

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

SAMANTHA HENNESSY,)	
)	
Plaintiff,)	
)	
v.)	Case No. 4:17-CV-00872-BCW
)	
MID-AMERICA APARTMENT)	
COMMUNITIES, INC.,)	
<i>d/b/a MAA & Residences at</i>)	
<i>Burlington Creek,</i>)	
)	
Defendant.)	

ORDER FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT

Before the Court is Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action Settlement. (Doc. #28). The Court, being duly advised of the premises, and for good cause shown, grants said motion as follows.

IT IS HEREBY ORDERED:

I. PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT

A. The terms of the Settlement Agreement and Release (Doc. #29) including all Exhibits thereto (the “Agreement”), attached to the Motion (Doc. #28), are hereby preliminarily approved, subject to further consideration thereof at the Fairness Hearing provided for below. This Order incorporates herein, and makes a part hereof, the Agreement, including all Exhibits thereto. Unless otherwise provided herein, the terms used herein shall have the meaning ascribed to such terms. The Agreement was entered into only after extensive arm’s-length negotiations by experienced counsel. The Court finds that the settlement embodied in the Agreement (the “Class Settlement”) is sufficiently within the range of reasonableness so that notice of the Class Settlement should be given as provided in this Order. In making this determination, the Court has considered the current

posture of this litigation and the risks and benefits to the parties involved in both settlement of these claims and continuation of the litigation.

II. THE CLASS, CLASS REPRESENTATIVE, AND CLASS COUNSEL.

A. The Settlement Class is defined as follows:

Those individuals who (A) were residents of (i) the Dentons apartment community from January 15, 2015, the date of its acquisition by MAALP, through February 8, 2018; or (ii) the Market Station apartment community from September 20, 2012, the date of its acquisition by MAALP, through February 8, 2018; and (B) who either (i) had security deposits withheld relating solely to physical damage done to an apartment unit; or (ii) paid money directly to MAALP relating solely to physical damage done to an apartment unit.

By way of clarification, amounts paid to MAALP that do not relate to payments for physical damage to an apartment unit are not at issue in this case and are not to be paid to the Settlement Class.

Notwithstanding the foregoing, in compliance with 28 U.S.C. § 455, this class specifically excludes persons in the following categories: (A) the district judge and magistrate judge presiding over this case and the judges of the United States Court of Appeals for the Eighth Circuit; (B) the spouses of those in category (A); (C) any person within the third degree of relationship of those in categories (A) or (B); and (D) the spouses of those within category (C).

This class also specifically excludes persons employed by Defendants at any time from September 20, 2012 through February 8, 2018.

Excluded from the Settlement Class is any individual who properly opts out of the Settlement Class pursuant to the procedure described herein.

B. The Court preliminarily finds that the Settlement Class meets all the applicable requirements of FED. R. CIV. P. 23(a) and (b)(3), and hereby certifies the Settlement Class for

settlement purposes only. The Court hereby finds, in the specific context of this Class Settlement, that:

1. Numerosity.

The parties estimate that the Settlement Class includes approximately 500 persons who meet this class definition. The numerosity requirement of FED. R. CIV. P. 23(a) is satisfied. Joinder of these numerous members of the Settlement Class into one suit would be impracticable.

2. Commonality.

Common questions of law and fact exist with regard to the alleged conduct of Defendants for each of the members of the Settlement Class. Plaintiffs claim that Defendants violated the Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.020 Landlord-Tenants Actions, Mo. Rev. Stat. § 535.300, and also assert claims for Unjust Enrichment and Breach of Contract. These allegations present the common questions of whether Defendants' purported actions violated the Missouri Merchandising Practices Act and Missouri Landlord-Tenant Actions, and constituted Unjust Enrichment, and Breach of Contract as alleged. These issues are central to this case and, for purposes of this settlement only, are sufficient to establish commonality.

3. Typicality.

Plaintiffs allege that Defendants violated the Mo. Rev. Stat. § 407.020, when Plaintiffs were not given notice, either mailed, emailed, verbally, or in person, of the post move out inspection. Plaintiffs further allege that Defendants violated the Mo. Rev. Stat. § 535.300, when Defendants did not return Plaintiffs' security deposit. They also allege Defendants retained wrongfully collected money as a result of assessing damages resulting from an inspection for which the Plaintiffs did not receive notice. Plaintiffs thus allege that Defendants breached their Lease Agreement by not giving Plaintiffs reasonable written notice mailed to tenant's last known address, or in person, of the date and time when Defendants would inspect the premises prior to Plaintiffs vacating the premises. As a result,

Plaintiffs allege that they are entitled to statutory and punitive damages, attorneys' fees and costs. These claims are typical of the members of the Settlement Class and, therefore, the element of typicality is satisfied for purposes of this settlement only.

4. Adequate Representation.

Plaintiffs' interests do not conflict with those of absent Class Members. Additionally, this Court recognizes the experience of Class Counsel A.J. Stecklein, Michael H. Rapp, Keith J. Keogh and finds under FED. R. CIV. P. 23(g) that the requirement for adequate representation of the Settlement Class has been fully met.

5. Predominance of Common Issues.

Plaintiffs have raised common issues of whether Defendants violated the Mo. Rev. Stat. § 407.020 and Mo. Rev. Stat. § 535.300, and engaged in Unjust Enrichment, and Breach of Contract by not giving Plaintiffs reasonable written notice to tenants of the date and time when Defendants would inspect the premises prior to Plaintiffs vacating the premises and by retaining their security deposits thereafter. In the context of this Class Settlement, these issues predominate over any individual questions, favoring class treatment.

6. Superiority of the Class Action Mechanism.

The class action mechanism is ideally suited for treatment of the settlement of this matter. Class certification promotes efficiency among other reasons, because the many members of the Settlement Class will not be required to separately pursue claims or execute settlements in various courts.

C. The Court determines that Samantha Hennessy and Morgan Willis are adequate to represent the Settlement Class.

D. Pursuant to Fed. R. Civ. P. 23(g), the Court determines that Ms. Hennessy's and Ms. Willis' counsel, A.J. Stecklein, Michael H. Rapp and Keith J. Keogh, are adequate to represent the Class and appoints them Class Counsel.

III. NOTICE TO CLASS MEMBERS

A. The Court has considered the Class Notice, attached as Exhibit A to the Agreement, including the proposed forms of notice, and finds that the forms, content, and manner of notice proposed by the Parties and approved herein meet the requirements of due process and Fed. R. Civ. P. 23(c) and (e), are the best notice practicable under the circumstances, constitute sufficient notice to all persons entitled to notice, and satisfy the Constitutional requirements of notice. The Court approves the notice program in all respects (including the proposed forms of notice, Summary Notice and Full Notice) and orders that notice be given in substantial conformity therewith. The notice program shall commence no later than 30 days after entry of this Order, on or about **December 26, 2018** (the "Notice Deadline"). The costs of preparing, printing, publishing, mailing, and otherwise disseminating the notice shall be paid solely from the Settlement Fund in accordance with the Agreement.

B. The Court appoints American Legal Claim Services LLC as Claims Administrator. Responsibilities of the Claims Administrator shall include the following: (a) arranging for distribution of the Class Notice to members of the Settlement Class; (b) making any other mailings to members of the Settlement Class required under the terms of this Agreement; (c) answering any inquiries from members of the Settlement Class and/or forwarding such inquiries to Class Counsel or their designee as appropriate; (d) receiving and maintaining on behalf of the Court and the Parties any Settlement Class member correspondence regarding requests for exclusion from the Class Settlement; (e) receiving and processing exclusions and distributing payments to members

of the Settlement Class; and (f) otherwise assisting with implementation and administration of the terms of this Agreement.

IV. REQUESTS FOR EXCLUSION FROM THE SETTLEMENT CLASS

A. A member of the Settlement Class who wishes to be excluded from the Settlement Class must mail a written notice of exclusion to the Claims Administrator, so that it is postmarked no later than 60 days after the Notice Deadline, **February 26, 2019** (the “Opt-Out Deadline”), and shall clearly state his or her name and physical address and that he/she/their desires to opt-out of the settlement or otherwise do not wish to participate in the settlement.

B. Any Settlement Class Member who submits a valid request for exclusion, as set forth above, shall not be bound by the Agreement, or the Order of Final Approval. Upon receipt, the Claims Administrator shall promptly provide copies of each notice of exclusion to Class Counsel and Counsel for Defendants.

C. Any Settlement Class Member who does not properly and timely mail a notice of exclusion, as set forth above, shall be automatically included in the Settlement Class, and shall be bound by all of the terms and provisions of the Agreement, and the Order of Final Approval, whether or not such Settlement Class Member received actual notice or shall have objected to the Class Settlement. In no event shall members of the Settlement Class who purport to opt-out of the settlement as a group, aggregate, collective, or class involving more than one Settlement Class Member be considered a successful opt-out.

