

SETTLEMENT AGREEMENT

INTRODUCTION

1. This Settlement Agreement is entered into by and among Plaintiffs Mildred Kinard, Earlene Wheeler, Vicky Bordeaux, and Donald Robinson, on behalf of all Class Members (as defined below), on the one hand, and Defendants East Capitol Family Rental L.P. (“ECFRLP”), Kettler Management, Inc. (“Kettler”), and A&R Management, Inc. (“A&R”), on the other. The Settlement Agreement is intended to fully, completely, and finally resolve the claims raised in this Action, *Mildred Kinard, et al. v. East Capitol Family Rental, L.P., et al.* (Case No. 15-cv-1935), subject to the terms and conditions set forth below, and subject to final approval by the Court.

RECITALS

2. Plaintiffs asserted claims concerning 61 residential housing units at Capitol Gateway, a housing development in the District of Columbia for low-income residents. Plaintiffs alleged that Defendants receive funding through the D.C. Housing Authority for these 61 units (the “Units”). The street addresses for the Units are listed in Exhibit A.

3. Among the Units, there are 12 one-bedroom walk-up apartments, 8 two-bedroom walk-up apartments, 2 three-bedroom walk-up apartments, 38 three-bedroom townhomes, and 1 four-bedroom townhome. Tenants in the walk-up apartments pay for electricity. Tenants in the townhomes pay for all utilities, which include electricity, water, and sewer.

4. Plaintiffs alleged that the Units are subject to federal statutory and regulatory requirements that tenant rents be based on income, and specifically that rent calculations provide tenants with a utility allowance that approximates a reasonable consumption of utilities for an energy-conservative household of modest circumstances.

5. Plaintiffs further alleged that, prior to 2014, for the Units, Defendants used utility allowances calculated by DCHA and used in its Housing Choice Voucher Program and that, beginning in approximately January 2014, Defendants implemented new utility allowance calculations for the Units. Plaintiffs alleged that the new utility allowances were lower, resulting in rent increases and/or decreases in monthly utility reimbursement checks for tenants living in the Units.

6. Plaintiffs, tenants of the Capitol Gateway housing development, filed the Complaint in this action on November 2, 2015, on behalf of themselves and others similarly situated, and alleged that Defendants violated federal law in connection with the utility allowances for the Units, including alleged violations with respect to providing notice to tenants of proposed utility allowance changes and with respect to calculating the utility allowances.

7. Defendants responded to the Complaint in this action by filing a Motion to Dismiss on December 31, 2015. Following full briefing on the Motion, the Parties agreed for the case to be referred to a Magistrate Judge for mediation.

NOW THEREFORE, IT IS HEREBY AGREED, BY AND BETWEEN the undersigned Parties, that this Action shall be settled, subject to the approval of the Court, pursuant to the following terms and conditions:

DEFINITIONS

8. As used in this Settlement Agreement, the following terms shall have the following meanings:

- a. “Action” means the lawsuit entitled *Mildred Kinard, et al. v. East Capitol Family Rental, L.P., et al.* (Case No. 15-cv-1935) in the United States District Court for the District of Columbia.
- b. “Agreement,” “Settlement Agreement,” or “Settlement” means this Settlement Agreement.
- c. “Claim Form” means the form as approved by the Court in its Preliminary Approval Order to be sent along with the Class Notice to Class Members where the Claim Form contains, among other things, calculations of individual class members’ damages and, if signed and returned to the Claims Administrator, will serve as the Class Member's claim for damages.
- d. “Claims Administrator” means Settlement Services, Inc.
- e. “Class” or “Class Members” means all tenants who were residents at Capitol Gateway Family Rental in one of the Units for any period of time between January 1, 2014 to December 31, 2015.
- f. “Class Counsel” means the counsel of record in the Action from the Legal Aid Society of the District of Columbia.
- g. “Class Notice” or “Notice of Settlement” means the Notice of Class Action Settlement as approved by the Court in its Preliminary Approval Order.
- h. “Class Notice Date” means the date that the Class Notice is mailed to Class Members.
- i. “Class Representative” means the Named Plaintiffs in their capacity as the appointed representatives of the Class.

- j. “Complaint” means the Complaint for Declaratory and Injunctive Relief and Damages in this Action filed on November 2, 2015.
- k. “Court” means the United States District Court for the District of Columbia.
- l. “DCHA” means the District of Columbia Housing Authority.
- m. “Defendants” means East Capitol Family Rental L.P., Kettler Management, Inc., and A&R Management, Inc.
- n. “Effective Date” means either: (a) the date of the Final Approval Order of this Agreement by the Court if no objections are timely filed; (b) the thirty-first (31st) day after entry of the Final Approval Order by the Court if any timely objections are filed but no appeal is filed; or (c) if an appeal is filed, the latest of (i) the date of final affirmance of that Order, (ii) the expiration of the time for a petition for writ of certiorari to review the Order if affirmed and, if the certiorari is granted, the date of final affirmance of the Order following review pursuant to that grant; or (iii) the date of final dismissal of any appeal from the Order or the final dismissal of any proceeding on certiorari to review the Order that has the effect of confirming the Order.
- o. “Final Approval Hearing” means the hearing to be requested by the Parties and conducted by the Court, following appropriate notice to Class Members and an opportunity for Class Members to object to the Agreement, at which time the Parties will request the Court to finally approve the fairness, reasonableness, and adequacy of the terms and conditions of this Agreement and to enter a Final Approval Order.

