COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
DEPARTMENT OF THE TRIAL COURT
CIVIL ACTION NO. 26-2445 G

In re AvalonBay Communities, Inc. & Equity Residential Merger

ASSURANCE OF DISCONTINUANCE PURSUANT TO G. L. c. 93A § 5

Pursuant to Massachusetts General Laws chapter 93A, § 5, AvalonBay Communities, Inc., Equity Residential, ERP Operating Limited Partnership, and Canopy Merger Sub LLC hereby offer this Assurance of Discontinuance ("Assurance") in lieu of litigation, and the Commonwealth of Massachusetts, by and through the Office of Attorney General Andrea Joy Campbell ("AGO") (collectively, the "Parties") hereby agrees to accept it on the terms and conditions contained herein.

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE
2026 AUG 17 A 9:48
JOHN E. POWERS III
CLERK/MAGISTRATE

I. Definitions

The following definitions shall apply wherever the defined terms are used within this Assurance:

1. "Acquirer" means the entity to which Equity divests the Divestiture Assets.

2. "AvalonBay" means AvalonBay Communities, Inc., a Maryland corporation with its principal place of business at 4040 Wilson Blvd., Ste. 1000, Arlington, VA 22203, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

3. "Equity" means Equity Residential, a Maryland real estate investment trust with its principal place of business at 2 North Riverside Plaza, Suite 400, Chicago, IL 60606, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees. "Equity" includes ERP Operating Limited Partnership, an Illinois limited partnership, and Canopy Merger Sub LLC, a Maryland limited liability company.

4. "Divestiture Assets" means Emerson Place Apartments, including two buildings at 1 Emerson Place and 10 Emerson Place, Boston, MA 02144, which is currently owned, operated, and managed by Equity. Divestiture Assets includes any and all of the tangible or intangible assets constituting and used primarily in connection with these buildings other than the Excluded Assets.

5. "Effective Date" means the date that the Transaction closes.

6. "Excluded Assets" means assets not typically conveyed in a real estate transaction of this nature, including without limitation: (a) all property owned by tenants or other users or occupants of the Divestiture Assets, (b) all items of personal property used in connection with the Divestiture Assets that are not owned by Equity, (c) all cash on hand, checks, money orders, accounts receivable, and prepaid postage in postage meters, and other prepaid items such as real estate taxes, utility charges and other costs and expenses to be prorated as of closing; (d) any trademarks, proprietary logos or other intellectual property for Equity and Equity affiliates, and (c) all telephone equipment, routers, touchscreen technology and computer hardware and software, the Equity legal manual and any marketing information containing a logo of Equity and/or Equity affiliates, located on the Divestiture Assets and used solely in connection therewith.

7. "Transaction" means the proposed merger of equals between AvalonBay and Equity pursuant to the May 20, 2026 Agreement and Plan of Merger entered into between AvalonBay and Equity.

II. Introduction

8. In Massachusetts, AvalonBay and Equity both build, own, control, and operate multifamily rental housing buildings.

9. On May 20, 2026, AvalonBay and Equity entered into an agreement for the Transaction—a proposed merger of equals of their businesses. Pursuant to G. L. c. 93A, § 6, the AGO conducted a preliminary investigation into the proposed Transaction. The AGO's

preliminary investigation focused on the potential anticompetitive effects of the Transaction on renters and prospective renters in the Commonwealth.

10. As a result of its preliminary investigation, the AGO raised concerns that the proposed Transaction could lead to a substantial lessening of competition in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 2 of the Massachusetts Consumer Protection Act, G. L. c. 93A, § 2. The AGO raised concerns that the Transaction could substantially lessen competition in the market for mid-rise and high-rise multifamily rental housing in downtown Boston.

11. In lieu of a protracted investigation and potential litigation, the AGO agrees to accept this Assurance on the terms and conditions contained herein, pursuant to the Massachusetts Consumer Protection Act, G. L. c. 93A, § 5.

12. To avoid a protracted investigation and potential litigation, AvalonBay, Equity and the AGO agree to enter into and be bound by the terms of this AOD. AvalonBay and Equity's agreement to this AOD does not constitute an admission of any of the AGO's allegations contained herein.