V. FAIRNESS HEARING

A. A hearing on final settlement approval (the “Fairness Hearing”) will be held on **August 9, 2019 at 10:00 a.m.** before this Court, at the United States District Court for the Western District of Missouri, U.S. Federal Building and Courthouse, 400 East 9th Street, Courtroom 7D, Kansas

City, MO 64106, to consider, inter alia, the following: (a) the fairness, reasonableness, and adequacy of the Class Settlement; (b) the dismissal with prejudice of the Litigation; (c) whether Class Counsel's application for attorneys' fees, expenses, and compensation for the Class Representatives (the "Fee Petition") should be granted; (d) whether to approve the proposed plan of allocation and distribution; and (e) whether to finally approve the Agreement, including the terms therein concerning release of claims by the Settlement Class and each of the Settlement Class members.

B. At least two weeks before the Fairness Hearing, Class Counsel shall file with the Court: (i) any memoranda or other materials in support of final approval of the Agreement and Class Settlement; and (ii) any Fee Petition.

C. Any Settlement Class Member who has not filed a notice of exclusion in the manner set forth above, and who has timely filed their objection may appear at the Fairness Hearing in person or by counsel and may be heard, to the extent allowed by the Court. However, no person shall be heard in opposition to the Class Settlement, dismissal or the Fee Petition, and no papers or briefs submitted by or on behalf of any such person shall be accepted or considered by the Court; unless filed with the Court and served upon Class Counsel and Counsel for Defendants listed below, within 60 days after the notice deadline. Such person must (a) file with the Clerk of the Court a notice of such person's intention to appear, as well as a statement that indicates the basis for such person's opposition and any documentation in support of such opposition within 60 days after Notice Deadline, and (b) serve copies of such notice, statement, and documentation, as well as any other papers or briefs that such person files with the Court, either in person or by mail, upon all counsel listed below, within 60 days after Notice Deadline. Members of the Settlement Class who object in the manner and by the dates provided herein, shall be subject to the jurisdiction of this Court. Members of the Settlement Class who fail to object in the manner and by the dates provided

herein, shall be deemed to have waived and shall forever be foreclosed from raising any such objections.

D. Counsel for the Parties who must be served with all documentation described above are as follows:

1. Counsel for Plaintiffs

A.J. Stecklein
Michael H. Rapp
Stecklein & Rapp Chartered
748 Ann Avenue
Kansas City, Kansas 66101

Keith J. Keogh
Keogh Law, Ltd.
55 W. Monroe Street, Suite 3390
Chicago, IL 60603

2. Counsel for Defendants

Gabriel Zorogastua, Esq.
POLSINELLI PC
900 W. 48th Place, Suite 900
Kansas City, Missouri 64112

Barry Goheen, Esq.
KING & SPALDING LLP
1180 Peachtree Street, N.E.
Atlanta, Georgia 30309

Katherine Stein, Esq.
KING & SPALDING LLP
500 W. 2nd Street, Suite 1800
Austin, Texas 78701

E. Any member of the Settlement Class may hire an attorney at his/ her or its own expense to appear in the action. Such attorney shall serve a Notice of Appearance on the Counsel listed above, and file it with the Court, within 60 days after the Notice Deadline.

F. The date and time of the Fairness Hearing shall be set forth in the Class Notice, but shall be subject to adjournment by the Court, without further notice to the members of the Settlement Class, other than that which may be posted at the Court, on the Court's website, and/or the Settlement Website.

VI. OTHER PROVISIONS

A. Upon Final Approval, each and every term and provision of the Agreement (except as may be modified by the Final Approval Order) shall be deemed incorporated into the Final Order and Judgment as if expressly set forth, and shall have the full force and effect of an Order of the Court.

B. In the event the Class Settlement is terminated in accordance with the provisions of the Agreement, the Class Settlement and all proceedings had in connection therewith, shall be null and void, except insofar as expressly provided in the Agreement, and without prejudice to the rights of Plaintiffs and Defendants, before they entered into the Agreement. Neither this Order, nor the Agreement, nor any documents or statements related thereto, shall constitute any evidence or admission of liability or wrongdoing by any Party, nor shall any such document or statement be offered into evidence, in this or any other proceeding, except to consummate or enforce the Agreement or the terms of this Order.

DATED: November 28, 2018

/s/ Brian C. Wimes
JUDGE BRIAN C. WIMES
UNITED STATES DISTRICT COURT

This Settlement Agreement and Release is entered into between and among the following parties (the “Parties” or, individually, each a “Party”), by and through their respective counsel: Samantha Hennessy and Morgan Willis (collectively referred to herein as the “Named Plaintiffs” or “Class Representatives”), on behalf of themselves and the Settlement Class (as hereinafter defined) and Mid-America Apartments Communities, Inc. (referred to herein as “MAA”) and Mid-America Apartments, L.P. (referred to herein as “MAALP” and together with MAA referred to herein collectively as the “Defendants” and individually as a “Defendant”). This Agreement (as hereinafter defined) fully and finally compromises and settles any and all claims that were or could have been asserted in the lawsuit styled as *Hennessy, et al. v. Mid-America Apartment Communities, Inc., et al.* 4:17-cv-00872-BCW (W.D. Mo.) (the “Litigation”).

WHEREAS, on September 8, 2017, the Named Plaintiffs filed a class action petition in the Circuit Court of Jackson County, Missouri at Kansas City, alleging willful violations of the Missouri Merchandising Practices Act, R.S. Mo. § 407.020 *et seq.* (“MMPA”) and Missouri Landlord-Tenants Actions, R.S.Mo. § 535.300, unjust enrichment, and breach of contract against the Defendants;

WHEREAS, on October 16, 2017, the Defendants filed a Notice of Removal from the Circuit Court of Jackson County, Missouri and the Litigation was then removed to the United States District Court of the Western District of Missouri (the “Court”);

WHEREAS, Named Plaintiffs alleged that they and other similarly situated individuals are entitled to statutory and punitive damages, attorneys’ fees and costs as a result of the alleged willful violations described above;

WHEREAS, the Parties conducted a mediation session with John Phillips of Husch Blackwell, a respected mediator, on February 7, 2018, through arm’s-length negotiations, and

reached an agreement in principle to resolve the Litigation, contingent upon the negotiation and execution by the Parties of a final agreement approved by the Court;

WHEREAS, for settlement purposes only, Named Plaintiffs will request that the Court certify the Settlement Class and appoint them as Class Representatives and their attorneys A.J. Stecklein, Michael H. Rapp and Keith J. Keogh as Class Counsel (as hereinafter defined) in this case;

WHEREAS, based on discovery and the experience of Class Counsel, the Class Representatives and Class Counsel have concluded that the terms and conditions of this Agreement are fair, reasonable, and adequate to the Settlement Class and in the best interests of the Settlement Class;

WHEREAS, the Class Representatives, on behalf of themselves and as the representatives of the Settlement Class, and the Defendants, desire to resolve the disputes between them;

WHEREAS, the Class Representatives, on behalf of themselves and as the representatives of the Settlement Class, and the Defendants, will execute this Agreement solely to compromise and settle protracted, complicated, and expensive litigation; and

WHEREAS, the Defendants vigorously deny any and all liability or wrongdoing to the Class Representatives and to the Settlement Class, but where the Defendants have nonetheless concluded that further conduct of the Litigation would be protracted and expensive, and have taken into account the uncertainty and risks inherent in this Litigation, and have determined that it is desirable that the Litigation be fully, completely, and finally settled in the manner and upon the terms set forth herein.

NOW, THEREFORE, in exchange for the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties and their respective counsel agree that the Litigation shall be settled, compromised, and dismissed with prejudice on the terms and conditions set forth in this Agreement, and without costs (except as provided herein), subject to Court approval of this Agreement after a hearing and upon finding that it is a fair, reasonable, and adequate settlement.

I. SETTLEMENT CLASS DEFINITION

For purposes of settlement only, the Parties agree to certification of the following as the Settlement Class:

Those individuals who (A) were residents of (i) the Dentons apartment community from January 15, 2015, the date of its acquisition by MAALP, through February 8, 2018 or (ii) the Market Station apartment community from September 20, 2012, the date of its acquisition by MAALP, through February 8, 2018 and (B) who either (i) had security deposits withheld relating solely to physical damage done to an apartment unit; or (ii) paid money directly to either Defendant relating solely to physical damage done to an apartment unit.

By way of clarification, amounts paid to either Defendant that do not relate to payments for physical damage to an apartment unit are not at issue in this case and are not to be paid to the Settlement Class.

Notwithstanding the foregoing, in compliance with [28 U.S.C. § 455](#), this class specifically excludes persons in the following categories: (A) The district judge and magistrate judge presiding over this case and the judges of the United States Court of Appeals for the Eighth Circuit; (B) the spouses of those in category (A); (C) any person within the third degree of relationship of those in categories (A) or (B); and (D) the spouses of those within category (C).

