

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

ALESSANDRO DEMARCO, et al., on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

AVALONBAY COMMUNITIES, INC., et al.,

Defendants.

Consolidated Civil Action
No. 2:15-cv-00628-JLL-JAD

CLASS ACTION

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STIPULATION OF CLASS ACTION SETTLEMENT

This Stipulation of Class Action Settlement, including its attached Exhibits (collectively, the “Settlement Agreement”), is entered into this 30th day of June, 2016, by and between Plaintiffs, on behalf of themselves and on behalf of each of the Settlement Class Members, and AvalonBay Communities, Inc. (“AvalonBay” or “Defendant”). Capitalized terms used herein are defined in Section A below or indicated in parentheses elsewhere in the Settlement Agreement.

Subject to Court approval as required by the applicable Federal Rules of Civil Procedure, and as provided herein, the Parties hereby stipulate and agree that in consideration of the promises and covenants set forth in the Settlement Agreement and upon the entry by the Court of a Final Judgment and Order Approving Settlement and the occurrence of the Effective Date, the claims of the Settlement Class pursued in this matter shall be dismissed with prejudice, settled and compromised upon the terms and conditions contained herein.

WHEREAS, three putative class actions were filed against Defendant, one in the Superior Court of New Jersey and two in the United States District Court, District of New Jersey, seeking damages and equitable relief on behalf of tenants and occupants of the Russell Building at the Avalon at Edgewater apartment complex that was destroyed as a result of a fire on January 21, 2015 (hereinafter “The Fire”).

WHEREAS, the case filed in the Superior Court of New Jersey, *Loposky, et al. v. AvalonBay Communities, Inc., et al.* (BER-L-801-15), was removed to the District of New Jersey pursuant to the provisions of 28 U.S.C. §§1332(d) and 1441, and assigned Docket No. 15-cv-1353 (JLL);

WHEREAS, on March 17, 2015, the Court consolidated *Loposky* and the two actions that had been filed in the District of New Jersey, *DeMarco v. AvalonBay Communities, Inc., et al.*

(15-cv-0628 (JLL)) and *Gutierrez v. AvalonBay Communities, Inc., et al.* (15-cv-1069 (JLL)) under the above-referenced caption pursuant to Federal Rule of Civil Procedure 42(a) and appointed the firms of Lite DePalma Greenberg, LLC, Chimicles & Tikellis LLP and Wilentz, Goldman & Spitzer, P.A. as Interim Co-Lead Counsel for Plaintiffs;

WHEREAS, on May 26, 2015, Plaintiffs in the consolidated cases filed a Consolidated Class Action Complaint (the “Amended Complaint”) against AvalonBay;

WHEREAS, a case filed in the Superior Court of New Jersey, *Voronov, et al. v. AvalonBay Communities, Inc.* (BER-L-1045-15), was removed to the District of New Jersey pursuant to the provisions of 28 U.S.C. §§1332(d) and 1441, and assigned Docket No. 15-cv-2740 (JLL) (hereinafter the “Voronov Action”);

WHEREAS, the Voronov Action was subsequently consolidated with *DeMarco* and on or about October 6, 2015, the parties entered a Consent Order: (1) amending the caption of the Amended Complaint to include both Jacqueline Voronov and Kathy Katz as named plaintiffs; and (2) wherein plaintiffs Jacqueline Voronov and Kathy Katz adopted the Amended Complaint;

WHEREAS, AvalonBay has denied and continues to deny Plaintiffs’ allegations and claims in the Amended Complaint, including those related to whether class treatment is appropriate, and has denied any wrongdoing or liability to Plaintiffs;

WHEREAS, Co-Lead Counsel representing Plaintiffs in connection with this Litigation have conducted an examination and investigation of the facts and law relating to the matters set forth in the Amended Complaint and have conducted pretrial discovery into the claims and defenses alleged in this matter, including document discovery and consulting with experts;

WHEREAS, in reaching the Settlement Agreement, the parties have engaged in extensive, arm’s-length negotiations, including their participation in mediation with Honorable

James R. Zazzali, Chief Justice, New Jersey Supreme Court (Ret.) and extensive settlement negotiations of the final terms of the Agreement under the auspices of Honorable Joseph A. Dickson, U.S.M.J.

WHEREAS, Plaintiffs believe that the claims asserted in this matter have substantial merit; however, taking into account the extensive burdens and expense of litigation, including the risks and uncertainties associated with protracted trials and appeals, as well as the fair, cost-effective and assured method of resolving the claims of the Settlement Class, Co-Lead Counsel have concluded that the Settlement Agreement provides substantial benefits to the Settlement Class, and is fair, reasonable, adequate, and in the best interests of Plaintiffs and the Settlement Class;

WHEREAS, although AvalonBay denies Plaintiffs' allegations in the Amended Complaint, denies wrongdoing of any kind, and believes that the Action is without merit, AvalonBay also has taken into account the uncertainty, risk, delay and costs inherent in litigation and agreed to enter into the Settlement Agreement to avoid any further litigation expenses and inconvenience, and to remove the distraction of burdensome and protracted litigation;

WHEREAS, it is the intention and desire of the Plaintiffs and AvalonBay to compromise, resolve, dismiss and release all allegations and claims for damages or equitable relief relating to The Fire as set forth in the Amended Complaint and that have been or could have been brought by the Settlement Class Members against AvalonBay in the Action;

WHEREAS, the Parties have agreed that an appropriate resolution of this controversy is accomplished through the benefits, releases and orders set forth in or attached to the Settlement Agreement, and intend that the Settlement Agreement resolves all claims and disputes arising out of or relating to The Fire on the terms set forth in the Settlement Agreement; and

WHEREAS, Plaintiffs and AvalonBay agree that any and all allegations and claims for damages or equitable relief relating to The Fire as set forth in the Amended Complaint by named Plaintiffs DeMarco, Bayer, Voronov, and Katz (the “River Mews Plaintiffs”) are in no way compromised, resolved, dismissed or released in any matter by execution of this Settlement Agreement; and that the River Mews Plaintiffs shall not be considered Settlement Class Members nor have any rights, duties, obligations or benefits arising from this Settlement Stipulation.

NOW, THEREFORE, the Settlement Agreement is entered into by and among the parties, by and through their respective counsel and representatives, and the parties agree that: (a) upon approval of the Court after the hearing(s) provided for in the Settlement Agreement, the claims of the Settlement Class in the Action shall be settled and compromised as between Plaintiffs and the Settlement Class, and Defendant; and (b) upon Court approval of the Agreement, the [Proposed] Final Judgment and [Proposed] Order Granting Final Approval of Class Settlement, substantially in the form attached as Exhibit D hereto, shall be entered dismissing the claims of the Settlement Class in the Action with prejudice and releasing all Released Claims, as defined herein, against Defendant and all Released Parties, all on the following terms and conditions:

A. DEFINITIONS

As used in the Settlement Agreement and the Exhibits hereto, in addition to any definitions elsewhere in parentheses in the Settlement Agreement, the following terms shall have the meanings set forth herein:

1. “Action” means the consolidated case *DeMarco v. AvalonBay Communities, Inc., et al.*, 2:2015-cv-00628-JLL-JAD (D.N.J.).

2. “Amended Complaint” means the Consolidated Class Action Complaint filed in the Action on May 26, 2015.

3. “Award” means the monetary relief obtained by Settlement Class Members pursuant to Section D.1. of this Agreement, as may be applicable to such person.

4. “Attorneys’ Fees and Expenses” means such funds as may be awarded by the Court to Co-Lead Counsel to compensate them and all other Plaintiffs’ Counsel in this Action for their fees and expenses in connection therewith, as described more particularly in Section I of this Settlement Stipulation.

5. “AvalonBay” or “Defendant” means AvalonBay Communities, Inc., and all of its current or former United States and foreign subsidiaries, predecessors, successors, parents, affiliates and assigns.

6. “AvalonBay’s Counsel” means the law firm of Gordon & Rees LLP.

7. “Claim” means a request for relief pursuant to Section E of this Agreement submitted by a Settlement Class Member on a Claim Form filed in accordance with the terms of the Settlement Agreement.

8. “Claim Form(s)” means the form or forms to be used by Settlement Class Members for filing Claims. The proposed Claim Form(s) are subject to Court approval and attached hereto as Exhibit C.

9. “Claimant” refers to any Settlement Class Member who completes a Claim Form.

10. “Claims Adjuster Expenses” means the expenses incurred in administering the Notice Program and processing all Claims by Settlement Class Members.

