

# Updated Terms of Use

*Updated effective January 1, 2021*

## **Acceptance of Terms of Use**

These Terms of Use are entered into by you and AvalonBay Communities, Inc. (“AvalonBay”, “Avalon”, “we” or “us”). The following terms and conditions, together with any documents they expressly incorporate by reference (collectively these “Terms,” or “Terms of Use”), govern your access to and use of this website, including any content, functionality, and services offered through this website, whether as a guest or a registered user, along with any other online services, software or apps provided by us that post a link to these Terms (the “Service”).

Please read the Terms of Use carefully before you start to use the Service. These Terms affect your legal rights, responsibilities and obligations and govern your use of the Service, are legally binding, limit our liability to you and require you to indemnify us and to settle certain disputes through individual arbitration. By using the Service, you accept, consent to, and agree to be bound and abide by these Terms of Use and our [Privacy Policy](#), incorporated herein by reference. If you do not want to agree to these Terms of Use or the [Privacy Policy](#) you must not access or use the Service. Similarly, if ever you decide you no longer want to be bound to these Terms, you can terminate these Terms for any reason by deleting your account.

This Service is offered and available to adult users who are eighteen (18) years of age or older, and is not intended for or directed to anyone under thirteen (13) years of age. Users under the age of majority where they reside must use the Service with the permission and supervision of their parent or legal guardian. By using the Service, you represent and warrant that you meet this eligibility requirement and that you will comply with these Terms and all applicable local, state, federal, and international laws, rules, and regulations. If you do not meet this requirement you must not access or use the Service.

## **Additional Terms**

In some instances, additional or different terms, posted on the Service, apply to your use of certain parts of the Service (individually and collectively “Additional Terms”). To the extent there is a conflict between these Terms and any Additional Terms, these Terms will control unless the Additional Terms expressly state otherwise.

## **Changes to the Terms of Use**

We may revise and update these Terms of Use from time to time in our sole discretion. All changes are effective immediately when we post them and apply to all access and use of the

Service thereafter. Continued use of the Service after such changes is deemed acceptance of any revised terms. You must review these Terms on a regular basis to keep yourself apprised of any changes. Avalon may terminate these Terms, with or without cause, at any time, without notice, and without penalty. You agree that Avalon shall not be liable to you or any third party for any modification, termination, or alteration of these Terms.

### **Accessing the Service and Account Security**

We reserve the right to withdraw or amend the Service and any feature, service or material we provide on the Service in our sole discretion without notice. We will not be liable if for any reason all or any part of the Service is unavailable at any time or for any period. From time to time, we may restrict access to some parts of the Service, or the entire Service, to users, including registered users.

You are responsible for:

- Making all arrangements necessary for you to have access to the Service.
- Ensuring that all persons who access the Service through your Internet connection are aware of these Terms of Use and comply with them.

To access the Service or some of the resources it offers, you may be asked to provide certain registration details or other information. It is a condition of your use of the Service that all of the information you provide to register with this Service is correct, current and complete. You are also responsible for ensuring that your account information is timely updated if it ever changes. You agree that all information you provide to register with this Service or otherwise, including but not limited through the use of any interactive features on the Service, is governed by our [Privacy Policy](#), and you consent to all actions we take with respect to your information consistent with our Privacy Policy.

If you choose, or are provided with, a username, password, or any other piece of information as part of our security procedures, you must treat such information as confidential, and you must not disclose it to any other person or entity. You also acknowledge that your account is personal to you and agree not to provide any other person with access to this Service or portions of it using your username, password, or other security information. You agree to notify us immediately of any unauthorized access to or use of your username and/or password, or any other breach of security of our Service. You also agree to ensure that you exit from your account at the end of each session. You should use particular caution when accessing your account from a public or shared computer so that others are not able to view or record your password or other Personally Identifiable Information as defined by our [Privacy Policy](#). You must keep and are responsible for keeping your sensitive information – like your Personally Identifiable Information and your account password – confidential.

We have the right to disable and/or terminate your access to the Service – such as by disabling any username, password or other identifier, whether chosen by you or provided by us – at any time in our sole discretion for any or no reason, including if, in our opinion, you have violated any provision of these Terms of Use.

In using our Service, you further agree that:

- You are permitted to create only one account for yourself, and you will not create more than one account for your individual use.
- You will not, without our express permission, create another account for yourself if we have disabled or otherwise restricted your account.
- You will not buy, sell, rent, or lease access to your account in any way.
- You will not share your account's login credentials with others.
- You will log in and access the Service through only those means authorized by us, and you will not log in or attempt to access the Service through any unauthorized means.

## **Intellectual Property Rights**

This Service and its entire contents, features, and functionality (including, but not limited to all information, software, text, displays, images, video, and audio, and the design, selection, and arrangement thereof, together, "Content") are owned by AvalonBay, its licensors, or other providers of such material and are protected by United States and international copyright, trademark, patent, trade secret, and other intellectual property, unfair competition, or proprietary rights laws.

