

CASEY M. FRANK, Individually and  
on Behalf of All Others Similarly Situated,

Plaintiff,

v.

EDUCATION REALTY TRUST, INC., *et al.*,

Defendants.

**IN THE**

**CIRCUIT COURT**

**FOR**

**BALTIMORE CITY, MARYLAND**

Case No. 24-C-19-005518

Judge: Jeffrey M. Geller

**STIPULATION AND AGREEMENT OF  
COMPROMISE, SETTLEMENT, AND RELEASE**

Plaintiff Casey M. Frank (“Plaintiff”), on the one hand, and Randall L. Churchey, Thomas Trubiana, John V. Arabia, Kimberly K. Schaefer, Howard A. Silver, John T. Thomas, Wendell W. Weakley (collectively, the “Individual Defendants”), and Education Realty Trust, Inc. (“EdR,” which together with the Individual Defendants, “Defendants,”) and Greystar Student Housing Growth and Income Trust (“Greystar” and together with EdR as successor by merger, the “Company”), on the other hand, have reached this Stipulation and Agreement of Compromise, Settlement, and Release (with the exhibits hereto, the “Stipulation”), in the above-captioned action *Frank v. Education Realty Trust, Inc., et al.*, Case No. 24-C-19-005518 (the “Action”) in the Circuit Court for Baltimore City, Maryland (the “Court”), subject to approval by the Court. Plaintiff, Defendants, and Greystar may be collectively referred to herein as the “Settling Parties.”

WHEREAS, on June 25, 2018, EdR and certain affiliates of Greystar Real Estate Partners, LLC (collectively, “Greystar Real Estate Partners”) announced that they had entered into an Agreement and Plan of Merger (“Merger Agreement”), pursuant to which Greystar Real Estate

Partners would acquire all outstanding shares of EdR common stock for \$41.50 in cash per share of EdR common stock (the “Transaction”);

WHEREAS, on August 13, 2018, EdR filed a Definitive Proxy Statement (“Proxy”) with the U.S. Securities and Exchange Commission (“SEC”) announcing that the special meeting of EdR’s shareholders to vote on the Transaction was set for September 14, 2018;

WHEREAS, on August 22, 2018, Plaintiff filed his Class Action Complaint (“Complaint”) in the Circuit Court for Baltimore County, Maryland (“Circuit Court for Baltimore County”) against Defendants, and the case was assigned to Judge Mickey J. Norman with case number 03-C-18-008387;

WHEREAS, the Complaint alleged that Defendants breached their fiduciary duties by approving the Transaction and by adopting a portion of the bylaw on June 24, 2018, which designated this Court and the United States District Court for the District of Maryland, Baltimore Division, as the sole venues for claims of this nature (“Exclusive Venue Designation”), because the Exclusive Venue Designation exceeded the jurisdiction-selection permitted by Md. Corps. & Ass’ns Code § 2-113 and contravened Maryland’s venue statutes;

WHEREAS, on September 14, 2018, EdR’s shareholders voted to approve the Transaction;

WHEREAS, on September 20, 2018, the Transaction was consummated (“Closing Date”);

WHEREAS, on November 19, 2018, Plaintiff filed an Amended Class Action Complaint (“Amended Complaint”) in the Circuit Court for Baltimore County against Defendants claiming that in addition to the allegations raised in the Complaint, the Individual Defendants breached their fiduciary duties by, among other things: (i) abdicating control of the sales process to Defendant Churchey; and (ii) impeding other interested parties from making a superior offer;

WHEREAS, on January 15, 2019, Defendants filed a Motion to Dismiss the Amended Complaint and also requested that the case be transferred to this Court;

WHEREAS, on February 28, 2019, Plaintiff filed his Opposition to Defendants' Motion to Dismiss and also requested that the Circuit Court for Baltimore County deem the Exclusive Venue Designation void and enjoin Defendants from enforcing it;

WHEREAS, on April 1, 2019, Defendants filed their Reply in support of their Motion to Dismiss;

WHEREAS, on September 30, 2019, Judge Norman denied Defendants' Motion to Dismiss but granted Defendants' request to transfer the case to this Court;

WHEREAS, on October 25, 2019, this case was transferred to this Court and assigned case number 24-C-19-005518, and later assigned to Judge Jeffrey M. Geller (the "Action");