This class also specifically excludes persons employed by Defendants at any time from September 20, 2012 through February 8, 2018.

Persons meeting this definition are referenced herein collectively as the “Settlement Class.”

Excluded from the Settlement Class are any individuals who properly opt out of the Settlement

Class pursuant to the procedures described herein. The Parties agree that the Settlement Class contains approximately 500 persons who meet this class definition.

II. OTHER DEFINITIONS

As used in this Agreement, the following terms have the meanings set forth below. Terms used in the singular shall include the plural and vice versa.

- A. “Agreement” means this Agreement and all attachments and exhibits, which the Parties understand and agree set forth all terms and conditions of the settlement between them, and which is subject to Court approval. It is understood and agreed that the Defendants’ obligations for payment under this Agreement are conditioned on, among other things, Final Approval of the Agreement by the Court.
- B. “Class Counsel” means
- A.J. Stecklein
Michael H. Rapp
Stecklein & Rapp Chartered
748 Ann Avenue
Kansas City, Kansas 66101
- Keith J. Keogh
Keogh Law, Ltd.
55 W. Monroe Street, Suite 3390
Chicago, IL 60603
- C. “Class Notice” means the notice to be approved by the Court substantially in the form attached hereto as Exhibit A.
- D. “Class Released Claims” means any and all claims, demands, rights, liabilities and causes of action alleged relating to claims arising under the MMPA or R.S. Mo. § 535.300 and any analogous state law relating to security deposits and/or

notice of inspections that the Settlement Class members have or may have against the MAA Releasees, and constitutional claims and common law claims including but not limited to breach of contract and unjust enrichment, for any type of relief, including, without limitation, actual or statutory damages, punitive damages that were asserted or could have been asserted, interest, attorneys' fees, costs, expenses, restitution, or equitable relief, based on the facts alleged in the Complaint filed in this Litigation. Each member of the Settlement Class will retain any defense relating to other claims of amount due. For example, if either Defendant claims that back rent is due, the Settlement Class member will not waive their defenses, if any, to any such claim.

E. "Complaint" means the document titled "Class Action Petition" that was filed with the Circuit Court of Jackson County, Missouri at Kansas City on September 8, 2017, and removed to the Court on October 16, 2017.

F. "Counsel for Defendants" means

G. Gabriel Zorogastua, Esq.
POLSINELLI PC
900 W. 48th Place, Suite 900
Kansas City, Missouri 64112

Barry Goheen, Esq.
KING & SPALDING LLP
1180 Peachtree Street, N.E.
Atlanta, Georgia 30309

Katherine Stein, Esq.
KING & SPALDING LLP
500 W. 2nd Street, Suite 1800
Austin, Texas 78701

G. "Effective Date" means the date on which the Order of Final Approval becomes Final.

- H. “Fairness Hearing” means a hearing set by the Court to take place no sooner than 149 days after entry of the Preliminary Approval Order for the purpose of:
- (i) determining the fairness, adequacy and reasonableness of this Agreement and associated settlement pursuant to class action procedures and requirements; and
 - (ii) entering the Order of Final Approval.
- I. “Final” or “Finally Approved” or “Final Approval” of this Agreement means the later of the date that (i) the time has run for any appeals from the Order of Final Approval or (ii) any such appeals have been resolved in favor of approving, or affirming the approval of, this Agreement.
- J. “Incentive Payment” means the payment to the Class Representatives further described in Section III(F)(2) of this Agreement.
- K. “MAA Released Claims” means any claims for physical damage done to apartment units by any member of the Settlement Class. The Defendants will release and not attempt to directly or indirectly seek to collect any such amounts or transfer or sell any such purported debts. Any credit reporting relating to the damages claimed will be deleted or updated to show a zero balance. No provision of the Agreement will impact the Defendants’ ability to collect any other amounts claimed that are unrelated to damages to an apartment unit, such as outstanding rent.
- L. “MAA Releasees” means MAA, each of its affiliates, shareholders, subsidiaries (including, without limitation, MAALP), predecessors, successors, and assigns, as well as each of those entities’ past or present owners, investors, directors, officers, employees, partners, members, principals, agents, underwriters, insurers, co-

insurers, re-insurers, indemnitors, shareholders, attorneys, accountants or auditors, banks or investment banks, associates, personal or legal representatives, consultants, vendors, contractors, volunteers, performers, co-marketers, licensors, concessionaires, franchisors, and assigns.

- M. “Opt-Out Deadline” shall have the same meaning as set forth in the Preliminary Approval Order issued by the Court, in substantially the form set forth in Exhibit B, the date of which shall be 60 days after the deadline for notice to be sent to members of the Settlement Class.
- N. “Order of Final Approval” means an order to be entered and filed by the Court granting final approval to the settlement and this Agreement, and ruling on Class Counsel’s application for reasonable attorneys’ fees and expenses, and the Incentive Payment for the Class Representatives, substantially in the form attached hereto as Exhibit C, and dismissing with prejudice the claims of the Class Representatives and members of the Settlement Class who do not opt out as provided by this Agreement.
- O. “Preliminary Approval Order” means an order to be entered and filed by the Court preliminarily certifying the Settlement Class for settlement purposes only and granting preliminary approval to the settlement substantially in the form attached hereto as Exhibit D.
- P. “Request for Exclusion” means the written request that members of the Settlement Class are required to timely submit in order to opt out of the Settlement Class and this Agreement.

- Q. “Settlement Administrator” means American Legal Claim Services LLC, the third-party settlement administrator agreed upon by the Parties and approved by the Court that shall be responsible for administrative tasks related to the settlement, including, without limitation: (a) arranging for distribution of the Class Notice to members of the Settlement Class; (b) making any other mailings to members of the Settlement Class required under the terms of this Agreement; (c) answering any inquiries from members of the Settlement Class and/or forwarding such inquiries to Class Counsel or their designee as appropriate; (d) receiving and maintaining on behalf of the Court and the Parties any correspondence regarding requests for exclusion from the Settlement Class; (e) receiving and processing exclusions and distributing payments to members of the Settlement Class; (f) distributing checks to members of the Settlement Class, and (g) otherwise assisting with implementation and administration of the terms of this Agreement.
- R. “Settlement Amount” means the amount which the Defendants will provide totaling \$277,150.91 for the Settlement Class as follows: (1) the Defendants will create the Settlement Fund for distribution to the Settlement Class as detailed below; and (2) the Defendants will release any claims for physical damage caused to apartment units by any member of the Settlement Class, which totals \$88,150.91 as of February 8, 2018, the date on which a tentative settlement agreement was reached.
- S. “Settlement Fund” means the \$189,000 fund used to pay the Named Plaintiffs and Settlement Class for settlement of the Litigation and all Class Released Claims

pursuant to this Agreement, reduced by the following amounts: (1) the Incentive Payment to the Named Plaintiffs that the Court approves; (2) the reasonable attorneys' fees, costs, and expenses to Class Counsel that the Court approves; and (3) the fees and expenses of the Settlement Administrator that the Court approves.

T. "Settlement Website" means the website described in Section IV(B)(3) of this Agreement.

III. SETTLEMENT TERMS

A. Certification of Settlement Class and Conditional Nature of Agreement

For settlement purposes only, the Defendants conditionally agree and consent to certification of the Settlement Class. The Defendants' conditional agreement is contingent upon each and all of the following: (1) the execution of this Agreement by the Parties, (2) entry of an Order of Final Approval by the Court, and (3) the Order of Final Approval becoming Final. Except as provided below, if this Agreement, for any reason, is not Finally Approved or is otherwise terminated, it shall be null and void, it shall be of no force or effect whatsoever, it shall not be referred to or utilized for any purpose whatsoever, and the negotiation, terms and entry of the Agreement shall remain subject to the Local Rules of the United States District Court for the Western District of Missouri, the Federal Rules of Civil Procedure, the provisions of Federal Rule of Evidence 408, and any applicable state law or rule of civil procedure.

Defendants deny all of the claims as to liability, damages, losses, penalties, interest, fees, restitution, and all other forms of relief as well as the class action allegations asserted in the Litigation. The Defendants have agreed to settle this Litigation through this Agreement, but to the extent this Agreement is deemed void or Final Approval does not occur, the Defendants do not waive, but rather expressly reserve, all rights to challenge all such claims and allegations in

the Litigation upon all procedural and factual grounds, including without limitation the ability to challenge class action treatment on any grounds or assert any and all defenses or privileges. The Class Representatives and Class Counsel agree that the Defendants retain and reserve all of these rights and agree not to take a position to the contrary.

B. Settlement Amount

In full and final settlement of the Settlement Class's claims, the Defendants shall pay the Settlement Amount of Two Hundred and Seventy-Seven Thousand, One Hundred and Fifty Dollars and Ninety-One Cents (\$277,150.91) consisting of \$189,000 for distribution to the Settlement Class as detailed below and \$88,150.91 consisting of the Defendants' release of the MAA Released Claims. The Settlement Amount shall include, but is not necessarily limited to, the full and complete cost of Settlement Class benefits and compensation, all settlement notices and claims administration, all related administrative costs, the Class Representatives' Incentive Payment (if any is authorized by the Court) and Class Counsel's attorneys' fees and expenses (as authorized by the Court). Payment of the Settlement Fund will constitute the only payment obligation of the Defendants and it will be distributed as described in this Agreement.