These Terms of Use permit you to use the Service for your personal, non-commercial use only. You must not reproduce, distribute, modify, create derivative works of, publicly display, publicly perform, republish, download, store, transmit, or otherwise use any of the material on our Service except as follows:

- Your computer may temporarily store copies of such materials from our Service incidental to your accessing and viewing those materials.
- You may store files that are automatically cached by your Web browser for display enhancement purposes.
- You may print or download one copy of a reasonable number of pages of the Service for your own personal non-commercial use and not for further reproduction, publication, or distributions.
- If we provide desktop, mobile, or other applications for download, you may download a single copy to your computer or mobile device solely for your own personal, non-commercial use, provided you agree to be bound by our end user license agreement for such applications.
- Subject to any applicable Additional Terms, if the Service includes a "Send to Friend," social media sharing or similar tool that allows you to initiate and send to one or more of your contacts a communication that includes Content, or to post our Content to third-party services or your own site or online service, and the tool is operational, use the tool to do so; provided, however, that you do not do so in any manner that violates applicable law or

third-party rights or reflects negatively on us, and only send to recipients you have permission to contact.

You must not:

- Modify copies of any materials from the Service.
- Use any illustrations, photographs, video or audio sequences, or any graphics separately from the accompanying text.
- Delete or alter any copyright, trademark, or other proprietary rights notices from copies of materials from this site.

Your right to use the Service and Content is subject to your strict compliance with these Terms and the Additional Terms. These rights are non-exclusive, limited, and revocable by us at any time in our sole discretion without advance notice or liability. As your right to access and use the Service and the content is personal to you, you may not assign nor transfer your right; any attempt to do so is void. If you print, copy, modify, download or otherwise use or provide any other person with access to any part of the Service in breach of the Terms of Use, your right to use the Service will stop immediately and you must, at our option, either return or destroy any copies of the materials you have made. No right, title, or interest in or to the Service or any content on the Service is transferred to you, and any rights not expressly granted are reserved by us. Any use of the Service not expressly permitted by these Terms of Use is a breach of these Terms of Use and may violate copyright, trademark and other laws.

### **Equal Housing Opportunity**

AvalonBay communities are equal housing opportunities. We are committed to the letter and spirit of all fair housing laws. AvalonBay does not discriminate in its housing based on race, color, religion, national origin, sex, familial status, disability, gender, gender identity, sexual orientation, or any other characteristic protected by law.

### **Accuracy**

While we try to keep all content that we post on the Service accurate, complete and up to date, we cannot and do not guarantee, represent or warrant that any of the content on this Service is accurate, complete, timely or applicable to you.

### **Your Use of the Service and User Generated Content**

You are ultimately responsible for all content posted and activity that occurs under your account (“User Generated Content” or “UGC”), even if that content or activity occurs from other individuals who have accessed the Service through your account. Except as otherwise described in the Service’s posted [Privacy Policy](#), or any applicable Additional Terms, you agree that (a) your UGC is non-confidential and non-proprietary (notwithstanding

markings such as “confidential,” “proprietary,” etc.), and (b) to the maximum extent not prohibited by applicable law, AvalonBay does not assume any obligation of any kind to you or any third party with respect to your UGC. You also agree to provide documentation necessary to authenticate rights to such content and verify your compliance with these Terms or any applicable Additional Terms.

In your communications with us, please keep in mind that we do not seek any unsolicited ideas or materials for products or services, or even suggested improvements to products or services, including, without limitation, ideas, concepts, inventions, or designs for websites, apps, books, software or otherwise (collectively, “Unsolicited Ideas and Materials”). Any Unsolicited Ideas and Materials you submit are deemed UGC and licensed to us as set forth below. In addition, AvalonBay retains all of the rights held by members of the general public with regard to your Unsolicited Ideas and Materials. Our receipt of your Unsolicited Ideas and Materials is not an admission by AvalonBay of their novelty, priority, or originality, and it does not impair our right to contest existing or future Intellectual Property rights relating to your Unsolicited Ideas and Materials.

License to AvalonBay of Your UGC. Except as otherwise described in any applicable Additional Terms (such as a promotion’s official rules), which specifically govern the submission of your UGC, or in our [Privacy Policy](#), you hereby grant AvalonBay the non-exclusive, unrestricted, unconditional, unlimited, worldwide, irrevocable, perpetual, and cost-free right and license to use, copy, record, distribute, reproduce, disclose, sell, re-sell, sublicense (through multiple levels), display, publicly perform, transmit, publish, translate, make derivative works of, and otherwise use and exploit in any manner whatsoever, all or any portion of your UGC (and derivative works thereof), for any purpose whatsoever in all formats, on or through any means or medium now known or hereafter developed, and with any technology or devices now known or hereafter developed, and to advertise, market, and promote the same. Without limitation, the granted rights include the right to: (a) configure, host, index, cache, archive, store, digitize, compress, optimize, modify, reformat, edit, adapt, publish in searchable format, and remove such UGC and combine same with other materials, and (b) use any ideas, concepts, know-how, or techniques contained in any UGC for any purposes whatsoever, including developing, producing, and marketing products and/or services. In order to further effect the rights and license that you grant to AvalonBay to your UGC, you also, as permitted by applicable law, hereby grant to AvalonBay, and agree to grant to AvalonBay, the unconditional, perpetual, irrevocable right to use and exploit your name, persona, and likeness in connection with any UGC, without any obligation or remuneration to you. Except as prohibited by law, you hereby waive, and you agree to waive, any moral rights (including attribution and integrity) that you may have in any UGC, even if it is altered or changed in a manner not agreeable to you. To the extent not waivable, you irrevocably agree not to exercise such rights (if any) in a manner that interferes with any exercise of the granted rights. You understand that you will not receive any fees, sums, consideration, or remuneration for any of the rights granted in this Section.

