

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

**Plaintiff:**

KATHERINE KATZ, et al.

vs.

**Defendants:**

AVALONBAY COMMUNITIES, INC.

CIVIL ACTION NO: 2:15-cv-02740-JLL-JAD

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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 24th day of May, 2019, by and between Plaintiffs, on behalf of themselves and on behalf of each of the 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, Plaintiffs filed this class action against Defendant in the Superior Court of New Jersey, *Voronov, et al. v. AvalonBay Communities, Inc.* (BER-L-1045-15), seeking damages and equitable relief on behalf of tenants and occupants of the River Mews Building at the Avalon at Edgewater apartment complex that was purportedly damaged as a result of a fire on January 21, 2015 (hereinafter “The Fire”) that destroyed the neighboring Russel Building.

WHEREAS, Defendant subsequently removed this case to the United States Court for the District of New Jersey pursuant to the provisions of 28 U.S.C. §§1332(d) and 1441, and it was assigned Docket No. 15-cv-2740 (JLL);

WHEREAS, the *Voronov* action was subsequently consolidated with an action that had been filed in the United States Court for the District of New Jersey, *DeMarco v. AvalonBay Communities, Inc., et al.* (15-cv-0628 (JLL)), which itself comprised two other consolidated actions, *Loposky, et al. v. AvalonBay Communities, Inc., et al.* (BER-L-801-15), 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); and *Gutierrez v. AvalonBay Communities, Inc., et al.* (15-cv-1069 (JLL)), 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, on June 14, 2016, the *Voronov* action was severed from the *DeMarco* action after the parties in that matter had reached a tentative settlement agreement with Defendant, final approval of which was granted on July 11, 2017, and Plaintiffs filed an Amended Complaint in this matter on June 24, 2016;

WHEREAS, on October 11, 2017, the United States District Court for the District of New Jersey granted Plaintiffs' Motion for Leave to File Amended Complaint asserting additional claims for breach of contract and breach of implied warranty of habitability, and adding Yudenia Mesa as an additional named Plaintiff in this matter;

WHEREAS, on June 29, 2018, named Plaintiff Jacqueline Voronov and Defendant entered a Stipulation of Dismissal with Prejudice, leaving Katz and Mesa as the remaining named Plaintiffs;

WHEREAS, on October 24, 2018, the United States District Court granted Plaintiffs' Motion for Class Certification, certifying a class of all tenants and occupants of the River Mews Building, appointing Katz and Mesa as Class Representatives, and appointing the Ferrara Law Group, P.C. as Class Counsel, and renaming this matter *Katz v. AvalonBay Communities, Inc.*;

WHEREAS, AvalonBay has denied and continues to deny Plaintiffs' allegations and claims in the Amended Complaint, and has denied any wrongdoing or liability to Plaintiffs;

WHEREAS, Class 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 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 Class, Class Counsel have concluded that the Settlement Agreement provides substantial benefits to the Class, and is fair, reasonable, adequate, and in the best interests of Plaintiffs and the 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 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

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 case *Katz v. AvalonBay Communities, Inc.*, 15-cv-2740-JLL-JAD (D.N.J.).
2. “Amended Complaint” means the Second Amended Class Action Complaint filed in the Action on October 19, 2017.
3. “Award” means the monetary relief obtained by 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 Class Counsel to compensate them 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 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 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 Class Member who completes a Claim Form.

10. "Claims Administrator Expenses" means the expenses incurred in administering the Notice Program and processing all Claims by Class Members.

11. "Claims Administrator" means the entity, which, subject to Court approval, is agreed to by the parties to review, process, administer and issue awards for all Claim Forms filed by Class Members.

12. "Claims Deadline" means the court-approved date by which all Claim Forms must be postmarked or received by the Claims Administrator 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 displayed on Class Counsel's Website.

13. "Class Notice" or "Notice" means the forms of notice to be disseminated to 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 Katherine Katz and Yudenia Mesa.

15. “Class Counsel” means Ralph P. Ferrara and Aaron L. Peskin of the Ferrara Law Group, P.C.

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. “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.

19. “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, 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.

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

21. “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 Class Members.

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

23. “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.

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

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

26. “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 Class Member to be excluded from the Class, and the date by which Class Members must submit objections to the Court and the parties, if any, to the Settlement in accordance with Section F herein.

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

28. “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.

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

30. “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 approving the Settlement, setting the date of the Final Approval Hearing, approving the Notice Program, Class Notice, and Claim Form, barring the commencement or pursuit of further litigation by Class Members (except as to any 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.

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

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

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

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

35. “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 Class Member who wishes to be excluded from the Class. Class Members must timely file the Request for Exclusion in order to effectively Opt-Out and be excluded from the Class.

36. “River Mews Building” means the building by the same name that is part of the Avalon at Edgewater Apartment complex, and which was purportedly damaged, but not destroyed, in The Fire on January 21, 2015.

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

38. “Class” and “Class Member(s)” means all tenants and occupants of the River Mews Building at Avalon at Edgewater as identified on the operative lease agreements as of January 21, 2015.

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 (including, without limitation, law clerks), and any member of their immediate families.

39. “Settlement Consideration” means the consideration exchanged by and between AvalonBay and the 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, 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 and/or decertification 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**

As soon as reasonably practical, 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. Schedule the Final Approval Hearing to: (i) review objections, if any, regarding the Agreement; (ii) consider further the fairness, reasonableness and adequacy of the

Settlement; (iii) consider Class Counsel's application for an award of attorneys' fees and reimbursement of expenses (in accordance with Section I below); (iv) determine the validity of Requests for Exclusion and exclude from the Settlement Class those Persons who validly and timely Opt-Out; (v) consider Class Counsel's application for payment of Incentive Awards to the named Plaintiffs (in accordance with Section I below); and (vi) 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);

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

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

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

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

g. Consider and approve the designation of American Legal Claim Services, LLC as the Claims Administrator;

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

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

j. Require any 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 Class Counsel and AvalonBay's Counsel, postmarked on or before the Opt-Out and Objection Date, a statement, signed by the objecting Class Member by hand, of his/her objection, as well as the specific reason, if any, for each objection, including any legal support the Class Member wishes to bring to the Court's attention and any evidence the Class Member wishes to introduce in support of his/her objection, and to state whether the Class Member and/or his/her counsel wishes to make an appearance at the Final Approval Hearing, or be forever barred from separately objecting;

k. 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 Class Member, except as to any Class Member who properly and timely files a Request for Exclusion;

l. 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

m. 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 800 pages of documents produced by Plaintiffs. Depositions of the Plaintiffs have been conducted. Further, Class 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.