11. “Claims Adjuster” means _____, which, subject to Court approval, is the Person agreed to by the parties to review, process, administer and issue awards for all Claim Forms filed by Settlement Class Members.

12. “Claims Deadline” means the court-approved date by which all Claim Forms must be postmarked or received by the Claims Adjuster to be considered timely. The Claims Deadline shall be set forth in the Court Orders granting preliminary and final approval of the Settlement, the Notices, and on the Settlement Website.

13. “Class Notice” or “Notice” means the forms of notice to be disseminated to Settlement Class Members with regard to the Settlement. The proposed Notices are attached respectively in the form of Exhibits A and B.

14. “Class Representatives” or “Plaintiffs” means Plaintiffs Digna Gutierrez and Ebony Cooley, and does not include the Excluded Plaintiffs.

15. “Co-Lead Counsel” means Bruce D. Greenberg of Lite DePalma Greenberg, LLC; Benjamin F. Johns of Chemicles & Tikellis LLP; and Daniel R. Lapinski of Wilentz, Goldman & Spitzer, P.A.

16. “The Court” means the United States District Court for the District of New Jersey.

17. “Effective Date” means either: (a) the date thirty days after the entry of the Final Judgment and Order Approving Settlement, if no motions for reconsideration and/or no appeals or other efforts to obtain review have been filed; or (b) in the event that an appeal or other effort to obtain review has been initiated, the date thirty days after such appeal or other review has been finally concluded and is no longer subject to any further review, whether by appeal, petitions for rehearing, petitions for rehearing *en banc*, petitions for writ of certiorari, or otherwise.

18. “Excluded Plaintiffs” mean Plaintiffs Alessandro DeMarco, Amanda Bayer, Jacqueline Voronov and Kathy Katz.

19. “Final Approval Hearing” means the hearing to be conducted by the Court in connection with its determination of the fairness, adequacy and reasonableness of the Settlement in accordance with applicable jurisprudence, and which shall occur no earlier than the 91st day after Notice is provided to Class Members.

20. “Final Judgment and Order Approving Settlement” means Order Granting Final Approval of Class Settlement to be entered by the Court, substantially in the form of Exhibit D and conforming to Section J herein, approving the Settlement without material alteration, as fair, adequate and reasonable, confirming the certification of the Settlement Class for purposes of the Settlement only, dismissing the Action with prejudice, and issuing such other findings and determinations as the Court and/or the Parties deem necessary and appropriate to implement the Settlement.

21. “The Fire” means the fire that occurred in the Russell Building at the Avalon at Edgewater apartment complex on January 21, 2015.

22. “Incentive Award” means the payment approved by the Court to compensate each of the Class Representatives for efforts undertaken by them on behalf of the Settlement Class Members.

23. “Insurance Payment” means the total amount received by Claimant from their renters insurance carrier (or any other insurance carrier) as a result of The Fire.

24. “Notice Date” means the date upon which the Class Notice is first disseminated to the Settlement Class.

25. “Notice Expenses” means the reasonable costs and expenses incurred in connection with preparing, printing, disseminating, posting, mailing, and emailing the Class Notice, and all other aspects of administering the Notice Program incurred by the Claims Administrator.

26. “Notice Program” means the plan as set forth in Section F herein and approved by the Court for disseminating the Class Notice.

27. “Opt-Out” means the act of timely filing the Request for Exclusion in order to be excluded from the Settlement Class.

28. “Opt-Out and Objection Date” means the date, 30 days after the Notice Date, by which a Request For Exclusion must be filed with the Court in order for a Settlement Class Member to be excluded from the Settlement Class, and the date by which Settlement Class Members must submit objections to the Court and the parties, if any, to the Settlement in accordance with Section F herein.

29. “Party” or “Parties” means the parties to this Agreement, *i.e.*, the Class Representatives and/or AvalonBay.

30. “Person(s)” means any adult individual and any minor child of whom such adult individual is the parent or guardian, any corporation, trust, partnership, limited liability company or other legal entity, and their respective successors or assigns.

31. “Plaintiffs’ Counsel” means all attorneys representing Plaintiffs or Class Representatives.

32. “Preliminary Approval Order” means the order to be entered by the Court, substantially in the form of Exhibit E and conforming to Section C.1. herein, preliminarily certifying the Settlement Class, preliminarily approving the Settlement, setting the date of the

Final Approval Hearing, appointing Co-Lead Counsel as Counsel for the Settlement Class, approving the Notice Program, Class Notice, and Claim Form, barring the commencement or pursuit of further litigation by Settlement Class Members (except as to any Settlement Class Member who properly and timely files a Request for Exclusion relating to a Released Claim) and setting dates for the Claims Deadline, Opt-Out and Objection Date, and Notice Date.

33. “Released Claim” is defined in Paragraph H.1. herein.

34. “Released Party” is defined in Paragraph H.1. herein.

35. “Releasing Party” is defined in Paragraph H.1. herein.

36. “Releases” means the releases contemplated in accordance with Sections G and H herein.

37. “Request For Exclusion” means the written communication that must be filed with the Court and postmarked on or before the Opt-Out and Objection Date by a Settlement Class Member who wishes to be excluded from the Settlement Class. Settlement Class Members must timely file the Request for Exclusion in order to effectively Opt-Out and be excluded from the Settlement Class.

38. “Russell Building” means the building by the same name that was part of the Avalon at Edgewater Apartment complex, and which was destroyed in The Fire on January 21, 2015.

39. “Settlement” and “Settlement Agreement” means the terms and conditions of this Stipulation of Class Action Settlement.

40. “Settlement Class” and “Settlement Class Member(s)” means all residents and occupants of the Russell Building at Avalon at Edgewater as identified on the operative lease

agreements as of January 21, 2015, whose property in a Russell Building apartment or storage unit was destroyed by The Fire.

Excluded from the Settlement Class are: (1) any Person that has already submitted a claim form to AvalonBay and been compensated pursuant to any agreement related to such claim form, (2) any Person who has already been compensated by AvalonBay and provided AvalonBay with a release of his/her/its claims related to The Fire, (3) any minor child who had a parent or guardian settle a claim with AvalonBay and whose parent or guardian provided AvalonBay with a release of claims related to The Fire; (4) any Person who files a valid, timely Request for Exclusion; and (5) any Judges or judicial staff to whom this Action is assigned, and any member of their immediate families.

41. "Settlement Consideration" means the consideration exchanged by and between AvalonBay and the Settlement Class, as set forth in this Settlement Agreement.

B. FOR SETTLEMENT PURPOSES ONLY

1. This Agreement is for settlement purposes only, and neither the fact of, nor any provision contained in, this Agreement or its Exhibits, nor any action taken hereunder shall constitute, be construed as, or be admissible in evidence as an admission of: (a) the validity of any claim or allegation by Plaintiffs or of any defense asserted by Defendant in the Action or any other action or proceeding; (b) the appropriateness of the Settlement Class as a class for purposes of further litigation and trial; (c) any wrongdoing, fault, violation of law, or liability of any kind on the part of any Party, Defendant, Released Party, Settlement Class Member or their respective counsel; or (d) the merits or lack thereof of the claims or defenses of the Excluded Plaintiffs against AvalonBay.

2. The Settlement Agreement is without prejudice to the rights of each Releasing Party and each Released Party to seek or oppose class certification in the Action for purposes of further litigation and trial should the Settlement Agreement not be finally approved or implemented for any reason.

3. In the event that this Settlement Agreement is not approved by the Court in substantially its present form, if any objection is upheld by this Court that alters the terms of this Settlement Agreement to the detriment of any of the Parties, or the Settlement does not become final for any reason, any of the Parties may, at their sole discretion, declare this Settlement Agreement null and void and the terms and provisions of this Settlement Agreement shall have no further force and effect with respect to the Parties and shall not be used in the Action or in any other proceeding for any purpose. In the event any final judgment is entered by the Court not in accordance with the terms of the Settlement, such final judgment shall be treated as vacated, *nunc pro tunc*, and the Parties may file a motion to have the Settlement vacated in such event.