- p. “Final Approval Motion” or “Motion for Final Approval” means the joint motion seeking final approval of this Agreement.
- q. “Final Approval Order” means the order that the Court enters upon granting the Final Approval Motion.
- r. “Gross Settlement Fund” means the total amount of funds that Defendants shall pay to resolve the claims by the Named Plaintiffs and the Class Members. The Gross Settlement Fund shall be the sum of One Hundred Thousand Dollars (\$100,000.00). Defendants’ responsibility to pay any amounts in settlement, including payments to Class Members, the service award payments to the Named Plaintiffs for their effort in bringing and prosecuting this matter, and attorneys’ fees to Class Counsel shall not exceed the amount of the Gross Settlement Fund. Excluded from the Gross Settlement Fund are any fees or costs of the Claims Administrator, which shall be paid separately by Defendants.
- s. “Head of Household” means the member of the household in a Unit who is listed with the Head of Household designation on the most recertification HUD Form 50059;
- t. “HUD” means the United States Department of Housing and Urban Development.
- u. “Net Settlement Fund” means the settlement funds that are available for distribution to Class Members, and specifically constitutes the Gross Settlement Fund less attorneys’ fees and the service award payments to the Named Plaintiffs.
- v. “Notice” means the Notice of Settlement of Class-Wide Claims against Defendants.
- w. “Parties” means the Named Plaintiff and Defendants.

- x. “Plaintiffs” or “Named Plaintiffs” means Mildred Kinard, Earlene Wheeler, Vicky Bordeaux, and Donald Robinson.
- y. “Preliminary Approval Date” means the date of the Preliminary Approval Order.
- z. “Preliminary Approval Motion” or “Motion for Preliminary Approval” means the joint motion seeking preliminary approval of this Agreement, which shall include a copy of this Settlement Agreement.
- aa. “Preliminary Approval Order” means the Court’s Order preliminarily approving this Agreement, setting a date for the Final Approval Hearing, and providing for notice of the Settlement Agreement to be sent to the Class Members.
- bb. “Property” means the Capitol Gateway Family Rental housing development that is the subject of this Action;
- cc. “Settlement Payment” means the payment that Class Members are entitled to receive if they timely submitted a claim for payment which is verified by the Claims Administrator as accurate and in compliance with the claim submission process set forth herein (a “verified claim”).

CLAIMS ADMINISTRATOR

9. Role of Claims Administrator. Subject to Court approval, Settlement Services, Inc. shall serve as the Claims Administrator for the Agreement. The Claims Administrator shall be responsible for preparing, printing, and mailing the Notice, Claim Form, self-addressed postage prepaid envelope, and two reminder postcards as directed by the Court to Class Members; collecting any objections and exclusion requests of Class Members to the Settlement and forwarding copies of those objections and exclusion requests to counsel for the Parties;

reviewing and resolving any objections to the calculations or data received from Class Members or Defendants to determine eligibility for payment as a Class Member and to verify the calculation of any such payment; preparing a declaration setting forth the final payments and Class Members' objections to the Settlement; mailing settlement award checks to Class Members; issuing any required state and federal reporting documents to Class Members; making any required State and or Federal reporting to State and/or Federal taxing authorities; and for such other tasks as the Parties may mutually agree or the Court orders the Claims Administrator to perform. Each Party shall receive a copy of all documents and records transmitted to the Claims Administrator by the other Party. The Parties each represent that they do not have any financial interest in Settlement Services, Inc. that could create a conflict of interest.

10. Costs of Claims Administration. All fees and expenses of the Claims Administrator shall be paid by Defendants. This payment shall be separate and apart from the Gross Settlement Fund. No later than ten (10) business days prior to the Final Approval Hearing, the Claims Administrator shall provide the Parties and file with the Court a declaration detailing its fees and expenses related to the settlement administration process. The Parties agree to cooperate in the settlement administration process and to make all reasonable efforts to control and to minimize the expenses incurred in administering the Settlement.

SERVICE AWARD & ATTORNEYS' FEES

11. Service Award to Named Plaintiffs. Within seven (7) days of the Effective Date, Defendants shall pay, from the Gross Settlement Fund and through the Claims Administrator, a Service Award (also known as an incentive payment) to the Named Plaintiffs in the amount of \$5,000.00 each. The Parties recognize that any Service Award is subject to Court approval.

12. Attorneys' Fees Award to Class Counsel. Within seven (7) days of the Effective Date, Defendants shall pay, from the Gross Settlement Fund and through the Claims Administrator, attorneys' fees to Class Counsel in the amount of \$15,000.00. The Parties recognize that any Attorneys' Fees Award is subject to Court approval.

MONETARY RELIEF FOR CLASS MEMBERS

13. Production of Class List. Within fifteen (15) business days of execution of this Agreement by all Parties, Defendants shall provide the following contact information in electronic format to the Claims Administrator for each Class Member, with a copy to Class Counsel:

- a. full name of the Head of Household(s) for each Unit, including any middle initial or middle name, any maiden name, and any aliases known to Defendants;
- b. his or her date of birth;
- c. address(es) at the Property where the Class Member resided from January 1, 2014 through December 31, 2015, including the configuration of each such address (bedroom size and apartment or townhome);
- d. the dates the Class Member resided at each address identified in (c) above;
- e. current or last known mailing address, if different than (c) above;
- f. current or last known telephone number(s); and
- g. whether the Head of Household speaks a primary language other than English, if known to Defendants.