## **D. SETTLEMENT CONSIDERATION**

In addition to all other Settlement Consideration set forth in the Agreement, 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 Administrator, shall have the right to obtain relief, as detailed herein.

### **1. SETTLEMENT CLAIMS PROCESS**

- a. AvalonBay shall pay \$3,000 to a tenant of each occupied unit in the River Mews Building at the time of the Fire who timely submits a validated Claim Form and completed

W-9. This amount is a per Unit amount and shall be paid regardless of the number of tenants and/or occupants in each Unit at the time of the Fire who submit an individual claim. In no event shall more than one payment in the amount of \$3,000 be issued to tenants of an individual Unit.

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

c. The Claims Administrator 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 Administrator will be able to evaluate all claims for the same Unit at the same time and not issue an award for duplicative claims. 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.38. 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 Administrator.

d. All Claims are to be submitted to an independent Claims Administrator, mutually agreed upon by the Parties, who shall assign a lead administrator 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 Administrator, with Class Counsel being made privy to the fee agreement and the payment of such fees and costs.

f. AvalonBay's Counsel and Class Counsel shall be required to simultaneously serve each other with all submissions provided to the Claims Administrator.

## **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. As set forth in the Claim Form, each Claimant will be required to provide personal identification and proof of residency in the River Mews Building at the time of the Fire. No further proof shall be necessary.

## **3. 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.

## **E. CLAIMS DEADLINES, CLAIM FORMS, AND CLAIMS ADMINISTRATOR**

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. 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. Class Members who make a timely Claim by submitting a signed Claim Form shall be provided the opportunity, upon notice from the Claims Administrator, to remedy deficiencies in such Class Member's Claim Form or related documentation.

2. Claim Forms must be signed by the Class Member by hand under penalty of perjury. Claim Forms will be made available by mail and for downloading from the websites maintained by Class Counsel. Class Members may submit completed and signed Claim Forms to

the Claims Administrator by mail, private courier, email or facsimile. AvalonBay agrees that information provided by 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 Administrator shall administer the relief for Class Members provided by the Agreement by processing Claims in a cost effective and timely manner. Nothing in this Stipulation shall require the Claims Administrator to issue Awards before the Effective Date – such actions are expressly prohibited. The Claims Administrator shall begin to process Claims only after the Claims Deadline. The determination of the validity of Claims shall be made by the Claims Administrator. The Claims Administrator shall maintain records of all Claims submitted. The Claims Administrator 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 Class or AvalonBay's Counsel upon request by Class Counsel and AvalonBay's Counsel. Claim Forms and supporting documentation will be kept confidential by the Claims Administrator and will be provided only to the Court upon request and to Class Counsel and AvalonBay's Counsel to monitor the progress of the payment of the Awards and monitor the filing of claims. Claims Administrator also shall provide such reports and such other information to the Court as it may require. Unless instructed otherwise, the Claims Administrator shall provide Class 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 Administrator.

4. The Claims Administrator will review and validate all Claims submitted by Class Members.

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

6. After the Claims Administrator has reviewed and validated all Claims, it shall notify Class Counsel and AvalonBay's Counsel of the number of valid Claims submitted. Upon notice of the exact number of valid Claims submitted, AvalonBay and/or its insurance carriers shall issue payment to the Claims Administrator in the amount of \$3,000 per valid Claim submitted and, in no event, shall payment exceed \$474,000.

7. Thereafter, Claims Administrator shall issue individual checks each in the amount of \$3,000 to the primary tenant of each apartment unit that submitted a valid Claim. In no event shall tenants from an individual unit receive more than one check. Payment is limited to \$3,000 per occupied apartment Unit. Such checks shall have an expiration date of 125 days from the date the check is mailed. No later than forty-five (45) days after the last expiration date of the delivered checks, the Settlement Administrator shall mail to AvalonBay's Counsel a check made payable to Gordon Rees Scully Mansukhani LLP Attorney Trust Account in the amount of any unclaimed funds.

**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 River Mews 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 Class 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 River Mews 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. Class Counsel shall also provide a direct link to the Notice of Settlement and Claim forms on its firm website (at its own expense);

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 Class Counsel. In the event that any email or mailing sent by the Claims Administrator to a Class Member is undeliverable or returned, the Claims Administrator shall notify both Class Counsel and AvalonBay's Counsel of such results on a weekly basis. 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 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 Class Members that, if they do not exclude themselves from the Class, they may be eligible to receive relief;
  - d. describe the procedures for participating in the Settlement and advise 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 Class Members under the Settlement is contingent on the Court's final approval of the proposed Settlement;
  - g. explain that neither Class Counsel, AvalonBay's Counsel, nor the Claims Administrator 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 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 Class Member, and has submitted copies of such papers to the Court and served copies of such papers on Class 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 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 Class Member who intends to object must do so, in a writing hand signed by the objecting Class Member, postmarked on or before the Opt-Out and Objection Date. In order to object, the Class Member must include in the objection submitted to the Court and served on Class 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 River Mews 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 River Mews Building apartment unit as the Person objecting. An objecting 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 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 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 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 Class Member must complete and send to the Court and copy Class 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 Class Member requesting exclusion and contain a statement that indicates a desire to be excluded from the Class.

9. Except for those Class Members who timely and properly file a Request for Exclusion, all other Class Members will be deemed to be 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 Class Member who timely and properly Opt-Out of the 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 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 Class Members, Class Counsel, and the Class Representatives' and 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, Class Members, and the Claims Administrator to interpret and enforce the terms, conditions, and obligations under the Settlement Agreement.

#### **I. COUNSEL FEES AND COSTS**

1. Class Counsel agree to make, and AvalonBay agrees not to oppose, only an application for the award of Attorneys' Fees and Expenses seeking up to the amount of \$466,000. The amount awarded by the Court for such Fees and Expenses will be paid by AvalonBay and/or its insurers within five business days after the Effective Date. 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 Class Counsel in connection with the Action, settlement process, or otherwise.

