file on or before their respective due dates all reports and any definitive proxy or information statements required to be filed by the Company with the Commission pursuant to Sections 13(a), 13(c), 14, 15(d) or any other provision of or under the Exchange Act. If during such period any event occurs as a result of which the Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances then existing, not misleading, or if during such period it is necessary to amend or supplement the Registration Statement or Prospectus to comply with the Securities Act, the Company will promptly notify CF&Co to suspend the offering of Placement Shares during such period and the Company will promptly amend or supplement the Registration Statement or Prospectus (at the expense of the Company) so as to correct such statement or omission or effect such compliance.

(d) Listing of Placement Shares. During any period in which the Prospectus relating to the Placement Shares is required to be delivered by CF&Co under the Securities Act with respect to a pending sale of the Placement Shares (including in circumstances where such requirement may be satisfied pursuant to Rule 172 under the Securities Act), the Company will use its commercially reasonable efforts to cause the Placement Shares to be listed on the Exchange and to qualify the Placement Shares for sale under the securities laws of such jurisdictions as CF&Co reasonably designates and to continue such qualifications in effect so long as required for the distribution of the Placement Shares; *provided, however*, that the Company shall not be required in connection therewith to qualify as a foreign corporation or dealer in securities or file a general consent to service of process in any jurisdiction.

(e) Delivery of Registration Statement and Prospectus. The Company will furnish to CF&Co and its counsel (at the expense of the Company) copies of the Registration Statement, the Prospectus (including all documents incorporated by reference therein) and all amendments and supplements to the Registration Statement or Prospectus that are filed with the Commission during any period in which a Prospectus relating to the Placement Shares is required to be delivered under the Securities Act (including all documents filed with the Commission during such period that are deemed to be incorporated by reference therein), in each case as soon as reasonably practicable and in such quantities as CF&Co may from time to time reasonably request and, at CF&Co's request, will also furnish copies of the Prospectus to each exchange or market on which sales of the Placement Shares may be made; *provided, however*, that the Company shall not be required to furnish any document (other than the Prospectus) to CF&Co to the extent such document is available on EDGAR.

(f) Earnings Statement. The Company will make generally available to its security holders as soon as practicable, but in any event not later than 15 months after the end of the Company's current fiscal quarter, an earnings statement covering a 12-month period that satisfies the provisions of Section 11(a) and Rule 158 of the Securities Act.

(g) Expenses. The Company, whether or not the transactions contemplated hereunder are consummated or this Agreement is terminated, in accordance with the provisions of Section 11 hereunder, will pay the following expenses all incident to the performance of its obligations hereunder, including, but not limited to, expenses relating to (i) the preparation, printing and filing of the Registration Statement and each amendment and supplement thereto, of each Prospectus and of each amendment and supplement thereto, (ii) the preparation, issuance and delivery of the Placement Shares, (iii) the qualification of the Placement Shares under securities laws in accordance with the provisions of Section 7(d) of this Agreement, including filing fees (provided, however, that any fees or disbursements of counsel for CF&Co in connection therewith shall be paid by CF&Co), (iv) the printing and delivery to CF&Co of copies of the Prospectus and any amendments or supplements thereto, and of this Agreement, (v) the fees and expenses incurred in connection with the listing or qualification of the Placement Shares for trading on the Exchange, (vi) filing fees and expenses, if any, of the Commission and the NASD Corporate Financing Department.

(h) Use of Proceeds. The Company will use the Net Proceeds as described in the Prospectus in the section entitled "Use of Proceeds."

(i) Notice of Other Sales. During the pendency of any Placement Notice given hereunder, the Company shall provide CF&Co notice as promptly as reasonably possible before it offers to sell, contracts to sell, sells, grants any option to sell or otherwise disposes of any shares of Common Stock (other than Placement Shares offered pursuant to the provisions of this Agreement) or securities convertible into or exchangeable for Common Stock, warrants or any rights to purchase or acquire Common Stock; *provided*, that such notice shall not be required in connection with the (i) issuance, grant or sale of Common Stock, options to purchase shares of Common Stock or Common Stock issuable upon the exercise of options or other equity awards pursuant to the any stock option, stock bonus or other stock plan or arrangement described in the Prospectus, (ii) the issuance of securities in connection with an acquisition, merger or sale or purchase of assets or (iii) the issuance or sale of Common Stock pursuant to any dividend reinvestment plan that the Company may adopt from time to time provided the implementation of such is disclosed to CF & Co. in advance or (iv) any shares of common stock issuable upon the exchange, conversion or redemption of securities, including but not limited to, operating partnership units in Essex Portfolio, L.P., as to which the Company is the general partner, or the exercise of warrants, options or other rights in effect or outstanding.

(j) Change of Circumstances. The Company will, at any time during a fiscal quarter in which the Company intends to tender a Placement Notice or sell Placement Shares, advise CF&Co promptly after it shall have received notice or obtained knowledge thereof, of any information or fact that would alter or affect in any material respect any opinion, certificate, letter or other document provided to CF&Co pursuant to this Agreement.

(k) Due Diligence Cooperation. The Company will cooperate with any reasonable due diligence review conducted by CF&Co or its agents in connection with the transactions contemplated hereby, including, without limitation, providing information and making available documents and senior corporate officers, during regular business hours and at the Company's principal offices, as CF&Co may reasonably request.

(l) Required Filings Relating to Placement of Placement Shares. The Company agrees that on such dates as the Securities Act shall require, the Company will (i) file a prospectus supplement with the Commission under the applicable paragraph of Rule 424(b) under the Securities Act (each and every filing under Rule 424(b), a “ **Filing Date** ”), which prospectus supplement will set forth, within the relevant period, the amount of Placement Shares sold through CF&Co, the Net Proceeds to the Company and the compensation payable by the Company to CF&Co with respect to such Placement Shares, and (ii) deliver such number of copies of each such prospectus supplement to each exchange or market on which such sales were effected as may be required by the rules or regulations of such exchange or market.