14. Changes in Residency. From the date Defendants produce the class list pursuant to Paragraph 13 through 30 days after the Effective Date, Defendants shall notify the Claims Administrator and Class Counsel within seven (7) calendar days when any Class Member

currently residing on the Property vacates his or her unit. This notice shall include any forwarding address or other new contact information provided by the vacating Class Member to Defendants.

15. Establishment of Gross and Net Settlement Funds. In consideration of the settlement set forth herein, within seven (7) calendar days after the Preliminary Approval Date, Defendants shall wire the entirety of the Gross Settlement Fund (\$100,000) to the Claims Administrator, which shall be immediately deposited by the Claims Administrator into a Qualified Settlement Fund pursuant to Internal Revenue Code § 1.468B-1 with a federally chartered national bank to be selected by the Parties. These funds shall be under the exclusive control of the Claims Administrator, and shall be used solely for the purpose of fulfilling the terms of the Agreement. Within fifteen (15) business days after the Preliminary Approval Date or fifteen (15) days after Defendants receive an election statement from the Class Administrator, whichever is later, Defendants shall execute an election statement provided by the Claims Administrator which shall be affixed to the initial tax return of the Qualified Settlement Fund in order to establish the start date of the Qualified Settlement Fund. The Gross Settlement Fund shall thereafter be administered and distributed as set forth in this Agreement. The monetary relief to the Class, the attorneys' fees to Class Counsel, the service award payments to the Named Plaintiffs, and any and all taxes arising out of any interest or other income derived from the Gross Settlement Fund shall be paid from the Gross Settlement Fund. No portion of the Gross Settlement Fund shall be used to pay the Claims Administrator's fees and expenses. The monies remaining in the Gross Settlement Fund after full payment of the service award payments to the Named Plaintiffs and the attorneys' fees to Class Counsel, as set forth in paragraphs 12 and 13, shall be known as the Net Settlement Fund.

16. Calculation of Class Member's Share of Net Settlement Fund. The Claims Administrator shall make initial calculations of the distribution of the Net Settlement Fund to Class Members as follows. In these initial calculations, Class Members shall receive credit for any calendar month between January 1, 2014 and December 30, 2015 in which the Class Member resided in the unit for any part of that month.

- a. For each calendar month in which the Class Member resided in a four-bedroom townhome unit, a payment of \$57.73;
- b. For each calendar month in which the Class Member resided in a three-bedroom townhome unit, a payment of \$49.13;
- c. For each calendar month in which the Class Member resided in a one-bedroom walk-up apartment unit, a payment of \$30.71;
- d. For each calendar month in which the Class Member resided in a two-bedroom walk-up apartment unit, a payment of \$39.92; and
- e. For each calendar month in which the Class Member resided in a three-bedroom walk-up apartment unit, a payment of \$47.90.

17. For any calendar month in which two different Heads of Household resided in a unit, the payment for that calendar month shall be divided pro-rata based on how many days each individual Head of Household resided in the unit.

18. The Claims Administrator shall add together the amounts under Paragraph 16 above for each Class Member and shall include that amount in the Claim Forms it sends to Class Members as the initial calculation of the amount the Class Member will recover in damages.

19. Final Calculation of Class Member's Share of Net Settlement Fund. The further and final calculations of payments to be made to each Class Member who timely submits a

verified claim shall be done by the Claims Administrator in accordance with Paragraph 16 above. If the total amount of all the claims submitted by Class Members exceeds the Net Settlement Fund plus any interest that accrues thereon, then the payment to each Class Member shall be reduced proportionately. If, on the other hand, the total amount of all the claims submitted by Class Members is less than the Net Settlement Fund plus any interest that accrues thereon, then there will be no increase in the payment to each Class Member and any remaining funds will be awarded by the Court as *cy pres* funds in accordance with Paragraph 47.

20. Tax Consequences. If any income tax liability is imposed upon any Class Member based on the settlement received herein, the Class Member agrees that he or she shall be solely responsible for paying any such determined liability from any government agency thereof. The Class Member further agrees to indemnify and hold harmless Defendants from any liability they may incur from any government agency arising out of the failure by any Class Member to pay for any liability he or she might incur from any government agency.

NON-MONETARY RELIEF FOR CLASS MEMBERS

21. For a 24-month period, beginning no later than one hundred fifty (150) days after the Effective Date, Defendants will adjust the utility allowances for the Units as follows.

- a. Defendants will perform an interim recertification for each such Class Member based on the household income, household composition, and other information reported by the Class Member to Defendants in the Class Member's most recent annual or interim recertification;
- b. The interim recertification will reflect the following new utility allowance for the unit configuration currently occupied by the Class Member:
 - i. For three-bedroom townhome units, \$352 per month;

- ii. For four-bedroom townhome units, \$459 per month;
 - iii. For one-bedroom walk-up apartment units, \$163 per month;
 - iv. For two-bedroom walk-up apartment units, \$205 per month; and
 - v. For three-bedroom walk-up apartment units, \$247 per month.
- c. Defendants shall provide each such Class Member with at least fifteen (15) days' notice of the Class Member's new Tenant Rent or Utility Reimbursement, whichever is applicable, as well as a copy of the interim recertification HUD Form 50059, and shall provide a copy of each such notice and HUD Form 50059 to Class Counsel.