Our Exclusive Right to Manage Our Service. AvalonBay may, but will not have any obligation to, review, monitor, display, post, store, maintain, accept, or otherwise make use of, any of your UGC, and AvalonBay may, in its sole discretion, reject, delete, move, re-format, remove or refuse to post or otherwise make use of UGC without notice or any liability to you or any third party in connection with our operation of UGC venues in an appropriate manner, such as to enhance accessibility of UGC, address copyright infringement and protect Users from harmful UGC. Without limitation, we may, but do not commit to, do so to address content that comes to our attention that we believe is offensive, obscene, lewd, lascivious, filthy, violent, harassing, threatening, abusive, illegal or otherwise objectionable or inappropriate, or to enforce the rights of third parties or these Terms or any applicable Additional Terms. Such UGC submitted by you or others need not be maintained on the Service by us for any period of time, and you will not have the right, once submitted, to access, archive, maintain, change, remove, or otherwise use such UGC on the Service or elsewhere, except that California minors have certain rights to have certain content about them that they have themselves posted on the Service prospectively removed from public display as provided for in the [Privacy Policy](#).

Representations and Warranties Related to Your UGC. Each time you submit any UGC, you represent and warrant that you are at least the age of majority in the jurisdiction in which you reside and are the parent or legal guardian, or have all proper consents from the parent or legal guardian, of any minor who is depicted in or contributed to any UGC you submit, and that, as to that UGC, (a) you are the sole author and owner of the Intellectual Property and other rights to the UGC, or you have a lawful right to submit the UGC and grant AvalonBay the rights to it that you are granting by these Terms and any applicable Additional Terms, all without any AvalonBay obligation to obtain consent of any third party and without creating any obligation or liability of AvalonBay; (b) the UGC is accurate; (c) the UGC does not and, as to AvalonBay's permitted uses and exploitation set forth in these Terms, will not infringe any Intellectual Property or other right of any third party; and (d) the UGC will not violate these Terms or any applicable Additional Terms, or cause injury or harm to any person.

You may use the Service only for lawful purposes and in accordance with these Terms of Use. You agree that:

- You will not use our Service in any way that violates any applicable federal, state, local, or international law or regulation (including without limitation any laws regarding the export of data or software to and from the U.S. or other countries), or otherwise prohibited by these Terms of Use.
- You will not use our Service for the purpose of exploiting, harming, or attempting to exploit or harm any individual in any way by exposing them to inappropriate content, asking for personally identifiable information, or otherwise.
- You will not use the Service to harass, abuse, defame, stalk, or threaten others.

- You will not use the Service to transmit or procure the sending of any advertising or promotional material, including any “junk mail”, “chain letter”, “spam”, or any other similar solicitation.
- You will not engage in any other conduct that restricts or inhibits anyone’s use or enjoyment of the Service, or which, as determined by us, may harm AvalonBay or users of the Service or expose any of them to liability.
- You will not use or attempt to use another user’s account without their permission.
- You will not solicit other users’ login credentials.
- You will not create an account using the name of another person with the intent of impersonating the other person, or create an account using any name that is offensive, vulgar, or obscene.
- You will not reveal another person’s address, phone number, email address, social security number, credit card number, medical information, financial information, or any other information that may be used to track, contact, or impersonate that individual, unless, and in the form and by the method, specifically requested by us (e.g., an email address to send an email invite to a friend).
- You will not post content that is offensive or that contains pornography, graphic violence, threats, hate speech, or incites violence, or promotes any unlawful activity.
- You will access only those areas or features of the Service that we have authorized you to access, and you will not attempt to access any areas or features that you are not authorized to access.

Additionally, you agree not to:

- Use the Service in any manner that could disable, overburden, damage, or impair the Service or interfere with any other party’s use of the Service, including their ability to engage in real time activities through the Service.
- Use any robot, spider, or other automatic device, process, or means to access the Service for any purpose, including monitoring or copying any of the material on the Service.
- Monitor or copy any of the material on the Service for any unauthorized purpose without our prior written consent.
- Use any device, software or routine that interferes with the proper working of the Service.
- Compromise the security of the Service, including the introduction of any viruses, Trojan horses, worms, logic bombs or other material that is malicious or technologically harmful.
- Attempt to gain unauthorized access to, interfere with, damage, or disrupt any part of the Service, the server on which any part of the Service is stored, or any server, computer, or database connected to the Service.
- Attack or harm the Service via a denial-of-service attack, distributed denial-of-service attack, or any other means.
- Probe, scan, or test the security or vulnerability of our Service, including any Avalon system or network.
- Otherwise attempt to interfere with the proper working of the Service.
- Engage in any activity that violates these Terms of Use, or encourage any acts that violate these Terms of Use.