2. Class 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 \$15,000.00 per Plaintiff, to be paid by AvalonBay and/or its insurers. 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 \$15,000.00 per Class Representative to be paid by AvalonBay and/or its insurers. If awarded by the Court, such Incentive Awards shall be paid by AvalonBay directly to the Class Representatives within five business days after the Effective Date. The Class Representatives shall also be entitled to submit a Claim Form and participate in the Settlement as Class Members, and to all other rights accruing to 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 granting final approval of the Settlement pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, and providing 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 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;

b. Determine that the Agreement is entered into in good faith, is reasonable, fair and adequate, and is in the best interest of the Class;

c. Make all appropriate and necessary findings of fact required to enter a final judgment pursuant to Rule 54(b);

d. Dismiss the Amended Complaint with prejudice as to the Released Parties;

e. 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 Class Member in favor of each Released Party and that all Class Members are bound thereby;

f. Bar and enjoin all Releasing Parties from asserting against any Released Party any Released Claim;

i. Release each Releasing Party and Class Member, Class Counsel, and the Class Representatives' and 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 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.

2. Plaintiffs represent and warrant that they are entering into the Settlement Agreement on behalf of themselves, individually and as representatives of the 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. Class 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 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, 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 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 Class 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 Class Members, to the attention of Class 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 Class Counsel:

Ralph P. Ferrara  
Aaron L. Peskin  
**FERRARA LAW GROUP, P.C.**  
1100 State St.  
Suite 1100  
Trenton, NJ 08608  
Telephone: (609) 571-3738  
Facsimile: (609) 498-7440  
[ralph@ferraralawgp.com](mailto:ralph@ferraralawgp.com)  
[aaron@ferraralawgp.com](mailto:aaron@ferraralawgp.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](mailto:rgiller@gordonrees.com)  
[ddimuro@gordonrees.com](mailto: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 Class Member is given or will be given by AvalonBay, AvalonBay's Counsel, or Class Counsel; nor is any Party or their counsel providing any representation or guarantee respecting the tax consequences of the Settlement as to any Class Member. The Class Notice will direct Class Members to consult their own tax advisors regarding the tax consequences of the Settlement and any tax reporting obligations with respect thereto. Each 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 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. **Termination if Large Number of Opt-Outs.** All Class Members will be bound by any determinations and judgments in this action. In the event that the number of persons in the Settlement Class who validly and timely submit opt-out requests exceeds seven percent (7%) of the apartment units that comprise the Settlement Class, Defendant, in its sole and absolute discretion, may terminate this Agreement.

#### **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 Class Members without delay.

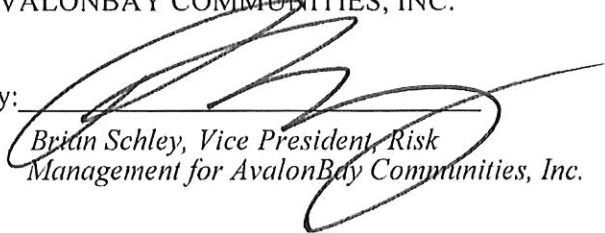
IN WITNESS WHEREOF, each of the Parties hereto has caused the Settlement Stipulation to be executed on its behalf by its duly authorized counsel of record, all as of the day set forth below.

AGREED:

Dated: May 24, 2019


AVALONBAY COMMUNITIES, INC.

By:

  
*Brian Schley, Vice President, Risk  
Management for AvalonBay Communities, Inc.*

Dated: May 24, 2019

FERRARA LAW GROUP, P.C.

By:   
Counsel for Plaintiffs

By: \_\_\_\_\_  
Kathleen Katz

By:   
Yudenia Mesa

Plaintiffs and Class Representatives

Dated: May 24, 2019

FERRARA LAW GROUP, P.C.

By: \_\_\_\_\_

*Counsel for Plaintiffs*

By: \_\_\_\_\_

Katherine Katz

By: \_\_\_\_\_

Yudenia Mesa

*Plaintiffs and Class Representatives*

# EXHIBIT A

**This Notice Was Authorized By The  
United States District Court, District Of New Jersey**

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**NOTICE OF CLASS ACTION SETTLEMENT WITH AVALONBAY  
COMMUNITIES, INC.**

*Katz v. AvalonBay Communities, Inc.*

Docket No.: 2:15-cv-02740-JLL-JAD

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- ▶ This is a Notice to inform you about a proposed settlement in a class action lawsuit against AvalonBay Communities, Inc., the operator of The Avalon at Edgewater located in Edgewater, New Jersey. The lawsuit concerns claims of negligence and private nuisance related to the January 21, 2015 fire that occurred at The Avalon at Edgewater (hereinafter “The Fire”).
- ▶ Defendant’s records show you are a Settlement Class Member, that is, that you were identified on the operative lease as a tenant or occupant of an apartment in the building commonly known as the River Mews Building at The Avalon at Edgewater as of January 21, 2015, the date of The Fire. This Notice describes the proposed Settlement and informs you of your rights.
- ▶ Please carefully read this Notice. If you do nothing, you will be included in the settlement and receive these benefits in exchange for releasing claims as described in this Notice:

Under the settlement, you will have the right to participate in a Settlement Claims Process as outlined in the Stipulation of Class Action Settlement whereby you can submit a claim form in order to be eligible for receipt of a flat payment.

Defendant will also pay the costs of the Settlement Claims Process and Class Counsel’s attorney fees.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND STAY IN THE CLASS	If you do nothing you will automatically remain in the Class and receive the benefits described on pages 5 through 8 of this Notice in exchange for releasing certain claims.
EXCLUDE YOURSELF FROM THE SETTLEMENT	If you take the steps necessary to exclude yourself from the settlement, you will not receive any benefit from the settlement but you will not release any claims you may have, and you will retain the right to bring your own lawsuit against Defendant if you wish to do so.
OBJECT	Remain a part of the Class but write to the court about why you don’t like the settlement.

Your rights and options –and the deadlines to exercise them– are explained in this notice.

**Do not be alarmed. You are not being sued. This is not a lawyer solicitation.**

## Summary

### What is the purpose of this Notice?

This Notice informs you of a proposed settlement of a class action lawsuit against AvalonBay Communities, Inc., the operator of The Avalon at Edgewater, located in Edgewater, New Jersey. You need to decide whether to remain in the Class and obtain the settlement benefits or to exclude yourself from the Class. If you exclude yourself from the Class, you will not receive any of the settlement benefits and you will not release any claims against the Defendant. If you wish to remain in the Class, you have the right to object to the settlement.

This Notice provides information to help you make these decisions and describes how to take advantage of your rights.

### What is this lawsuit about?

This class action lawsuit is about The Fire that occurred at The Avalon at Edgewater in Edgewater, New Jersey and claims against Defendant of negligence and private nuisance.

The Plaintiffs brought the lawsuit as a class action, asking the court to decide the case on behalf of themselves and all residents and occupants of the River Mews Building at The Avalon at Edgewater similar to them. Defendant denies any wrongdoing and that it violated any law. The claims of the lawsuit are described in response to Question #1 below.