C. All Class Released Claims Satisfied by Settlement Fund

Each member of the Settlement Class shall look solely to the Settlement Fund for settlement and satisfaction of all Class Released Claims as provided in this Agreement.

D. Settlement Fund

The Defendants will pay the Settlement Fund to the Settlement Administrator by wire transfer within 10 days after the Effective Date. After entry of the Preliminary Approval Order, the Defendants will advance to the Settlement Administrator funds necessary to send notice and administer the settlement, which shall come from, and reduce, the Settlement Fund. Expenses

associated with the administration of the settlement shall be eligible for reimbursement as approved by the Court from the Settlement Fund. The Defendants shall have no further payment obligations to the Named Plaintiffs or members of the Settlement Class, or to Class Counsel or the Settlement Administrator, upon payment of a total of \$189,000.00 to the Settlement Administrator.

The members of the Settlement Class who submit claims shall be entitled to a pro rata share of the Settlement Fund after administration expenses and any Court-approved Incentive Payment and attorney fees and costs. Upon the Effective Date, the Defendants will release the MAA Released Claims against each member of the Settlement Class regardless of whether such member of the Settlement Class filed a claim.

Each Settlement Class member's claim, if submitted, shall equal (i) two (2) times the amount of any security deposit withheld solely as a result of physical damage done to an apartment unit, if any; plus (ii) any amount paid by a Settlement Class member directly to either Defendant relating solely to physical damage done to an apartment unit, if any. Amounts paid to either Defendant that do not relate to payments for physical damage done to an apartment unit will not be paid to the Settlement Class.

There is no claim needed to obtain the release for any claims for physical damage done to apartment units by any member of the Settlement Class. For any Settlement Class member, Defendants will release and not attempt to directly or indirectly seek to collect any such amounts or transfer or sell any such purported debts. Any credit reporting relating to the damages claimed will be deleted or updated to show a zero balance. No provision of the Agreement will impact the ability of either Defendant to collect any other amounts claimed that are unrelated to damages to an apartment unit, such as outstanding rent.

The distribution shall be as follows:

1. Settlement Payments shall be paid by check. The Settlement Administrator shall mail, by first-class mail, a check to each claiming member of the Settlement Class eligible to receive payment, postmarked within twenty (20) business days after the Effective Date. The Settlement Administrator will perform skip tracing and re-mailing, as reasonably necessary. Checks will be valid for 180 days from the date on the check. The amounts of any checks that are returned as undeliverable or that remain uncashed more than 180 days after the date on the check will be included as part of the *cy pres* distribution described below. The Parties agree that all members of the Settlement Class waive and abandon any ownership interest in any undeliverable, returned, uncashed, or non-negotiated checks and further agree that no obligation has been generated or proven with respect to such undeliverable, returned, uncashed, or non-negotiated checks.
2. Taxes. The Parties agree the payments to each member of the Settlement Class and to the Named Plaintiffs are not wages, and each member of the Settlement Class and the Named Plaintiffs will be solely responsible for correctly characterizing their payment(s) for tax purposes and for paying any taxes owed on such payments.
3. Remaining Funds. There will be a second distribution for uncashed checks provided that the value of the check after re-mailing costs exceeds \$10. If it does not exceed \$10, uncashed checks will be given to *cy pres*. The Parties will endeavor to agree to a *cy pres*, but if they cannot agree,

the Parties shall submit their selection to the Court following all distributions.

E. Reversion to the Defendants if Final Approval Does Not Occur or Is Voided

In the event the Agreement is not Finally Approved or is cancelled or terminated or otherwise becomes null and void for any reason, the remainder of the Settlement Fund, net of actual costs incurred for distribution of the Class Notice, shall revert back to the Defendants.

F. Attorneys' Fees and Class Representatives Incentive Payment

To the extent that the Court orders an award of attorneys' fees and expenses to Class Counsel, or an Incentive Payment to the Class Representatives, such awards will be paid from the Settlement Fund by the Settlement Administrator within twenty (20) business days after the Effective Date.

1. Attorneys' Fees and Expenses

The Named Plaintiffs will petition the Court for reasonable attorney's fees equal to \$92,383.64, representing one-third of the Settlement Amount plus reasonable costs. This award shall be Class Counsel's total recovery for attorneys' fees, costs, and adequately supported expenses of any kind (including, but not limited to, mediation fees, travel, filing fees, court reporter, and videographer expenses, expert fees and costs, and document review and production costs). Class Counsel shall be responsible for allocating and shall allocate all attorneys' fees and expenses that are awarded by the Court among Class Counsel, and the Defendants shall have no responsibility, role, or liability in connection with such allocation.

2. Incentive Payment to Class Representatives

The Settlement Administrator shall be responsible for distributing to the Class Representatives any Incentive Payment awarded by the Court, which shall come from the

Settlement Fund. Named Plaintiffs will petition the Court for an Incentive Payment to the Named Plaintiffs of \$2,500 each to be paid from, and reduce, the Settlement Fund.

G. Motion for Preliminary Approval

As soon as practicable after the Parties execute this Agreement, and concurrent with submission of this Agreement for the Court's consideration, Class Counsel shall submit to the Court a motion for preliminary approval of this Agreement.

IV. SETTLEMENT ADMINISTRATION

A. Settlement Administrator

The Settlement Administrator may appoint as many settlement administration officers, experts, and/or advisors as are necessary to carry out the duties of the Settlement Administrator expeditiously. The cost of notices and administration shall be paid from the Settlement Fund. The Settlement Administrator procedures shall be subject to Court approval and under the continuing jurisdiction of the Court. The Settlement Administrator shall be responsible for disseminating information to members of the Settlement Class concerning settlement procedures. In addition, the Settlement Administrator shall assist the Court in processing and tabulating opt-out requests, shall receive all opt-out forms and documentation, shall process and pay members of the Settlement Class as provided in this Agreement and any applicable orders of the Court, and shall operate under the continuing supervision of the Court.

B. Notice

1. Mailing

A copy of the Class Notice shall be mailed by first class mail to every member of the Settlement Class for which there is address information by the deadline established by the Preliminary Approval Order. Such mailing shall be completed by the Settlement Administrator.

If it has not already done so, within ten (10) business days after signing this Agreement, the Defendants shall provide the Settlement Administrator with all address information it has for members of the Settlement Class in Excel format. For those members of the Settlement Class for whom the Defendants do not have address information, the Defendants shall produce information, if any, it does have about them that reasonably may assist the Settlement Administrator in obtaining address information for any such members of the Settlement Class. Addresses and any other contact information for the members of the Settlement Class shall be kept confidential by the Settlement Administrator.

2. Notices Returned as Undeliverable

For each Class Notice returned to the Settlement Administrator without forwarding addresses, the Settlement Administrator will use publicly available databases as practicable to update addresses for the members of the Settlement Class and will cause the Class Notice to be re-mailed to such members of the Settlement Class who can be located.

3. Settlement Website

Within five (5) business days after entry of the Preliminary Approval Order, Class Counsel will cause a Settlement Website to become active at the following URL, or such other URL as agreed to by the Defendants: www.missourisecuritydepositclassactionmaa.com. The Settlement Website shall include hyperlinks to allow access to the Complaint, this Agreement, the Class Notice, and the Preliminary Approval Order. The Settlement Website will also contain plain-language Frequently Asked Questions. Within two (2) business days of any the following documents being filed, the Settlement Website will also be updated to include copies of: the Named Plaintiffs' Motion for Attorney Fees and Costs, the Named Plaintiffs' Motion for Incentive Payments, the Motion for Final Settlement Approval and all exhibits submitted in

support thereof, and any further orders issued by the Court, including the Order of Final Approval. This information shall remain on the Settlement Website until the date that is 30 days after the void date of the Settlement Class members' checks. The Settlement Website shall not contain any direct hyperlinks to Class Counsel's websites. If Class Counsel is unable to host the Settlement Website as specified in this paragraph, the Settlement Administrator shall instead host the Settlement Website described above at a different URL, subject to the Defendants' approval.

4. Opt-Out

The Class Notice shall provide a procedure whereby members of the Settlement Class may exclude themselves, or "opt out," from the Settlement Class by mailing a Request for Exclusion. On or before the Opt-Out Deadline, but no more than sixty (60) days after the mailing date of the initial Class Notice, each member of the Settlement Class who elects to opt out of the settlement must send, by first-class U.S. mail, written notice addressed to the Settlement Administrator indicating his or her name and address and stating that he or she desires to opt-out of the settlement or otherwise does not want to participate in the settlement. Any member of the Settlement Class who does not validly and timely (as measured by the postmark date on that individual's written request) request exclusion shall be a member of the Settlement Class and shall be bound by the terms of this Agreement and by any orders of the Court regarding the settlement or the Settlement Class. In no event shall members of the Settlement Class who purport to opt-out of the settlement as a group, aggregate, collective, or class involving more than one member of the Settlement Class be considered a successful opt-out.