III. AGO's Allegations

A. Potential Relevant Product Market

13. Mid-rise and high-rise multifamily rental housing is a relevant product market. Mid-rise and high-rise multifamily rental housing is comprised of apartment buildings with units for rent. While each mid-rise or high-rise multifamily rental building is distinct, these buildings frequently offer a bundle of amenities that distinguish them from other rental options, such as single-family home rentals, duplexes, or three deckers. For example, mid-rise and high-rise multifamily rental housing buildings often include amenities such as a building concierge, on-site leasing office, package rooms, lounges, pools, fitness centers, business centers, dog parks, and on-

site maintenance staff. This product market does not include military, senior, or student housing, vacation homes, and mobile homes, all of which have distinct characteristics, availability, and demand that prevent them from being reasonable substitutes for renters looking to rent at mid-rise and high-rise multifamily rental housing buildings. Industry participants generally recognize mid-rise and high-rise multifamily rental housing as an offering distinct from other types of rental housing.

14. The hypothetical monopolist test is an analytical tool used to help define markets. The test determines whether a group of products is sufficiently broad to be a properly defined antitrust product market. If a single firm (i.e., a hypothetical monopolist) seeking to maximize profits controlled all sellers of a set of products or services and could profitably undertake a small but significant and nontransitory increase in price, then that group of products is a properly defined antitrust market. *See* Fed. Trade Comm'n & U.S. Dep't of Justice, Merger Guidelines § 4.3.A (2023).

15. Renters would not substitute to alternative forms of housing in sufficient numbers to defeat a small but significant and nontransitory price increase by a hypothetical monopolist of all mid-rise and high-rise multifamily rental housing in a properly defined relevant market. Therefore, a hypothetical monopolist over such housing could profitably increase its prices by at least a small but significant and nontransitory amount.

B. Potential Relevant Geographic Market -- Downtown Boston Market

16. Downtown Boston is a relevant geographic market in which to assess the proposed merger's effect on the relevant product market of mid-rise or high-rise multifamily rental housing. Downtown Boston is comprised of zip codes 02108, 02109, 02110, 02113, 02114, 02133, and 02203—which together constitute the geographic area within Boston, Massachusetts north and northeast of Boston Common. This market includes, as defined by the City of Boston Planning

Department, the neighborhoods of the West End, North End, Beacon Hill, and northern portions of Downtown. Downtown Boston offers easy walking access to the Massachusetts State House, Boston City Hall, TD Garden, Mass General Hospital, Faneuil Hall, and transit options like the North Station, Government Center, Downtown Crossing, and South Station MBTA stations.

17. Renters would not substitute to renting in alternative geographic areas in sufficient numbers to defeat a small but significant and nontransitory price increase by a hypothetical monopolist of all multifamily rental housing in mid-rise and high-rise buildings in the Downtown Boston market. Therefore, a hypothetical monopolist over such housing in Downtown Boston could profitably increase its prices by at least a small but significant and nontransitory amount.

C. Alleged Market Shares, Market Concentration, and Competitive Effects

18. The Supreme Court has held that mergers that significantly increase concentration in a concentrated market are presumptively anticompetitive and therefore presumptively unlawful. *United States v. Phila. Nat'l Bank*, 374 U.S. 321, 363 (1963). To measure market concentration, courts often use the Herfindahl-Hirschman Index ("HHI"). HHIs range from 0 in markets with no concentration to 10,000 in markets where one firm has 100 percent market share. Mergers that increase the HHI by more than 100 and result in an HHI above 1,800 in any relevant market are presumed to be anticompetitive. *See* Fed. Trade Comm'n & U.S. Dep't of Justice, Merger Guidelines § 2.1 (2023). Similarly, mergers that increase the HHI by more than 100 and result in a combined market share greater than 30% in any relevant market are also presumed to be anticompetitive. *See id.*

19. In the alleged market for mid-rise and high-rise multifamily rental housing in Downtown Boston, the proposed Transaction would increase the HHI by 783 and result in an HHI of 2,863. After the Transaction, the combined company would possess a share of this market exceeding 50%. Under the 2023 Merger Guidelines, published by the U.S. Department of Justice

and the Federal Trade Commission, transactions with these market shares and concentration levels trigger a "presumption of illegality." *See* Fed. Trade Comm'n & U.S. Dep't of Justice, Merger Guidelines § 2.1 (2023).

20. A significant market share and a highly concentrated market in mid-rise and high-rise multifamily housing markets can affect renters and prospective renters through higher rents and fees, lessening of amenity offerings, worsening leasing terms, and decreasing quality.

21. For these reasons, the AGO alleges that Transaction may substantially lessen competition in a market for mid-rise and high-rise multifamily rental housing in Downtown Boston, a potential violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 2 of the Massachusetts Consumer Protection Act, G. L. c. 93A, § 2.