The court has not decided who is right. To avoid the time, expense and uncertainty of litigation, the Parties have agreed to the settlement. This settlement has to be approved by the court, and not appealed or sustained on any appeal, before it becomes effective.

### What happens next?

The Court will decide whether to approve the proposed settlement at a Fairness Hearing currently scheduled for \_\_\_\_\_, 2019. You do not need to attend the Fairness Hearing. If you want to object to the settlement you must follow the directions in response to Question #10 below. If you wish to exclude yourself from the settlement, you must follow the directions provided in response to Question #9 below. The deadline for excluding yourself from the settlement or objecting to the settlement is \_\_\_\_\_, 2019. If you do nothing you will remain in the Class and receive the benefits described in response to Question #6 below.

If the settlement is approved and you have remained in the Class, you will have the right to participate in a Settlement Claims Process as outlined in the Stipulation of Class Action Settlement, whereby you can submit a claim form in order to receive payment.

## What This Notice Contains

### Basic Information..... PAGE 4

1. What is this lawsuit about?
2. What is a class action and who is involved?
3. Why did I get this Notice?
4. Why is there a settlement?
5. Who is representing the Class in this case?

### The Terms of the Settlement..... PAGES 5-6

6. What is the proposed settlement and what benefits will I receive?
7. What am I giving up by staying in the settlement and receiving benefits?

### Your Rights and Options .....PAGES 6-8

8. How do I participate in the settlement and receive its benefits?
9. What if I want to exclude myself from the Class and the settlement?
10. How can I object to the terms of the settlement?
11. What is the difference between objecting to the settlement and excluding myself from the Class?
12. What will happen at the Fairness Hearing?
13. How will I know if the settlement is approved?

### Additional Information .....PAGE 8-9

14. How may I obtain more information about the case?
15. What if my address changes?

# **Basic Information**

## **1. What is this lawsuit about?**

Plaintiffs' lawsuit alleges that Defendant was negligent and created a public nuisance in conjunction with the January 21, 2015 fire at the Avalon at Edgewater. Plaintiffs alleged that Defendant breached its duty to supervise, maintain and operate the facilities at Avalon at Edgewater.

Plaintiffs alleged that Defendant's actions both before and after The Fire significantly interfered with Plaintiffs' and Class Members' interests in the private use and enjoyment of their property and caused damages to Plaintiffs and Class Members. Plaintiffs' Complaint seeks money damages.

Defendant denies any wrongdoing and agreed to the settlement in order to avoid further litigation.

## **2. What is a class action and who is involved?**

In a class action lawsuit, a "Class Representative" can sue on behalf of other people who are in a similar position. In this case, Kathleen Katz and Yudenía Mesa are the "Class Representatives" and the "Plaintiffs." The court has already determined that people with similar claims are a "Class" or "Class Members." Since everyone in the Class has the same or similar claims, one court case can resolve the issues for everyone in the Class.

## **3. Why did I get this Notice?**

You received this Notice because Defendant's records show that you are a member of the Class, defined as all residents and occupants of the River Mews Building at Avalon at Edgewater as identified on the operative lease agreements as of January 21, 2015.

## **4. Why is there a settlement?**

Plaintiffs and Defendant have agreed to a settlement before going to trial in order to avoid the costs and uncertainties of litigation. The Class Representatives and Class Counsel believe the proposed settlement is in the best interest of the Class.

## **5. Who is representing the Class in this case?**

The Court appointed the following attorneys as "Class Counsel" to represent the Class:

Ralph P. Ferrara  
Aaron L. Peskin  
**FERRARA LAW GROUP, P.C.**  
1100 State St.  
Suite 1100  
Trenton, NJ 08608  
Telephone: (609) 571-3738  
Facsimile: (609) 498-7440  
[ralph@ferraralawgp.com](mailto:ralph@ferraralawgp.com)  
[aaron@ferraralawgp.com](mailto:aaron@ferraralawgp.com)

These attorneys are experienced in handling class actions. You may, but are not required to, hire your own attorney to represent you in this matter. If you want to be represented by your own lawyer, you will be responsible for paying his or her fees.

## **The Terms of the Settlement**

### **6. What is the proposed settlement and what benefits will I receive?**

If the settlement becomes final, you will receive the following benefits:

Defendant's records show that you are a member of the proposed Class, defined as all residents and occupants of the River Mews Building at Avalon at Edgewater as identified on the operative lease agreements as of January 21, 2015.

Under the settlement, you will have the right to participate in a Settlement Claims Process as outlined in the Stipulation of Class Action Settlement whereby you can submit a claim for \$3,000. The \$3,000 will be awarded on a per unit basis. Each class member must provide personal identification, and proof of residency in the River Mews Building at the time of the Fire. No further proof is required.

#### **Defendant Will Pay All Costs of Administering the Settlement Claims Process.**

Defendant has agreed to pay the costs and expenses of the Claims Administrator.

#### **Defendant Will Pay Fees of Class Counsel.**

Under the terms of the settlement, subject to court approval, Defendant will pay the reasonable attorneys' fees and costs of Class Counsel awarded by the Court in an amount not to exceed \$466,000. The payment of attorneys' fees by Defendant is in addition to the settlement benefits each Class Member will receive. No fees shall be deducted from the settlement amounts being provided to Class Members.

#### **Each Class Representative Will Receive an Additional Payment of \$15,000.00.**

Subject to Court approval, the Class Representatives will each receive a payment in the amount of \$15,000.00 in recognition of their efforts made on behalf of the Class. This payment will be in addition to any benefits they may receive as a Class member. These payments shall not be deducted from the amounts being provided to Class Members.

### **7. What am I giving up by staying in the Class?**

Anyone who remains in the Class will not be able to sue, or continue to sue, Defendant as part of any other lawsuit about the same legal claims that are the subject of this lawsuit. If you remain in the Class, you will be legally bound by all of the Orders the court issues and judgments the court makes in the proposed settlement.

Under the Stipulation of Class Action Settlement, if you remain a member of the Class, each Member of the Class for themselves, their heirs, successors and assigns shall and will have jointly and severally remised, released, acquitted and forever discharged Defendant, i.e. AvalonBay Communities, Inc. and its officers, directors, shareholders, employees, and their successors and assigns of and from any and all actions, causes of action, suits, claims, defenses, covenants, controversies, agreements, promises, damages, judgments, demands, liabilities and obligations in law including but not limited to claims of negligence and private nuisance that were made or that could have been made in the complaint

concerning the subject matter of the complaint. IF YOU BELIEVE YOU HAVE BEEN PHYSICALLY INJURED AS A RESULT OF THE FIRE AND WISH TO PURSUE CLAIMS BASED UPON THOSE INJURIES YOU SHOULD EXCLUDE YOURSELF FROM THIS CLASS.