C. PRELIMINARY APPROVAL; CLASS NOTICE; COOPERATION THROUGH FINAL APPROVAL

1. PRELIMINARY APPROVAL

On or before July 1, 2016, the Parties shall file the Settlement Agreement with the Court and shall jointly move the Court for entry of an order, substantially in the form of Exhibit E hereto, which by its terms shall:

- a. Determine, preliminarily, that this Settlement Agreement and the Settlement set forth herein fall within the range of reasonableness and merit possible final approval and dissemination of Notice to the Settlement Class;
- b. Determine, preliminarily, that the Class Representatives are members of the Settlement Class and that, for purposes of the Settlement, they satisfy the requirements of

typicality, and that they adequately represent the interests of the Settlement Class Members, and appoint them as the representatives of the Settlement Class;

c. Determine, preliminarily, that the Settlement Class meets all applicable requirements of Fed. R. Civ. P. 23 (“Rule 23”), and preliminarily certify the Settlement Class for purposes of the Agreement under Rule 23 for settlement purposes only;

d. Appoint Co-Lead Counsel as Class Counsel pursuant to Fed. R. Civ. P. 23(g);

e. Schedule the Final Approval Hearing to: (i) determine finally whether the Settlement Class satisfies the applicable requirements of Rule 23 and should be finally certified for settlement purposes only; (ii) review objections, if any, regarding the Agreement; (iii) consider further the fairness, reasonableness and adequacy of the Settlement; (iv) consider Co-Lead Counsel’s application for an award of attorneys’ fees and reimbursement of expenses (in accordance with Section I below); (v) determine the validity of Requests for Exclusion and exclude from the Settlement Class those Persons who validly and timely Opt-Out; (vi) consider Co-Lead Counsel’s application for payment of Incentive Awards to the named Plaintiffs (in accordance with Section I below); and (vii) consider whether the Court shall issue the Final Judgment and Order Approving Settlement approving the Settlement and dismissing the Action with prejudice pursuant to Rule 54(b);

f. Set a briefing schedule for the Final Approval Hearing and Co-Lead Counsel’s request for Attorneys’ Fees and Expenses, and Incentive Awards for the Class Representatives (in accordance with Section I below);

g. Consider and determine that the Class Notice and the Notice Program: (i) meets the requirements of Rule 23(c)(3) and due process; (ii) is the best practicable notice under

the circumstances; (iii) is reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action and their right to object to the proposed Settlement or Opt-Out of the Settlement Class; and (iv) is reasonable and constitutes due, adequate and sufficient notice to all those entitled to receive notice;

h. Consider and approve the proposed Class Notice, Claim Form, and Notice Program;

i. Direct Class Notice to be disseminated in the manner set forth in the Notice Program on or before the Notice Date;

j. Consider and approve the designation of _____ as the Claims Adjuster and _____ as the Claims Administrator;

k. Require each Settlement Class Member who wishes to Opt-Out of the Settlement Class to submit a timely written Request for Exclusion, on or before the Opt-Out and Objection Date, to the Court, to Co-Lead Counsel, and to AvalonBay's Counsel, as specified in Section F herein;

l. Rule that any Settlement Class Member who does not submit a timely written Request for Exclusion will be bound by all proceedings, orders and judgments in the Action;

m. Require any Settlement Class Member who wishes to object to the fairness, reasonableness or adequacy of the Settlement Agreement or to the award of Attorneys' Fees and Expenses and/or the Incentive Awards to submit to the Court and deliver to Co-Lead Counsel and AvalonBay's Counsel, postmarked on or before the Opt-Out and Objection Date, a statement, signed by the objecting Settlement Class Member by hand, of his/her objection, as well as the specific reason, if any, for each objection, including any legal support the Settlement

Class Member wishes to bring to the Court's attention and any evidence the Settlement Class Member wishes to introduce in support of his/her objection, and to state whether the Settlement Class Member and/or his/her counsel wishes to make an appearance at the Final Approval Hearing, or be forever barred from separately objecting;

n. Enter an order permanently barring and enjoining, under the All Writs Act, the pursuit of any existing or new litigation arising from or related to The Fire by any Settlement Class Member, except as to any Settlement Class Member who properly and timely files a Request for Exclusion;

o. Enter an order continuing all applicable pre-trial deadlines (if any) in the Action so that AvalonBay and Plaintiffs shall in no way be prejudiced by their efforts to resolve the claims resolved through this Agreement; and

p. Establish:

- (i) the date and time of the Final Approval Hearing.
- (ii) the Notice Date: The Parties propose that the Notice Date be ninety days before the Final Approval Hearing.
- (iii) the Opt-Out and Objection Date: The Parties propose that the Opt Out and Objection Date be thirty days after the Notice Date.
- (iv) the Claims Deadline: The Parties propose that the Claims Deadline be thirty days after the Effective Date.

2. COOPERATION

The Parties acknowledge that each intends to implement the Settlement. The Parties shall, in good faith, cooperate and assist with and undertake all reasonable actions and steps in order to accomplish all required events on the schedule set by the Court, and shall use their best efforts to implement all terms and conditions of the Settlement Agreement. Nothing in this

provision, however, requires either Party to waive its rights hereunder, or to change the consideration provided hereunder.

3. CONFIRMATORY DISCOVERY

Considerable discovery has already occurred in this action, including review of over 22,800 pages of documents produced by AvalonBay, and over 2,500 pages of documents produced by Plaintiffs. Further, Co-Lead Counsel has consulted with liability and damages experts related to the claims asserted in this Action and will review any additional information obtained from AvalonBay.

4. CERTIFICATION OF SETTLEMENT CLASS

The Released Parties do not consent to certification of the Settlement Class for any purpose other than to effectuate the settlement of this Action. As a result, as part of this Settlement Agreement, the Parties stipulate to certification of the Settlement Class for settlement purposes only pursuant to Fed. R. Civ. P. 23.

D. SETTLEMENT CONSIDERATION

In addition to all other Settlement Consideration set forth in the Agreement, Settlement Class Members who timely file Claims by the Claims Deadline and provide all required proof or documentation and comply with all other conditions and requirements specified herein, all as approved and validated by the Claims Adjuster, shall have the right to obtain relief, as detailed herein.

1. SETTLEMENT CLAIMS PROCESS

- a. There will be no monetary cap on the overall Claim that is submitted.

b. Claims must only be submitted by individuals specifically identified as residents or occupants on lease agreements for apartments located in the Russell Building that were in effect at the time of The Fire (i.e., January 21, 2015).

c. The Claims Adjuster shall not begin reviewing any Claims that are submitted until after the Claims Deadline so if more than one individual submits a claim for the same unit, the Claims Adjuster will be able to evaluate all claims for the same unit at the same time and not issue an award for duplicative items. In the event one or more of the individuals residing in the same unit already resolved their claim with AvalonBay or a Person excluded from the Settlement Class (as discussed in Section A.40. above) improperly submits a Claim, AvalonBay's Counsel may submit documentation related to the settlement of this claim or inapplicability of the Person excluded from the Settlement Claims to the Claims Adjuster.

d. All Claims are to be submitted to an independent Claims Adjuster (not a public adjuster), mutually agreed upon by the Parties, who shall assign a lead adjuster who will make all final decisions concerning the issuance of awards through the Claim Process.

e. AvalonBay and/or its insurers shall be responsible for paying all fees and costs associated with the retention of the Claims Adjuster, with Co-Lead Counsel being made privy to the fee agreement and the payment of such fees and costs.

f. AvalonBay or AvalonBay's Counsel shall have the right to submit a letter to the Claims Adjuster concerning any item in any submission. The Claimant shall have the right to submit a letter in response. The Claims Adjuster will evaluate the letters as he/she sees fit with no outside influence from either side.

g. AvalonBay's Counsel and Co-Lead Counsel shall be required to simultaneously serve each other with all submissions provided to the Claims Adjuster.

2. CLAIM FORM PARAMETERS

a. Each Claimant must file all Claims on a single Claim Form which will require the Claimant to sign by hand and certify under penalty of perjury as to the accuracy of the content of the document. Each Claim Form will explain that any falsification of information by a Claimant may be prosecuted to the fullest extent of the law. Each Claim Form shall also be notarized.

b. Each Claimant will be requested to specifically list all of the basic household items and provide descriptive information (including the date of purchase or receipt of each item, age of each item, and purchase price of each item) that he or she claims to have lost, even if the Claimant does not have sufficient proof to support ownership or value of these items. The Claims Adjuster will review and evaluate the basic household items based upon typical standards in the industry. However, the Claims Adjuster shall be instructed that the standard of review for items valued at less than \$500.00 will be less stringent than the standard of review (*see below*) for items valued at \$500.00 or more.

c. Each Claimant must produce supporting documentation to confirm proof of ownership for all items valued by Claimant at pre-depreciation cost of \$500 or more. For example, such proofs may include, without limitation, credit card or purchase receipts, credit card statements, dated photographs of the class members wearing the claimed items which specifically detail those items (only when accompanied by other proofs for the claimed items), or product registration documentation. Items owned by third-parties, including without limitation, guests or visitors, shall not be recoverable as part of this Claims Process and shall not be included in any Claim Form.

d. All items contained in the Claim Form are to be valued at market value at the time of The Fire. As a result, the Claims Adjuster shall value items by taking the value at

time of purchase or receipt less standard depreciation for certain categories of items. The Claims Adjuster shall not take into consideration any sentimental value when calculating damages.