(m) Representation Dates; Certificate. On or prior to the First Delivery Date and each time the Company (i) files the Prospectus relating to the Placement Shares or amends or supplements the Registration Statement or the Prospectus relating to the Placement Shares (other than a prospectus supplement filed in accordance with Section 7(l) of this Agreement) by means of a post-effective amendment, sticker, or supplement but not by means of incorporation of document(s) by reference to the Registration Statement or the Prospectus relating to the Placement Shares; (ii) files an annual report on Form 10-K under the Exchange Act; (iii) files its quarterly reports on Form 10-Q under the Exchange Act; or (iv) files a report on Form 8-K containing amended financial information (other than an earnings release, to “furnish” information pursuant to Items 2.02 or 7.01 of Form 8-K or to provide disclosure pursuant to Item 8.01 of Form 8-K relating to the reclassifications of certain properties as discontinued operations in accordance with Statement of Financial Accounting Standards No. 144) under the Exchange Act (each date of filing of one or more of the documents referred to in clauses (i) through (iv) shall be a “ **Representation Date** ”); the Company shall furnish CF&Co with a certificate, in the form attached hereto as Exhibit 7(m) within three (3) Trading Days of any Representation Date if requested by CF&Co. The requirement to provide a certificate under this Section 7(m) shall be waived for any Representation Date occurring at a time at which no Placement Notice is pending, which waiver shall continue until the earlier to occur of the date the Company delivers a Placement Notice hereunder (which for such calendar quarter shall be considered a Representation Date) and the next occurring Representation Date; *provided, however*, that such waiver shall not apply for any Representation Date on which the Company files its annual report on Form 10-K. Notwithstanding the foregoing, if the Company subsequently decides to sell Placement Shares following a Representation Date when the Company relied on such waiver and did not provide CF&Co with a certificate under this Section 7(m), then before the Company delivers the Placement Notice or CF&Co sells any Placement Shares, the Company shall provide CF&Co with a certificate, in the form attached hereto as Exhibit 7(m), dated the date of the Placement Notice.

(n) Legal Opinion. On or prior to the First Delivery Date and within three (3) Trading Days of each Representation Date with respect to which the Company is obligated to deliver a certificate in the form attached hereto as Exhibit 7(m) for which no waiver is applicable, the Company shall cause to be furnished to CF&Co a written opinion of Baker & McKenzie LLP (“ Company Counsel ”), or other counsel satisfactory to CF&Co, in form and substance satisfactory to CF&Co and its counsel, dated the date that the opinion is required to be delivered, substantially similar to the form attached hereto as Exhibit 7(n)(i) and Exhibit 7(n)(ii), respectively, modified, as necessary, to relate to the Registration Statement and the Prospectus as then amended or supplemented; *provided, however*, that in lieu of such opinions for subsequent Representation Dates, counsel may furnish CF&Co with a letter (a “ **Reliance Letter** ”) to the effect that CF&Co may rely on a prior opinion delivered under this Section 7(n) to the same extent as if it were dated the date of such letter (except that statements in such prior opinion shall be deemed to relate to the Registration Statement and the Prospectus as amended or supplemented at such Representation Date).

(o) Comfort Letter. On or prior to the First Delivery Date and within three (3) Trading Days of each Representation Date with respect to which the Company is obligated to deliver a certificate in the form attached hereto as Exhibit 7(m) for which no waiver is applicable, the Company shall cause its independent accountants to furnish CF&Co letters (the " **Comfort Letters** "), dated the date of the Comfort Letter is delivered, in form and substance satisfactory to CF&Co, (i) confirming that they are an independent registered public accounting firm within the meaning of the Securities Act and the PCAOB, (ii) stating, as of such date, the conclusions and findings of such firm with respect to the financial information and other matters ordinarily covered by accountants' "comfort letters" to CF&Cos in connection with registered public offerings (the first such letter, the " **Initial Comfort Letter** ") and (iii) updating the Initial Comfort Letter with any information that would have been included in the Initial Comfort Letter had it been given on such date and modified as necessary to relate to the Registration Statement and the Prospectus, as amended and supplemented to the date of such letter.

(p) Market Activities. The Company will not, directly or indirectly, (i) take any action designed to cause or result in, or that constitutes or might reasonably be expected to constitute, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Shares or (ii) sell, bid for, or purchase the Shares to be issued and sold pursuant to this Agreement, or pay anyone any compensation for soliciting purchases of the Shares other than CF&Co; provided, however, that the Company may bid for and purchase shares of its common stock in accordance with Rule 10b-18 under the Exchange Act.

(q) Insurance. The Company and its Subsidiaries shall maintain, or caused to be maintained, insurance in such amounts and covering such risks as is reasonable and customary for the business for which it is engaged.

(r) Compliance with Laws. The Company and each of its Subsidiaries shall maintain, or cause to be maintained, all material environmental permits, licenses and other authorizations required by federal, state and local law in order to conduct their businesses as described in the Prospectus, and the Company and each of its Subsidiaries shall conduct their businesses, or cause their businesses to be conducted, in substantial compliance with such permits, licenses and authorizations and with applicable environmental laws, except where the failure to maintain or be in compliance with such permits, licenses and authorizations could not reasonably be expected to have a Material Adverse Effect.

(s) REIT Treatment. The Company will take all reasonable efforts to enable the Company to continue to meet the requirements for qualification and taxation as a REIT under the Code for subsequent tax years that include any portion of the term of this Agreement.

(t) Investment Company Act. The Company will conduct its affairs in such a manner so as to reasonably ensure that neither it nor the Subsidiaries will be or become, at any time prior to the termination of this Agreement, an "investment company," as such term is defined in the Investment Company Act, assuming no change in the Commission's current interpretation as to entities that are not considered an investment company.

(u) Securities Act and Exchange Act . The Company will use its best efforts to comply with all requirements imposed upon it by the Securities Act and the Exchange Act as from time to time in force, so far as necessary to permit the continuance of sales of, or dealings in, the Placement Shares as contemplated by the provisions hereof and the Prospectus.

(v) No Offer to Sell . Other than a free writing prospectus (as defined in Rule 405 under the Act) approved in advance by the Company and CF&Co in its capacity as principal or agent hereunder, neither CF&Co nor the Company (including its agents and representatives, other than CF&Co in its capacity as such) will make, use, prepare, authorize, approve or refer to any written communication (as defined in Rule 405 under the Act), required to be filed with the Commission, that constitutes an offer to sell or solicitation of an offer to buy Shares hereunder

(w) Sarbanes-Oxley Act . The Company and the Subsidiaries will use their best efforts to comply with all effective applicable provisions of the Sarbanes-Oxley Act.