You will remain in the Class and be bound by the release (which is more fully outlined in the Stipulation of Class Action Settlement) unless you remove yourself from the Class, as described below. If you do not remain in the Class you will not be releasing any claims. However, there is no guarantee that anyone who does not join the Class has any viable claims.

## **Your Rights and Options**

### **8. How do I participate in the settlement and receive the settlement benefits?**

You will be automatically included in the proposed settlement unless you exclude yourself. If you do not exclude yourself and the settlement is approved, you will receive the benefits described in the answer to Question 6. Please note though that neither Class Counsel, AvalonBay's Counsel, nor the Claims Administrator may advise on the tax consequences of participating or not participating in the settlement.

### **9. What if I want to exclude myself from the Class Settlement?**

If you don't want to release your claims in exchange for receiving the benefits described in this Notice, then you must take steps to exclude yourself, also known as opting out of or removing oneself from the settlement. If you exclude yourself from the settlement, you will be doing so for any and all claims related to The Fire.

A Class Member who wishes to Opt-Out of the Class must do so on or before the Opt-Out and Objection Date, \_\_\_\_\_, 2019. In order to Opt-Out, a Class Member must complete and send to the Clerk of the Court and copy Class Counsel and AvalonBay's Counsel a Request For Exclusion that is postmarked no later than the Opt-Out and Objection Date. The Request for Exclusion must (i) be personally signed by hand by the Class Member requesting exclusion, (ii) indicate that the Class Member is a member of the Class by identifying the unit within the River Mews Building that the Class Member was a resident or occupant of on January 21, 2015, (iii) clearly express the Class Member's desire to be excluded (or to "opt out") from the Class, and (iv) include the Class Member's name, address, and telephone number, and, if represented by counsel, counsel's name, address, and telephone number.

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

### **10. How can I object to the terms of the settlement?**

Objecting is telling the court that you do not approve of the settlement. Only those who have not excluded themselves from the Class are eligible to object to the terms of the settlement. To make an objection, you or your attorney must submit an objection in writing, as described below, and you or your attorney may, but are not required to, appear at the Fairness Hearing. At the Fairness Hearing, any person who has remained in the Class may appear in person or through counsel of his

or her own choosing, and at his or her own expense, and be heard to the extent allowed by the court to object to any aspect of the settlement.

Any Class Member who intends to object must do so, in a writing hand signed by the objecting Class Member, postmarked on or before the Opt-Out and Objection Date, \_\_\_\_\_, 2019. In order to object, the Class Member must submit the objection to the Clerk of the Court and serve the objection on Class Counsel and AvalonBay's Counsel. The objection must: (a) identify the Class Member by name; (b) identify the River Mews Building apartment unit number that the Class Member was a resident or occupant of as of January 21, 2015; (c) identify the Class Member's current street address and current electronic mail address, if any; (d) identify the names and, if known, addresses and telephone number(s) of any other persons who resided as of January 21, 2015 in the same River Mews Building apartment unit as the person objecting; (e) attach copies of any materials that will be submitted by or on behalf of the objecting Class Member to the Court or presented at the Fairness Hearing; and (f) clearly state in detail the legal and factual grounds for the objection, and, if represented by counsel, such counsel's name, address, and telephone number.

Except for good cause shown, no person (other than the parties and their respective representatives and counsel) may appear or be heard at the Fairness Hearing, or file papers, briefs, or other submissions regarding the Fairness Hearing, unless no later than 20 days before the date of the Fairness Hearing, such person or their counsel files with the Clerk of the Court and simultaneously serves on counsel for all parties at the addresses set forth in the Settlement Agreement a timely, written notice of request to appear at the Fairness Hearing. Such notice must state the name, address, and telephone number of the Class Member, as well as the name, address, and telephone number of any counsel who wishes to appear on behalf of the Class Member. The notice must also indicate that the Class Member has previously or contemporaneously objected to the settlement.

These addresses are as follows:

**The Court:**

Clerk of the Court  
United States District Court  
District of New Jersey  
Martin Luther King Building & U.S. Courthouse  
50 Walnut Street  
Newark, New Jersey 07101

**Plaintiffs' Counsel:** Ralph P. Ferrara

Aaron L. Peskin  
**FERRARA LAW GROUP, P.C.**  
1100 State St.  
Suite 1100  
Trenton, NJ 08608  
Telephone: (609) 571-3738  
Facsimile: (609) 498-7440  
ralph@ferraralawgp.com  
aaron@ferraralawgp.com  
Attorneys for Ms. Katz, Ms.  
Mesa and the  
Class

**Defendant'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

Any and all documents must contain a reference to *Katz v. AvalonBay Communities, Inc.*, Docket No.: 2:15-cv-02740-JLL-JAD. Any Class Member who does not object in the manner provided above may be deemed to have waived his or her objection and shall forever be foreclosed from objecting to the fairness, reasonableness, or adequacy of the proposed settlement or any payment of Class attorneys' fees and expenses and payment of the Class Representatives' incentive awards.

**11. What is the difference between objecting to the settlement and excluding myself from the Class?**

You can object only if you are a member of the Class. If you exclude yourself from the settlement, you may not object. You may not object and then exclude yourself. You may not exclude yourself and then object.

**12. What will happen at the Fairness Hearing?**

At the Fairness Hearing, presently scheduled for \_\_\_\_\_ on \_\_\_\_\_, 2019, the judge in the case, Hon. Joseph A. Dickson, U.S.M.J., will decide whether the settlement is fair, reasonable, and adequate and whether it should be given final approval. The judge will also consider any objections and determine whether the attorneys' fees and expenses and award to the Class Representatives set forth in the Stipulation of Class Action Settlement should be approved. **You are not required to attend the Fairness Hearing unless you or your attorney wish to do so.** You are welcome to attend at your own expense. The court may adjourn the Fairness Hearing without further written notice to the Class.

**13. How will I know if the settlement is approved?**

If the settlement is approved, you will receive a mailing from the Claims Administrator advising that the settlement has been approved. This mailing should take place within 30 days after the Fairness Hearing as set forth in the Answer to Question 12, above, unless approval of the settlement is appealed, in which case implementation of the settlement will be delayed. You may also contact Class Counsel.