## **Information About You and Your Visits to the Service**

Your privacy is important – both to you and to us. All information we collect about you on this Service is subject to our [Privacy Policy](#). By using the Service, you consent to all actions

taken by us with respect to your information in compliance with the Privacy Policy. Please view our Privacy Policy to learn how your information is handled when you register for and use our Service.

### **Online Applications, Consents, Leases, Payments and Other Transactions**

This Service may provide you with the option to electronically enter into agreements with us, such as certain transactions related to your proposed or actual rental of an apartment, including but not limited to an application to lease an apartment, certain consents related thereto, a lease agreement for an apartment, a renewal of a lease agreement, and/or payments related to your application for or lease of an apartment. The Service may also allow you to apply for employment with us. Your use of the Service to make applications and enter into such transactions with us is completely voluntary. However, if you make an application, or enter into any such transaction via this Service or through any link on this Service, you consent to doing so by electronic form, and to providing an electronic signature (which is any electronic action acknowledging agreement) in the form specified on this Service, rather than a handwritten signature. In addition you understand and acknowledge that all consents, applications and transactions that you enter into via this Service will be legally binding on you, just as if they were done on paper, and that your electronic acceptance in the form specified on this Service will be binding as though you had physically signed a paper document by hand.

### **Third Party Services & Links**

AvalonBay is not responsible for the content, quality, safety, availability, completeness, accuracy, privacy policies, legality, or any other practices and policies of any third-party website that may be accessed from the Service. Each linked entity has its own privacy policies, terms and conditions, and other policies that govern your use of their website and services. Each linked entity is responsible for the correctness, completeness, legality and accuracy of its own website. As such, AvalonBay makes no representation as to the accuracy or any other aspect of the information contained on such third-party sites.

When you click on one of the provided links, you are leaving our Service to enter another site on the Internet. If you decide to access any of the third-party sites linked to through our Service, you do so entirely at your own risk. Your use of a third party's website or services is governed by the third party's privacy policy, terms and conditions, and other policies. You agree that we are not liable for any harm or damages related to the purchase or use of goods, services, websites, resources, content, or any other transactions made in connection with any third-party websites or advertisers. Please review carefully the third party's policies and practices and make sure you understand them before you engage in any transaction. Complaints, claims, concerns, or questions regarding third-party products should be directed to the third party. You hereby waive any claim you might have against



Avalon with respect to these websites. Avalon is not responsible or otherwise liable for a third party's terms or policies, or for any actions taken under therein.

If you are accessing or using the Service through Apple, Android, or any other platform, these are Third-Party Services. If you access our Apps via Apple, click [here](#) for Additional Terms and conditions that are applicable to you and are incorporated into the Terms by this reference.

#### TERMS APPLICABLE FOR APPLE IOS.

- (i)** To the extent that you are accessing the Service through an Apple mobile application, you acknowledge that these Terms are entered into between you and Avalon and, that Apple, Inc. ("**Apple**") is not a party to these Terms other than as third-party beneficiary as contemplated below.
- (ii)** The license granted to you by Avalon under the Terms is subject to the permitted Usage Rules set forth in the App Store Terms of Use (see: <http://www.apple.com/legal/itunes/us/terms.html>) and any third-party terms of agreement applicable to the Service.
- (iii)** You acknowledge that Avalon, and not Apple, is responsible for providing the Service and Content thereof.
- (iv)** You acknowledge that Apple has no obligation whatsoever to furnish any maintenance or any support services to you with respect to the Service.
- (v)** To the maximum extent not prohibited by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Service.
- (vi)** Notwithstanding anything to the contrary herein, and subject to the terms and conditions of the Terms, you acknowledge that, solely as between Apple and Avalon, Avalon, and not Apple is responsible for addressing any claims you may have relating to the Service, or your possession and/or use thereof, including, but not limited, to: (i) product liability claims; (ii) any claim that the Service fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.
- (vii)** Further, you agree that if the Service, or your possession and use of the Service, infringes on a third-party's Intellectual Property rights, you will not hold Apple responsible for the investigation, defense, settlement and discharge of any such Intellectual Property infringement claims.
- (viii)** You acknowledge and agree that Apple, and Apple's subsidiaries, are third-party beneficiaries of the Terms, and that, upon your acceptance of the terms

and conditions of the Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce the Terms against you as a third-party beneficiary thereof.

- (ix)** When using the Service, you agree to comply with any and all third-party terms that are applicable to any platform, website, technology or service that interacts with the Service.
- (x)** Your use of real time route guidance on the Service (if any) is at your sole risk. Location data may not be accurate.