IV. Assurances and Undertakings

A. Divestiture

22. Equity shall divest, absolutely and in good faith, the Divestiture Assets to an Acquirer or Acquirers, acceptable to the AGO, that (1) has the financial resources and experience to operate the Divestiture Assets; (2) agrees to assume the existing obligations and commitments regarding affordable housing units at the Divestiture Assets; (3) does not own or operate such competing multifamily housing buildings in the Downtown Boston Market to create a presumption of illegality under Section 2.1 of the 2023 Merger Guidelines of the U.S. Department of Justice and Federal Trade Commission; and (4) agrees to pay a fair market price for the Divestiture Assets. In compliance with this obligation, within 180 calendar days after the earlier of the entry of this Assurance or the consummation of the Transaction, Equity shall enter into an agreement to divest the Divestiture Assets consistent with the considerations in this Paragraph.

23. Any agreement between Equity and an Acquirer or Acquirers will be contingent on the AGO's written approval. The AGO shall provide approval or not within ten business days of receiving relevant information from Equity and shall evaluate proposals for consistency with the purposes of this Assurance.

24. Equity must use reasonable best efforts to divest the Divestiture Assets as expeditiously as possible but subject to the parameters set forth in Paragraph 22. The AGO shall grant one or more extensions of this time period as necessary, not to exceed an additional 180 calendar days in total, so long as Equity has utilized reasonable best efforts to divest the Divestiture Assets during the initial 180-day period and any previous extension period. The AGO, in its sole discretion, may grant one or more additional extensions of this time period, not to exceed an additional 180 calendar days in total.

25. In accomplishing the divestiture ordered by this Assurance, Equity promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Equity shall inform any person making inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Assurance and provide that person with a copy of this Assurance. Equity shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privileges or work-product doctrine.

26. Equity shall provide the Acquirer information relating to the personnel who work primarily onsite and are directly involved in the operation and management of the Divestiture Assets to enable the Acquirer to make offers of employment. Equity will not interfere with any negotiations by the Acquirer to employ any Equity employee whose primary responsibility is to

work onsite directly on the operation and management of the Divestiture Assets, provided that Acquirer shall provide reasonable notice to Equity before beginning negotiations with any such Equity employee.

27. Equity shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of the Divestiture Assets and reasonable access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

28. Unless the AGO otherwise consents in writing, the divestitures pursuant to this Assurance must include the entire Divestiture Assets and must be accomplished in such a way as to satisfy the AGO, in its sole discretion, that the Divestiture Assets can and will be used by Acquirer or Acquirers as part of a viable, ongoing business of high-rise multifamily rental housing and that divestiture to Acquirer or Acquirers will remedy the competitive harm alleged in the Assurance. The divestitures must be made to one or more Acquirers that, in the AGO's sole judgment, have the intent and capability, including the necessary managerial, operational, technical, and financial capability, to compete effectively in the business of the provision of high-rise multifamily rental housing.

29. Equity shall use reasonable best efforts to secure all consents and waivers from all third parties that are necessary to permit Equity to divest the Divestiture Assets to the Acquirer, and to permit such Acquirer to continue the operations of the Divestiture Assets at the relevant location; provided, however, that Equity may satisfy this requirement by certifying that the Acquirer has executed all such agreements directly with each of the relevant third parties.

30. As a condition of any purchase of the Divestiture Assets, the Acquirer or Acquirers must agree to assume the terms of any preexisting affordable housing commitments previously

associated with the Divestiture Assets. Specifically, the Divestiture Assets currently have 36 units (8.1% of all units)—including studio, 1 bedroom, 2 bedroom, and 3 bedroom units—set aside for residents within certain income brackets. As a condition of any purchase of the Divestiture Assets, the Acquirer or Acquirers may not in any way decrease the affordable housing options through, for example, an increase in the maximum income limit (as measured as a percentage of area medium income) or a reallocation of the unit types available for such residents.

31. The Divestiture Assets must be sold in a manner that ensures that the Divestiture Assets retain resident access to amenities—including amenities shared with adjacent buildings—at substantially the same as current terms for at least two years, or until the earlier of (a) the amenity no longer being available or in use at the adjacent building, or (b) Equity no longer owning the adjacent building in which the amenity is located .

B. Third Party Management

32. In the event that Equity is unable to enter into an agreement to divest the Divestiture Assets as contemplated in Paragraph 22 within 360 days, Equity shall engage an independent third-party property manager, subject to the AGO's approval, to manage the Divestiture Assets until the divestiture has occurred. Equity shall continue in good faith to endeavor to find an Acquirer on the terms described above and sell the Divestiture Assets promptly, notwithstanding the hiring of an independent third-party manager.