## **Additional Information**

**14. How may I obtain more information about the case?**

**Do not contact the judge or the Clerk of the Court for legal questions or advice.** You may obtain copies of the complaint and other documents filed in this case from the Clerk of the Court, United States District Court, District of New Jersey, Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Newark, New Jersey 07101, Re: Docket No.: 2:15-cv-02740-JLL-JAD, during the hours when the Clerk's office is open. You will need to provide the Docket Number. You may contact Class Counsel at the addresses listed in the answer to Question 5 above.

**15. What if my address changes?**

If your address has changed, or changes in the future, you should send your new address and telephone number to \_\_\_\_\_, the company appointed by the Court to serve as Claims Administrator:

AVALONBAY SETTLEMENT ADMINISTRATOR  
C/O

**THIS NOTICE WAS AUTHORIZED BY THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF NEW JERSEY.**

# EXHIBIT B

**Subject:** PLEASE READ – Avalon at Edgewater Class Action Settlement

**Text:** You are receiving this e-mail because Defendant's records show you are a Settlement Class Member in a class action lawsuit against AvalonBay Communities, Inc., the operator of the Avalon at Edgewater located in Edgewater, New Jersey. The lawsuit concerns claims of negligence, private nuisance, and breach of contract related to the January 21, 2015 fire that occurred at the Avalon at Edgewater.

The attached Notice describes the proposed settlement and informs you of your rights. It is important that you read this Notice carefully.

If you are unable to open the attachment or have questions related to the attachment you can contact Class Counsel listed below:

Ralph P. Ferrara  
Aaron L. Peskin  
**FERRARA LAW GROUP, P.C.**  
1100 State St.  
Suite 1100  
Trenton, NJ 08608  
Telephone: (609) 571-3738  
Facsimile: (609) 498-7440  
ralph@ferraralawgp.com  
aaron@ferraralawgp.com

# EXHIBIT C

## CLAIM FORM

### CLASS MEMBER/CLAIMANT INFORMATION

Name of Individual Completing Form: \_\_\_\_\_ (Print)

River Mews Building Apartment No. \_\_\_\_\_ (As of January 21, 2015)

Name of Each Tenant/Occupant in Apartment as of January 21, 2015:

\_\_\_\_\_  
\_\_\_\_\_

Current Address: \_\_\_\_\_

### SIGNATURE SECTION

I \_\_\_\_\_ [insert name] hereby certify under penalty of perjury that the information included in this Claim Form is accurate to the best of my knowledge. I further understand and acknowledge that any falsification of information included in this form may be prosecuted to the fullest extent of the law.

Sign Name: \_\_\_\_\_ Date: \_\_\_\_\_

### NOTARY SECTION

STATE OF \_\_\_\_\_ )  
 )ss.  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, a Notary Public in and for said County in said State, hereby certify that \_\_\_\_\_ signed the foregoing Claim Form, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Claim Form, she/he executed the same voluntarily.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

# EXHIBIT D

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

**Plaintiff:**

KATHERINE KATZ, et al.

vs.

**Defendants:**

AVALONBAY COMMUNITIES, INC.

CIVIL ACTION NO: 2:15-cv-02740-JLL-JAD

**ORDER GRANTING FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT**

Before the Court is Plaintiffs' unopposed application requesting that the Court enter an Order granting final approval of a class action settlement involving Plaintiffs Katherine Katz and Yudenia Mesa (hereinafter "Plaintiffs") and Defendant AvalonBay Communities, Inc. (hereinafter "Defendant"), as fair, reasonable and adequate, awarding attorneys' fees and costs to Class Counsel as outlined herein, and awarding an incentive payment to Plaintiffs as detailed below.

Having reviewed and considered the Stipulation of Class Action Settlement, the application for final approval of the settlement, an award of attorneys' fees and costs, and an incentive award to the Plaintiffs, and having conducted a final approval hearing, the Court makes the findings and grants the relief set forth below approving the settlement upon the terms and conditions set forth in this Order.

**THE COURT** not being required to conduct a trial on the merits of the case or determine with certainty the factual and legal issues in dispute when determining whether to approve a proposed class action settlement; and

**THE COURT** being required under Federal Rule of Civil Procedure 23(e) to make the findings and conclusions hereinafter set forth for the limited purpose of determining whether the

settlement should be approved as being fair, reasonable, adequate and in the best interests of the Settlement Class;

**IT IS ON THIS** \_\_\_\_\_ day of \_\_\_\_\_, 2019,

**ORDERED** that:

1. The settlement involves allegations in Plaintiffs' Second Amended Class Action Complaint and Jury Demand against Defendant for Negligence, Private Nuisance, Breach of Contract, and Breach of the Implied Warranty of Habitability related to the January 21, 2015 fire at the apartment complex known as The Avalon at Edgewater.
2. Defendant has denied any wrongdoing and denies all liability alleged in the Complaint;
3. The settlement does not constitute an admission of liability by Defendant, and the Court expressly does not make any finding of liability or wrongdoing by Defendant.
4. Unless otherwise noted, words spelled in this Order with initial capital letters have the same meaning as set forth in the Stipulation of Class Action Settlement.
5. On \_\_\_\_\_ the Court entered a Preliminary Approval Order which among other things: (a) preliminarily approved the Stipulation of Class Action Settlement; (b) approved the form and manner of Notice to the Settlement Class; (c) set deadlines for opt-outs and objections; (d) approved and appointed the Claims Administrator; and (e) set the date for the Final Fairness Hearing.
6. The Court, having reviewed the terms of the Stipulation of Class Action Settlement submitted by the parties pursuant to *Rule 23(e)(2)*, grants final approval of the Stipulation of Class Action Settlement and finds that the settlement is fair, reasonable and adequate and meets the requirements of *Rule 23*.
7. The Stipulation of Class Action Settlement provides, in part, and subject to a more detailed description of the settlement terms in that Agreement, for:

- A. Defendant to pay \$3,000 per River Mews Building unit.
  - B. Defendant to pay all costs of Claims Administration and Settlement Administration, including the cost of Claims Administrator, mailing notice, and preparing and mailing checks.
  - C. Defendant to pay the reasonable attorneys' fees of Class Counsel in the amount of \$466,000.
  - D. Defendant to pay incentive awards of \$15,000.00 per Class Representative.
8. The terms of the Stipulation of Class Action Settlement Agreement are fair, adequate, and reasonable and are hereby approved, adopted, and incorporated by the Court. The parties, their respective attorneys, and Claims Administrator are hereby directed to consummate the settlement in accordance with this Order and the terms of the Stipulation of Class Action Settlement.
9. Notice of the Final Approval Hearing, the application for counsel fees and costs, and the proposed payments to the Class Representative have been provided to Settlement Class Members as directed by this Court's Orders, and proof of Notice has been filed with the Court by Defendant.
10. The Court finds that such Notice as therein ordered, constitutes the best possible notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Class Members in compliance with the requirements of Rule 23(c)(2)(B).
11. Only \_\_\_\_ of potential settlement class members have requested to be excluded from the Settlement which is less than \_\_\_\_ of the 158 occupied River Mews Building units, and less than \_\_\_\_% of the \_\_\_\_ residents and occupants of River Mews Building units who were successfully mailed notices.
12. The Court has considered all the documents filed in support of the settlement, and has fully considered all matters raised, all exhibits and affidavits filed, all evidence received at the

final hearing, all other papers and documents comprising the record herein, and all oral arguments presented to the Court.