22. If, during the 24-month period described in Paragraph 21 above, DCHA makes an upward or downward adjustment in the utility allowances it provides under the Housing Choice Voucher Program, then Defendants shall implement the same adjustment to the utility allowances for the Units.

- a. The utility allowance for each unit size shall be calculated by adding:
 - i. in those Units where the resident pays for water service, the applicable allowance for water and sewer service provided by DCHA under the Housing Choice Voucher Program for that unit size and configuration; and
 - ii. for all Units, the average of the applicable allowance for electric heat and the applicable allowance for gas heat provided by DCHA under the Housing Choice Voucher Program for that unit size and configuration.
- b. Defendants shall issue a notice to the Head of Household for each Unit with at least thirty (30) days' notice of household's new Tenant Rent or Utility

Reimbursement, whichever is applicable, and shall provide a copy of each such notice to Class Counsel.

23. Beginning on the Effective Date and continuing through the 24-month period described in Paragraph 21 above, all Class Members who have not opted out of this Agreement shall refrain from making any claim, demand, action, suit, and/or cause of action regarding or relating to the calculation of the utility allowance for the Class Member's unit. This release of claims is not intended to waive the right of any Class Member to seek relief based on allegations that Defendants are not complying with this Agreement.

24. Beginning on the Effective Date and continuing through the 24-month period described in Paragraph 21 above, Class Counsel will not affirmatively solicit any clients to challenge the calculation of the utility allowances for the Property. This paragraph does not preclude Class Counsel from representing tenants at the Property in other landlord-tenant matters against Defendants or limit Class Counsel's ability to advocate on behalf of such tenants in matters Class Counsel would ordinarily undertake, as long as these matters do not involve a challenge to the calculation of utility allowances.

25. All Class Members who have not opted out of this Agreement agree that the notice of the change in utility allowances given during the period of October or November 2015 cured all alleged notice defects and the allowances referenced in such notices were valid from their effective date through the date of this Agreement.

26. Within fourteen (14) days of the Effective Date, Defendants shall provide specific instructions to the D.C. Water and Sewer Authority ("WASA") that each Class Member still residing at the Property: (i) should be added as a responsible party to the current water and sewer account for his or her Unit; and (ii) is responsible for paying the water and sewer bill for the Unit

and should have full access to the services of WASA and all information maintained by WASA with respect to the account. Defendants agree to take all reasonable steps to comply with any request from WASA for additional information in order to complete the process for adding the Class Members as responsible parties.

27. Defendants shall take all necessary steps to ensure that all Class Members still residing on the Property shall receive copies of their rental ledgers within three business days of any request to Defendants via the on-site rental office. Defendants shall ensure that the rental ledger provided in response to any such request shall include all charges for rent, water bills, and all other charges, as well as all payments made, for the length of the Class Member's tenancy or the past three years prior to the date of the request, whichever is shorter.

NOTICE OF SETTLEMENT

28. Giving Notice to Class Members. Notice of this Settlement shall be provided to Class Members. The Parties will request that the Court determine that the proposed procedures for notice set forth below constitute the best practicable notice to Class Members.

29. Proposed Notices to Class Members. A copy of the Notice of the Settlement is attached hereto, marked as Exhibit 1, and incorporated herein by reference. A copy of the Claim Form is attached hereto, marked as Exhibit 2 and incorporated herein by reference. A copy of the two Reminder Postcards are attached hereto, marked respectively as Exhibits 3 and 4 and incorporated herein by reference. The Notice, Claim Form, and Reminder Postcards will be in both English and Spanish, and all these documents are subject to Court approval.

30. Claims Administrator's Duties in Sending Notices. The Claims Administrator shall be responsible for preparing and printing the above-mentioned Notice, Claim Form, self-addressed postage prepaid envelope, and Reminder Postcard. Within thirty (30) days after entry

of the Preliminary Approval Order, the Claims Administrator will mail the Notice, Claim Form, and self-addressed stamped envelope to all Class Members via First Class U.S. Mail, using the most current mailing address information for Class Members as provided in the Class list and any updates from the Parties. Prior to this mailing, the Claims Administrator also will run all Class Members' names through the U.S. Postal Service's National Change of Address database.

31. Establishment of Toll-Free Number. Effective on the Class Notice Date, the Claims Administrator shall arrange for a toll-free number to be active until such time as all distributions of Settlement Payments are completed to Class Members, in order to respond to questions from Class Members. The staff will be able to respond to questions in both English and Spanish.

32. Undelivered Class Notices. Any Class Notice and other documents returned to the Claims Administrator as non-delivered before the claims period deadline specified below shall be sent to the forwarding address affixed thereto. If no forwarding address is provided, then the Claims Administrator shall perform a standard skip trace to attempt to determine the most current mailing address and shall resend the Class Notice to any address(es) identified through that search. If no forwarding address is identified, then the Claims Administrator shall perform another search using the NCOA database. The undelivered Class Notices, Claim Forms, and self-addressed stamped envelopes shall be resent within five (5) business days after the Claims Administrator receives notice that the Class Notice was undeliverable.