- e. Deceased pets are valued at replacement cost.
- f. Photographs (including wedding photos) are valued at the actual cost of photographs.
- g. The Claims Adjuster shall determine the value of memorabilia and other collector's items and, where the Claims Adjuster deems it necessary, shall consult with third-party experts to do so. AvalonBay shall be responsible for the cost of any such third-party experts.
- h. The following items will be excluded from the damages calculations and are not recoverable in the Claims Process:
 - (i) New security deposits, rental payments, deposits for first and last months' rent, and any other refundable deposits.
 - (ii) Damages associated with lost income from work.
 - (iii) Damages claimed for time and effort to obtain records, new residence, etc.
 - (iv) Loans or loan interest resulting from The Fire.
 - (v) Entertainment expenses, such as tickets to sporting events or Broadway shows scheduled after January 24, 2015. All such claimed expenses for events not attended and scheduled for January 21, 2015 to January 24, 2015 must be supported by acceptable proof in order to be included in damages calculation.
 - (vi) Lost cash or gift cards are both excluded from damages calculation unless Claimant can provide adequate proof of possession at the time of The Fire.
 - (vii) All expenses associated with post-fire appointments with medical professionals including, without limitation, medical co-pays, doctor appointment co-pays and travel to/from appointments. However, any documented "no show" fees paid by Claimant as a result of his/her failure to attend a previously scheduled doctor's appointment within a week of

The Fire shall not be excluded. The Claimant shall provide documentation to support entitlement to recover payment of such fees.

(viii) Damages associated with emotional distress, mental anguish, pain and suffering, personal injury, or the like.

i. Reimbursement for the following items will be capped unless sufficient supporting documentation approved by the Claims Adjuster is provided:

(i) Food in apartment: 1 bedroom = Up to \$100.00; 2 bedroom = Up to \$150.00; and 3 bedroom = Up to \$200.00.

(ii) Skincare / makeup accessories and toiletries (shampoos, soaps, razors, etc.): Up to \$250.00.

(iii) Holiday decorations: Up to \$500.00.

(iv) Alcohol: Up to \$150.00.

j. The Claims Process may be subject to additional, mutually agreed-upon provisions concerning the actual employment of the Claims Process and the items included or excluded from Claim Forms.

k. In the event the Claims Adjuster has a question about the employment of the Claims Process or whether certain items should be included or excluded, the Claims Adjuster shall simultaneously contact both Co-Lead Class Counsel and AvalonBay's Counsel to seek clarification. In the event Co-Lead Class Counsel and AvalonBay's Counsel are unable to come to an agreement, such dispute shall be brought to the attention of the Court.

3. OUT-OF-POCKET EXPENSES / RELOCATION EXPENSES

a. Out-of-pocket and relocation expenses shall include all reasonable meals, groceries, drinks, hotel stays, parking fees, moving expenses, fees associated with the retention of any new apartment or residence, including, without limitation, all utility and cable hookup fees, application fees, etc., and all incidental costs associated with obtaining replacement licenses, passports, green cards, etc. including, without limitation, flights, travel, legal fees and

hotel stays (Actual fees to purchase new licenses, passports, green cards, etc. shall be submitted through the Claims Process and are not calculated as part of this category of damages).

b. Reimbursement of out-of-pocket expenses and relocation expenses shall be capped on a per-unit basis as follows:

(i) 1 bedroom = Up to \$3,500.00

(ii) 2 bedroom = Up to \$4,000.00

(iii) 3 bedroom = Up to \$5,000.00

c. Since out-of-pocket and relocation expenses will have been incurred after The Fire, Class Members shall be required to provide proof of paid expenses for all of these claimed expenses.

d. Meals and hotel accommodations post-January 2015 are excluded from this reimbursement category and the damages calculation in their entirety. Meal expenses for Persons who are not Settlement Class Members shall also be excluded.

e. If a putative class member has decided to opt-out or has previously settled their Claim, the per unit cap for that apartment will be reduced proportionally. For example, if there were two adult co-tenants residing in a one-bedroom apartment and one of the tenants previously settled his/her claim, the cap would be reduced by 50% for the other tenant that submits his/her claim through this Claims Process.

f. The Claims Adjuster shall deduct all monies received from AvalonBay and all other third-parties (including, without limitation, insurance companies and other donations) from Claimant's total claim (the "Net Claim"). Claimants shall be required to provide written documentation from renters or other insurance carriers to confirm policy number(s), amounts of coverage, and amounts and dates of all payments received or confirmation that claims have been denied.

g. A Claimant whose award of damages is less than or equal to their total available insurance coverage or Net Claim shall only be permitted to submit a claim for any insurance deductibles paid, if any.

4. SUBROGATION

Neither Party shall indemnify the other for any subrogation claims related to The Fire. By agreeing to the terms of this Settlement Agreement, neither Party is releasing any right regarding subrogation that has not previously been released. Further, any Settlement Class Member who submits a Claim Form shall declare, provide proof and represent therein the total amount received from their renters insurance carrier (or other insurance carrier) as a result of The Fire (hereinafter "Insurance Payment"). The Parties hereby represent that the entire Insurance Payment shall be deducted from the total Claim submitted in connection with this Settlement Agreement and that the Insurance Payment shall not be included in and is expressly excluded from the monies received in connection with this Settlement.

5. ARBITRATION OF CLAIMS

For all awards issued by the Claims Adjuster of \$137,500.00 or more, either Party, within 20 days of issuance, has the right to reject the award and request that the Claim be submitted to arbitration. Claimants shall have the further right to reject the award if the award is between \$123,750.00 and \$137,500.00 and the award is at least 20% less than the Claimant's submitted Claim. The following conditions shall apply to any Claim submitted to arbitration:

a. The Party who rejects the award must include a reasonable, good faith settlement proposal at the time notice of rejection is submitted. The settlement proposal shall be valid only for a period of 14 days and shall be deemed withdrawn immediately thereafter. The non-rejecting party must respond to the settlement proposal within that time period. Failure to

respond during the 14-day time period shall be deemed to constitute a rejection of the settlement proposal.

b. A single, agreed-upon arbitrator shall preside over these arbitration proceedings.

c. The non-prevailing Party will incur the cost of the arbitrator's fees associated with the arbitration. Each Party will be responsible for its own additional costs and attorneys' fees, if any, related to the arbitration. The term "prevailing party" shall be defined as follows: If AvalonBay rejects the award, it would have to receive at least a 10% reduction in the Claims Adjuster's award to be considered the prevailing party, and if it does not receive at least such a reduction then AvalonBay is considered the non-prevailing party. If the Claimant rejects the award, the Claimant would have to receive at least a 10% increase in the Claims Adjuster's award to be considered the prevailing party, and if it does not receive at least such an increase then the Claimant is considered the non-prevailing party. The non-prevailing party shall be required to pay the cost of the arbitrator's fees.

d. The Party that rejects the Claims Adjuster's award shall file a pre-arbitration statement within 30 days of submitting the dispute to arbitration.

e. The non-rejecting Party may file a pre-arbitration statement in response within 30 days of receipt of the moving Party's statement.

f. The Parties shall use their best efforts to schedule an initial scheduling conference with the arbitrator no later than 30 days after all pre-arbitration statements have been submitted to discuss, among other things, the anticipated discovery needed by AvalonBay to evaluate the Claim. The arbitrator will then set a discovery schedule. This schedule may be modified with a showing of good cause.

g. Both Parties will have the right to conduct all discovery (including, without limitation, paper discovery, third-party discovery, depositions, expert discovery) that they would be able to conduct in a litigation.

h. Both Parties will have the right to file informal motions with the arbitrator.

i. The arbitrator shall hold a hearing during which both Parties may call witnesses – fact and expert, if applicable. By mutual agreement, the Parties may agree to waive the requirement for a formal hearing and instead, submit briefs outlining their respective positions.

j. The arbitrator will issue a written arbitration decision following the hearing or receipt of the written submissions with a reasoned award.