WHEREAS, on November 14, 2019, Defendants filed their Answer to Plaintiff's Amended Complaint;

WHEREAS, on January 22, 2020, Judge Geller entered a Stipulated Order Regarding Confidentiality of Discovery ("Confidentiality Agreement"), which effectively marked the commencement of extensive discovery by the Settling Parties in the Action;

WHEREAS, Plaintiff conducted extensive discovery that included reviewing 90,539 pages of documents produced by Defendants, 8,505 pages of documents produced by EdR's financial advisor in connection with the Transaction, Merrill Lynch, Pierce, Fenner & Smith Incorporated ("BofA"), and thousands of pages of documents produced by 13 third parties, and Plaintiff responded to Defendants' Request for Production and First Set of Interrogatories;

WHEREAS, on December 2, 2020, the Settling Parties attended a mediation with Robert A. Meyer from JAMS but were unable to reach a settlement. Thereafter, the Settling Parties continued to engage in informal settlement discussions with the assistance of Mr. Meyer;

WHEREAS, on January 25, 2021, Plaintiff filed his Motion for Class Certification under seal pursuant to the Confidentiality Agreement;

WHEREAS, on May 14, 2021, Defendants took the deposition of Plaintiff;

WHEREAS, thereafter Plaintiff took the following eleven (11) depositions: (i) each of the seven Individual Defendants; (ii) EdR's former Chief Financial Officer, Edwin B. Brewer, Jr.; (iii) Christine Richards, EdR's former Chief Operating Officer and Executive Vice President; (iv) Robert A. Faith, Greystar Real Estate Partners' Founder, Chairman of the Board, and Chief Executive Officer; and (v) Jeffrey Horowitz, head of the BofA team that advised EdR in connection with the Transaction;

WHEREAS, Plaintiff also obtained an affidavit from The Scion Group LLC's ("Scion") President and co-founder, Robert Bronstein related to Plaintiff's claims about the sales process;

WHEREAS, Plaintiff retained a valuation expert, M. Travis Keath, and a corporate governance expert, Professor Stephen J. Lubben, and Defendants retained valuation expert Dr. Stuart C. Gilson and corporate governance expert Steven Davidoff Solomon, and subsequently on July 16, 2021, Plaintiff and Defendants exchanged their respective expert reports;

WHEREAS, on September 9, 2021, the Settling Parties exchanged rebuttal reports from each of their respective experts;

WHEREAS, on November 4, 2021, after two months of settlement discussions facilitated by Mr. Meyer, Mr. Meyer issued a proposal to settle the Action for a \$10 million common fund;

WHEREAS, the Settling Parties accepted Mr. Meyer's proposal, and on November 15, 2021, the Settling Parties filed a Notice of Settlement informing the Court that a settlement in principle for a \$10 million common fund had been reached to resolve the Action (the "Settlement");

WHEREAS, on November 16, 2021, the Settling Parties memorialized the terms of the Settlement in a term sheet;

WHEREAS, on January 11, 2022, the Settling Parties reduced the settlement terms into this Stipulation, which is now subject to this Court’s approval; and

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED**, subject to approval by the Court, pursuant to Rule 2-231(i) of the Maryland Rules of Civil Procedure of the Circuit Court (“Maryland Rules”), in consideration of the benefits afforded herein, that the Action shall be compromised, settled, released, and dismissed with prejudice, upon and subject to the following terms and conditions:

**DEFINITIONS**

In addition to the terms defined elsewhere in this Stipulation, the following terms have the meanings specified below:

1. “Action” or “Litigation” means the above-captioned action *Frank v. Education Realty Trust, Inc., et al.*, Case No. 24-C-19-005518 in the Circuit Court for Baltimore City and includes all prior filings in the Circuit Court for Baltimore County, as well as all filings in the Circuit Court for Baltimore City.
2. “Authorized Claimant” means any Settlement Class Member whose claim for recovery has been allowed pursuant to the terms of the Plan of Allocation ultimately approved by the Court.
3. “Claimant” means a person or entity who or which submits a Proof of Claim and Release form to the Claims Administrator.
4. “Claims Administrator” means the firm to be selected by Plaintiff’s Counsel that will provide and administer notice of the proposed Settlement to the Settlement Class Members.
5. “Court” means the Circuit Court for Baltimore City, Maryland.