8. Conditions to CF&Co's Obligations . The obligations of CF&Co hereunder with respect to a Placement will be subject to the continuing accuracy and completeness of the representations and warranties made by the Company herein, to the due performance by the Company of its obligations hereunder, to the completion by CF&Co of a due diligence review satisfactory to CF&Co in its reasonable judgment, and to the continuing satisfaction (or waiver by CF&Co in its sole discretion) of the following additional conditions:

(a) Registration Statement Effective . The Registration Statement shall be effective and shall be available for (i) all sales of Placement Shares issued pursuant to all prior Placement Notices and (ii) the sale of all Placement Shares contemplated to be issued by any Placement Notice.

(b) No Material Notices . None of the following events shall have occurred and be continuing: (i) receipt by the Company or any of its Subsidiaries of any request for additional information from the Commission or any other federal or state governmental authority during the period of effectiveness of the Registration Statement, the response to which would require any post-effective amendments or supplements to the Registration Statement or the Prospectus; (ii) the issuance by the Commission or any other federal or state governmental authority of any stop order suspending the effectiveness of the Registration Statement or the initiation of any proceedings for that purpose; (iii) receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Placement Shares for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; (iv) the occurrence of any event that makes any material statement made in the Registration Statement or the Prospectus or any material document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires the making of any changes in the Registration Statement, related Prospectus or such documents so that, in the case of the Registration Statement, it will not contain any materially untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading and, that in the case of the Prospectus, it will not contain any materially untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(c) No Misstatement or Material Omission. CF&Co shall not have advised the Company that the Registration Statement or Prospectus, or any amendment or supplement thereto, contains an untrue statement of fact that in CF&Co's reasonable opinion is material, or omits to state a fact that in CF&Co's opinion is material and is required to be stated therein or is necessary to make the statements therein not misleading.

(d) Material Changes. Except as contemplated in the Prospectus, or disclosed in the Company's reports filed with the Commission, there shall not have been any material adverse change, on a consolidated basis, in the authorized capital stock of the Company or any Material Adverse Change or any development that could reasonably be expected to result in a Material Adverse Change, or any downgrading in or withdrawal of the rating assigned to any of the Company's securities (other than asset backed securities) by any rating organization or a public announcement by any rating organization that it has under surveillance or review its rating of any of the Company's securities (other than asset backed securities), the effect of which, in the case of any such action by a rating organization described above, in the reasonable judgment of CF&Co (without relieving the Company of any obligation or liability it may otherwise have), is so material as to make it impracticable or inadvisable to proceed with the offering of the Placement Shares on the terms and in the manner contemplated in the Prospectus.

(e) Legal Opinion. CF&Co shall have received the opinions of Company Counsel required to be delivered pursuant Section 7(n) on or before the date on which such delivery of such opinion is required pursuant to Section 7(n).

(f) Comfort Letter. CF&Co shall have received the Comfort Letter required to be delivered pursuant Section 7(o) on or before the date on which such delivery of such opinion is required pursuant to Section 7(o).

(g) Representation Certificate. CF&Co shall have received the certificate required to be delivered pursuant to Section 7(m) on or before the date on which delivery of such certificate is required pursuant to Section 7(m).

(h) No Suspension. Trading in the Shares shall not have been suspended on the NYSE.

(i) Other Materials. On each date on which the Company is required to deliver a certificate pursuant to Section 7(m), the Company shall have furnished to CF&Co such appropriate further information, certificates and documents as CF&Co may have reasonably requested. All such opinions, certificates, letters and other documents shall have been in compliance with the provisions hereof. The Company will furnish CF&Co with such conformed copies of such opinions, certificates, letters and other documents as CF&Co shall have reasonably requested.

(j) Securities Act Filings Made. All filings with the Commission required by Rule 424 under the Securities Act to have been filed prior to the issuance of any Placement Notice hereunder shall have been made within the applicable time period prescribed for such filing by Rule 424.

(k) Approval for Listing . The Placement Shares shall either have been (i) approved for listing on the NYSE, subject only to notice of issuance, or (ii) the Company shall have filed an application for listing of the Placement Shares on the NYSE at, or prior to, the issuance of any Placement Notice.

(l) No Termination Event . There shall not have occurred any event that would permit CF&Co to terminate this Agreement pursuant to Section 11(a) .

9. Indemnification and Contribution .

(a) Company Indemnification . The Company agrees to indemnify and hold harmless CF&Co, the directors, officers, partners, employees and agents of CF&Co and each person, if any, who (i) controls CF&Co within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, or (ii) is controlled by or is under common control with CF&Co (a “ **CF&Co Affiliate** ”) from and against any and all losses, claims, liabilities, expenses and damages (including, but not limited to, any and all reasonable investigative, legal and other expenses incurred in connection with, and any and all amounts paid in settlement (in accordance with Section 9(c)) of, any action, suit or proceeding between any of the indemnified parties and any indemnifying parties or between any indemnified party and any third party, or otherwise, or any claim asserted), as and when incurred, to which CF&Co, or any such person, may become subject under the Securities Act, the Exchange Act or other federal or state statutory law or regulation, at common law or otherwise, insofar as such losses, claims, liabilities, expenses or damages arise out of or are based, directly or indirectly, on (x) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or the Prospectus or any amendment or supplement to the Registration Statement or the Prospectus or in any free writing prospectus or in any application or other document executed by or on behalf of the Company or based on written information furnished by or on behalf of the Company filed in any jurisdiction in order to qualify the Shares under the securities laws thereof or filed with the Commission, (y) the omission or alleged omission to state in any such document a material fact required to be stated in it or necessary to make the statements in it not misleading or (z) any breach by any of the indemnifying parties of any of their respective representations, warranties and agreements contained in this Agreement; *provided, however* , that this indemnity agreement shall not apply to the extent that such loss, claim, liability, expense or damage arises from the sale of the Placement Shares pursuant to this Agreement and is caused directly or indirectly by an untrue statement or omission made in reliance upon and in conformity with written information relating to CF&Co and furnished to the Company by CF&Co expressly for inclusion in any document as described in clause (x) of this Section 9 (a) . This indemnity agreement will be in addition to any liability that the Company might otherwise have.