33. Reminder Postcard. Within forty-five (45) days after mailing the Notice, Claim Form, and self-addressed postage prepaid envelope to Class Members, the Claims Administrator shall send the Reminder Postcard (Exhibit 3) to all Class Members who have not yet submitted either signed and completed Claim Forms or requests for exclusion from the Settlement, using

the most current mailing address information for Class Members as provided in the Class list and any updates from the Parties. Prior to this mailing, the Claims Administrator also will run the applicable Class Members' names through the U.S. Postal Service's National Change of Address database.

34. Updating of Addresses. The Claims Administrator will update addresses based on any forwarding address received and/or requests to do so received from Class Members or Class Counsel.

35. Declaration from Claims Administrator. No later than fourteen (14) days prior to the Final Approval Hearing, the Claims Administrator shall provide counsel for the Parties a declaration setting forth: (a) due diligence and proof of mailing of the Class Notice, Claim Form, and self-addressed stamped envelope by the Claims Administrator, including an accounting of any documents returned as undeliverable and any subsequent mailings for those Class Members; (b) the total number of Class Members who were sent the Class Notice and other documents; (c) the total number and names of Class Members who sent timely requests for exclusion from the Settlement; and (d) the total number of Class Members who sent timely objections to the Settlement, along with the complete copies of all objections received, including the postmark dates for each objection. Class Counsel shall file such declaration with the Court.

EXCLUSIONS & OBJECTIONS

36. Exclusion Requests. The Notice shall provide that Class Members who wish to exclude themselves from the Settlement, i.e., to opt-out of the Settlement, must submit a written statement requesting exclusion from the Settlement no later than forty-two (42) days following the date of mailing of the Notice by the Class Administrator to that Class Member. Such written request for exclusion must contain the full name, current home (or mailing) address, and Social

Security number of the person requesting exclusion, and it must include the statement “I wish to be excluded from the settlement of the case entitled *Mildred Kinard v. East Capitol Family Rental, L.P.*” The written request must be signed by the person requesting exclusion and must be returned by mail to the Claims Administrator at the specified address, and must be postmarked on or before the above-mentioned exclusion deadline date. The date of the postmark on the return mailing envelope shall be the exclusive means used to determine whether a request for exclusion has been timely submitted. The Claims Administrator shall provide the Parties with copies of all requests for exclusion on a weekly basis. Any Class Member who opts out of the Settlement will not be entitled to any recovery under the Agreement and will not be bound by the Agreement or have any right to object, appeal, or comment thereon. Class Members who do not submit a valid and timely request for exclusion shall be bound by all the terms of the Agreement and any final judgment or order in this Action.

37. Objections. The Notice shall provide that any Class Members who wish to object to the Settlement Agreement must mail a written objection to the Claims Administrator postmarked no later than forty-two (42) days following the date of mailing of the Notice by the Class Administrator to that Class Member. The Notice of Objection must state the basis for the objection. Such objection must contain the name, address, and telephone number of the Class Member making the objection, and be personally signed by the Class Member. The objection must be sent by mail to the Claims Administrator and must be timely postmarked as set forth above. The postmark date of the mailing envelope shall be the exclusive means used to determine whether an objection has been timely submitted. The Claims Administrator shall provide the Parties with copies of all objections on a weekly basis. Class Members who fail to make objections in the manner specified above shall be deemed to have waived any objections

and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement Agreement.

38. Appearance at the Final Approval Hearing and Submission of Briefs. The Notice shall also set forth the procedures Class Members must follow to appear at the Final Approval Hearing (whether individually or through separate counsel) and/or to submit written briefs regarding the Agreement. No Class Member shall be entitled to be heard at the Final Approval Hearing (whether individually or through separate counsel) or to submit written briefs regarding the Agreement, unless written notice of the intention of the Class Member or his or her own counsel to appear at the Final Approval Hearing and copies of any written briefs shall have been filed with the Court and personally served on counsel for the Parties no later than forty two (42) days following the date of mailing of the Notice by the Class Administrator to that Class Member.

CLASS MEMBERS' CLAIMS FOR PAYMENT

39. Submitting Claim for Payment. In order to receive a payment under the Settlement, a Class Member must sign and mail the Claim Form to the Claims Administrator by regular mail, postmarked no later than seventy (70) days following the date of mailing of the Notice and the Individual Claim Notice (the "Claim Deadline"). The date of mailing is deemed to be the date the Claim Form is deposited in the U.S. Mail, as evidenced by the postmark. If a timely but incomplete or defective Claim Form is received by the Claims Administrator, the Class Member shall be given the opportunity to cure the defect(s), but shall do so promptly, and in any event, prior to the deadline for claim submission set forth in this Paragraph.

40. Eligibility for Claim for Payment. Only one person from each household may submit a claim. In the event more than one person from any household submits a claim, the

Claims Administrator will decide who will be paid. The Claims Administrator will follow these rules: First, if a Head or co-Head of Household submits a claim, that person will be paid. Second, if the Head of Household has passed away and a personal representative for the Head of Household submits a claim, the personal representative will be paid. Third, if no Head of Household or personal representative submits a claim, then any other member of the same household who submits a claim will be paid.