6. “Defendants” means Education Realty Trust, Inc., Randall L. Churchey, Thomas Trubiana, John V. Arabia, Kimberly K. Schaefer, Howard A. Silver, John T. Thomas, and Wendell W. Weakley.

7. “Defendants’ Counsel” means the undersigned counsel for Defendants.

8. “Defendants’ Released Persons” means Defendant EdR, the Individual Defendants (Randall L. Churchey, Thomas Trubiana, John V. Arabia, Kimberly K. Schaefer, Howard A. Silver, John T. Thomas, and Wendell W. Weakley), Greystar Student Housing Growth and Income Trust (successor by merger to EdR), and any and all of their related parties, including, without limitation, as well as each of their respective past or present family members, spouses, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, distributees, foundations, agents, employees, fiduciaries, partners, control persons, partnerships, general or limited partners or partnerships, joint ventures, member firms, limited liability companies, corporations, affiliates, parents, subsidiaries, divisions, associated entities, stockholders, principals, officers, managers, directors, managing directors, members, managing members, managing agents, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, financial or investment advisors, advisors, consultants, investment bankers, entities providing any fairness opinion, underwriters, brokers, dealers, lenders, commercial bankers, attorneys, personal or legal representatives, accountants, insurers, co-insurers, reinsurers, and associate.

9. “EdR” means Education Realty Trust, Inc.

10. “Escrow Account” means the account that is maintained by the Escrow Agent and into which the Settlement Amount shall be deposited. The funds deposited into the Escrow Account shall be invested in instruments backed by the full faith and credit of the U.S. Government or agency thereof, or if the yield on such instruments is negative, in an account fully insured by the U.S. Government or

an agency thereof.

11. “Escrow Agent” means Monteverde & Associates PC or its successor(s) or authorized agents.

12. “Final Approval” means when the Court has entered an Order and Final Judgment certifying the Settlement Class, approving the Settlement, dismissing the Action with prejudice on the merits as to the Defendants (and with Plaintiff and Plaintiff’s Counsel agreeing not to pursue fees or costs against the Defendants other than from the Fund pursuant to paragraph 60 herein), and providing for such release language as set forth in paragraphs 72, et seq. herein, with such Order and Final Judgment being final and no longer subject to further appeal or review, whether by affirmance on or exhaustion of any possible appeal or review, by writ of certiorari or otherwise, or by lapse of time.

13. “Fund” means the Settlement Amount held as a common fund in the Escrow Account, plus all interest and accretions thereto after being deposited into the Escrow Account controlled by the Escrow Agent, and which may be reduced by payments or deductions as provided for herein or by court order.

14. “Greystar” means Greystar Student Housing Growth and Income Trust, successor by merger to EdR. Greystar and EdR may collectively be referred to herein as the “Company.”

15. “Individual Defendants” means Randall L. Churchey, Thomas Trubiana, John V. Arabia, Kimberly K. Schaefer, Howard A. Silver, John T. Thomas, and Wendell W. Weakley.

16. “Liaison Counsel” means Levi & Korsinsky, LLP.

17. “Net Settlement Fund” means the Fund less: (i) any attorneys’ fees, expenses, and incentive award approved by the Court, (ii) any costs or expenses incurred in connection with administering the Settlement and/or distribution of monies from the Fund (other than expenses incurred by Defendants in connection with the provision of Notice in accordance with paragraph 67

herein), and (iii) any federal, state, or local taxes of any kind in connection with the Fund (including any penalties and the reasonable expenses and costs in connection with determining the amount of, and paying, any taxes owed by the Fund (including, without limitation, reasonable expenses of tax attorneys and accountants), and for the preparation, mailing, administration, and distribution costs and expenses relating to the filing or the failure to file all necessary or advisable tax returns).

18. “Notice” means the Notice of Pendency and Proposed Settlement of Class Action, substantially in the form attached hereto as Exhibit A-1.

19. “Order and Final Judgment” means the judgment to be rendered by the Court, substantially in the form attached hereto as Exhibit B.

20. “Person” means a natural person, individual, corporation, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and all of their respective spouses, heirs, beneficiaries, executors, administrators, predecessors, successors, representatives, or assignees.

21. “Plaintiff” means Casey M. Frank.