### **Processing Payments**

Avalon uses third-party payment service providers (“Payment Service Providers”) to process payments related to certain Transactions. All such Transactions are subject to the Payment Service Provider’s relevant terms and policies, which the Payment Service Provider may modify from time to time and at its sole discretion. By agreeing to these Terms, you agree to be bound by the Payment Service Provider’s relevant terms and policies related to your Transaction.

### **Contact with AvalonBay**

Text Messages. You may be given opportunities to subscribe to various text marketing or other text messaging programs and by doing so, you consent to receive ongoing text alerts (including by auto-dialers) from us related to our various businesses and affiliates, which may include co-promotions with or about other parties, except that if the scope of your consent for a particular subscription is limited to that subscription, your subscription will be so limited. Such consent is not required to purchase any product or service and no purchase is required. For each subscription, text "HELP" for help and text "STOP" to terminate (i.e., opt-out) of that subscription. In some cases we may offer you the ability to limit the opt-out to promotional texts and to maintain a subscription to informational texts, and you consent to receive a post-STOP text providing you that option. Subsequent or different subscriptions will be unaffected by an opt-out. You consent to receive a text confirming any opt-out as well as non-marketing administrative or transactional messages. For subscriptions to recurring text messages, you may receive up to the number of text messages per month specified in your consent, or to which you later consent. Alerts auto-renew unless otherwise specified when you consented. You understand that we will send mobile text messages using automated technology. If you subscribe to text messages you represent that you are 18 years of age or older, or have obtained parental consent. Standard message, data and other fees may be charged by your carrier, and carriers may deduct charges from pre-paid amounts or data allowances, for which you are responsible. Contact your carrier for details. Not all phones and/or carriers are supported. We are the sponsor of our text messages and may be contacted regarding them at: [webmaster@avaloncommunities.com](mailto:webmaster@avaloncommunities.com).

Email Messages. You may cancel or modify our email marketing communications you receive from us by following the instructions contained within our promotional emails. This will not affect subsequent subscriptions and if your opt-out is limited to certain types of emails the opt-out will be so limited. Please note that we reserve the right to send you certain communications relating to your account or use of our Services, such as administrative and service announcements and these transactional account messages may be unaffected if you choose to opt-out from receiving our marketing communications.

Location-Based Features. If GPS, geo-location or other location-based features are enabled on your Device, you acknowledge that your Device location may be tracked and may be shared with others consistent with our [Privacy Policy](#). Some Devices and platforms may allow disabling some, but not all, location-based features or managing such preferences. Typically, your proximity or connection to wi-fi, Bluetooth and other networks may still be tracked when location services are turned off on Device settings. You can terminate Device location tracking via a mobile app by us by uninstalling the application. Territory geo-filtering may be required in connection with use of some Service features due, for instance, to Content territory restrictions. The location-based services offered in connection with AvalonBay's mobile app(s) or feature(s) are for individual use only and should not be used or relied on in any situation in which the failure or inaccuracy of use of the location-based services could lead directly to death, personal injury, or physical or property damage. Use location-based services at your own risk as location data may not be accurate.

### **Disclaimer of Warranties**

Except as may be expressly set forth otherwise in a written agreement between you and AvalonBay or an AvalonBay affiliate, AvalonBay has no special relationship with or fiduciary duty to you.

TO THE FULLEST EXTENT PROVIDED BY LAW, WE WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY A DISTRIBUTED DENIAL OF SERVICE ATTACK, VIRUSES, OR OTHER TECHNOLOGICALLY HARMFUL MATERIAL THAT MAY INFECT YOUR COMPUTER EQUIPMENT, COMPUTER PROGRAMS, DATA OR OTHER PROPRIETARY MATERIAL DUE TO YOUR USE OF THE SERVICE OR ANY FEATURES, SERVICES OR ITEMS OBTAINED THROUGH THE SERVICE OR TO YOUR DOWNLOADING OF ANY MATERIAL POSTED ON IT, OR ON ANY WEB SITE LINKED TO IT.

YOUR USE OF THE SERVICE, INCLUDING WITHOUT LIMITATION MATERIALS AND THIRD PARTY CONTENT SHALL BE AT YOUR OWN RISK AND ALL OF THE FOREGOING ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. AVALONBAY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF INTELLECTUAL PROPERTY. WE

ASSUME NO LIABILITY OR RESPONSIBILITY FOR (i) ERRORS, MISTAKES OR INACCURACIES OF MATERIALS OR THIRD PARTY CONTENT, (ii) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND USE OF THE SERVICE, (iii) ANY UNAUTHORIZED ACCESS TO OR USE OUR SECURE SERVERS, (iv) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR USE OF THE SERVICE, (v) ANY BUGS, VIRUSES, TROJAN HORSES, OTHER MALWARE OR THE LIKE WHICH MAY BE TRANSMITTED TO OR THROUGH OUR SERVICE BY ANY THIRD PARTY, AND/OR (vi) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE THROUGH THE SERVICE.