(b) CF&Co Indemnification . CF&Co agrees to indemnify and hold harmless the Company and its directors and each officer of the Company that signed the Registration Statement, and each person, if any, who (i) controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act or (ii) is controlled by or is under common control with the Company (a “ **Company Affiliate** ”) against any and all loss, liability, claim, damage and expense described in the indemnity contained in Section 9(a) , as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Registration Statement (or any amendments thereto) or the Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with written information relating to CF&Co and furnished to the Company by CF&Co expressly for inclusion in any document as described in clause (x) of Section 9(a) .

(c) Procedure. Any party that proposes to assert the right to be indemnified under this Section 9 will, promptly after receipt of notice of commencement of any action against such party in respect of which a claim is to be made against an indemnifying party or parties under this Section 9, notify each such indemnifying party of the commencement of such action, enclosing a copy of all papers served, but the omission so to notify such indemnifying party will not relieve the indemnifying party from (i) any liability that it might have to any indemnified party otherwise than under this Section 9 and (ii) any liability that it may have to any indemnified party under the foregoing provision of this Section 9 unless, and only to the extent that, such omission results in the forfeiture of substantive rights or defenses by the indemnifying party. If any such action is brought against any indemnified party and it notifies the indemnifying party of its commencement, the indemnifying party will be entitled to participate in and, to the extent that it elects by delivering written notice to the indemnified party promptly after receiving notice of the commencement of the action from the indemnified party, jointly with any other indemnifying party similarly notified, to assume the defense of the action, with counsel reasonably satisfactory to the indemnified party, and after notice from the indemnifying party to the indemnified party of its election to assume the defense, the indemnifying party will not be liable to the indemnified party for any legal or other expenses except as provided below and except for the reasonable costs of investigation subsequently incurred by the indemnified party in connection with the defense. The indemnified party will have the right to employ its own counsel in any such action, but the fees, expenses and other charges of such counsel will be at the expense of such indemnified party unless (1) the employment of counsel by the indemnified party has been authorized in writing by the indemnifying party, (2) the indemnified party has reasonably concluded (based on advice of counsel) that there may be legal defenses available to it or other indemnified parties that are different from or in addition to those available to the indemnifying party, (3) a conflict or potential conflict exists (based on advice of counsel to the indemnified party) between the indemnified party and the indemnifying party (in which case the indemnifying party will not have the right to direct the defense of such action on behalf of the indemnified party) or (4) the indemnifying party has not in fact employed counsel to assume the defense of such action within a reasonable time after receiving notice of the commencement of the action, in each of which cases the reasonable fees, disbursements and other charges of counsel will be at the expense of the indemnifying party or parties. It is understood that the indemnifying party or parties shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees, disbursements and other charges of more than one separate firm admitted to practice in such jurisdiction at any one time for all such indemnified party or parties. All such fees, disbursements and other charges will be reimbursed by the indemnifying party promptly as they are incurred. An indemnifying party will not, in any event, be liable for any settlement of any action or claim effected without its written consent. No indemnifying party shall, without the prior written consent of each indemnified party, settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action or proceeding relating to the matters contemplated by this Section 9 (whether or not any indemnified party is a party thereto), unless such settlement, compromise or consent includes an unconditional release of each indemnified party from all liability arising or that may arise out of such claim, action or proceeding.

(d) Contribution. In order to provide for just and equitable contribution in circumstances in which the indemnification provided for in the foregoing paragraphs of this Section 9 is applicable in accordance with its terms but for any reason is held to be unavailable from the Company or CF&Co, the Company and CF&Co will contribute to the total losses, claims, liabilities, expenses and damages (including any investigative, legal and other expenses reasonably incurred in connection with, and any amount paid in settlement of, any action, suit or proceeding or any claim asserted, but after deducting any contribution received by the Company from persons other than CF&Co, such as persons who control the Company within the meaning of the Securities Act, officers of the Company who signed the Registration Statement and directors of the Company, who also may be liable for contribution) to which the Company and CF&Co may be subject in such proportion as shall be appropriate to reflect the relative benefits received by the Company on the one hand and CF&Co on the other. The relative benefits received by the Company on the one hand and CF&Co on the other hand shall be deemed to be in the same proportion as the total Net Proceeds from the sale of the Placement Shares (before deducting expenses) received by the Company bear to the total compensation received by CF&Co from the sale of Placement Shares on behalf of the Company. If, but only if, the allocation provided by the foregoing sentence is not permitted by applicable law, the allocation of contribution shall be made in such proportion as is appropriate to reflect not only the relative benefits referred to in the foregoing sentence but also the relative fault of the Company, on the one hand, and CF&Co, on the other, with respect to the statements or omission that resulted in such loss, claim, liability, expense or damage, or action in respect thereof, as well as any other relevant equitable considerations with respect to such offering. Such relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company or CF&Co, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and CF&Co agree that it would not be just and equitable if contributions pursuant to this Section 9(d) were to be determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to herein. The amount paid or payable by an indemnified party as a result of the loss, claim, liability, expense, or damage, or action in respect thereof, referred to above in this Section 9(d) shall be deemed to include, for the purpose of this Section 9(d), any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim to the extent consistent with Section 9(c) hereof. Notwithstanding the foregoing provisions of this Section 9(d), CF&Co shall not be required to contribute any amount in excess of the commissions received by it under this Agreement and no person found guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 9(d), any person who controls a party to this Agreement within the meaning of the Securities Act, and any officers, directors, partners, employees or agents of CF&Co, will have the same rights to contribution as that party, and each officer of the Company who signed the Registration Statement will have the same rights to contribution as the Company, subject in each case to the provisions hereof. Any party entitled to contribution, promptly after receipt of notice of commencement of any action against such party in respect of which a claim for contribution may be made under this Section 9(d), will notify any such party or parties from whom contribution may be sought, but the omission to so notify will not relieve that party or parties from whom contribution may be sought from any other obligation it or they may have under this Section 9(d) except to the extent that the failure to so notify such other party materially prejudiced the substantive rights or defenses of the party from whom contribution is sought. Except for a settlement entered into pursuant to the last sentence of Section 9(c) hereof, no party will be liable for contribution with respect to any action or claim settled without its written consent if such consent is required pursuant to Section 9(c) hereof.

10. Representations and Agreements to Survive Delivery. The indemnity and contribution agreements contained in Section 9 of this Agreement and all representations and warranties of the Company herein or in certificates delivered pursuant hereto shall survive, as of their respective dates, regardless of (i) any investigation made by or on behalf of CF&Co, any controlling persons, or the Company (or any of their respective officers, directors or controlling persons), (ii) delivery and acceptance of the Placement Shares and payment therefor or (iii) any termination of this Agreement.