41. Challenges to Proposed Settlement Payments. The Individual Claim Form shall provide that Class Members may challenge the amount of a Class Member's proposed settlement payment by sending the completed Claim Form to the Claims Administrator within forty-two (42) days following its mailing to that Class Member. The completed Claim Form must include: (a) a brief statement of the reasons for disagreeing with the calculation; and (b) any written objective documentation to prove the claim. No later than ten (10) business days after receipt of any Claim Form challenging the amount of the settlement payment, the Claims Administrator will make a determination whether information provided to the Claims Administrator by Defendants was incorrect. The Claims Administrator may consult with counsel for the Parties in reaching this determination. The Claims Administrator will give written notice to the Class Member and counsel for the Parties of its determination for each disputed calculation. The determination of the Claims Administrator shall be final and non-appealable.

42. Further Calculations of Settlement Payments. Within seven (7) days after the Claim Deadline Date, and after all challenges have been resolved, the Claims Administrator shall prepare a Declaration setting out the basis for the distribution of the Net Settlement Fund to all Class Members who have timely submitted claims. The Claims Administrator will forward a draft of this Declaration to all Counsel, who shall then have fourteen (14) days to review,

challenge, or propose any changes or modifications to the final calculation. The Declaration, when finalized by the Claims Administrator, shall accompany the Motion for Final Approval of the Settlement.

43. No Offsets. There shall be no offset to any payments received by any Class Members under this Agreement to account for amounts otherwise owed by Class Members to Defendants.

DISBURSEMENTS TO CLASS MEMBERS

44. Distribution of Settlement Payments. All Settlement Payments to Class Members shall be distributed in the form of a check sent via first class mail. For purposes of this mailing, the Claims Administrator shall use the addresses that were provided by Class Members on the Claim Form, subject to appropriate updating by the Claims Administrator prior to mailing, which shall consist of the following:

- a. The Claims Administrator will update addresses based on any requests received from Class Members or Class Counsel, or on any updates received from Defendants, if those requests or information were provided subsequent to submission of the Claim Form; and
- b. The Claims Administrator will check each address against the U.S. Postal Service National Change of Address Database.

45. Timing of Settlement Payments. Within seven (7) days after the Effective Date, the Claims Administrator shall pay each Class Member the Class Member's portion of the Settlement Award in accordance with the Claims Administrator's Final Calculation, as described above at Paragraphs 19 and 41.

46. Re-Mailing of Returned Settlement Payments. Any Settlement Payments that are returned as non-deliverable with a forwarding address shall be re-mailed by the Claims Administrator to such forwarding address within five (5) business days. To the extent that any Settlement Payments are returned as non-deliverable without a forwarding address, the Claims Administrator shall perform a standard skip trace to attempt to determine the most current mailing address. If no forwarding address is identified, then the Claims Administrator shall perform another search using the NCOA database. The Claims Administrator shall, within five (5) business days, re-mail the Settlement Payment, as applicable, to any Class Members for whom new address information is identified.

47. Time Period to Accept Payment. Class Members shall have one hundred eighty (180) days from the date of their Settlement Payments to cash their check. The Claims Administrator shall send a Reminder Postcard (Exhibit 4) to those Class Members who have not deposited their checks ninety (90) days after their mailing, and shall make reasonable efforts to contact those Class Members and take appropriate action to cancel and reissue checks as necessary. Class Members may request new checks to be issued by the Claims Administrator during this time period, if they lose or misplace their original check; however, the time period for cashing the check will be the same as the original time period set forth above.

- a. If certain checks have not been deposited or cashed one hundred eighty (180) days after their issuance, the Claims Administrator shall cancel such checks, and the amount of such cancelled checks shall be deemed unclaimed monies;
- b. For any unclaimed monies for any Class Member who currently resides in any Unit, the Claims Administrator shall release and revert these unclaimed funds to Defendants, and Defendants shall credit the amount of the reverted, unclaimed

monies as to that Class Member to his or her corresponding rental account and shall provide notice to the Class Member of the credit; and

- c. All unclaimed monies in the Net Settlement Fund after the above-mentioned distributions shall revert to a fund for a *cy pres* award.

48. Final Accounting. No later than thirty (30) days after all Settlement Payments are issued to Class Members, the Claims Administrator shall provide an initial accounting to the Parties. No later than one hundred ninety-five (195) days after all Settlements Payments are issued to Class Members, the Claims shall provide a final accounting to the Parties. The Claims Administrator shall also provide declarations to the Parties to be filed with the Court, concerning the status of the administration process, at the request of Class Counsel or counsel for Defendants at any time.

49. No Claims regarding Distribution of Settlement Payments. No person shall have any claim against Defendants, Defendants' counsel, the Named Plaintiffs, the Class Members, Class Counsel, or the Claims Administrator based on distributions or payments made in accordance with this Settlement Agreement.

PRELIMINARY & FINAL APPROVAL OF THE SETTLEMENT

50. Application and/or Motion for Preliminary Approval. Promptly upon execution of this Agreement by all Parties, the Parties shall apply jointly to the Court via an application and/or motion for preliminary approval of this Agreement. The Parties shall apply to the Court for entry of an order substantially in the following form:

- a. Giving its preliminary approval to the Agreement as being fair, reasonable, and adequate as to Class Members;

- b. Approving the form and content of the proposed Notice, Claim Form, self-addressed postage prepaid envelope and Reminder Postcards and the proposed procedures for giving notice to Class Members; and
- c. Scheduling a Final Approval Hearing (Fairness Hearing) on the questions as to whether this Agreement should be finally approved as fair, reasonable, and adequate as to Class Members, whether to approve the service award for the Named Plaintiffs and attorney' fee award for Class Counsel, and whether the Court should enter an Order and Final Judgment.