THE FOREGOING DOES NOT AFFECT ANY WARRANTIES THAT CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

### **Limitation of Liability**

IN NO EVENT SHALL AVALONBAY BE LIABLE TO YOU OR ANY THIRD PARTY CLAIMING THROUGH YOU FOR ANY DAMAGES IN CONNECTION WITH YOUR USE OF THE SERVICE, YOUR INABILITY TO USE THE SERVICE OR ANY CONTENT APPEARING ON THE SERVICE. IN NO EVENT WILL AVALONBAY BE LIABLE TO YOU OR ANY THIRD PARTY CLAIMING THROUGH YOU FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, SPECIAL OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES ARISING FROM CLAIMS RELATED TO PERSONAL INJURY OR DEATH, LOSS OF DATA, LOST REVENUE, LOST PROFITS, LOSS OF USE OR OTHER ECONOMIC ADVANTAGE, CHANGE IN APPLICABLE GOVERNMENT REGULATIONS, WHETHER CAUSED BY TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT, OR OTHERWISE, EVEN IF FORESEEABLE.

AVALONBAY TAKES NO RESPONSIBILITY AND ASSUMES NO LIABILITY FOR ANY CONTENT PROVIDED BY YOU, ANOTHER USER, OR THIRD PARTY THROUGH OUR SERVICE. AVALONBAY IS NOT RESPONSIBLE FOR ANY CONTENT THAT MAY BE INAPPROPRIATE, OFFENSIVE, MISLEADING, ILLEGAL, OR OTHERWISE OBJECTIONABLE.

We do not warrant that the Service will be uninterrupted, timely, secure or error-free. There may be delays, errors, defects, omissions, interruptions and inaccuracies in the information or other materials available on or through the Service. AvalonBay is not responsible for the availability, use, timeliness, security, validity, accuracy, or reliability of, or the results of the use of, the content of the Service, or other any other website that may be linked to on through the Service.

THE FOREGOING DOES NOT AFFECT ANY LIABILITY THAT CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW. In those jurisdictions which prohibit the exclusion or limitation of liability for consequential or incidental damages, any such liability shall be limited to the maximum extent permitted by law. In no event will AvalonBay's aggregate

liability for any and all claims related to the Services exceed \$100 US or the amount you paid to AvalonBay, if any, in the last 12 months, whichever is greater.

## **Indemnity**

You agree to indemnify, defend, and hold AvalonBay, its, subsidiaries, affiliates, officers, directors, employees, and agents harmless, at your sole expense, from and against any claim, action, legal proceeding, damages, liability, settlements, expenses (including reasonable attorneys' fees) and other costs arising out of or relating to (a) your access or use of the Service; (b) your UGC; (c) your breach or alleged breach of these Terms or the documents it incorporates by reference; (d) your negligence or misconduct; or (e) a claim that your use of the Service infringes the copyright, trademark, trade secret, patent or other rights of a third party. AvalonBay may, at its sole discretion, assume the exclusive defense and control of any matter subject to indemnification by you. The assumption of such defense or control by us, however, shall not excuse any of your indemnity obligations. You agree to cooperate as fully required by AvalonBay in the defense of such claims.

## **Digital Millennium Copyright Act**

AvalonBay does not permit copyright infringing activities and infringement of intellectual property rights on the Service.

If a person is a copyright owner or an agent thereof and believes that any content posted on the Service infringes upon another's copyrights, such person may submit a notification pursuant to the Digital Millennium Copyright Act ("DMCA") by providing AvalonBay's copyright contact with the following information in writing (see 17 U.S.C. 512(c)(3) for further details):

- A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- Identification of the copyrighted work claimed to have been infringed, or if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
- Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled and information reasonably sufficient to permit us to locate the material;
- Information reasonably sufficient for us to contact the reporting person, such as an address, telephone number and, if available, email address;
- A statement that the reporting person has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
- A statement that the information in the notice is accurate, and, under penalty of perjury, that the reporting person is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Please send all DMCA notices to AvalonBay's copyright contact to receive notifications of claimed infringement (the "DMCA Contact") at:

AvalonBay

Attn: Digital Marketing

4040 Wilson Blvd., Suite 1000

Arlington, VA 22203.

Please be advised that DMCA notices should go to the DMCA contact at the above address. The complaining person acknowledges that in the event he/she fails to comply with all the requirements of this Section, such person's DMCA notice may not be valid. We recommend that you speak to a legal advisor before filing a DMCA notice with our designated agent to assess your rights.

If the person who is allegedly infringing a copyright (as reported by the complaining person above) believes that content that was removed (or to which access was disabled) is not infringing, or that such person has access from the copyright owner, the copyright owner's agent, or pursuant to the law, to post and use the content, the person responding to the complaint may send a counter-notice containing the following information to the DMCA Contact:

- The responding person's physical or electronic signature;
- Identification of the content that has been removed or to which access has been disabled and the location at which the content appeared before it was removed or disabled;
- A statement that the responding person has a good faith belief that the content was removed or disabled as a result of mistake or a misidentification of the content; and
- Such responding person's name, address, telephone number, and email address, a statement that such responding person consents to the jurisdiction of the Federal District Court for the judicial district where the responding person's address is located, and that the responding person will accept service of process from the person who provided DMCA notification to us or an agent of such person.