6. RIGHT TO APPEAL ARBITRATOR AWARD

For all awards issued by the arbitrator of \$225,000.00 or more, either Party, within 30 days of issuance of the written arbitration decision, has the right to serve a Notice of Appeal of the arbitrator's award. The following conditions shall apply to any Claim submitted to this appellate process:

a. All appeals shall be submitted to a 1-member appellate panel to be determined by the Parties.

b. Each side shall provide the panel member with a deposit in the same amount for the panel's retention. The prevailing party (as defined in the arbitration process above) will receive the return of their deposit and the non-prevailing party (as defined in the arbitration process above) shall be required to incur the cost of the panel's time.

c. The standard of appeal will be akin to the litigation standard for appeal from a bench trial – not the standard for vacation of an arbitration award. Findings of fact would be reviewed for clear error. Conclusions of law would be reviewed de novo – a plenary review.

d. Appellant shall have 30 days from date of service of Notice of Appeal to file a formal brief in support thereof.

e. Appellee shall have 30 days from date of service of Appellant’s moving brief to file a submission in opposition.

f. Appellant shall have 30 days from date of service of opposition to file a reply brief.

g. This briefing schedule may only be amended by agreement of the Parties or Order of the Appellate Panel upon a showing of good cause.

h. The Appellate Panel shall issue a written decision thereafter concerning the arbitration decision and issues raised on appeal.

i. The Parties shall hereby waive all rights as to any judicial appeal of the arbitration decision.

E. CLAIMS DEADLINES, CLAIM FORMS, AND CLAIMS ADJUSTER

1. All Claims must be submitted with a Claim Form postmarked by the Claims Deadline. The Claims Deadline shall be clearly set forth in the Settlement Class Notice and the Claim Form. Settlement Class Members who do not timely submit a completed Claim Form shall not be eligible for an Award, and waive any rights to such an Award. Settlement Class Members who make a timely Claim by submitting a signed Claim Form shall be provided the opportunity, upon written notice from the Claims Adjuster, to remedy deficiencies in such Settlement Class Member’s Claim Form or related documentation.

2. Claim Forms must be signed by the Settlement Class Member by hand under penalty of perjury and also be notarized. Claim Forms will be made available by mail and for downloading from the websites maintained by Co-Lead Counsel. Class Members may submit completed and signed Claim Forms to the Claims Adjuster by mail, private courier, email or facsimile. AvalonBay agrees that information provided by Settlement Class Members on Claim Forms shall be kept confidential, shall be used only for purposes of administering the Settlement, and shall not be used for any other purposes, including ongoing litigation related to The Fire.

3. The Claims Adjuster shall administer the relief for Settlement Class Members provided by the Agreement by resolving Claims in a cost effective and timely manner. Nothing in this Stipulation shall require the Claims Adjuster to issue Awards before the Effective Date or to process Claims before the Effective Date – such actions are expressly prohibited. The Claims Adjuster shall begin to process Claims only after the Claims Deadline. The determination of the validity of Claims shall be made by the Claims Adjuster. The Claims Adjuster shall maintain records of all Claims submitted. The Claims Adjuster shall maintain all such records until the later of ninety days after either the Effective Date or all Claims have been finally resolved, and such records will be made available at any time to Co-Lead or AvalonBay's Counsel upon request by Co-Lead Counsel and AvalonBay's Counsel. Claim Forms and supporting documentation will be kept confidential by the Claims Adjuster and will be provided only to the Court upon request and to Co-Lead Counsel and AvalonBay's Counsel to monitor the progress of the payment of the Awards, to monitor the filing of claims, and to the extent necessary to resolve issues pursuant to Section E.5. The Claims Adjuster also shall provide such reports and such other information to the Court as it may require. Unless instructed otherwise, the Claims Adjuster shall provide Co-Lead Counsel and AvalonBay's Counsel with a copy of all submitted

Claim Forms and all other submissions within five (5) business days of receipt of these materials by the Claims Adjuster.

4. The Claims Adjuster will review and validate all Claims submitted by Settlement Class Members. The Claims Adjuster shall have the right to contact Settlement Class Members to, among other things, conduct phone interviews or request an in-person interview in order to attempt to validate Claims. The Claims Adjuster may also request additional information and/or documentation from Claimants, including, without limitation, proof of income or other bank account statements, signed authorizations to obtain records from Claimants' financial institutions if Claims Adjuster deems it necessary in order to evaluate a certain Claim in accordance with industry standards.

5. No payments will be made to any Class Member until the Class Member provides the Claims Adjuster with a completed Form W-9.

F. NOTICE TO THE SETTLEMENT CLASS, OBJECTION, AND OPT-OUT RIGHTS

1. Subject to Court approval, Notice shall be accomplished by the following:

a. the entity designated as Claims Administrator or its designee shall send by first-class regular U.S. mail a Notice of Settlement containing information related to the Settlement to all former Russell Building tenants and occupants identified in the lease agreements in effect as of January 21, 2015 for whom AvalonBay has a mailing address in its databases, except for individuals already Excluded from the Settlement Class. AvalonBay will provide the last known names, mailing addresses, telephone numbers and e-mail addresses it has for these persons to Co-Lead Counsel after this Agreement is executed by all parties. If AvalonBay has the same mailing address for individuals previously identified in a lease

agreement for the same Russell Building apartment unit, a mailing will be sent to each individual at that address. A copy of the Notice of Settlement can be found at Exhibit A;

b. the entity designated as Claims Administrator or its designee shall send an email message containing information related to the Settlement to the same tenants and occupants identified in Section F.1.a. (above) for whom AvalonBay has an email address in its databases. A copy of that email message can be found at Exhibit B;

c. Co-Lead Counsel shall also provide a direct link to the Notice of Settlement and Claim forms on their respective firm websites (at their own expense, if any);

2. AvalonBay and the Claims Administrator shall have no obligation to update or verify any of the email or mailing addresses that are provided for Notice of Settlement, but shall use its reasonable efforts, consisting of AvalonBay's diligent search and reasonable inquiry of the records in its possession and shall provide these addresses in a format acceptable to the Claims Administrator and Co-Lead Counsel. In the event that any email or mailing sent by the Claims Administrator to a Settlement Class Member is undeliverable or returned, the Claims Administrator shall immediately notify both Co-Lead Counsel and AvalonBay's Counsel. The Claims Administrator shall conduct a skip trace or other reasonable search to determine an appropriate address for said class Member so that follow up notice may be promptly provided;

3. Upon Preliminary Approval of the Settlement, as the Court may direct, the Parties shall cause the Class Notice to be disseminated to potential Settlement Class Members as provided herein. Notice shall be disseminated pursuant to the Notice Program on or before the Notice Date. Copies of the proposed forms of Class Notice and the Claim Form are attached as Exhibits A and C.

4. The Class Notice shall:

- a. contain a short, plain statement of the background of the Action and the proposed Settlement;
- b. describe the proposed Settlement relief as set forth in this Settlement Agreement;
- c. inform Settlement Class Members that, if they do not exclude themselves from the Settlement Class, they may be eligible to receive relief;
- d. describe the procedures for participating in the Settlement and advise Settlement Class Members of their rights, including their right to file a Claim in order to attempt to receive an Award under the Settlement, to Opt-Out of same, or object thereto;
- e. explain the scope of the Release and Covenant Not To Sue, and the impact of the proposed Settlement on any existing litigation, arbitration or other proceeding;
- f. state that any Award to Settlement Class Members under the Settlement is contingent on the Court's final approval of the proposed Settlement;
- g. explain that neither Co-Lead Counsel, Plaintiffs' Counsel, AvalonBay's Counsel, nor the Claims Adjuster may advise on the tax consequences of participating or not participating in the Settlement;
- h. provide that any objection to the Settlement and any papers submitted in support of said objection will be considered only if the Settlement Class Member making an objection has submitted timely notice of his or her intention to do so, with the grounds for the objection, hand signed by the objecting Settlement Class Member, and has submitted copies of such papers to the Court and served copies of such papers on Co-Lead Counsel and AvalonBay's Counsel on or before the Opt-Out and Objection Date, as approved by the Court and specified in the Class Notice; and

i. identify the existence of an injunction, barring the pursuit of existing or new suits by Class Members (except for Settlement Class Members who properly and timely file Requests for Exclusion) relating to the Released Claims, until consideration of the Settlement Stipulation is concluded by the Court.