51. Final Approval Motion. The Parties shall request the Court to schedule the Final Approval Hearing no earlier than forty-eight (48) calendar days after the Objection Deadline Date. At least twenty-eight (28) calendar days before the Final Approval Hearing, the Plaintiffs shall file a motion requesting that the Court grant final approval of the Settlement Agreement, with Class Counsel filing a memorandum addressing any timely submitted objections to the Settlement. Defendants shall have the right, but not the obligation, to file a memorandum (with supporting declaration(s) and/or evidence) to address or respond to Plaintiffs' motion. Any such filing shall be made not less than twenty-one (21) days before the date set for the Final Approval Hearing. Plaintiffs in turn shall have the right, but not the obligation, to file a reply addressing any objections or concerns raised by Defendants and any such reply shall be filed not less than fourteen (14) days before the date set for the Final Approval Hearing.

52. Matters to Be Considered at Final Approval Hearing. At the Final Approval Hearing, the Court will consider and determine whether the provisions of this Agreement should be approved, whether the Settlement should be finally approved as fair, reasonable, and adequate, whether any objections to the Settlement should be overruled, whether the service

award for the Named Plaintiffs should be approved, whether the attorneys' fee award to Class Counsel should be approved, and whether a Final Approval Order should be entered.

53. Final Approval Order. This Agreement is subject to and conditioned upon the issuance by the Court of a Final Approval Order which grants final approval of this Agreement and:

- a. Finds that the Class Notice and Claim Form satisfy the requirements of due process and Fed. R. Civ. P. 23(e)(1);
- b. Finds that the Agreement is fair, reasonable, and adequate to the Class;
- c. Retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation, and enforcement of this Settlement; and
- d. Orders dismissal with prejudice of this Action two hundred and twenty-five (225) days after the Effective Date unless any motions are still pending.

54. Parties' Best Efforts to Support the Settlement. The Parties agree to use their best efforts to carry out the terms of this Agreement. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage class members to exclude themselves from the Settlement, to submit written objections to the Agreement, to challenge their distribution share of Net Settlement Funds, or to appeal from the Final Judgment or Order approving this Agreement. The Parties also recognize their mutual obligations not to retaliate or take any adverse action against any person because that person did or did not participate in the Settlement Agreement to any degree.

55. Effect of Court Disapproval of the Agreement. In the event that (1) the Court does not approve this Agreement, or (2) the order approving the Agreement is reversed on appeal, the Parties shall make good faith efforts to modify the Agreement so as to gain judicial

approval. If the Parties are subsequently unable to modify the Agreement so as to gain judicial approval,

- a. this Agreement shall be considered null and void, and the Parties may proceed in all respects as if this Agreement had not been executed, except that costs paid by Defendants to the Claims Administrator shall not be repaid to Defendants;
- b. all of the Parties' respective pre-Settlement claims and defenses will be preserved;
- c. no Party shall use this Settlement Agreement or documents or communications implementing or relating to its creation for any purpose in the renewed class litigation; and
- d. the Claims Administrator shall return the Gross Settlement Fund to Defendants within seven days of termination, less any money that the Gross Settlement Fund has already paid, or incurred an obligation to pay, in accordance with the terms of this Agreement.

56. Agreement to Cooperate. The Parties and their respective counsel will cooperate with each other and use their reasonable and good faith efforts to secure and effect the implementation of the Agreement. In the event that the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties may seek the assistance of the Court to resolve such disagreement after meeting and conferring with each other in good faith to attempt to resolve the dispute.

RELEASE, DISMISSAL & RESERVATION OF CLAIMS

57. Release. Upon entry of the Final Approval Order and Judgment, Plaintiffs and all Class Members who have not timely exercised their option to opt out of the Settlement as well as

their heirs, successors, representatives, and assigns, shall forever release and discharge all claims, demands, actions, suits, and/or causes of action that have been brought or could have been brought by Plaintiffs or any non-opting out Class Members against Defendants and their insurers, affiliates, successors, representatives, and assigns, whether known or unknown, asserted or unasserted, under or pursuant to any statute, regulation, common law, or claim in equity, that relate in any way, directly or indirectly, to the facts, acts, events, transactions, occurrences, courses of conduct, representations, omissions, circumstances, or other matters referenced in the Complaint. For purposes of this Agreement, the Release described above does not include any claims for breaches of the obligations of performance under this Agreement or the Final Approval Order.

58. Dismissal. It is the Parties' intention that any dismissal of this litigation with prejudice following entry of the Final Approval Order shall constitute a Final Judgment on the merits to which the principles of res judicata and/or collateral estoppel shall apply to the fullest extent of the law as to the Parties and Class Members.

59. Reservation of Claims. This Agreement does not release any claims, demands, actions, suits, and/or causes of action, or any defenses thereto, that do not relate in any way, directly or indirectly, to the facts, acts, events, transactions, occurrences, courses of conduct, representations, omissions, circumstances, or other matters referenced in the Complaint, and the Parties expressly reserve all such claims and defenses. This reservation of claims includes, but is not limited to, any claims for nonpayment of rent or other lease violations, for nonpayment of water or other utility bills, or for breach of the implied warranty of habitability.