5. Objections

The Class Notice shall also provide a procedure for members of the Settlement Class to object to the settlement set forth herein and any of its terms. Any member of the Settlement Class

who wishes to object to the settlement must file a timely written statement of objection with the Clerk of Court, and mail a copy of that objection with the requisite postmark to Class Counsel and Counsel for the Defendants no later than the objections deadline set by the Court. The notice of objection must state the case name and number; the basis for and an explanation of the objection; the name, address, telephone number, and email address of the Settlement Class member making the objection; and a statement of whether the Settlement Class member intends to appear at the Fairness Hearing, either with or without counsel. In addition, any objection must be personally signed by the Settlement Class member and, if represented by counsel, then by counsel. Any Settlement Class member who fails to make objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objections, whether by appeal or otherwise, to the settlement. No Settlement Class member shall be entitled to contest in any way the approval of the terms and conditions of this Agreement or the Order of Final Approval except by filing and serving written objections in accordance with the provisions of this Agreement. Any Settlement Class member who fails to object in the manner prescribed shall be deemed to have waived and shall be foreclosed forever from raising any objections to the settlement.

6. Non-Approval of Agreement

This Agreement is conditioned on Final Approval without material modification by the Court. In the event that the Agreement is not so approved, the Parties shall return to the status quo ante as of the date of this Agreement, as if no Agreement had been negotiated or entered into. Moreover, the Parties shall be deemed to have preserved all of their rights or defenses as of the date of the Agreement, and shall not be deemed to have waived any substantive or procedural rights of any kind that they may have as to each other or any member of the proposed Settlement

Class. In the event that the Agreement is approved without material modification by the Court, but is later reversed or vacated on appeal and such reversal or vacation would require material modifications to the Agreement, each of the Parties shall have a right to withdraw from the Agreement and return to the status quo ante as of the date of this Agreement, for all litigation purposes, as if no Agreement had been negotiated or entered into, and shall not be deemed to have waived any substantive or procedural rights of any kind that they may have as to each other or any member of the proposed Settlement Class.

7. Defendants' Rights to Terminate Agreement

The Defendants' willingness to settle this Litigation on a classwide basis and to agree to the certification of the Settlement Class is dependent upon achieving finality in this Litigation, and the desire to avoid further expense in this Litigation. Consequently, the Defendants shall have the right in their sole discretion to terminate this Agreement, declare it null and void, and have no further obligations under this Agreement to Named Plaintiffs, Settlement Class members, or Class Counsel if any of the following conditions subsequently occurs: (1) the Court fails or declines to grant preliminary approval pursuant to the terms of the Preliminary Approval Order; (2) more than 4% of the Settlement Class members request to opt-out of the settlement pursuant to Section IV(B)(4), above; (3) the Court materially modifies the terms of the MAA Releasees or Class Released Claims; or (4) the Effective Date does not occur unless such failure to occur is attributable to Defendants..

8. CAFA Notice

The Settlement Administrator will serve any notices required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, by no later than ten (10) days after the entry of the Preliminary Approval Order.

9. Fairness Hearing

The Parties will petition the Court to hold a final Fairness Hearing and to enter the Order of Final Approval. The Parties agree to cooperate in scheduling the Fairness Hearing so it shall be held as soon as practicable, but in no event before 90 days after the Settlement Administrator has issued the required CAFA notices.

C. Retention of Records

The Settlement Administrator shall retain all records relating to payment of claims under this Agreement for a period of five (5) years from the Effective Date. The confidentiality of those records shall be maintained in accordance with the Preliminary Approval Order.

V. EXCLUSIVE REMEDY/DISMISSAL OF CLAIMS/JURISDICTION

A. Exclusive Remedy

This Agreement shall be the exclusive remedy for any and all Class Released Claims, any claims arising out of the subject matter of this Agreement, and any complaints by the Settlement Class or any member of the Settlement Class against any or all of the MAA Releasees related to the Class Released Claims. No MAA Releasee shall be subject to liability or expense of any kind to the Settlement Class or any Settlement Class member related to the Class Released Claims except as provided in this Agreement. This Agreement shall be binding upon, and inure to the benefit of, the Parties' successors and assigns.

B. Dismissal of Claims

The Parties agree that upon the Effective Date of this Agreement, the Litigation shall be dismissed with prejudice in accordance with the Order of Final Approval.

C. Jurisdiction

The Court shall retain exclusive and continuing jurisdiction over this Litigation, the Parties, and this Agreement with respect to the performance of its terms and conditions (and disputes arising out of or relating to this Agreement), the proper provision of all benefits, and the implementation and enforcement of its terms, conditions, and obligations.

VI. RELEASES

A. Class Release of MAA Releasees

Upon the Effective Date of this Agreement, the MAA Releasees shall be released and forever discharged by the Class Representatives, the Settlement Class, and each member of the Settlement Class from all Class Released Claims. The Settlement Class and each member of the Settlement Class covenant and agree that they shall not hereafter seek to establish liability against any MAA Releasee based, in whole or in part, on any of the Class Released Claims. The Class Representatives, the Settlement Class, and each member of the Settlement Class further expressly waive and relinquish any and all rights which they may have under Section 1542 of the California Civil Code or any similar statute of the United States. Section 1542 reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The Class Representatives, the Settlement Class, and each member of the Settlement Class may hereafter discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Class Released Claims, but the Class Representatives, the Settlement Class, and each member of the Settlement Class, upon the Effective Date, shall be deemed to have, and by operation of the Order of Final Approval shall

have, nevertheless, fully, finally, and forever waived, settled and released any and all Class Released Claims, regardless of such subsequent discovery of additional or different facts.

B. Named Plaintiffs' Release of MAA Releasees

Upon the effective date of this Agreement, Named Plaintiffs irrevocably and unconditionally release, acquit, and forever discharge the MAA Releasees from any and all claims, charges, demands, causes of action, liabilities, and legal obligations of any nature, known or unknown, which Named Plaintiffs now have or claim to have, including claims arising under their lease, under the MMPA, or under R.S.Mo. § 535.300 and any analogous state law relating to security deposits and notice of inspections. Named Plaintiffs understand and agree that any and all claims, etc. they may now have against all MAA Releasees are released for all purposes and all times and that such claims, charges, demands, and/or causes of action will never be brought by them in any court or before a governmental agency or any other tribunal.

C. No Release of Claims Unrelated to Physical Damages

No provision of this Agreement will impact Defendants' ability to collect any other amounts claimed that are unrelated to physical damages to an apartment unit, such as outstanding rent. Likewise, Settlement Class members will retain any and all defenses relating to these unreleased claims, including but not limited to defenses to claims involving outstanding rent.

VII. MISCELLANEOUS PROVISIONS

A. Cooperation to Facilitate this Settlement

The Parties agree that they shall work together in good faith to facilitate this settlement, as well as undertake any required steps to effectuate the purposes and intent of this Agreement.

B. Representation by Counsel

The Parties represent and warrant that they have been represented by, and have consulted with, the counsel of their choice regarding the provisions, obligations, rights, risks, and legal effects of this Agreement and have been given the opportunity to review independently this Agreement with such legal counsel and agree to the particular language of the provisions herein.

C. No Admission of Liability

Nothing in this Agreement, or the Parties' willingness to enter into this Agreement, shall be construed as an admission by any Party, person, or entity, of any liability or wrongdoing of any Party, or of the truth of any allegations made by the Class Representatives, on behalf of themselves or the Settlement Class, against the Defendants. The Defendants expressly deny and disclaim any liability or wrongdoing. The existence, contents, and terms of this Agreement, and any negotiations, statements, or proceedings in connection therewith, shall not be admissible in evidence for any such purpose in any proceeding, except solely for purposes of enforcement of its terms; however, this Agreement may be used by either Party and pleaded as a full and complete defense to any action, suit, or other proceeding that has been or may be instituted, prosecuted or attempted with respect to any of the Class Released Claims or MAA Released Claims, and may be filed, offered, and received into evidence, and otherwise used for such defense.

D. Contractual Agreement

The Parties understand and agree that all terms of this Agreement are contractual and are not a mere recital, and each signatory warrants that he or she is competent and possesses the full and complete authority to execute and covenant to this Agreement on behalf of the Party that he or she represents.

E. Change of Time Periods

The time periods and/or dates described in this Agreement with respect to the giving of notices and hearings are subject to approval and change by the Court or by written agreement of Class Counsel and Counsel for the Defendants, without notice to members of the Settlement Class. The Parties reserve the right, by agreement and subject to Court approval, to grant any reasonable extension of time that might be needed to carry out any of the provisions of this Agreement.