13. Pursuant to the Stipulation of Class Action Settlement, Defendant, the Claims Administrator, and Class Counsel shall implement the settlement in the manner and time frame as set forth therein.

14. Pursuant to the Stipulation of Class Action Settlement, Plaintiffs and the Settlement Class Members release claims as follows:

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. Plaintiffs Katherine Katz and Yudenia Mesa and each Settlement Class Member fully, finally and forever settle, release and discharge all Released Parties from and against any and all Released Claims, including 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.

Upon occurrence of the Effective Date, and to the fullest extent permitted by law, Plaintiffs and each member of the Class either directly, indirectly, representatively, as a member or on behalf of the general public, or in any other capacity, are and shall be permanently barred and enjoined from commencing, prosecuting, or participating in any recovery in, any action in this or any other forum (other than participation in the settlement as provided for in this Stipulation) in which any of the Released Claims are asserted against the Released Parties.

Plaintiffs and each member of the Class have released all of their claims against Defendant that they could have brought in their Complaint including the release of all claims for personal injuries arising out of The Fire.

15. Pursuant to the Stipulation of Class Action Settlement, and in recognition of their efforts on behalf of the Class, the Court approves payments to Plaintiffs in the total amount of \$15,000.00 each as an incentive payment for their efforts on behalf of the Class. Defendant shall make such payment in accordance with the terms of the Stipulation of Class Action Settlement.
16. The Court, after careful review of the time entries and rates requested by Class Counsel, and after applying the appropriate standards required by relevant case law, hereby grants Class Counsel's application for attorneys' fees in the amount of \$466,000 to be paid by Defendant. This payment includes all costs and expenses for time already spent and time to be spent in this Litigation (excluding responding to Notices of Rejection, arbitration submissions, arbitration proceedings, appellate submissions and appellate proceedings as to which Class Counsel reserves the right to represent Class Members for an additional fee to be negotiated with the individual Class Member), including but not limited to finalizing the Settlement Agreement, preparing settlement documents, drafting briefs, communicating with the Settlement Class, attending hearings and monitoring of the settlement. Payment shall be made pursuant to the terms of the Stipulation of Class Action Settlement.
17. This Order resolves all claims against all parties in this action and is a final order.

18. The matter is hereby dismissed with prejudice and without costs except that the Court reserves jurisdiction over the consummation and enforcement of the settlement.
19. Counsel for the parties shall work together to ensure that notice of the entry of the this order will be provided to class members who did not opt-out (and who can be identified) within five business days.

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Honorable Joseph A. Dickson, U.S.M.J.

# EXHIBIT E

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

**Plaintiff:**

KATHERINE KATZ, et al.

vs.

**Defendants:**

AVALONBAY COMMUNITIES, INC.

CIVIL ACTION NO: 2:15-cv-02740-JLL-  
JAD

**FERRARA LAW GROUP, P.C.**

Ralph P. Ferrara, Esquire  
Aaron L. Peskin, Esquire  
50 W. State St.  
Trenton, New Jersey 08608  
(609) 571-3738  
Attorneys for Plaintiffs

**[PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT AND DIRECTING DISSEMINATION OF CLASS  
NOTICE**

THIS MATTER having been brought before the Court upon Motion of Class Counsel for an Order pursuant to Federal Rule of Civil Procedure 23(e), seeking preliminary approval of a class action settlement, and directing dissemination of class notice (the "Motion"); and

WHEREAS Defendant AvalonBay Communities, Inc. ("AvalonBay" or "Defendant") does not oppose Plaintiffs' Motion;

The Court having considered the pleadings and other papers on file, the argument of counsel, and for good cause shown;

IT IS on this \_\_\_\_ day of \_\_\_\_\_, 2019, ORDERED that the Motion is GRANTED, subject to the following terms and conditions:

1. The proposed Stipulation of Class Action Settlement dated May 24, 2019 (the "Settlement Agreement"), submitted with the Motion, is preliminarily approved as being within the range of potential final approval.

2. American Legal Claim Services, LLC is appointed as the Claims Administrator.

3. A final hearing (the "Fairness Hearing") shall be held before this Court on September 25, 2019 at 10 a.m., in Courtroom 2D of the United States District Court for the District of New Jersey, Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Newark, New Jersey, to review and consider any objections and the validity of requests for exclusion, and to determine whether (a) the Settlement Agreement should receive final approval as fair, reasonable, adequate and in the best interests of the Class; (b) orders granting final approval of the Settlement Agreement, entering final judgment and dismissing the Second Amended Class Action Complaint with prejudice as provided in the Settlement Agreement, should be entered; (c) applications of Plaintiffs' counsel for the payment of attorneys' fees and expenses as provided in the Settlement Agreement are reasonable and should be approved; and (d) applications for incentive awards to Plaintiffs as outlined in the Settlement Agreement are reasonable and should be approved. The Fairness Hearing may be postponed, adjourned or continued by further Order of this Court, without further notice to the parties or the members of the Class.

4. At the Fairness Hearing the Court will consider and determine whether the Settlement Agreement should be finally approved as fair, adequate and reasonable in light of any objections presented by the Class Members and the parties' responses to any such objections.