MISCELLANEOUS PROVISIONS

60. Authority. Each person executing this Settlement Agreement on behalf of any of the Parties represents that such person has the authority to execute this Agreement.

61. Binding Upon Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties.

62. Construction. This Agreement has been drafted jointly by counsel for the Parties. Hence, in any construction or interpretation of this Agreement, the same shall not be construed against any of the Parties.

63. Defense Fees and Costs. Defendants shall bear all of their own costs and attorneys' fees incurred in this Action.

64. Entire Agreement. This Agreement constitutes the entire fully integrated agreement among the Parties relating to the Settlement. All prior or contemporaneous agreements, understandings and statements, whether oral or written, and whether by a Party or to its counsel, are merged herein. No oral or written representations, warranties, or inducements of any kind have been made to any Party concerning this Agreement, other than as set forth herein.

65. No Oral Modifications. This Agreement may not be changed, altered, or modified except in writing and signed by counsel for all the Parties hereto or their successors-in-interest, and approved by the Court. No rights hereunder may be waived except in writing. No oral amendment or modification shall be permitted or effective. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

66. Counterparts. This Agreement may be executed in one or more counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one

Agreement, which shall be binding upon and effective as to all Parties. All executed copies of this Agreement and photocopies thereof (including facsimile and/or emailed copies of the signature pages) shall have the same force and effect and shall be as legally binding and enforceable as the original.

67. Retention of Jurisdiction. The Court shall have jurisdiction for the limited purposes of resolving any dispute arising under or relating to this Agreement.

68. No Admissions. This Agreement represents a compromise and settlement of disputed matters that were or could have been raised. Accordingly, it shall not be construed as an admission or concession, express or implied, as to any allegations in the Complaint, alleged wrongdoing or liability by any Party, or arguments asserted in Defendants' Motion to Dismiss.

[signatures on following pages]

Mildred Kinard
MILDRED KINARD

5 / 1 / 2018
DATE

EARLENE WHEELER

DATE

Vicky Bordeaux
VICKY BORDEAUX

5/1/2018
DATE

Donald Robinson
DONALD ROBINSON

5-1-2018
DATE

Mildred Kinard
Plaintiff

DATE

Earlene Wheeler

Earlene Wheeler
Plaintiff

5-3-10

DATE

Vicky Bordeaux
Plaintiff

DATE

Donald Robinson
Plaintiff


DATE

EAST CAPITOL FAMILY RENTAL LIMITED PARTNERSHIP,
a District of Columbia limited partnership

By: CAPGATE, LLC, a District of Columbia limited
liability company, its general partner

By: A&R/THC, LLC, a Maryland limited
liability company, its sole member


By: A&R Development Corp.,
a Maryland corporation, its Managing Member

By: 
Name: Theo C. Rodgers

Title: Chairman & CEO

DATE: 5/3/18

A&R MANAGEMENT, INC., a dissolved Maryland corporation

By: 
Name: Marjorie Rodgers Cheshire

Title: Director

DATE: 5.2.18

KETTLER MANAGEMENT, INC., a Virginia corporation

By: 
Name: _____

Title: PRESIDENT

DATE: 5/15/18

EXHIBIT A

101 57th Street, SE, Unit A, Washington, DC 20019
101 57th Street, SE, Unit C, Washington, DC 20019
101 57th Street, SE, Unit D, Washington, DC 20019
10 56th Place, SE, Unit A, Washington, DC 20019
10 56th Place, SE, Unit B, Washington, DC 20019
10 56th Place, SE, Unit C, Washington, DC 20019
10 57th Place, SE, Washington, DC 20019
109 58th Street, SE, Washington, DC 20019
110 57th Street, SE, Unit A, Washington, DC 20019
110 57th Street, SE, Unit B, Washington, DC 20019
110 57th Street, SE, Unit C, Washington, DC 20019
110 57th Street, SE, Unit D, Washington, DC 20019
111 58th Street, SE, Washington, DC 20019
113 58th Street, SE, Washington, DC 20019
11 57th Street, SE, Washington, DC 20019
11 57th Place, SE, Unit D, Washington, DC 20019
117 58th Street, SE, Washington, DC 20019
119 57th Place, SE, Washington, DC 20019
119 58th Street, SE, Washington, DC 20019
121 57th Place, SE, Washington, DC 20019
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132 56th Place, SE, Washington, DC 20019
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224 58th Street, SE, Washington, DC 20019
22 57th Place, SE, Unit A, Washington, DC 20019
22 57th Place, SE, Unit B, Washington, DC 20019
22 57th Place, SE, Unit C, Washington, DC 20019
22 57th Place, SE, Unit D, Washington, DC 20019

226 58th Street, SE, Washington, DC 20019
228 58th Street, SE, Washington, DC 20019
230 58th Street, SE, Washington, DC 20019
5740 Blaine, SE, Unit A, Washington, DC 20019
5740 Blaine, SE, Unit C, Washington, DC 20019
5740 Blaine, SE, Unit D, Washington, DC 20019
5741 Blaine, SE, Unit A, Washington, DC 20019
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