F. Integration

This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. This Agreement supersedes all prior representations, agreements, understandings, both written and oral, by and among the Parties, or any of them, with respect to the subject matter of this Agreement. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein, and no Party is relying on any prior oral or written representations, agreements, understandings, or undertakings with respect to the subject matter of this Agreement.

G. Drafting

The Parties agree that no single Party shall be deemed to have drafted this Agreement, or any portion thereof, for purpose of the invocation of the doctrine of *contra proferentem*. This Agreement is a collaborative effort of the Parties and their respective attorneys.

H. Costs

Except as otherwise provided herein, each Party shall bear its own legal and other costs incurred in connection with the Class Released Claims and MAA Released Claims, including the preparation and performance of this Agreement.

I. Modification or Amendment

This Agreement may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by the Parties who executed this Agreement or their successors-in-interest.

J. No Waiver

The failure of a Party hereto to insist upon strict performance of any provision of this Agreement shall not be deemed a waiver of such Party's rights or remedies or a waiver by such Party of any default by another Party in the performance or compliance of any of the terms of this Agreement. In addition, the waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

K. Severability

Should any part, term, or provision of this Agreement be declared or determined by any court or tribunal to be illegal or invalid, the Parties agree that the Court may modify such provision to the extent necessary to make it valid, legal, and enforceable. In any event, such provision shall be separable and shall not limit or affect the validity, legality, or enforceability of any other provision hereunder; provided, however, that the terms of this Paragraph shall not apply should any court or tribunal find any part, term, or provision of the release, as set forth in Section VI, to be illegal or invalid in any manner.

L. No Consent

To the Parties' knowledge and belief, except as expressly provided herein, no consent, authorization, action, or approval of, notice to or filing with, waiver or exemption by, any person or entity which has not been obtained, including, without limitation, any governmental, public or self-regulatory body or authority, is required in connection with the execution, delivery, and performance of this Agreement or consummation of the transactions contemplated hereby by the Parties hereto.

M. No Violation of Law or Agreement

The execution, delivery, and performance of this Agreement by the Parties hereto does not and will not, conflict with, violate, result in a breach of, or cause a default under, (a) any applicable provision of any federal, state, or local law or regulation, (b) any provision of any order, arbitration award, judgment, or decree, or (c) any provision of any agreement or instrument applicable to the Parties.

N. Choice of Law

All terms and conditions of this Agreement shall be governed by and interpreted according to the laws of the State of Missouri, without reference to its conflict of law provisions, except to the extent the federal law of the United States requires that federal law governs. The adequacy of the settlement, and any determination regarding Class Counsel's fees and expenses, and the Incentive Payment, shall be governed by federal law.

O. Fair and Reasonable

The Parties and their counsel represent that this Agreement is a fair and reasonable compromise of the disputed claims and is in the best interest of the Parties and that the Parties have arrived at this Agreement as a result of extensive arms-length negotiations.

P. Headings

Any headings contained herein are for informational purposes only and do not constitute a substantive part of this Agreement. In the event of a dispute concerning the terms and conditions of this Agreement, the headings shall be disregarded.

Q. Exhibits

The Exhibits to this Agreement are expressly incorporated and made part of the terms and conditions set forth herein.

R. Counterparts

This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Agreement shall exchange among themselves original signed counterparts.

S. Facsimile and Electronic Mail

Transmission of a signed Agreement by facsimile or electronic mail shall constitute receipt of an original signed Agreement by mail.

T. Warranty of Signature

Each signer of this Agreement represents and warrants that he or she is authorized to execute this Agreement in his or her official capacity on behalf of the Party to this Agreement for which he or she is signing and that this Agreement is binding on the principal represented by that signatory.

U. No Assignment

The Parties represent and warrant that they have not assigned or otherwise transferred (via subrogation or otherwise) any right, title, or interest in or to any claims, causes of action, or demands which were or could have been, or ever could be asserted and that are released in this

Agreement, or which were, could have been, or ever could be asserted. In the event of any breach of the representations and warranties set forth in this Paragraph, the breaching Party shall indemnify and hold harmless the non-breaching Parties from any and every claim or demand of every kind or character arising out of a breach by the breaching Party of their representations and warranties in this Paragraph.

V. Confidentiality

1. The Parties agree that any confidential information made available to them solely through the settlement process was made available, as agreed to, on the condition that the Parties do not disclose the confidential information to third parties; that it not be the subject of public comment; that it not be used by any Party in any way in the Litigation should settlement not be achieved; and that it is to be returned to the providing Party or destroyed; provided, however, that nothing contained herein shall prohibit any Party from seeking such information through formal discovery or from referring to the existence of such information in connection with this settlement and the preliminary approval and Final Approval of this settlement.

2. The Parties and their counsel agree to keep the contents of this Agreement confidential until the motion for preliminary approval is filed; provided however, that this Section VII(V) shall not prevent the disclosure of such information prior to the filing of such motion to (1) regulators, rating agencies, independent accountants, advisors, financial analysts, agents, existing or potential insurers or reinsurers, Named Plaintiffs, members of the Settlement Class requesting information, experts, courts, co-counsel, any existing or potential investor or any existing or potential lender to any of the MAA Releasees, the Settlement Administrator, as may reasonably be required to effectuate the terms and conditions of this Agreement, and/or as otherwise required to comply with any applicable law or regulation, (2) any person or entity to

whom the Parties agree in writing disclosure must be made to effectuate the terms of this Agreement, and/or (3) by Defendants or any of the MAA Releasees as necessary for any reasonable commercial purpose.

3. If contacted by a member of the Settlement Class, Class Counsel may provide advice or assistance regarding any aspect of the settlement. At no time shall any of the Parties or their counsel or their agents seek to solicit Settlement Class members or any other persons to submit written objections to the settlement, or to encourage Settlement Class members or any other persons to appeal from the Order of Final Approval.

4. Within one hundred eighty (180) days after the Effective Date (unless the time is extended by written agreement of the Parties), Class Counsel, and any expert or other consultant employed by them in such capacity or any other individual with access to documents provided by Defendants to Class Counsel, shall either: (i) return to Counsel for Defendants all such documents and materials (and all copies of such documents in whatever form made or maintained) informally produced by Defendants in the Litigation and any and all handwritten notes summarizing, describing, or referring to such documents; or (ii) certify to Counsel for Defendants that all such documents and materials (and all copies of such documents in whatever form made or maintained) informally or formally produced by Defendants in the Litigation and any and all handwritten and/or electronically recorded notes summarizing, describing, or referring to such documents have been destroyed; provided, however, that this provision shall not apply to any documents made part of the record nor to any documents made part of a Court filing, nor to Class Counsel's work product.

any and all handwritten and/or electronically recorded notes summarizing, describing, or referring to such documents have been destroyed; provided, however, that this provision shall not apply to any documents made part of the record nor to any documents made part of a Court filing, nor to Class Counsel's work product.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by themselves or by their duly authorized representatives:

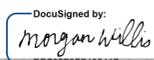
Dated: _____

By:

Samantha Hennessy
Named Plaintiff and Class Representative

Dated: 9/24/2018 2:40:15 PM PDT

By:

DocuSigned by:


Morgan Willis
Named Plaintiff and Class Representative

Dated: _____

Counsel for Named Plaintiffs and the Class

Dated: _____

By:

Mid-America Apartment Communities, Inc.

Name: _____
Title: _____

Dated: _____

By:

Mid-America Apartments, L.P.
By: Mid-America Apartment Communities, Inc.
Its General Partner

Name: _____
Title: _____

Dated: _____

By:

*Counsel for Defendants Mid-America Apartments, Inc.
and Mid-America Apartments, L.P.*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by themselves or by their duly authorized representatives:

Dated: 9/20/18

By:

Samantha Hennessy
Samantha Hennessy
Named Plaintiff and Class Representative

Dated: _____

By:

Morgan Willis
Named Plaintiff and Class Representative

Dated: _____

Counsel for Named Plaintiffs and the Class

Dated: _____

By:

Mid-America Apartment Communities, Inc.

Name: _____

Title: _____

Dated: _____

By:

Mid-America Apartments, L.P.
By: Mid-America Apartment Communities, Inc.
Its General Partner

Name: _____

Title: _____

Dated: _____

By:

*Counsel for Defendants Mid-America Apartments, Inc.
and Mid-America Apartments, L.P.*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by themselves or by their duly authorized representatives:

Dated: _____

By: _____

Samantha Hennessy
Named Plaintiff and Class Representative

Dated: _____

By: _____

Morgan Willis
Named Plaintiff and Class Representative

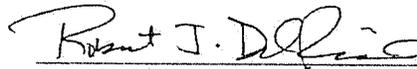
Dated: _____

Counsel for Named Plaintiffs and the Class

Dated: 9/5/18

By: _____

Mid-America Apartment Communities, Inc.