If a counter-notice is received by the DMCA Contact, we may send a copy of the counter-notice to the original complaining party informing such party that it may replace the removed content or cease disabling it in ten (10) business days. Unless the copyright owner files an action seeking a court order against the content provider, member or user, the removed content may be replaced, or access to it restored, in ten (10) to fourteen (14) business days or more after receipt of the counter-notice, in our sole discretion.

**Governing Law, Dispute Resolution and Class Action Waiver**

These terms shall be governed by the laws of the Commonwealth of Virginia, the United States of America and international copyright laws. You agree to submit to the jurisdiction of the federal and state courts in the Commonwealth of Virginia for any and all disputes, claims and actions arising out of or in connection with the information provided to you herein.

Certain portions of this Section are deemed to be a “written agreement to arbitrate” pursuant to the Federal Arbitration Act. You and we agree that we intend that this Section satisfies the “writing” requirement of the Federal Arbitration Act. This Section can only be amended by mutual agreement.

If any controversy, allegation, or claim arises out of or relates to the Service, the content on the Service, our Service activities and submissions, and/or the Terms of Use, whether heretofore or hereafter arising (collectively a “Dispute”), you and we agree to send a written notice to the other providing a reasonable description of the Dispute along with a proposed resolution of it. Our notice to you will be sent to the most recent contact information that you provide to us. If no such contact information exists or if contact information is not current, then we have no obligation to contact you to try to resolve the Dispute. Your notice to us must be sent to us at the following address:

AvalonBay Communities, Inc.

Attn: Legal

4040 Wilson Blvd., Suite 1000

Arlington, VA 22203.

For a period of sixty (60) days from the date of receipt of notice from the other party, we and you will engage in a dialogue in order to attempt to resolve the Dispute, although nothing will require either party to agree to any resolution.

**Binding Arbitration:**

If we cannot resolve a Dispute as set forth above within sixty (60) days of receipt of the required notice, and unless you provide us notice of opt-out within five (5) business days of your first use of the Service, addressed to: [DMCA-Contact@avalonbay.com](mailto:DMCA-Contact@avalonbay.com), then ANY AND ALL DISPUTES ARISING BETWEEN YOU AND US (WHETHER BASED IN CONTRACT, STATUTE, REGULATION, ORDINANCE, TORT – INCLUDING BUT NOT LIMITED TO FRAUD, ANY OTHER INTENTIONAL TORT, OR NEGLIGENCE – COMMON LAW, CONSTITUTIONAL PROVISION, RESPONDEAT SUPERIOR, AGENCY, OR ANY OTHER LEGAL OR EQUITABLE THEORY), WHETHER ARISING BEFORE OR AFTER THE EFFECTIVE DATE OF THESE TERMS, MUST BE RESOLVED BY FINAL AND BINDING ARBITRATION. THIS INCLUDES ANY

AND ALL DISPUTES BASED ON ANY PRODUCT, SERVICE OR ADVERTISING CONNECTED TO THE USE OR PROVISION OF THIS SERVICE. The Federal Arbitration Act (“FAA”), and not state law, shall govern the arbitrability of all disputes between us and you regarding these Terms and the Service. You and we agree, however, that Virginia law shall apply to and govern, as appropriate, any and all claims or causes of action, remedies and damages arising between you and us regarding a Dispute, whether arising or stated in contract, statute, common law, or any other legal theory, without regard to Virginia’s choice of law principles that might apply other states’ laws.

Disputes will be resolved solely by binding arbitration in accordance with the then-current Commercial Arbitration Rules of the American Arbitration Association (“AAA”). If a party properly submits a Dispute to the AAA for formal arbitration and the AAA is unwilling to hold a hearing, then either party may elect to have the arbitration administered by the Judicial Arbitration and Mediation Services, Inc. (“JAMS”) using JAMS’ streamlined Arbitration Rules and Procedures in accordance with Virginia’s civil rules governing discovery. If an in-person arbitration hearing is required, then it will be conducted in the “metropolitan statistical area” (as defined by the U.S. Census Bureau) where you are a resident at the time the Dispute is submitted to arbitration. You and we will pay the administrative and arbitrator’s fees and other costs in accordance with the applicable arbitration rules; but if applicable arbitration rules or laws require us to pay a greater portion or all of such fees and costs in order for this Section to be enforceable, then we will have the right to elect to pay the fees and costs and proceed to arbitration. The arbitrator shall be selected by mutual agreement of the parties or, if the parties cannot agree, then by striking from a list of arbitrators supplied by AAA or JAMS (depending on the arbitral forum). The arbitration shall be a confidential proceeding, closed to the general public; provided, however, that a party may disclose information relating to the arbitration proceedings to its and its affiliates’ lawyers, insurance providers, auditors and other professional advisers. The fact that there is a dispute between the parties that is the subject of arbitration shall be confidential to the same extent. The arbitrator will apply applicable law and the provisions of the Terms of Use, will be bound by these Terms of Use, will determine any Dispute according to the applicable law and facts based upon the record and no other basis, and will issue a reasoned award only in favor of the individual party seeking relief and only to the extent to provide relief warranted by that party’s individual claim. This arbitration provision shall survive termination of these Terms or the Service. Prior to appointment of the arbitrator or for remedies beyond the jurisdiction of an arbitrator, either party may, at any time, seek pendente lite relief (subject to the provisions of these Terms waiving or limiting that relief) in a court of competent jurisdiction in Arlington County, Virginia or, if sought by AvalonBay, such other court that may have jurisdiction over you, without thereby waiving its right to arbitration of the dispute or controversy under this Section. The losing party to the arbitration shall have fifteen (15) business days after the issuance of the arbitrator’s decision to fully comply with such decision, after which the prevailing party may enforce such decision by a petition to a court of competent jurisdiction in Arlington County, Virginia or, in the case of you, such other court having