5. Any Class Member who has not timely filed a written request for exclusion from the Class pursuant to paragraph 6 of this Order may object to the fairness, reasonableness or adequacy of the settlement. Any member of the Class who so objects may appear at the Fairness Hearing, in person or through counsel, to show cause why the settlement should not be approved as fair, reasonable and adequate.

a. Each Class Member who wishes to object to any term of the Settlement Agreement must do so in writing by filing a written objection with the Clerk of the Court and mailing it to counsel for all parties at the addresses set forth in the Settlement Agreement. Any such objection must be filed with the Clerk of the Court and received by counsel for the parties no later than 30 days after the date of the Settlement Notice set forth in Exhibit A of the Settlement Agreement.

b. The objection must:

- i. Identify the Class Member by name;
- ii. Identify the unit within the River Mews Building that the Class Member was a resident or occupant on January 21, 2015;
- iii. Identify the Class Member's current street address and current electronic mail address, if any;
- iv. Attach copies of any materials that will be submitted by or on behalf of the objecting Class Member to the Court or presented at the Fairness Hearing;
- v. Be personally signed by the Class Member, and
- vi. Clearly state in detail the legal and factual grounds for the objection and if represented by counsel, such counsel's name, address, and telephone number.

c. Any objection that fails to satisfy the requirements of this paragraph, or that is not properly and timely submitted, shall not be effective, will not be considered by this Court, and will be deemed waived, and those Class members shall be bound by the final determination of this Court.

6. Any person included within the Class who wishes to be excluded, or to "opt out," from membership in the Class must do so in writing by mailing a request for exclusion from the settlement to the Clerk of the Court, so that such request is postmarked no later than 30 days from the date of the Settlement Notice set forth in Exhibit A of the Settlement Agreement.

a. Such request must (i) be personally signed by the Class Member, (ii) indicate that the Class Member is a member of the Class by identifying the unit within the River Mews Building that the Class Member was a resident or occupant on January 21, 2015, (iii) clearly express the Class Member's desire to be excluded (or to "opt out") from the Class, and (iv) include the Class Member's name, address and telephone number, and, if represented by counsel, counsel's name, address and telephone number.

b. Any person within the Class who wishes to be excluded from the Class can only exclude himself or herself and, except for minors, cannot opt out for any other person. No person within the Class may authorize another person to opt out on his or her behalf.

c. Any Class Member who has filed an objection to this fairness, reasonableness or adequacy of the settlement pursuant to paragraph 5 of this Order shall be deemed not to have opted out of the Class pursuant to this paragraph. In the event and to the extent that the Parties advise the Court that a Class Member has made a submission to the Court and the Parties which appears to assert both an objection to the fairness reasonableness or adequacy of the

proposed settlement, and a statement of intent to opt out of the Class, such Class Member shall be deemed to have objected to the settlement.

d. Any request for exclusion that fails to satisfy the requirements of this paragraph, or is not properly or timely submitted, shall not be effective, and the person making such a request shall be deemed to have waived all rights to opt out of the Settlement, and shall be a Class Member for all purposes pursuant to this Order.

7. Except for good cause shown, no person (other than the parties and their respective representative and counsel) may appear or be heard at the Fairness Hearing, or file papers, briefs or other submissions regarding the Fairness Hearing, unless no later than 20 days before the date of the Fairness Hearing, such person or their counsel files with the Clerk of the Court and simultaneously serves on counsel for all parties at the addresses set forth in the Settlement Agreement a timely, written notice of request to appear at the Fairness Hearing.

a. Such notice must state the name, address and telephone number of the Class Member, as well as the name, address and telephone number of any counsel who wishes to appear on behalf of the Class Member. The notice must also indicate that the Class Member has previously or contemporaneously objected to the settlement in compliance with paragraph 5 of this Order.

b. Any request to appear that fails to satisfy the above requirements, or that is not properly and timely submitted, shall not be effective and will not be considered by this Court, and the person who made such a request shall not be permitted to appear or be heard at the Fairness Hearing, or otherwise comment further on the settlement

8. The Court finds that the manner and content of (a) the Settlement Notice set forth in Exhibits A and B of the Settlement Agreement, and (b) the proposed Claim Form attached as

Exhibit C of the Settlement Agreement, will provide the best notice practicable to the Class under the circumstances. All costs incurred in connection with the preparation and dissemination of the notices to the Class as provided for in the Settlement Agreement shall be borne by AvalonBay.

9. If the Settlement Agreement is finally approved, the Court shall enter a separate Order finally approving the Settlement Agreement, entering judgment and dismissing the Second Amended Class Action Complaint. Such Order and Judgment shall be fully binding with respect to all members of the Class.

10. In the event that the proposed settlement is not finally approved by this Court, or in the event that the Settlement Agreement becomes null and void pursuant to the terms or is otherwise not consummated, this Order and all related Orders shall likewise become null and void, shall have no further force and effect, and shall not be used or referred to for any purposes whatsoever in this action or in any other case or controversy. In such event, the Settlement Agreement and all negotiations and proceedings directly related to the Settlement Agreement shall be deemed to be without prejudice to the rights of all of the Parties, who or which shall be restored to their respective positions preceding the execution of the Settlement Agreement.

11. The Parties shall abide by the following scheduled dates:

a. Within 20 days of entry of this Order, the Settlement Notice and a Claim Form shall be mailed by a claims administrator to all members of the Class for whom AvalonBay has records of such persons' mailing or e-mail addresses, as follows:

i. To the extent AvalonBay has an operative e-mail address for a Class Member, the claims administrator will send e-mail notification to that Class Member solely by means of providing, within the body of the e-mail, the text contained in Exhibit B of the Settlement Agreement, along with an attachment of the Settlement Notice and Claim Form.

ii. To the extent AvalonBay has a mailing address for a Class Member, the claims administrator will send direct mail notice to those Class Members, postage prepaid, enclosing a hard copy of the Settlement Notice.

12. Neither the Settlement Agreement, or any of its terms or provisions, nor any of the related negotiations or proceedings connected with it shall be construed as an admission or concession by AvalonBay of the truth of any of the allegations made by Plaintiffs in this action, or of any liability, fault or wrongdoing of any kind. Neither the Settlement Agreement nor any submission by any Party in connection with Plaintiffs' motion for preliminary or final approval of the Settlement or Plaintiffs' application for an award of attorneys' fees, expenses and incentive awards, any appeal from such motions or application, or any related motions or proceedings may be used in these actions or in any other proceeding for any purpose other than specified in the Settlement Agreement.

13. This Court hereby enters a Preliminary Injunction barring and enjoining Plaintiffs and all Class Members, to the extent permissible by existing law, from bringing, filing, commencing, prosecuting (or further prosecuting), maintaining, intervening in, participating in, or receiving any benefits from any other lawsuit, arbitration or administrative, regulatory or other proceeding in law or equity that asserts, arises from, concerns, or is in any way related to the Released Claims identified in the Settlement Agreement, until such time as this Court has ruled on the fairness of the settlement terms following the Fairness Hearing.

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HONORABLE JOSEPH A. DICKSON, U.S.M.J.