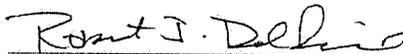
Name: Robert J. DePriore

Title: EVP

Dated: 9/5/18

By: _____

Mid-America Apartments, L.P.
By: Mid-America Apartment Communities, Inc.
Its General Partner



Name: Robert J. DePriore

Title: EVP

Dated: 9/24/18

By: _____


Counsel for Defendants Mid-America Apartments, Inc.
and Mid-America Apartments, L.P.

Exhibit A

Hennessy v. Mid-America Apartment Communities, Inc.
United States District Court for the Western District of Missouri,
Case No. 17-cv-00872-BCW

You have been identified as one of the approximately 500 persons who either (i) had security deposits withheld relating solely to physical damage done to an apartment unit; or (ii) paid money directly to either Defendant relating solely to physical damage done to an apartment unit. You are entitled to benefits under a class action settlement.

A federal Court authorized this Notice. This is not a solicitation from a lawyer.

- Plaintiffs allege that Defendants Mid-America Apartments Communities, Inc. (“MAA”) & Mid-America Apartments, L.P (“MAALP,” and together with MAA, “Defendants”) violated the Missouri Merchandising Practices Act, R.S. Mo. § 407.020 *et seq.* (“MMPA”) and Missouri Landlord-Tenants Actions, R.S.Mo. § 535.300 and engaged in Unjust Enrichment and/or Breach of Contract by withholding security deposits or collecting payment related solely to physical damage done to an apartment unit without providing adequate notice of inspection as required by Missouri law. Defendants deny Plaintiffs’ allegations and deny any wrongdoing whatsoever. The Court has not ruled on the merits of Plaintiffs’ claims or Defendants’ defenses. By entering into the settlement, Defendants have not conceded the truth or validity of any of the claims against it.
- A proposed settlement will provide a total of \$ 277,150.91 consisting of \$189,000 for distribution to the Settlement Class as detailed below and \$88,150.91 consisting of the Defendants’ release of the MAA Released Claims (the “Settlement Fund”) to fully settle and release claims of the approximately 500 persons who either (i) had security deposits withheld relating solely to physical damage done to an apartment unit; or (ii) paid money directly to either Defendant relating solely to physical damage done to an apartment unit (the “Settlement Class”).
- The Settlement Fund will also be used to pay the costs of administrating the settlement as well as reasonable attorneys’ fees and expenses to attorneys representing Plaintiffs and the Settlement Class (“Class Counsel”), and any service award for Plaintiffs.
- Class Counsel estimates you will receive around \$400 if you paid a security deposit, but your claim will be more or less depending on the amount of your security deposit retained for damages.

If you did not have a security deposit, but were charged damages, Class Counsel estimates that the average amount of damages charged to Settlement Class members was around \$176. This means that, on average, if you file a claim and MAA did not have a security deposit, you will receive around \$176

- Your rights and options, and the deadlines to exercise them, are explained in this Notice. Your legal rights are affected whether you act or don’t act. Read this Notice carefully.
- The Court in charge of this case still has to decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after any appeals are resolved. Please be patient.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
REMAIN IN THE CLASS - DO NOTHING	To remain in the class and receive a pro rata share of the settlement funds you are not required to take any further action. Settlement funds will be disbursed to all class members who do not request timely exclusion from the settlement.
EXCLUDE YOURSELF OR "OPT-OUT" OF THE SETTLEMENT	If you ask to be excluded, you will not receive a payment. This is the only option that allows you to pursue your own claims against Defendants and/or other released parties in the future. The deadline for excluding yourself is [60 days after notice deadline].
OBJECT TO THE SETTLEMENT	Write to the Court about why you believe the settlement is unfair in any respect. The deadline for this is [60 days after Notice Deadline]. To obtain a benefit from this settlement, you must still submit a Claim Form. If you only submit an objection and the settlement is approved you will give up your right to sue Defendants and/or any other released parties on a released claim. If you request exclusion from the settlement you cannot file an objection.
GO TO THE FINAL APPROVAL HEARING	Ask to speak in Court about the fairness of the settlement if you object to the settlement. To speak at the Final Approval Hearing, you must file a document including your name, address, telephone number and your signature with the Court stating your intention to appear, by no later than [60 days after Notice Deadline].

BASIC INFORMATION

1. What is the purpose of this Notice?

The purpose of this Notice is to inform you that a proposed Settlement has been reached in the class action lawsuit entitled *Hennessy, et al. v. Mid-America Apartment Communities, Inc., et al.*, 4:17-cv-00872-BCW (W.D. Mo.). Because your rights will be affected by this settlement, it is extremely important that you read this Notice carefully. This Notice summarizes the settlement and your rights under it.

2. What does it mean if I received a notice about this settlement?

If you received this notice, it is because Defendants' records indicate that you are a member of the Settlement Class in this action.

3. What is this class action lawsuit about?

In a class action, one or more people called a Class Representatives (here, Plaintiffs Samantha Hennessy and Morgan Willis) sue on behalf of people who allegedly have similar claims. This group is called a class and the persons included are called class members. One court resolves the issues for all of the class members, except for those who exclude themselves from the class.

Here, Plaintiffs allege that Defendants violated the MMPA and Missouri Landlord-Tenants Actions, R.S.Mo. § 535.300 and engaged in Unjust Enrichment and/or Breach of Contract by withholding security deposits or collecting payment related solely to physical damage done to an apartment unit without providing adequate notice of inspection as required by Missouri law. Defendants deny Plaintiffs' allegations and deny any wrongdoing whatsoever. The Court has not ruled on the merits of Plaintiffs' claims or Defendants' defenses. By entering into the settlement, Defendants have not conceded the truth or validity of any of the claims against them. The Honorable Brian C. Wimes is the judge in charge of the lawsuit.

4. Why is there a settlement?

The Court has not decided in favor of Plaintiffs or Defendants. Instead, both sides have agreed to this settlement. That way, they avoid the risk and cost of a trial, and the members of the Settlement Class will receive compensation. Plaintiffs and Class Counsel believe that the settlement is best for all persons in the Settlement Class. Defendants have agreed to the settlement to avoid the risks and costs of protracted litigation.

WHO IS IN THE SETTLEMENT CLASS?

5. How do I know if I am a part of the settlement class?

The Court has preliminarily certified this case as a class action for settlement purposes. The Settlement Class is defined as:

Those individuals who (A) were residents of (i) the Dentons apartment community from January 15, 2015, the date of its acquisition by MAALP, through February 8, 2018 or (ii) the Market Station apartment community from September 20, 2012, the date of its acquisition by MAALP, through February 8, 2018 and (B) who either (i) had security deposits withheld relating solely to physical damage done to an apartment unit; or (ii) paid money directly to either Defendant relating solely to physical damage done to an apartment unit.

By way of clarification, amounts paid to either Defendant that do not relate to payments for physical damage to an apartment unit are not at issue in this case and are not to be paid to the Settlement Class.

Notwithstanding the foregoing, in compliance with [28 U.S.C. § 455](#), this class specifically excludes persons in the following categories: (A) The district judge and magistrate judge presiding over this case and the judges of the United States Court of Appeals for the Eighth Circuit; (B) the spouses of those in category (A); (C) any person within the third degree of relationship of those in categories (A) or (B); and (D) the spouses of those within category (C).

This class also specifically excludes persons employed by Defendants at any time from September 20, 2012 through February 8, 2018.

If you are still not sure whether you are included, you can visit other sections of the Settlement Website, <http://www.missourisecuritydepositclassactionmaa.com>, you may write to the claims administrator at *Hennessy, et al. v. Mid-America*, c/o [ADMINISTRATOR AT PO BOX], or you may call Class Counsel at 866.726.1092, for more information.

THE LAWYERS REPRESENTING YOU

6. Do I have lawyers in this case?

The Court has appointed lawyers from the law firms of Stecklein & Rapp Chartered, and Keogh Law, LTD as Class Counsel to represent you and the other persons in the Settlement Class. You will not be personally charged by these lawyers.

7. How will Class Counsel be paid?

The Named Plaintiffs will petition the Court for reasonable attorney's fees equal to one-third of the Settlement Fund, which is \$92,383.64, plus reasonable costs.

THE SETTLEMENT BENEFITS – WHAT YOU GET

8. What does the settlement provide?

Settlement Fund. This Settlement Fund will be reduced by the following amounts: (1) the Incentive Payment to the Named Plaintiffs that the Court approves; (2) the reasonable attorneys' fees, costs, and expenses to Class Counsel that the Court approves; and (3) the fees and expenses of the Settlement Administrator that the Court approves.

Debt Release. Defendants will release any claims against members of the Settlement Class for physical damage done to apartment units. For any member of the Settlement Class, Defendants will release and not attempt to directly or indirectly seek to collect any such amounts or transfer or sell any such purported debts. Any credit reporting relating to the damages claimed will be deleted or updated to show a zero balance. This value of this release totals \$88,150.91 as of February 8, 2018.