11. Termination.

(a) CF&Co shall have the right by giving notice as hereinafter specified at any time to terminate this Agreement if (i) any Material Adverse Change, or any development that has actually occurred and that could reasonably be expected to result in cause a Material Adverse Change has occurred that, in the reasonable judgment of CF&Co, may materially impair the ability of CF&Co to sell the Placement Shares hereunder, (ii) the Company shall have failed, refused or been unable to perform any agreement on its part to be performed hereunder; *provided, however*, in the case of any failure of the Company to deliver (or cause another person to deliver) any certification, opinion, or letter required under Sections 7(m), 7(n), or 7(o), CF&Co's right to terminate shall not arise unless such failure to deliver (or cause to be delivered) continues for more than thirty (30) days from the date such delivery was required; or (iii) any other condition of CF&Co's obligations hereunder is not fulfilled, or (iv), any suspension or limitation of trading in the Placement Shares or in securities generally on the NYSE shall have occurred. Any such termination shall be without liability of any party to any other party except that the provisions of Section 7(g) (Expenses), Section 9 (Indemnification and Contribution), Section 10 (Representations and Agreements to Survive Delivery), Section 16 (Applicable Law; Consent to Jurisdiction) and Section 17 (Waiver of Jury Trial) hereof shall remain in full force and effect notwithstanding such termination. If CF&Co elects to terminate this Agreement as provided in this Section 11(a), CF&Co shall provide the required notice as specified in Section 12 (Notices).

(b) The Company shall have the right, by giving ten (10) days notice as hereinafter specified to terminate this Agreement in its sole discretion at any time after the date of this Agreement. Any such termination shall be without liability of any party to any other party except that the provisions of Section 7(g), Section 9, Section 10, Section 16 and Section 17 hereof shall remain in full force and effect notwithstanding such termination.

(c) CF&Co shall have the right, by giving ten (10) days notice as hereinafter specified to terminate this Agreement in its sole discretion at any time after the date of this Agreement. Any such termination shall be without liability of any party to any other party except that the provisions of Section 7(g), Section 9, Section 10, Section 16 and Section 17 hereof shall remain in full force and effect notwithstanding such termination.

(d) Unless earlier terminated pursuant to this Section 11, this Agreement shall automatically terminate upon the issuance and sale of all of the Placement Shares through CF&Co on the terms and subject to the conditions set forth herein; *provided* that the provisions of Section 7(g), Section 9, Section 10, Section 16 and Section 17 hereof shall remain in full force and effect notwithstanding such termination.

(e) This Agreement shall remain in full force and effect unless terminated pursuant to Sections 11(a), (b), (c), or (d) above or otherwise by mutual agreement of the parties; *provided, however*, that any such termination by mutual agreement shall in all cases be deemed to provide that Section 7(g), Section 9, Section 10, Section 16 and Section 17 shall remain in full force and effect.

(f) Any termination of this Agreement shall be effective on the date specified in such notice of termination; *provided, however*, that such termination shall not be effective until the close of business on the date of receipt of such notice by CF&Co or the Company, as the case may be. If such termination shall occur prior to the Settlement Date for any sale of Placement Shares, such Placement Shares shall settle in accordance with the provisions of this Agreement.

12. Notices. All notices or other communications required or permitted to be given by any party to any other party pursuant to the terms of this Agreement shall be in writing, unless otherwise specified in this Agreement, and if sent to CF&Co, shall be delivered to CF&Co at Cantor Fitzgerald & Co., 499 Park Avenue, New York, New York 10022, fax no. (212) 308-3730, Attention: Capital Markets/Jeff Lumby, with copies to Stephen Merkel, General Counsel, at the same address, and DLA Piper LLP (US), 1251 Avenue of the Americas, New York, New York 10020, fax no. (212) 884-8494, Attention: Dean M. Colucci; or if sent to the Company, shall be delivered to Essex Property Trust, Inc., 925 East Meadow Drive, Palo Alto, California 94303, fax no. (650) 320-9833, attention: Michael Dance, Chief Financial Officer, with a copy to Baker & McKenzie LLP, Two Embarcadero Center, 11th Floor, San Francisco, CA 94111-3802, fax no. (415) 576-3099, attention: Stephen Schrader, Esq. Each party to this Agreement may change such address for notices by sending to the parties to this Agreement written notice of a new address for such purpose. Each such notice or other communication shall be deemed given (i) when delivered personally or by verifiable facsimile transmission (with an original to follow) on or before 4:30 p.m., New York City time, on a Business Day (as defined below), or, if such day is not a Business Day on the next succeeding Business Day, (ii) on the next Business Day after timely delivery to a nationally-recognized overnight courier and (iii) on the Business Day actually received if deposited in the U.S. mail (certified or registered mail, return receipt requested, postage prepaid). For purposes of this Agreement, “**Business Day**” shall mean any day on which the NYSE and commercial banks in the City of New York are open for business.

13. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Company and CF&Co and their respective successors and the affiliates, controlling persons, officers and directors referred to in Section 9 hereof. References to any of the parties contained in this Agreement shall be deemed to include the successors and permitted assigns of such party. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and permitted assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement. Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party; *provided, however*, that CF&Co may assign its rights and obligations hereunder to an affiliate of CF&Co without obtaining the Company’s consent.

14. Adjustments for Share Splits. The parties acknowledge and agree that all share-related numbers contained in this Agreement shall be adjusted to take into account any share split, share dividend or similar event effected with respect to the Shares.

15. Entire Agreement; Amendment; Severability. This Agreement (including all schedules and exhibits attached hereto and Placement Notices issued pursuant hereto) constitutes the entire agreement and supersedes all other prior and contemporaneous agreements and undertakings, both written and oral, among the parties hereto with regard to the subject matter hereof. Neither this Agreement nor any term hereof may be amended except pursuant to a written instrument executed by the Company and CF&Co. In the event that any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable as written by a court of competent jurisdiction, then such provision shall be given full force and effect to the fullest possible extent that it is valid, legal and enforceable, and the remainder of the terms and provisions herein shall be construed as if such invalid, illegal or unenforceable term or provision was not contained herein, but only to the extent that giving effect to such provision and the remainder of the terms and provisions hereof shall be in accordance with the intent of the parties as reflected in this Agreement.