22. “Plaintiff’s Counsel” means Monteverde & Associates PC and Ademi LLP, or any of their successors. No other law firm is included within the definition of Plaintiff’s Counsel.

23. “Plaintiff’s Released Claims” means any and all claims, rights and causes of action, duties, obligations, demands, actions, debts, sums of money, suits, contracts, agreements, promises, damages and liabilities, whether known or unknown, contingent or non-contingent, or suspected or unsuspected, including all claims arising under federal or state statutory or common law or any other law, rule or regulation, whether foreign or domestic, that arise out of or relate in any way to the



institution, prosecution, or settlement of the claims by Plaintiff, any other Settlement Class Members, Plaintiff's Counsel, or Liaison Counsel against the Defendants, except for claims relating to the enforcement of this Settlement.

24. "Plan of Allocation" means a plan or formula of allocation of the Fund, whereby the Fund shall be distributed to Authorized Claimants after payment of Notice and Administration Costs (defined below), Taxes and Tax Expenses (defined below), such attorneys' fees, costs, expenses (including time and expenses awarded by the Court to Plaintiff), and interest as may be awarded by the Court. Any Plan of Allocation is not part of the Stipulation, and Defendants and Defendants' Released Persons shall have no responsibility or liability with respect thereto.

25. "Preliminary Approval and Scheduling Order" means a proposed order of preliminary approval and for notice and scheduling described below, substantially in the form attached hereto as Exhibit A.

26. "Proof of Claim and Release" means the document, substantially in the form attached hereto as Exhibit A-2.

27. "Released Claims" means any and all claims, rights and causes of action, duties, obligations, demands, actions, debts, sums of money, suits, contracts, agreements, promises, damages and liabilities, whether known or unknown, contingent or non-contingent, derivative or direct, or suspected or unsuspected, including any claims arising under federal or state statutory or common law or any other law, rule or regulation, whether foreign or domestic, that have been asserted, could have been asserted, or could be asserted in the future against Defendants' Released Persons that arise out of or relate in any way to the Merger Agreement, the Transaction, the Proxy, or the Action; provided, however, that the Released Claims do not include any claims to enforce the Settlement or any claims against Settlement Class Members that properly seek to opt-out of the Settlement.

28. “Settlement” means the settlement of the Litigation as set forth in this Stipulation.

29. “Settlement Amount” means the principal amount of Ten Million Dollars (\$10,000,000.00) that the Company and/or its insurers shall pay or cause to be paid pursuant to paragraph 39 of this Stipulation. The Individual Defendants are not responsible for paying any portion of the Settlement Amount. No Defendant, including EdR, or any Defendants’ Released Person, including Greystar, shall have any obligation whatsoever to pay any amount over and above the principal amount of Ten Million Dollars (\$10,000,000.00). Such amount is to be paid as consideration for full and complete settlement of all of the Released Claims.

30. “Settlement Class” means all record holders and all beneficial holders of EdR common stock who purchased, sold, or held such stock during the period from and including June 25, 2018, date of execution of the Merger Agreement, through and including, September 20, 2018, the Closing Date, including any and all of their respective predecessors, successors, trustees, executors, administrators, estates, legal representatives, heirs, assigns and transferees. Excluded from the Settlement Class are: (i) Defendants; (ii) members of the immediate families of each Individual Defendant; (iii) EdR’s subsidiaries and affiliates; (iv) any entity in which any Defendant has a controlling interest; (v) the legal representatives, heirs, successors, administrators, executors, and assigns of each Defendant; and (vi) any Person or entity who properly excludes themselves by filing a valid and timely request for exclusion (collectively the “Excluded Stockholders”).

31. “Settlement Class Member” means any Person who falls within the definition of the Settlement Class as set forth in paragraph 30 of the Stipulation.

32. “Settlement Class Period” means the period commencing on June 25, 2018, and ending on September 20, 2018, inclusive.

33. “Settlement Hearing” means a hearing where the Court determines whether the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class.

34. “Settling Parties” means each of the Defendants and Greystar, on the one hand, and Plaintiff on behalf of himself and each of the Settlement Class Members, on the other hand.

35. “Stipulation” means this Stipulation and Agreement of Compromise, Settlement, and Release, including the exhibits thereto.

36. “Summary Notice” means the document, substantially in the form attached hereto as Exhibit A-3.