No Portion of the Settlement Fund Will Return to Defendants. All money in the Settlement Fund, after administration expenses and any court-approved Incentive Payment and attorneys fees and costs have been paid, will be divided and paid pro rata to the members of the Settlement Class who do not submit a valid and timely request for exclusion. All unclaimed funds from any uncashed checks shall be paid to the following charity as a *cy pres* award agreed to by the parties and approved by the Court: _____ a 501(c)(3) charitable organization.

9. How much will my payment be?

Class Counsel estimates you will receive around \$400 if you paid a security deposit, but your claim will be more or less depending on the amount of your security deposit retained for damages.

If you did not have a security deposit, but were charged damages, Class Counsel estimates that the average amount of damages charged to Settlement Class members was around \$176.

10. What am I giving up to stay in the Settlement Class?

Unless you exclude yourself from the settlement, you will be part of the Settlement Class and will be bound by the release of claims in the settlement. This means that if the settlement is approved, you cannot rely on any released claim to sue or continue to sue Defendants or any other released parties, whether on your own or as part of any other lawsuit, as explained in the settlement agreement. It also means that all of the Court's orders will apply to you and legally bind you. Unless you exclude yourself from the settlement, you will agree to release Defendants and any other released parties, as defined in the settlement agreement, from any and all claims arising under the Missouri Merchandising Practices Act, R.S. Mo. § 407.020 *et seq.* ("MMPA"), Missouri Landlord-Tenants Actions, R.S. Mo. § 535.300 or for Unjust Enrichment and/or Breach of Contract.

If you have any questions about the Release or what it means, you can speak to Class Counsel, listed under Question 6, for free, or you can, at your own expense, talk to your own lawyer. The Release does not apply to persons in the Settlement Class who timely exclude themselves.

HOW TO OBTAIN A PAYMENT

11. How can I get a payment?

To receive a portion of the Settlement Fund you must submit a claim either through the mail or at the Settlement Website, <http://www.missourisecuritydepositclassactionmaa.com>. Claim forms must be submitted no later than _____, 2018

WHEN WILL I RECEIVE MY SETTLEMENT PAYMENT?

12. When would I receive a settlement payment?

The Court will hold a hearing [240 days] after preliminary approval to decide whether to approve the settlement. If the Court approves the settlement, after that, there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. All members of the Settlement Class will be informed of the progress of the settlement through information posted on the Settlement Website at http://www._____. Please be patient.

EXCLUDING YOURSELF FROM THE SETTLEMENT

13. How do I get out of the settlement?

If you want to keep the right to sue or continue to sue Defendants or a released party, as defined in the settlement agreement, then you must take steps to get out of the Settlement Class. This is called excluding yourself from, or opting-out of, the Settlement Class.

To exclude yourself from the settlement you must send, by first-class U.S. mail, written notice addressed to the Settlement Administrator indicating your name and address and stating that you desire to opt-out of the settlement or otherwise do not want to participate in the settlement. No request for exclusion will be valid unless all of the information described above is included. No person in the Settlement Class, or any person acting on behalf of or in concert or participation with that person in the Settlement Class, may exclude any other person in the Settlement Class from the Settlement Class.

To be valid, you must mail your exclusion request postmarked no later than [60 days after Notice Deadline] to the claims administrator at *Hennessy, et al. v. Mid-America*, c/o [INSERT ADMIN PO BOX].

14. If I do not exclude myself, can I sue Defendants for the same thing later?

No. If you do not exclude yourself, you give up any right to sue (or continue to sue) Defendants or any released parties for the claims that this settlement resolves.

15. If I exclude myself, can I get a benefit from this settlement?

No. If you ask to be excluded, you will not be able to submit a Claim Form for a settlement payment and you cannot object to the settlement.

OBJECTING TO THE SETTLEMENT

16. How do I tell the Court that I do not think the settlement is fair?

If you are in the Settlement Class, you can object to the settlement or any part of the settlement that you think the Court should reject, and the Court will consider your views. If you do not provide a written objection in the manner described below, you shall be deemed to have waived any objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the settlement or the award of any attorneys' fees and expenses and/or service award.

To object, you must make your objection in writing, stating that you object to the settlement in *Hennessy, et al. v. Mid-America Apartment Communities, Inc., et al.* 4:17-cv-00872-BCW (W.D. Mo.). To be considered by the Court, the written objection must: (i) attach documents establishing, or provide information sufficient to allow the parties to confirm that the objector is a member of the Settlement Class; (ii) include a statement of the specific objections; and (iii) state the grounds for objection, as well as identify any documents which the objector desires the Court to consider.

To be considered, you must file your objections with the Court and mail your objections to the addresses below no later than [60 days after Notice Deadline].

For Plaintiff:

A.J. Stecklein
Michael H. Rapp
Stecklein & Rapp Chartered
748 Ann Avenue
Kansas City, Kansas 66101

For Defendants:

Barry Goheen, Esq.
KING & SPALDING LLP
1180 Peachtree Street, N.E.
Atlanta, Georgia 30309

If you file a request for exclusion from the settlement you shall be deemed to have waived any objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the settlement or the award of any attorneys' fees and expenses and/or service award.

17. What is the difference between objecting and excluding yourself?

Objecting is telling the Court that you oppose something about the settlement. You can object only if you stay in the Settlement Class. Excluding yourself means that you do not want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the settlement no longer affects you.

THE FINAL APPROVAL HEARING

18. When and where will the Court decide whether to approve the settlement?

The Court will hold a Final Approval Hearing at [TIME] on [240 days after preliminary approval] at the United States District Court for the Western District of Missouri, U.S. Federal Building and Courthouse, 400 E. 9th St., Court Room ----, Kansas City, MO 64106. At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate. If there are valid objections that comply with the requirements in Question 16 above, the Court will also consider them and will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay to Class Counsel and Plaintiffs.

The Final Approval Hearing may be moved to a different date or time without additional notice, so it is a good idea to check the Settlement Website for updates.

19. Do I have to come to the hearing?

No. Class Counsel will appear on behalf of the Settlement Class. But, you are welcome to come, or have your own lawyer appear, at your own expense.

20. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Approval Hearing, but only in connection with an objection that you have timely submitted to the Court according to the

procedure set forth in Question 16 above. To speak at the Final Approval Hearing, you must also file a document with the Court stating your intention to appear. For this document to be considered, it must include your name, address, telephone number and your signature. The document must be filed with the Court no later than **[60 days after Notice Deadline]**. You cannot speak at the hearing if you exclude yourself from the settlement.

GETTING MORE INFORMATION

21. How do I get more information?

This notice is only a summary of the proposed settlement. You can get a complete copy of the settlement agreement by visiting the Settlement Website, <http://www.missourisecuritydepositclassactionmaa.com>, or you can write to the address below or call class counsel with any questions at 866.726.1092.

DO NOT CALL OR WRITE TO THE COURT, THE CLERK OF THE COURT, DEFENDANTS OR DEFENDANTS' COUNSEL ABOUT THE SETTLEMENT. ALSO, TELEPHONE REPRESENTATIVES WHO ANSWER CALLS MADE TO THE TOLL-FREE NUMBER ARE NOT AUTHORIZED TO CHANGE THE TERMS OF THE SETTLEMENT OR THIS NOTICE.

Exhibit B

Exhibit C

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI**

**SAMANTHA HENNESSY and
MORGAN WILLIS,**

Plaintiffs,

Case Number: 17-CV-00872 BCW

vs.

**MID-AMERICA APARTMENT
COMMUNITIES, INC., et al.,**

Defendants.

**[PROPOSED] FINAL ORDER APPROVING SETTLEMENT, APPROVING
PROPOSED ALLOCATION OF SETTLEMENT FUNDS, APPROVING CLASS
COUNSEL’S APPLICATION FOR ATTORNEYS’ FEES, EXPENSES AND INCENTIVE
AWARD FOR CLASS REPRESENTATIVE AND FINAL JUDGMENT**

This Court having considered: (a) the Settlement Agreement and Release, dated _____, including all Exhibits thereto (the “Agreement”), between Plaintiffs, Samantha Hennessy and Morgan Willis (“Class Representative”), on behalf of themselves and the Settlement Class (as defined therein) and Mid-America Apartment Communities, Inc. (“MAA”) & Mid-America Apartments, L.P. (“MAALP,” and together with MAA referred to herein collectively as the “Defendants”) (b) the proposed allocation and distribution of funds among the Settlement Class;¹ and (c) Class Counsel’s application for attorneys’ fees, expenses, and an incentive payment for the Class Representatives; and having held a hearing on _____, 2018, and having considered all of the submissions and arguments with respect thereto, and otherwise being fully informed in the premises, and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED and DECREED that:

¹ Unless otherwise provided herein, the terms defined in the Settlement Agreement and Release shall have the same meanings herein.