16. Applicable Law; Consent to Jurisdiction. This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of New York without regard to the principles of conflicts of laws. Each party hereby irrevocably submits to the non-exclusive jurisdiction of the state and federal courts sitting in the City of New York, borough of Manhattan, for the adjudication of any dispute hereunder or in connection with any transaction contemplated hereby, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof (certified or registered mail, return receipt requested) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law.

17. Waiver of Jury Trial. The Company and CF&Co each hereby irrevocably waives any right it may have to a trial by jury in respect of any claim based upon or arising out of this Agreement or any transaction contemplated hereby.

18. Absence of Fiduciary Relationship. The Company acknowledges and agrees that:

(a) CF&Co has been retained solely to act as underwriter in connection with the sale of the Shares and that no fiduciary, advisory or agency relationship between the Company and CF&Co has been created in respect of any of the transactions contemplated by this Agreement, irrespective of whether CF&Co has advised or is advising the Company on other matters;

(b) the Company is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated by this Agreement;

(c) the Company has been advised that CF&Co and its affiliates are engaged in a broad range of transactions which may involve interests that differ from those of the Company and that CF&Co has no obligation to disclose such interests and transactions to the Company by virtue of any fiduciary, advisory or agency relationship; and

(d) the Company waives, to the fullest extent permitted by law, any claims it may have against CF&Co, for breach of fiduciary duty or alleged breach of fiduciary duty and agrees that CF&Co shall have no liability (whether direct or indirect) to the Company in respect of such a fiduciary claim or to any person asserting a fiduciary duty claim on behalf of or in right of the Company, including stockholders, partners, employees or creditors of the Company.

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

[Remainder of Page Intentionally Blank]

If the foregoing correctly sets forth the understanding between the Company and CF&Co, please so indicate in the space provided below for that purpose, whereupon this letter shall constitute a binding agreement between the Company and CF&Co.

Very truly yours,

ESSEX PROPERTY TRUST, INC.

By: /s/ Michael T. Dance
Name: Michael T. Dance
Title: EVP, Chief Financial Officer

**ACCEPTED as of the date
first-above written:**

CANTOR FITZGERALD & CO.

By: /s/ Jeffrey Lumby
Name: Jeffrey Lumby
Title: Managing Director

FORM OF PLACEMENT NOTICE

From: []
Cc: []
To: []
Subject: Controlled Equity Offering—Placement Notice

Gentlemen:

Pursuant to the terms and subject to the conditions contained in the Controlled Equity Offering SM Sales Agreement between Essex Property Trust, Inc. (the “ Company ”), and Cantor Fitzgerald & Co. (“ CF&Co ”) dated May 6, 2009 (the “ Agreement ”), I hereby request on behalf of the Company that CF&Co sell up to [] shares of the Company’s common stock, par value \$0.0001 per share, at a minimum market price of \$_____ per share.

CANTOR FITZGERALD & CO.

Peter Dippolito	pdippolito@cantor.com
Joshua Feldman	jfeldman@cantor.com
Jeff Lumby	jlumby@cantor.com

ESSEX PROPERTY TRUST, INC.

Keith Guericke	kguericke@essexpropertytrust.com
Michall Schall	mschall@essexpropertytrust.com
Michael Dance	mdance@essexpropertytrust.com

Compensation

CF&Co shall be paid compensation equal to up to two percent (2.0%) of the gross proceeds from the sales of Shares pursuant to the terms of this Agreement.

MATTERS TO BE COVERED BY INITIAL OPINION OF

BAKER & MCKENZIE LLP

- (i) As of December 31, 2006, the Company had an authorized capitalization as set forth in its statements of financial condition included in the Company's Annual Report on Form 10-K for the year ended December 31, 2006. All of the outstanding shares of Common Stock and Preferred Stock conform, in all material respects, to the description thereof contained in the Prospectus.
 - (ii) The Company is a corporation duly incorporated and existing under and by virtue of the laws of the State of Maryland and is in good standing with the State Department of Assessments and Taxation of Maryland. The Company has the corporate power to own, lease and operate its properties and conduct its business in all material respects as described under the headings "Item 1 Business" and "Item 2 Properties" in the Company's Annual Report on Form 10-K for the year ended December 31, 2006. The Operating Partnership is validly existing as a limited partnership in good standing under the laws of the jurisdiction of its incorporation or organization with the power to own, lease and operate its properties and conduct its business in all material respects as described under the headings "Item 1 Business" and "Item 2 Properties" in the Company's Annual Report on Form 10-K for the year ended December 31, 2006.
 - (iii) To the knowledge of such counsel, the Company and the Operating Partnership is duly qualified or registered to transact business in each jurisdiction set forth on Schedule 1 hereto in which the failure, individually or in the aggregate, to be so qualified could reasonably be expected to have a Material Adverse Effect. To the knowledge of such counsel, other than the Company's interests in the Subsidiaries or as disclosed in the Prospectus, the Company does not own, directly or indirectly, any capital stock or other equity securities of any other corporation or any ownership interest in any limited liability company, partnership, joint venture or other association.
 - (iv) The execution, delivery and performance of the Sales Agreement by the Company and the transactions contemplated thereby do not conflict with, or result in any breach of, or constitute a default under (nor constitute an event that with notice, lapse of time or both would constitute a breach of or default under), (i) the charter or bylaws of the Company, (ii) any agreement listed on Schedule 2 hereto or (iii) to our knowledge, any Applicable Law or any decree, judgment or order applicable to the Company (other than state and foreign securities or blue sky laws, as to which we express no opinion), except in the case of clauses (ii) and (iii) for such conflicts, breaches or defaults, which individually or in the aggregate could not be reasonably expected to have a Material Adverse Effect.
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- (v) The Company has the corporate power to execute and deliver the Agreement and to issue, sell and deliver the Shares as contemplated in the Agreement. The Agreement has been duly authorized, executed and, so far as is known to us, delivered by the Company.
- (vi) No approval, authorization, consent or order of, or filing with, any federal or state governmental or regulatory commission, board, body, authority or agency is required under Applicable Law in connection with the execution, delivery and performance of the Sales Agreement, or the consummation of the transactions contemplated thereby, by the Company, other than such as have been obtained or made under the Securities Act or the Securities Exchange Act of 1934, as amended, and such approvals as have been obtained in connection with the listing of the Placement Shares on the New York Stock Exchange; *provided, however*, that we do not express any opinion as to any necessary qualification under the securities or blue sky laws of the various jurisdictions in which the Placement Shares are being offered by CF&Co or any approval of the underwriting terms and arrangements relating to the offering of the Placement Shares by the NASD.
- (vii) The Shares, when issued and delivered by the Company pursuant to the Resolutions and the Agreement against payment of the consideration set forth therein, will be duly authorized, validly issued, fully paid and nonassessable.
- (viii) The issuance and sale of the Placement Shares by the Company is not subject to preemptive or other similar rights arising by operation of the Maryland General Corporation Law under the charter or bylaws of the Company or under any agreement known to us to which the Company is a party.
- (ix) To our knowledge, except as otherwise described in the Registration Statement, the Prospectus, the documents incorporated therein by reference or the exhibits filed in connection therewith, there are no persons with registration or other similar rights to have any securities registered pursuant to the Registration Statement.
- (x) At the time the Registration Statement became effective, the Registration Statement and, as of the date of the Sales Agreement and the date hereof, the Prospectus (in each case, other than the financial statements, financial schedules and other financial and statistical data included or incorporated by reference in, or excluded from, the Registration Statement and the Prospectus, as to which we express no opinion) complied as to form in all material respects with the requirements of the Securities Act and the rules and regulations promulgated thereunder.