37. “Unknown Claims” means (i) any of the Plaintiff’s Released Claims which Plaintiff or any Settlement Class Member, or any of their agents or attorneys, does not know or suspect to exist in such Person’s favor at the time of the release of the Plaintiff’s Released Claims; and (ii) any of the Released Claims that the Defendants’ Released Persons do not know or suspect to exist in his, her, or its favor at the time of the release of the Released Claims, which, in the case of both (i) and (ii), if known by such Person, might have affected such Person’s decision with respect to this Settlement, including, without limitation, such Person’s decision not to object to this Settlement or not to exclude himself, herself, or itself from the Settlement Class. Unknown Claims include those Plaintiff’s Released Claims and Released Claims in which some or all of the facts comprising the claim may be suspected, or even undisclosed or hidden. With respect to any and all Plaintiff’s Released Claims and Released Claims, Plaintiff and Defendants shall expressly, and each of the Settlement Class Members and Defendants’ Released Persons shall be deemed to have, and by operation of the Order and Final Judgment shall have, expressly waived to the fullest extent permitted by law, the provisions, rights, and benefits of California Civil Code § 1542, which provides:

A general release does not extend to claims that the creditor or releasing party does not

know or suspect to exist in his or her favor at the time of executing the release, and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Plaintiff and Defendants shall expressly, and each of the Settlement Class Members and Defendants' Released Persons shall be deemed to have, and by operation of the Order and Final Judgment, shall have expressly waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to California Civil Code § 1542. Plaintiff, Settlement Class Members, and the Defendants' Released Persons may hereafter discover facts in addition to or different from those which such party now knows or believes to be true with respect to the subject matter of Plaintiff's Released Claims and the Released Claims, but Plaintiff and Defendants shall expressly, and each Settlement Class Member and Defendants' Released Persons shall be deemed to have, and by operation of the Order and Final Judgment shall have fully, finally, and forever settled and released any and all Plaintiff's Released Claims or Released Claims, as the case may be, including Unknown Claims, whether or not known or unknown, suspected or unsuspected, contingent or non-contingent and whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, reckless, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts, whether or not previously or currently asserted in any action. Plaintiff and Defendants acknowledge, and the Settlement Class Members and Defendants' Released Persons shall be deemed by operation of the Order and Final Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.

### **SUBMISSION AND APPLICATION TO THE COURT**

38. As soon as practicable after this Stipulation has been executed, Plaintiff shall submit a proposed Preliminary Approval and Scheduling Order seeking preliminarily approval of the Settlement and certification of the Settlement Class for settlement purposes only, and establishing the procedure for: (i) approval of the Notice, Proof of Claim and Release, and Summary Notice; and (ii) the Court's consideration for final approval of the proposed Settlement, class certification, and Plaintiff's application(s) for attorneys' fees, reimbursement of expenses, and an incentive award.

### **SETTLEMENT CONSIDERATION**

39. In consideration for the full and final Settlement and releases (as defined herein) by Plaintiff and the Settlement Class and the dismissal with prejudice of the Action as to the Defendants, the Settling Parties have agreed that on behalf of the Defendants, the Company and/or its insurers shall cause the Settlement Amount to be paid into the Escrow Account no later than thirty (30) days after the later of (the "Due Date"): (i) entry of the Preliminary Approval and Scheduling Order by the Court; and (ii) receipt by pertinent insurance carrier(s) of each of (a) a copy of the Preliminary Approval and Scheduling Order as entered by the Court (which will be transmitted by Defendants' Counsel on the day received), (b) a W-9 for the Escrow Account, and (c) wire or mailing instructions for delivery to the Escrow Account.

### **ESCROW AGENT AND ESCROW ACCOUNT**

40. The Escrow Agent shall open the Escrow Account in a federally insured financial institution to hold the Settlement Amount, plus any accrued interest, in a segregated account maintained by the Escrow Agent. Such funds will be returned by the Escrow Agent in the event that the Settlement or any of the dismissals are not upheld on appeal.

41. The Escrow Agent will invest the Fund only in instruments backed by the full faith and credit of the U.S. Government or fully insured by the U.S. Government or an agency thereof, and will reinvest the proceeds of these instruments as they mature in similar instruments at their then-current market rates. All costs and risks related to the investment of the Fund in accordance with the guidelines set forth in this paragraph shall be borne by the Fund and neither Defendants nor Defendants' Released Persons shall have any responsibility for, interest in, or liability whatsoever with respect to the funds held in the Escrow Account, including with respect to investment decisions, distribution of the Fund, or the actions of the Escrow Agent, or any transactions executed by the Escrow Agent.