C. Divestiture Trustee

33. In the event that Equity has not fully complied with its obligation as contemplated in Paragraph 22 after any and all applicable extension periods, the AGO may instruct Equity to appoint a divestiture trustee ("Trustee"), at the expense of Equity.

34. Equity shall select the Trustee, subject to the consent of the AGO, which shall be provided or not within ten business days. Within ten days after appointment of the Trustee, Equity

shall execute a trust agreement that, subject to the prior approval of the AGO, transfers to the Trustee all rights and powers necessary for the Trustee to complete the divestiture. The trust agreement shall include customary cooperation and notification provisions to enable Equity to prepare for the sale and transition of the Divestiture Assets.

35. The Trustee may hire at the cost and expense of Equity any investment bankers, attorneys, or other agents, who shall be solely accountable to the Trustee, reasonably necessary in the Trustee's judgment to assist in the divestiture. The Trustee, and any attorneys or agents retained by the Trustee, shall have full access to the personnel, books, records, and facilities related to the divestiture process, or any other relevant information as the Trustee may request. Equity shall develop such financial or other information as such Trustee may request and shall fully cooperate with the Trustee. Equity shall take no action to interfere with or impede the Trustee's accomplishment of the divestiture, and shall take all reasonable actions necessary to accomplish the divestiture.

36. The Trustee shall use best efforts to market the Divestiture Assets and negotiate the highest price and most favorable terms available. If the Trustee receives bona fide offers from more than one potential acquirer, and if the AGO determines to approve more than one such acquirer, the Trustee shall divest to the acquirer selected by Equity from among those approved by the AGO, provided that Equity shall select such acquirer within five days of receiving notice of the AGO's approval.

37. The Trustee shall have 180 days from the date of execution of the Trust agreement, unless extended by the AGO in its sole discretion, to divest the Divestiture Assets, which shall be subject to prior approval of the AGO.

D. Asset Preservation

38. Until the completion of the divestiture, Equity shall not take any actions that would be reasonably expected to impede the divestitures contemplated herein. Consistent with the ordinary course of business, Equity shall take such actions as are reasonably necessary to maintain the full economic viability, marketability and competitiveness of the Divestiture Assets, to minimize any risk of loss of their competitive potential, and to prevent the destruction, removal, wasting, deterioration, or impairment of such assets and businesses except for ordinary wear and tear. Equity shall not sell, transfer, encumber or otherwise impair the Divestiture Assets (other than to facilitate the divestiture contemplated by this Assurance) nor take any action that lessens their full economic viability, marketability or competitiveness. In furtherance of the foregoing, Equity shall maintain the management, staffing, and marketing of the Divestiture Assets at substantially the same as current levels.

39. Equity shall promptly institute appropriate internal safeguards relating to leasing activities at the Divestiture Assets to prohibit the sharing of competitively sensitive marketing and pricing information, and coordination regarding lease terms and decisionmaking concerning competitively sensitive pricing and leasing terms between the Divestiture Assets, on the one hand, and Equity's other properties in the Downtown Boston Market, on the other hand.

E. No Reacquisition or Partnership

40. For a period of ten years following the divestiture, AvalonBay and Equity may not acquire or partner with the Acquirer or Acquirers, or otherwise control any decisions made by the Acquirer or Acquirers with respect to the management or operation of the Divestiture Assets, without the written consent of the AGO.

F. Cooperation

41. Within 60 calendar days of the Effective Date, and every 30 calendar days thereafter until the completion of the divestiture, Equity shall deliver to the AGO a progress report describing Equity's efforts in divesting and maintaining the Divestiture Assets. The progress report shall include, at a minimum, (a) the name, address, phone number of any person who has expressed any interest in acquiring, negotiating or receiving more information about the Divestiture Assets; (b) any offers made for purchase of the Divestiture Assets; (c) the efforts Equity has made in soliciting and providing information to prospective Acquirers; and (d) any changes in the management or operation of the Divestiture Assets. In the event that Equity during any of the periods provided in Paragraphs 22 and 24, has not accepted an offer for the Divestiture Assets, then Equity shall provide to the AGO objective information to evaluate the fair market value of the Divestiture Assets.

42. AvalonBay and Equity shall cooperate fully with the AGO in the implementation of this Assurance and shall respond promptly to any reasonable requests for information or documents made by the AGO to ensure compliance with this Assurance.

V. Notice

43. Any notice that is made or required under the terms of this Assurance shall be provided via electronic mail and first-class mail to the following addresses.