- (xi) The statements under the caption “Description of Capital Stock” in the Prospectus, insofar as such statements constitute a summary of the legal matters referred to therein, constitute accurate summaries thereof in all material respects as of the date of such statements.
- (xii) To our knowledge, there are no actions, suits or proceedings or inquiries or investigations, pending or threatened, against the Company or any of its officers and directors or to which the Company’s assets (excluding the Company’s direct or indirect interests in the Subsidiaries) are subject, at law or in equity, before or by any federal, state, local or foreign governmental or regulatory commission, board, body, authority, arbitration panel or agency that are required to be described in the Prospectus or the documents incorporated therein by reference but are not so described.
- (xiii) The Company is not an “investment company” required to register under the Investment Company Act of 1940, as amended, (the “1940 Act”) or a company “controlled” by an “investment company” within the meaning of the 1940 Act.
- (xiv) The Shares to be issued and sold by the Company pursuant to the Sales Agreement are duly listed, and admitted and authorized for trading, subject to official notice of issuance, on the NYSE.
- (xv) Commencing with its taxable year ended December 31, 1994 through its taxable year ended December 31, 2006, the Company has been organized and has operated in conformity with the requirements for qualification and taxation as a REIT under the Code and its organization and proposed method of operation will enable it to continue to meet the requirements for qualification and taxation as a REIT; and
- (xvi) The statements contained in the Prospectus Supplement under the caption “Certain Material U.S. Federal Income Tax Considerations” insofar as such statements constitute matters of law, summaries of legal matters, or legal conclusions, have been reviewed by us and fairly present and summarize, in all material respects, the matters referred to therein.

The Registration Statement became effective under the Securities Act in 2003 and, to our knowledge, no stop order suspending the effectiveness of the Registration Statement has been issued under the Securities Act or proceedings therefor initiated or threatened by the Commission.

In addition, we have reviewed the Registration Statement and the Prospectus and participated in conferences with officers and other representatives of the Company, representatives of independent public accountants for the Company at which the contents of the Registration Statement and the Prospectus and related matters were discussed, although we are not passing upon, and do not assume any responsibility for, the accuracy, completeness or fairness of the statements contained or incorporated by reference in the Registration Statement and the Prospectus and have not made any independent check or verification thereof, during the course of such participation, nothing has come to our attention that leads us to believe that the Registration Statement, at the time such Registration Statement became effective, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading or that the Prospectus, as of the date of the Sales Agreement or the date hereof, included or includes an untrue statement of a material fact or omitted or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading (it being understood that we express no belief with respect to the financial statements, financial schedules and other financial or statistical data included or incorporated by reference in, or excluded from, the Registration Statement or the Prospectus).

The limitations inherent in the independent verification of factual matters and the character of determinations involved in the preparation of a disclosure document are such, however, that we do not assume any responsibility, except as otherwise stated in opinion (xiii) above, for the accuracy, completeness or fairness of the statements contained in the Registration Statement or Prospectus or any amendments or supplements thereto (including any of the documents incorporated by reference therein).

In rendering such opinion, such counsel may rely (A) as to matters involving the application of laws of any jurisdiction other than the California Corporations Code or the federal law of the United States, to the extent they deem proper and specified in such opinion, upon the opinion (which shall be satisfactory in form and substance to the Underwriter, shall expressly state that the Underwriter and Underwriter's counsel may rely on such opinion as if the opinion were addressed to them and shall be furnished to the Underwriter) of other counsel of good standing whom they believe to be reliable and who are satisfactory to counsel for the Underwriter; *provided, however*, that such counsel shall further state that they believe that they, the Underwriter and the Underwriter's counsel are justified in relying upon such opinion of other counsel, and (B) as to matters of fact, to the extent they deem proper, on certificates of responsible officers of the Company and public officials.

Matters to be covered by subsequent Company Counsel Opinions

The Registration Statement, when it became effective, and the Prospectus and any amendment or supplement thereto, on the date of filing thereof with the Commission, complied as to form in all material respects with the requirements for registration statements on Form S-3 under the Securities Act and the rules and regulations of the Commission thereunder, and each of the documents incorporated by reference in the Registration Statement or the Prospectus, or any amendment or supplement thereto, on the date of filing thereof with the Commission, complied as to form in all material respects with the requirements of the Exchange Act and the rules and regulations of the Commission thereunder; it being understood, however, that we express no opinion with respect to the financial statements, schedules or other financial or statistical data included or incorporated by reference in, or omitted from, the Registration Statement or the Prospectus or any other document. In passing upon the compliance as to form of the Registration Statement and the Prospectus and any other document, we have assumed that the statements made and incorporated by reference therein are correct and complete.

(a) The Registration Statement has become effective under the Securities Act and, to the best of our knowledge, no stop order suspending the effectiveness of the Registration Statement has been issued and no proceeding for that purpose has been instituted by the Commission.

(b) To our knowledge and other than as set forth in the Prospectus, there are no legal or governmental proceedings, pending or threatened, to which the Company is a party required to be described in the Prospectus that are not described as required.