42. The Escrow Agent shall not disburse the Fund except as provided by: (i) the Stipulation; (ii) an order of the Court; or (iii) prior written agreement of Defendants' Counsel. Subject to further order(s) and/or directions as may be made by the Court, or as provided in the Stipulation, the Escrow Agent is authorized to execute such transactions on behalf of the Settlement Class Members as are consistent with the terms of the Stipulation.

43. Neither Defendants nor Defendants' Released Persons shall have any responsibility for, interest in, or liability whatsoever with respect to, the actions of the Escrow Agent, or any transaction executed by the Escrow Agent. All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed or returned pursuant to the Stipulation and/or further order(s) of the Court.

#### **TAXES AND TAX EXPENSES**

44. The Settling Parties and their counsel agree that the Fund should be treated as being at all times a "qualified settlement fund" within the meaning of Treas. Reg. §1.468B-1. The Settling

Parties shall not take a position in any filing or before any tax authority inconsistent with such treatment. In addition, the Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this section, including the “relation-back election” (as defined in Treas. Reg. §1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur. The Escrow Agent shall obtain and provide to Defendants the Fund’s federal taxpayer identification number before the Due Date.

45. For the purpose of §468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” shall be the Escrow Agent. The Escrow Agent shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Fund (including, without limitation, the returns described in Treas. Reg. §1.468B-2(k)(1)). Such returns (as well as the election described in this section) shall be consistent with this section and in all events shall reflect that all taxes, including any estimated taxes, interest, or penalties (collectively, the “Taxes”) on the income earned by the Fund shall be paid out of the Fund as provided hereof.

46. All Taxes arising with respect to the income earned by the Fund shall be paid out of the Fund. Expenses and costs incurred in connection with the operation and implementation of this section (including, without limitation, expenses of tax attorneys and/or accountants, and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this section) (“Tax Expenses”) shall be paid out of the Fund without approval of the Defendants or the Court. In all events none of Defendants’ Released Persons or their counsel shall have any liability or

responsibility for the Taxes or the Tax Expenses. The Escrow Agent shall indemnify and hold each of Defendants' Released Persons and their counsel harmless for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification). Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Fund and shall be timely paid by the Escrow Agent out of the Fund without prior order from the Court, and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from any distribution to Settlement Class Members any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. §1.468B-2(1)(2)); neither any of Defendants' Released Persons, their insurance carriers, nor their counsel are responsible, nor shall they have any liability. The Settling Parties agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this section.

#### **CLASS CERTIFICATION**

47. For settlement purposes only, the Settling Parties agree that the Action shall be conditionally certified as an opt-out class pursuant to Maryland Rule 2-231. Certification of the Settlement Class (except for the Excluded Stockholders) is for settlement purposes only and is conditioned upon Final Approval.

48. The Excluded Stockholders hereby relinquish any right to receive any part of the Fund. The Excluded Stockholders shall endeavor to provide Plaintiff, within two business days after Final Approval of the Settlement and upon prior reasonable request by Plaintiff: (i) the names and mailing addresses for each of the Excluded Stockholders; (ii) the number of Excluded Shares held by such Excluded Stockholders; (iii) the account information (including financial institution and account numbers where the Excluded Shares were held) for such Excluded Stockholders; and (iv) any other



information pertaining to the Excluded Stockholders' holdings in EdR necessary and sufficient to permit the Claims Administrator to take appropriate steps to ensure that no Excluded Stockholder inadvertently receives any payment from the Fund.

49. In the event that any Excluded Stockholder learns that he, she, or it has received payment from the Fund, he, she, or it shall provide reasonable notice to Plaintiff and take steps reasonably requested by Plaintiff and the Claims Administrator to return promptly said funds to the Claims Administrator.

50. If the Settlement does not become final for any reason, Defendants reserve the right to oppose certification of Plaintiff or the Settlement Class in the Action or any future proceedings.