5. Any Settlement Class Member who intends to object must do so, in a writing hand signed by the objecting Settlement Class Member, postmarked on or before the Opt-Out and Objection Date. In order to object, the Settlement Class Member must include in the objection submitted to the Court and served on Co-Lead Counsel and AvalonBay's Counsel: (a) the name, address, telephone number of the Person objecting and, if represented by counsel, of his/her counsel; and (b) the Russell Building apartment unit number that the Person objecting claims to have resided in as of January 21, 2015; and (c) the names and, if known, addresses and telephone number(s) of any other persons who resided as of January 21, 2015 in the same Russell Building apartment unit as the Person objecting. An objecting Settlement Class Member must state, specifically and in writing, all objections and the basis for any such objections, and provide a statement of whether he/she intends to appear at the Final Approval Hearing, either with or without counsel. Any Settlement Class Member who fails to submit and serve timely and in accordance with the requirements herein a written objection and notice of his or her intent to appear at the Final Approval Hearing pursuant to this Section F.5., as detailed in the Notice, shall not be permitted to object to the approval of the Settlement at the Final Approval Hearing and shall be foreclosed from seeking any review of the Settlement or the terms of the Agreement by appeal or other means.

6. The Claims Administrator shall provide AvalonBay's Counsel and Co-Lead Class Counsel with a Declaration of Notice Procedures indicating its compliance with the Notice Program.

7. Prior to the Final Approval Hearing, the Parties shall provide to the Court documentation that Notice was provided in accordance with the Notice Program.

8. A Settlement Class Member who wishes to Opt-Out of the Settlement Class must do so on or before the Opt-Out and Objection Date. In order to Opt-Out, a Settlement Class Member must complete and send to the Court and copy Co-Lead Counsel and AvalonBay's Counsel a Request For Exclusion that is post marked no later than the Opt-Out and Objection Date. The Request for Exclusion must be personally signed by hand by the Settlement Class Member requesting exclusion and contain a statement that indicates a desire to be excluded from the Settlement Class.

9. Except for those Settlement Class Members who timely and properly file a Request for Exclusion, all other Settlement Class Members will be deemed to be Settlement Class Members for all purposes under the Settlement Stipulation, and upon the Effective Date, will be bound by its terms, regardless of whether they file a Claim or receive any monetary relief.

10. Any Settlement Class Member who timely and properly Opts-Out of the Settlement Class shall not: (a) be bound by any orders or judgments entered in the Action relating to the Settlement; (b) be entitled to relief under, or be affected by, the Agreement; (c) gain any rights by virtue of the Agreement; or (d) be entitled to object to any aspect of the Settlement.

11. In the event the procedures in this Section are followed and the intended recipient of the Class Notice does not receive the Class Notice, the intended recipient shall remain a Class Member and will be bound by all of the terms of the Settlement and the Final Judgment and Order Approving Settlement entered by the Court. In the event the procedures in this Section are followed and a Class Member does not ultimately object, properly Opt-Out, or properly submit a Claim Form, the Class Member shall remain a Class Member and will be bound by all terms of the Settlement and the Final Judgment and Order Approving Settlement entered by the Court.

G. EXCLUSIVE REMEDY; RELEASES; JURISDICTION OF COURT

The Settlement Stipulation shall be the sole and exclusive remedy for any and all Released Claims of all Releasing Parties against all Released Parties. The Releases are entirely independent from the dismissals with prejudice contained in, and made a part of, this Settlement Stipulation. No Released Party shall be subject to liability or expense of any kind to any Releasing Party with respect to any Released Claim. Upon entry of the Final Judgment and Order Approving Settlement, each and every Releasing Party shall be permanently barred and enjoined from initiating, asserting and/or prosecuting any Released Claim against any Released Party in any court or any other forum.

H. RELEASES AND COVENANT NOT TO SUE

1. The following terms have the meanings set forth herein:
 - a. "Released Claim" means any individual, class, representative, group or collective claim, cost, attorneys' fees, court and litigation expenses, judgment, liability, expense, right, controversy, demand, suit, matter, obligation, damage (including, but not limited to, contract damage, compensatory damage, tort damage for bodily injury, personal injury, emotional distress, property damage and/or any other claim and punitive damage), loss, action or

cause of action, of every kind, character and description whatsoever, either direct or consequential, at law or in equity, that a Releasing Party has or may have, including assigned claims, whether known or unknown, asserted or unasserted, latent or patent, suspected or unsuspected, concealed or hidden, that is, has been, could have been or in the future might reasonably be asserted, inferred, implied, included or connected under any body of law (federal law, common law, or under the laws of any state) by the Releasing Party either in the Court or any other court or forum, regardless of legal theory or relief claimed, and regardless of the type of relief or amount of damages claimed, against any of the Released Parties arising from, concerning or in any way relating to The Fire and/or the Avalon at Edgewater complex and/or the construction, leasing or operation by AvalonBay or its employees of the Avalon at Edgewater complex, including any claims asserted or which could have been asserted in the Action.

b. "Released Party" shall collectively mean Edgewater Financing, LLC, AvalonBay Communities, Inc. and its insurers including, without limitation, Houston Casualty Company, Network Adjusters, Inc., Indian Harbor Insurance Company, QBE Insurance Corporation, Great American Insurance Company of New York, National Surety Corporation, Ohio Casualty Insurance Company, Navigators Insurance Company, the lenders to Edgewater Financing, LLC, and all entities and individuals involved in the design or construction of the Avalon at Edgewater complex; and all of their current and former affiliates, parents, subsidiaries, predecessors, successors and assigns and their past, present and future officers, directors, agents, servants, employees, members, partners, shareholders, attorneys, legal representatives, heirs, executors and administrators and any person, company or entity associated with or acting on their behalf.

c. “Releasing Party” means each Settlement Class Member (including the Class Representatives representing such Settlement Class) and any Person claiming by or through him/her/it as his/her/its spouse, child, ward, heir, devisee, legatee, invitee, employee, customer, associate, co-owner, attorney, agent, administrator, predecessor, successor, assignee, representative of any kind, shareholder, partner, director, or affiliate and any person, company or entity associated with or acting on their behalf.

d. “Covenant Not To Sue” means the agreement that, upon entry of the Final Judgment and Order Approving Settlement, each Releasing Party covenants that he/she will not initiate, maintain, or prosecute any legal action, in any forum, against any Released Party that is related in any way to any Released Claim. Should any legal action be pending at the time of the entry of the Final Judgment and Order Approving Settlement, each Releasing Party shall prepare and file a stipulation of dismissal with prejudice within five days thereof.

2. Upon entry of the Final Judgment and Order Approving Settlement, each Releasing Party shall be deemed to have forever, unconditionally and irrevocably, relieved, released, and discharged each Released Party of and from liability for any and all Released Claims.

3. Additional Mutual Releases

a. On and after the Effective Date, each of the Released Parties shall be deemed to have fully, finally, and forever released, relinquished and discharged each and all of the Class Representatives and Settlement Class Members, Co-Lead Counsel, Plaintiffs’ Counsel, and the Class Representatives’ and Settlement Class Members’ present and former attorneys, accountants, experts, consultants, insurers, and agents of each of them, each of the foregoing solely in their capacity as such, and the predecessors, successors, heirs, and assigns of each, from

all claims of every nature and description, known and unknown, relating to the initiation, assertion, prosecution, non-prosecution, settlement, and/or resolution of the Action or the Released Claims.

b. On and after the Effective Date, each of the Releasing Parties shall be deemed to have fully, finally, and forever released, relinquished and discharged AvalonBay and each Released Party (identified above) including, without limitation, their respective present and former parents, subsidiaries, divisions, and affiliates, the present and former partners, employees, officers and directors of each of them, the present and former attorneys, accountants, experts, consultants, insurers and agents of each of them, each of the foregoing solely in their capacity as such, and the predecessors, successors, heirs, and assigns of each of them, from all claims of every nature and description, known and unknown, relating to the defense, settlement and/or resolution of the Action or the Released Claims.

4. The Parties agree that the Court shall retain exclusive and continuing jurisdiction over the Parties, Settlement Class Members, and the Claims Adjuster to interpret and enforce the terms, conditions, and obligations under the Settlement Agreement.