In addition, we have participated in conferences with officers and other representatives of the Company, representatives of the independent public accountants for the Company, and your representatives, at which the contents of the Registration Statement and the Prospectus and related matters were discussed and, although we are not passing upon, and do not assume any responsibility for, the accuracy, completeness or fairness of the statements contained or incorporated by reference in the Registration Statement and the Prospectus, during the course of such participation, no facts came to our attention that caused us to believe that the Registration Statement, at the time it became effective, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that the Prospectus (including the Incorporated Documents), as of its date, contained an untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; it being understood that we express no belief with respect to the financial statements, schedules and other financial and statistical data included or incorporated by reference in the Registration Statement or the Prospectus.

* Note: “Registration Statement” and “Prospectus” will be defined to include documents incorporated by reference therein (“**Incorporated Documents**”).

OFFICER CERTIFICATE

The undersigned, the duly qualified and elected Michael T. Dance, of **ESSEX PROPERTY TRUST, INC.** (“ **Company** ”), a Maryland corporation, does hereby certify in such capacity and on behalf of the Company, pursuant to Section 7(m) of the Sales Agreement dated May 6, 2009 (the “ **Sales Agreement** ”) between the Company and Cantor Fitzgerald & Co., that to the best of the knowledge of the undersigned.

(i) The representations and warranties of the Company in Section 6 of the Sales Agreement (A) to the extent such representations and warranties are subject to qualifications and exceptions contained therein relating to materiality or Material Adverse Effect, are true and correct on and as of the date hereof with the same force and effect as if expressly made on and as of the date hereof, except for those representations and warranties that speak solely as of a specific date and which were true and correct as of such date, and (B) to the extent such representations and warranties are not subject to any qualifications or exceptions, are true and correct in all material respects as of the date hereof as if made on and as of the date hereof with the same force and effect as if expressly made on and as of the date hereof except for those representations and warranties that speak solely as of a specific date and which were true and correct as of such date; and

(ii) The Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied pursuant to the Sales Agreement at or prior to the date hereof.

By: /s/ Michael T. Dance
Name: Michael T. Dance
Title: EVP, Chief Financial Officer

Date: May 6, 2009

ESSEX PROPERTY TRUST, INC. AND SUBSIDIARIES
Schedule of computation of Ratio and Earnings to Fixed Charges and Preferred Stock Dividends
(Dollars in thousands, except ratios)

	Quarter ended March 31	Years ended December 31				
	2009	2008 ⁽¹⁾	2007	2006	2005	2004
Earnings:						
Income before discontinued operations	\$ 21,088	\$ 81,875	\$ 42,349	\$ 32,738	\$ 47,266	\$ 72,485
Gain on sales of real estate	-	(4,578)	-	-	(6,391)	(7,909)
Noncontrolling interest	4,942	22,255	19,999	18,783	20,699	28,106
Interest expense	20,203	85,063	81,993	75,017	72,096	61,623
Total earnings	\$ 46,233	\$ 184,615	\$ 144,341	\$ 126,538	\$ 133,670	\$ 154,305
Fixed charges:						
Interest expense	\$ 20,203	\$ 85,063	\$ 81,993	\$ 75,017	\$ 72,096	\$ 61,623
Capitalized interest	3,228	10,908	5,134	3,913	1,100	1,997
Preferred stock dividends	1,826	9,241	9,174	5,145	1,953	1,952
Perpetual preferred unit distributions	1,575	9,909	10,238	10,238	10,238	14,175
Total fixed charges and preferred stock dividends	\$ 26,832	\$ 115,121	\$ 106,539	\$ 94,313	\$ 85,387	\$ 79,747
Ratio of earnings to fixed charges (excluding preferred stock dividends and preferred unit distributions)						
	1.97X	1.92X	1.66X	1.60X	1.83X	2.43X
Ratio of earnings to combined fixed charges and preferred stock dividends						
	1.72X	1.60X	1.35X	1.34X	1.57X	1.93X

(1) The results of operations for 2008 have been reclassified to reflect discontinued operations for properties sold subsequent to December 31, 2008, and the results of operations for 2004 through 2007 have not been reclassified.

ESSEX PROPERTY TRUST, INC.
Certification of Chief Executive Officer
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Keith R. Guericke, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Essex Property Trust, Inc.;
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 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 controls over financial reporting, or caused such internal controls 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 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 data; 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: May 6, 2009

/s/ Keith R. Guericke
Keith R. Guericke
Chief Executive Officer and President
Director and Vice Chairman of the Board
Essex Property Trust, Inc.

ESSEX PROPERTY TRUST, INC.
Certification of Chief Financial Officer
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Michael T. Dance, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Essex Property Trust, Inc.;
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 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 controls over financial reporting, or caused such internal controls 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 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 data; 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: May 6, 2009

/s/ Michael T. Dance

Michael T. Dance
Chief Financial Officer, Executive Vice President,
Essex Property Trust, Inc.

ESSEX PROPERTY TRUST, INC.
Certification of Chief Executive Officer
Pursuant to 18 U.S.C. Section 1350 as adopted
Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (Subsections (a) and (b) of Section 1350, chapter 63 of title 18, United States Code), I, Keith R. Guericke, hereby certify, to the best of my knowledge, that the Quarterly Report on Form 10-Q for the period ended March 31, 2009 (the "Form 10-Q") of Essex Property Trust, Inc. fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended, and information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of Essex Property Trust, Inc. at the dates of and for the periods presented.

Date: May 6, 2009

/s/ Keith R. Guericke
Keith R. Guericke
Chief Executive Officer and President,
Director and Vice Chairman of the Board,
Essex Property Trust, Inc.

ESSEX PROPERTY TRUST, INC.
Certification of Chief Financial Officer
Pursuant to 18 U.S.C. Section 1350 as adopted
Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (Subsections (a) and (b) of Section 1350, chapter 63 of title 18, United States Code), I, Michael T. Dance, hereby certify, to the best of my knowledge, that the Quarterly Report on Form 10-Q for the period ended March 31, 2009 (the "Form 10-Q") of Essex Property Trust, Inc. fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended, and information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of Essex Property Trust, Inc. at the dates of and for the periods presented.

Date: May 6, 2009

/s/ Michael T. Dance
Michael T. Dance
Chief Financial Officer, Executive Vice President,
Essex Property Trust, Inc.