#### **NOTICE**

51. Plaintiff's Counsel are responsible for selecting a Claims Administrator to provide and administer notice of the proposed Settlement to the Settlement Class Members. Subject to the direction and approval of the Escrow Agent, the Claims Administrator shall pay from the Fund the costs and expenses reasonably and actually incurred in connection with providing notice to Settlement Class Members, mailing the Notice and Proof of Claim and Release and publishing Summary Notice (such amount shall include, without limitation, the actual costs of publication, printing and mailing the notice, and reimbursement to nominee owners for forwarding notice to their beneficial owners), assisting with the filing of claims, administering and distributing the Net Settlement Fund to Authorized Claimants, processing Proofs of Claim and Releases, and paying escrow fees and costs, if any, and the administrative expenses incurred and fees charged by the Claims Administrator in connection with providing notice and processing the submitted claims (together, the "Notice and Administration Costs"). All Notice and Administration Costs shall be paid from the Fund. In the

event that the Settlement does not become final, any money paid or incurred for the above purposes shall not be returned or repaid to EdR or its insurers.

52. Notice of the proposed Settlement shall be provided by the Claims Administrator by mailing Notice to all stockholders of record of EdR, in accordance with the Preliminary Approval and Scheduling Order. Plaintiff's Counsel shall, at least ten (10) business days before the Settlement Hearing, file with the Court an appropriate affidavit or declaration, regarding preparation and distribution of the Notice, Proof of Claim and Release, and Summary Notice.

### **OPT-OUT RIGHTS**

53. Prospective Settlement Class Members shall have the right to opt-out of, and request exclusion from, the Settlement Class and the Settlement. Any prospective Settlement Class Member who does not timely and validly request exclusion from the Settlement Class and Settlement shall be a Settlement Class Member and shall be bound by the terms of this Stipulation, the Settlement, and the Order and Final Judgment. Any prospective Settlement Class Member who timely and validly requests exclusion from the Settlement Class and Settlement shall be excluded from the Settlement Class and the Settlement as an Excluded Stockholder.

54. The Notice shall describe the procedure whereby prospective Settlement Class Members may exclude themselves from the Settlement Class and Settlement, which shall, at a minimum, provide that any such requests must be made in writing, no later than twenty-one (21) calendar days prior to the Settlement Hearing, and be mailed and postmarked to the address designated in the Notice.

55. Notwithstanding anything else contained in this Stipulation, if more than a certain number to be kept confidential and filed under seal ("Blow Up Number") of the prospective Settlement Class Members request exclusion, then Defendants may, in their sole discretion, elect to terminate this

Stipulation. Prior to termination of the Stipulation and within five (5) business days from the day they determine that the number of Settlement Class Members who have requested exclusion exceeds the Blow Up Number, and in any event, at least fifteen (15) days prior to the Settlement Hearing, Defendants will notify Plaintiff's Counsel, in writing, that they have received the Blow Up Number of Requests for Exclusion. Plaintiff's Counsel will then have ten (10) days to attempt to cause retraction of any election of exclusion by Settlement Class Members or any group thereof. To retract a prior Request for Exclusion, the Settlement Class Member must provide to the Settling Parties, at least three (3) days prior to the Settlement Hearing, or any adjournment thereof, a written notice stating his, her, or its desire to retract the Request for Exclusion from the Settlement Class. If Plaintiff's Counsel cannot cause sufficient retractions three (3) days prior to the Settlement Hearing, Defendants may terminate this Stipulation. In that event, (a) this Stipulation shall terminate and become null and void, the Preliminary Approval and Scheduling Order and all of its provisions shall be vacated by its own terms, and the Action shall revert to the status that existed prior to the execution date of this Stipulation, including no certification of a class; and (b) no term of this Stipulation or any draft thereof, or of the negotiation, documentation, or other part or aspect of the Settling Parties' settlement discussions, shall have any effect, nor shall any such matter be admissible in evidence for any purpose in the Action, or in any other proceeding. Any dispute among the parties concerning the interpretation or application of this blow-up provision may be presented to the Court for resolution upon the application of any party hereto.

### **ORDER AND FINAL JUDGMENT**

56. If the Settlement (including any modification thereto made with the consent of the Settling Parties) shall be approved by the Court following the Settlement Hearing as fair, reasonable,

adequate, and in the best interests of the Settlement Class, then the Settling Parties shall request that the Court enter an Order and Final Judgment.