I. COUNSEL FEES AND COSTS

1. Co-Lead Counsel agree to make, and AvalonBay agrees not to oppose, only an application for the award of Attorneys' Fees and Expenses in the form of (a) \$1,900 to be paid by AvalonBay and/or its insurers for each Russell Building unit for which a Claim(s) is submitted and an award issued pursuant to this Settlement Agreement; and (b) an amount, not to exceed 6%, paid directly from the award received by each Claimant. The additional fee of up to 6% from the award received by each Claimant shall be withheld from Claimant by AvalonBay and/or its insurers on behalf of Co-Lead Counsel following the award of a settlement

determination. Such Fees and Expenses will be paid by AvalonBay and/or its insurers within five business days after an award payment is made to each Claimant. The Released Parties shall have no obligation to pay any additional Attorneys' Fees and Expenses (including, without limitation, any costs, expenses, and expert fees) to Co-Lead Class Counsel in connection with the Action, settlement process, or otherwise.

2. Co-Lead Counsel, in their sole discretion, shall allocate and distribute this award of Attorneys' Fees and Expenses among Plaintiffs' Counsel.

3. Co-Lead Counsel shall seek approval to award to each Class Representative the amount of an Incentive Award, if any, as may be approved by the Court, up to \$1,000.00 per Plaintiff, to be paid out of the Attorneys' Fees and Expenses received by Co-Lead Counsel. AvalonBay agrees that it will not object to, or otherwise challenge, the application for Incentive Awards, so long as the Class Representatives do not seek awards in excess of \$1,000.00 per Class Representative paid out of the Attorneys' Fees and Expenses received by Co-Lead Counsel. If awarded by the Court, such Incentive Awards will be paid by Co-Lead Counsel to the Class Representative(s) within thirty business days after Co-Lead Counsel receives its first payment of Fees and Expenses from AvalonBay and/or its insurers. The Class Representatives shall also be entitled to submit a Claim Form and participate in the Settlement as Settlement Class Members, and to all other rights accruing to Settlement Class Members hereunder.

J. THE FINAL JUDGMENT AND ORDER APPROVING SETTLEMENT

1. This Agreement is subject to and conditioned upon the issuance by the Court of the Final Judgment and Order Approving Settlement that finally certifies the Settlement Class for the purposes of settlement only, and grants final approval of the Settlement pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, and provides the relief specified herein, which relief shall be subject to the terms and conditions of the Settlement Agreement and the Parties'

performance of their continuing rights and obligations hereunder. Such Final Judgment and Order Approving Settlement shall:

- a. Confirm the final certification, for settlement purposes only, of the Settlement Class;
- b. Confirm the compliance of the Settlement Class with all requirements of Rule 23, including confirmation of the adequacy of the representation of the Class Representatives as representatives of the Settlement Class, for settlement purposes only;
- c. Confirm that the Notice Program complied in all respects with the requirements of due process and Rule 23 by providing due, adequate, and sufficient notice to the Settlement Class;
- d. Determine that the Agreement is entered into in good faith, is reasonable, fair and adequate, and is in the best interest of the Settlement Class;
- e. Make all appropriate and necessary findings of fact required to enter a final judgment pursuant to Rule 54(b);
- f. Dismiss the Amended Complaint with prejudice as to the Released Parties;
- g. Release each Released Party from the Released Claims that any Releasing Party has, had, or may have in the future, against each Released Party and provide that the Covenant Not To Sue has been given by each Settlement Class Member in favor of each Released Party and that all Settlement Class Members are bound thereby;
- h. Bar and enjoin all Releasing Parties from asserting against any Released Party any Released Claim;
- i. Release each Releasing Party and Settlement Class Member, Co-Lead Counsel, Plaintiffs' Counsel, and the Class Representatives' and Settlement Class Members'

present and former attorneys, accountants, experts, consultants and insurers, and agents of each of them, each of the foregoing solely in their capacity as such, and the predecessors, successors, heirs and assigns of each of them, from all claims of every nature and description, known and unknown, that any Released Party has had, or may in the future have relating to the initiation, assertion, prosecution, non-prosecution, settlement and/or resolution of the Action or the Released Claims, and bar and enjoin all Released Parties from asserting the same;

j. Release AvalonBay and each Released Party, and their respective present and former parents, subsidiaries, divisions, and affiliates, the present and former partners, employees, officers and directors of each of them, the present and former attorneys, accountants, experts, consultants, insurers and agents of each of them, each of the foregoing solely in their capacity as such, and the predecessors, successors, heirs, and assigns of each of them, the present and former attorneys, accountants, experts, consultants, insurers and agents of each of them, from all claims of every nature and description, known and unknown, that any Releasing Party has, had or may in the future have relating to the defense, settlement and/or resolution of the Action or the Released Claims, and bar and enjoin all Releasing Parties from asserting the same; and

k. Retain the Court's continuing and exclusive jurisdiction over the Parties to the Settlement Agreement, including all Settlement Class Members, to construe and enforce the Agreement in accordance with its terms for the mutual benefit of the Parties.

K. REPRESENTATIONS AND WARRANTIES

1. AvalonBay represents and warrants: (a) that it has the requisite corporate power and authority to execute, deliver and perform the Settlement Agreement and to consummate the transactions contemplated hereby; (b) that the execution, delivery and performance of the

Settlement Agreement and the consummation by it of the actions contemplated herein have been duly authorized by necessary corporate action on the part of AvalonBay; and (c) that the Settlement Agreement has been duly and validly executed and delivered by AvalonBay and constitutes its legal, valid and binding obligation. AvalonBay's Counsel represents and warrants that they are fully authorized to execute this Settlement Agreement on behalf of AvalonBay and thereby to bind AvalonBay.

2. Plaintiffs represent and warrant that they are entering into the Settlement Agreement on behalf of themselves, individually and as representatives of the Settlement Class Members and the Releasing Parties, of their own free wills and without the receipt of any consideration other than what is provided in the Settlement Agreement or disclosed to, and authorized by, the Court. Each Plaintiff represents and warrants that he or she has reviewed the terms of the Settlement, believes it to be fair and reasonable, and each covenants that he or she will not file a Request for Exclusion from the Settlement Class or object to the Settlement. Co-Lead Counsel represents and warrants that they are fully authorized to execute the Settlement Agreement on behalf of the Plaintiffs, individually and as representatives of the Settlement Class Members and Releasing Parties.

3. The Parties warrant and represent that no promise, inducement or consideration for the Settlement has been made, except those set forth herein. No consideration, amount or sum paid, accredited, offered or expended by AvalonBay in its performance of this Settlement Agreement and the Settlement constitutes a fine, penalty, punitive damages or other form of assessment for any claim against it.

L. NO ADMISSIONS; NO USE

1. The Settlement Stipulation shall in no event be construed or deemed to be evidence or an admission or a concession on the part of any Plaintiff, Defendant, any Releasing Party, or any Released Party with respect to any issue in the case, including any claim of any fault or liability, any defense, or any claim of injury or damages.

2. The Settlement Agreement, whether or not consummated, any proceedings taken pursuant to it, and any act performed or document executed pursuant to or in furtherance of the Settlement Agreement are not and shall not in any event be:

a. Construed as, offered in evidence as, received in evidence as, and/or deemed to be, evidence of a presumption, concession or an admission by any Plaintiff, Defendant, Settlement Class Member, or Released Party of the truth of any fact alleged or the validity of any claim or defense that has been, could have been, or in the future might be asserted in any litigation or the deficiency of any claim or defense that has been, could have been, or in the future might be asserted in any litigation, or of any liability, fault, wrongdoing or otherwise of such Party; or

b. Construed as, offered in evidence as, received in evidence as, and/or deemed to be, evidence of a presumption, concession or an admission of any liability, fault or wrongdoing, or in any way referred to for any other reason, by any Plaintiff, Defendant, Releasing Party or Released Party in the Action or in any other civil, criminal or administrative action or proceeding other than such proceedings as may be necessary to effectuate the provisions of the Agreement and as except as may be necessary in any action that may be brought by a Settlement Class Member and against any of the Released Parties in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

M. MISCELLANEOUS PROVISIONS

1. ENTIRE AGREEMENT

The Settlement Agreement, including all Exhibits hereto, shall constitute the entire Agreement among the Parties with regard to the Settlement and shall supersede any previous agreements, representations, communications and understandings among the Parties with respect to the subject matter of the Settlement. The Settlement Agreement may not be changed, modified, or amended except in a writing signed by all Parties and, if required, approved by the Court. The Parties contemplate that certain of the Exhibits to the Agreement relating to Class Notice may be modified by subsequent agreement of AvalonBay and Co-Lead Counsel prior to dissemination to the Settlement Class.

2. GOVERNING LAW

The Agreement shall be construed under and governed by the laws of the State of New Jersey, applied without regard to laws applicable to choice of law.