For the Commonwealth:

Massachusetts Attorney General's Office
Antitrust Division
ATTN: Antitrust Division Chief
One Ashburton Place, 20th Floor
Boston, MA 02108
Antitrust@mass.gov
Anthony.Mariano@mass.gov

For AvalonBay Communities, Inc.:

AvalonBay Communities, Inc.
c/o Edward M. Schulman
Executive Vice President General Counsel and Secretary
4040 Wilson Blvd, Suite 1000
Arlington, VA 22203
ted_schulman@avalonbay.com

For Equity Residential:

Equity Residential
c/o Scott Fenster
Executive Vice President and General Counsel
Two North Riverside Plaza, Suite 500
Chicago, IL 60606
sfenster@eqr.com

ERP Operating Limited Partnership
c/o Scott Fenster
Executive Vice President and General Counsel
Two North Riverside Plaza, Suite 500
Chicago, IL 60606
sfenster@eqr.com

Canopy Merger Sub LLC
c/o Scott Fenster
Executive Vice President and General Counsel
Two North Riverside Plaza, Suite 500
Chicago, IL 60606
sfenster@eqr.com

VI. General Provisions

44. This Assurance shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts, and Superior Court for Suffolk County shall retain jurisdiction over this Assurance.

45. This Assurance shall be effective as of the Effective Date and, except where otherwise noted, shall expire upon the completion of the divestiture.

46. This Assurance contains the complete agreement between the Parties. No promises, representations, or warranties other than those set forth in this Assurance have been made by either

party. This Assurance supersedes all prior communications, discussions, or understandings, if any, of the Parties, whether written or oral.

47. The provisions of this Assurance are severable. If any provision herein is found to be legally insufficient, invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect and shall in no way be affected, impaired, or invalidated.

48. This Assurance shall be binding on AvalonBay's and Equity's successors, subsidiaries, transferees, assigns, and all other persons who have authority to control or who in fact control and direct AvalonBay's and Equity's business in the Commonwealth of Massachusetts.

49. AvalonBay, Equity, and the AGO participated in the drafting of this Assurance, with the exception of Section III, which reflects the AGO's allegations.

50. AvalonBay and Equity waive all rights to appeal or to otherwise challenge or contest the validity of this Assurance.

51. Except as to the Notice provision, this Assurance may only be amended or supplemented by a written document signed by all parties or by court order.

52. This Assurance, as well as any amendments thereto, may be signed in multiple counterparts, each of which will be considered an original and all of which, when considered together, will constitute a whole.

53. Nothing in this Assurance shall relieve AvalonBay and Equity of any obligations to comply with all applicable federal and state laws, rules, and regulations.

54. This Assurance does not constitute an approval by the AGO of AvalonBay's and Equity's acts or practices, and AvalonBay and Equity shall make no representation to the contrary.

55. AvalonBay and Equity shall not cause, encourage, or knowingly permit third parties acting as AvalonBay's and Equity's agent, on AvalonBay's and Equity's behalf or for its benefit, or otherwise under AvalonBay's and Equity's control or direction, to engage in practices from which AvalonBay and Equity are prohibited by this Assurance.

56. AvalonBay and Equity and their signatories have consulted with counsel in connection with their decision to enter into this Assurance.

57. Signatories for AvalonBay and Equity represent and warrant that they have the full legal power, capacity, and authority to bind AvalonBay and Equity.

58. By signing below, AvalonBay and Equity agree to comply with all the terms of this Assurance.

COMMONWEALTH OF MASSACHUSETTS
ANDREA JOY CAMPBELL, ATTORNEY GENERAL

By: _____
Anthony W. Mariano, BBO #688559
Chief
Antitrust Division
One Ashburton Place
Boston, MA 02108
(781) 835-7990

Dated: 8/17/26

AvalonBay Communities, Inc.

By: _____
Edward M. Schulman
Executive Vice President General Counsel and Secretary
4040 Wilson Blvd, Suite 1000
Arlington, VA 22203

Dated: August 14, 2026

Equity Residential

By: _____
Scott Fenster
Executive Vice President and General Counsel
Two North Riverside Plaza, Suite 500
Chicago, IL 60606

Dated: August 14, 2024

ERP Operating Limited Partnership

By: _____
Scott Fenster
Executive Vice President and General Counsel
Two North Riverside Plaza, Suite 500
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Dated: August 14, 2024

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Executive Vice President and General Counsel
Two North Riverside Plaza, Suite 500
Chicago, IL 60606

Dated: August 14, 2024