jurisdiction over you, which may be made ex parte, for confirmation and enforcement of the award.

### **Injunctive Relief**

The foregoing provisions of this Section will not apply to any legal action taken by us to seek an injunction or other equitable relief in connection with any loss, cost or damage (or any potential loss, cost or damage) relating to any Dispute and/or our rights, our operations, and/or our products or services. Further, as permitted by applicable law, alleged losses, damages, or injuries claimed in connection with your use of the Service will not be deemed irreparable or sufficient to entitle you to an injunction or other equitable relief. Thus, without limitation, you agree that you will not seek (and you will not be permitted to obtain) any relief in any court or other legal proceeding that may interfere with or prevent the development or exploitation of any website, application, content, UGC, product, service, or intellectual property owned, licensed, used, or controlled by AvalonBay or by a licensor of AvalonBay.

### **No Class Action Matters**

Disputes will be arbitrated only on an individual basis and will not be joined or consolidated with any other arbitrations or other proceedings that involve any claim or controversy of any other party. YOU AND WE AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR OUR INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Notwithstanding any provision in the AAA's Commercial Arbitration Rules or JAMS Comprehensive Arbitration Rules and Procedures to the contrary, there shall be no right or authority for any Dispute to be arbitrated on a class basis or any other basis involving Disputes brought to a purported representative capacity on behalf of the general public, or other person or entities similarly situated. But if, for any reason, any court with competent jurisdiction holds that this restriction is unconscionable or unenforceable, then our agreement in this Section to arbitrate will not apply and the Dispute must be brought exclusively in court in Alexandria, Virginia (to which jurisdiction and venue you irrevocably consent). Notwithstanding any other provision of this Section, any and all issues relating to the scope, interpretation and enforceability of these class action waiver provisions are to be decided only by a court of competent jurisdiction and not by the arbitrator.

Notwithstanding the foregoing, either of us may bring a qualifying claim in small claims court.

### **Investigations; Cooperation with Law Enforcement; Termination; Survival**

As permitted by applicable law, AvalonBay reserves the right, without limitation, to: (i) investigate any suspected breaches of its Service security or its information technology or other systems or networks, (ii) investigate any suspected breaches of these Terms and any applicable Additional Terms, (iii) use any information obtained by AvalonBay in

accordance with its [Privacy Policy](#) in connection with reviewing law enforcement databases or complying with applicable laws and use and/or disclose any information obtained by AvalonBay to comply with law enforcement requests or legal requirements in accordance our [Privacy Policy](#), (iv) involve and cooperate with law enforcement authorities in investigating any of the foregoing matters, (v) prosecute violators of these Terms and any applicable Additional Terms, and (vi) discontinue the Service, in whole or in part, or, suspend or terminate your access to it, in whole or in part, including any user accounts or registrations, at any time, without notice, for any reason and without any obligation to you or any third-party. Any suspension or termination will not affect your obligations to us under these Terms or any applicable Additional Terms. Upon suspension or termination of your access to the Service, or upon notice from us, all rights granted to you under these Terms or any applicable Additional Terms will cease immediately, and you agree that you will immediately discontinue use of the Service. The provisions of these Terms and any applicable Additional Terms, which by their nature should survive your suspension or termination will survive, including the rights and licenses you grant to AvalonBay in these Terms, as well as the indemnities, releases, disclaimers, and limitations on liability and the provisions regarding jurisdiction, choice of law, no class action, and mandatory arbitration.

### **Severability**

If any portion of these Terms is found to be unenforceable, that provision will be severed from these Terms, and will not affect the validity and enforceability of the remaining Terms.

### **Complete Terms**

Please note that these Terms, along with any other documents incorporated by reference, make up the entire agreement between you and AvalonBay. We reserve all rights that are not expressly granted to you. You may not transfer any rights given or obligations borne to you under these Terms without our express consent. We do not waive any provision under these Terms even if it is not enforced.

### **Contact Us**

If you have any questions regarding our Terms of Use or our practices, you can contact us at:

AvalonBay

Attn: Terms of Use

4040 Wilson Blvd., Suite 1000

Arlington, VA 22203.

Or by email at: [webmaster@avaloncommunities.com](mailto:webmaster@avaloncommunities.com).

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