3. EXECUTION BY COUNTERPARTS

The Agreement may be executed by the Parties in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile signatures, scanned signatures, or signatures sent by e-mail shall be treated as original signatures and shall be binding.

4. NOTICES

Any notice, instruction, application for Court approval or application for Court orders sought in connection with the Settlement and the Agreement or other document to be given by any Party to any other Party shall be in writing and delivered personally or sent by registered or

certified mail, postage prepaid, if to AvalonBay to the attention of AvalonBay's Counsel, and if to Settlement Class Members, to the attention of Co-Lead Counsel on their behalf.

All notices to the Parties or counsel required by the Agreement shall be made in writing and communicated by fax and mail to the following addresses:

a. If to Plaintiffs or Co-Lead Counsel:

Benjamin F. Johns
CHIMICLES & TIKELLIS LLP
One Haverford Centre
361 West Lancaster Avenue
Haverford, PA 19041
Telephone: (610) 642-8500
Facsimile: (610) 649-3633
BFJ@chimicles.com

Bruce D. Greenberg
LITE DEPALMA GREENBERG, LLC
570 Broad Street, Suite 1201
Newark, NJ 07102
Telephone: (973) 623-3000
Facsimile: (973) 623-0858
bgreenberg@litedepalma.com

Daniel R. Lapinski
**WILENTZ, GOLDMAN &
SPITZER, P.A.**
90 Woodbridge Center Drive
Woodbridge, NJ 07095
Telephone: (732) 855-6066
Facsimile: (732) 726-4735
dlapinski@wilentz.com

b. If to AvalonBay or AvalonBay's Counsel:

Ronald A. Giller
Daniel J. DiMuro
GORDON & REES LLP
18 Columbia Turnpike
Suite 220
Florham Park, NJ 07932
Telephone: (973) 549-2500
Facsimile: (973) 377-1911

rgiller@gordonrees.com
ddimuro@gordonrees.com

5. PROTECTIVE ORDERS

All orders, agreements and designations regarding the confidentiality of documents and information (“Protective Orders”) remain in effect, and all Parties and counsel remain bound to comply with the Protective Orders.

6. MISCELLANEOUS PROVISIONS

a. The Agreement shall be binding upon, and inure to the benefit of, the heirs, successors, assigns, executors and legal representatives of the Parties to the Agreement and Defendant and Released Parties.

b. Time is of the essence.

c. Subject to Court approval, the Parties may agree to reasonable extensions of time to carry out any of the provisions of the Agreement. Nothing in this Settlement Agreement, or any other understanding, shall require such agreement.

d. The determination of the terms of, and the drafting of, the Agreement has been by mutual understanding after negotiation, with consideration by, and participation of, the Parties hereto and their Counsel.

e. The waiver by one Party of any provision or breach of the Agreement shall not be deemed a waiver of any other provision or breach of the Agreement.

f. In the event of any variance between the terms of this Settlement Agreement and any of the Exhibits hereto, the terms of this Settlement Agreement shall control and supersede the Exhibit(s), except if such Exhibit shall become an entered order, in which case the Parties shall petition the Court for an amendment of such entered order to ensure that the terms of this Settlement Agreement shall control.

g. All Exhibits to this Settlement Agreement are material and integral parts hereof, and are incorporated by reference as if fully rewritten herein.

h. No opinion concerning the tax consequences of the Settlement to any Settlement Class Member is given or will be given by AvalonBay, AvalonBay's Counsel, Co-Lead Counsel, or Plaintiffs' Counsel; nor is any Party or their counsel providing any representation or guarantee respecting the tax consequences of the Settlement as to any Settlement Class Member. The Class Notice will direct Settlement Class Members to consult their own tax advisors regarding the tax consequences of the Settlement and any tax reporting obligations with respect thereto. Each Settlement Class Member is responsible for his/her tax reporting and other obligations respecting the Settlement, if any.

i. It is expressly understood that, to the extent a Released Party is not a Party to the Settlement Agreement, all such Released Parties are intended third party beneficiaries of the Settlement Agreement.

j. Except as expressly provided herein regarding the payment of Attorneys' Fees and Costs pursuant to Section I of this Settlement Agreement, the Released Parties shall bear no other expenses, costs, damages or fees alleged or incurred by Plaintiffs or any Settlement Class Member, or by any of their attorneys, experts, advisors, insurers, agents, or representatives arising out of, relating to or in connection with the Action and/or The Fire.

k. On the first day of each calendar month following two calendar months after the Effective Date of the Agreement, the Claims Adjuster shall provide to Co-Lead Counsel a description of the current status of all Claims by any Settlement Class Member. For instance, if the Effective Date is August 10, then the first status report would be sent on October 1. This monthly reporting shall continue until all Claims are finally resolved, including through

arbitration and/or appeal provided for hereunder. AvalonBay's Counsel shall be copied on all of the written communications referenced in this paragraph.

N. NON-DISPARAGEMENT

The Parties agree not to make any statements, written or verbal, or cause or encourage others to make any statements, written or verbal, that defame, disparage, or in any way criticize the personal or business reputation, practices, or conduct of the other Party. The Parties acknowledge and agree that this prohibition extends to statements written or verbal, made to anyone, including but not limited to, the news, investors, potential investors, competitors, strategic partners, vendors, current tenants, former tenants, and employees (past or present). The Parties understand and agree that this Paragraph is a material provision of this Settlement Agreement and that any breach of this Paragraph shall be a material breach of this Agreement, and that each Party would be irreparably harmed by violation of this provision.

O. NO SOLICITATION OF SETTLEMENT OBJECTIONS OR EXCLUSIONS

The Parties agree to use their best efforts to carry out the terms of this Settlement Agreement. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to request exclusion from the Class, submit written objections to the Settlement, or appeal from or seek review of the Court's Final Judgment and Order Approving Settlement.

P. TERMINATION OF THIS AGREEMENT

1. In the event of the termination of this Settlement Agreement, all Parties shall be restored to their respective positions as of immediately prior to the date of execution of this Settlement Agreement. Upon termination, Sections B and L herein shall survive and be binding on the Parties, but this Settlement Agreement shall otherwise be null and void.

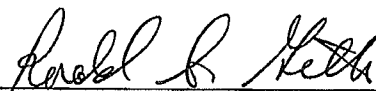
2. In the event that the Court enters the Final Judgment and Order Approving Settlement but does not approve (or reserves judgment on) the request for Attorneys' Fees and Expenses and/or Incentive Awards, the Settlement shall nonetheless be implemented and the Settlement Consideration shall nonetheless be distributed to Settlement Class Members without delay.

IN WITNESS WHEREOF, each of the Parties hereto has caused the Settlement Stipulation to be executed on its behalf by its duly authorized counsel of record, all as of the day set forth below.

AGREED:

Dated: July 7, 2016

GORDON & REES LLP

By: 
Counsel for Defendant AvalonBay Communities, Inc.

Dated: July ___, 2016

LITE DEPALMA GREENBERG, LLP

By: _____

CHIMICLES & TIKELLIS LLP

By: _____

WILENTZ, GOLDMAN & SPITZER, P.A.

By: _____
Co-Lead Counsel for Plaintiffs

2. In the event that the Court enters the Final Judgment and Order Approving Settlement but does not approve (or reserves judgment on) the request for Attorneys' Fees and Expenses and/or Incentive Awards, the Settlement shall nonetheless be implemented and the Settlement Consideration shall nonetheless be distributed to Settlement Class Members without delay.

IN WITNESS WHEREOF, each of the Parties hereto has caused the Settlement Stipulation to be executed on its behalf by its duly authorized counsel of record, all as of the day set forth below.

AGREED:

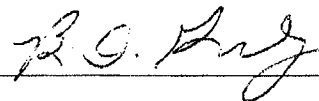
Dated: July __, 2016

GORDON & REES LLP

By: _____
Counsel for Defendant AvalonBay Communities, Inc.

Dated: July 6, 2016

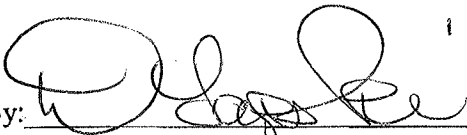
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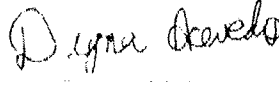
By: 


CHIMICLES & TIKELLIS LLP

By: 

WILENTZ, GOLDMAN & SPITZER, P.A.

By: 
Co-Lead Counsel for Plaintiffs

By: 
Digna Gutierrez

By: 
Ebony Cooley

Plaintiffs and Class Representatives