57. The Order and Final Judgment shall, among other things, provide for the full and complete dismissal of the Action with prejudice as to the Defendants and for the full, final, and forever settlement, release, relinquishment, and discharge of the Released Claims, as well as a permanent injunction barring any and all manner of the Released Claims, by any Settlement Class Member in his, her, or its capacity as a purchaser, seller, or holder of EdR stock (collectively, the “Releasing Persons”) against Defendants’ Released Persons; provided, however, that the Released Claims do not include any claims to enforce the Settlement or any claims by Settlement Class Members that properly seek to opt-out of the Settlement.

58. Furthermore, Defendants and Defendants’ Released Persons shall be deemed to have, and by operation of the Order and Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged Plaintiff, the Settlement Class Members, Plaintiff’s Counsel, and Liaison Counsel from all Plaintiff’s Released Claims or the administration or distribution of the Fund in accordance with the terms of this Stipulation; provided, however, that such release shall not affect any claims to enforce the terms of the Stipulation or the Settlement.

59. Moreover, each and all of the Settlement Class Members shall be deemed to have, and by operation of the Order and Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged Plaintiff, Plaintiff’s Counsel, and Liaison Counsel from all claims, demands, rights, actions or causes of action, liabilities, damages, losses, obligations, judgments, suits, fees, expenses, costs, matters and issues of any kind or nature whatsoever, based upon or arising out of the institution, prosecution, assertion, settlement or resolution of the Action or the Released Claims

or the administration or distribution of the Fund; provided, however, that such release shall not affect any claims to enforce the terms of the Stipulation or the Settlement.

### **FINAL COURT APPROVAL**

60. As defined above, Final Approval of the Settlement shall occur when the Court has entered an Order and Final Judgment (in accordance with paragraphs 56, et seq.) certifying the Settlement Class for settlement purposes only, approving the Settlement, dismissing the Action with prejudice on the merits as to the Defendants (and with Plaintiff and Plaintiff's Counsel agreeing not to pursue fees or costs against the Defendants other than from the Fund pursuant to this paragraph), and providing for such release language as set forth in paragraphs 72, et seq. herein; and such Order and Final Judgment is final and no longer subject to further appeal or review, whether by affirmance on or exhaustion of any possible appeal or review, by writ of certiorari or otherwise, or by lapse of time.

### **DISTRIBUTION OF THE FUND**

61. After the Court enters an Order and Final Judgment, and Final Approval has been obtained as to such Order and Final Judgment, the Net Settlement Fund will be distributed as described in the Plan of Allocation to the Settlement Class Members (except for Excluded Stockholders). The Plan of Allocation is set forth in the Notice attached hereto as Exhibit A-1.

62. Solely for the purpose of facilitating the Claims Administrator's distribution of the Fund, Defendants have provided Plaintiff with a list or report of the holders of record of EdR common stock as of the Closing Date, containing each holder's name, address, the number of shares owned, and any other information necessary to provide notice to the Settlement Class.

## **CONDITIONS OF SETTLEMENT**

63. Defendants have denied and continue to deny that he, she, or it has committed any breach of fiduciary duty or violation of any other law or engaged in any of the wrongful acts alleged in the Action and expressly maintains that he, she, or it diligently and scrupulously complied with his, her, or its fiduciary and other legal duties, to the extent such duties exist, and is entering into this Stipulation solely because the Settlement would eliminate the burden, expense, distraction, and uncertainties inherent in further litigation.

64. Plaintiff's Counsel believes that Plaintiff's claims were at all relevant times meritorious and continue to have merit, and that Plaintiff and Plaintiff's Counsel are only entering into this Stipulation solely because they believe that the Settlement will provide a significant benefit to EdR's stockholders. Plaintiff and Plaintiff's Counsel concluded that the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class, and that it is reasonable to pursue the Settlement based upon the terms and procedures outlined herein and in light of the risks attendant to litigation.

65. The Settlement is expressly conditioned upon fulfillment of each of the following (once each is fulfilled, the "Effective Date"):

- (a) Execution of this Stipulation and such other documents as may be required to obtain final Court approval of the Settlement and Stipulation in a form satisfactory to the Settling Parties;
- (b) The Court has entered the Preliminary Approval and Scheduling Order;
- (c) The Settlement Amount has been deposited into the Escrow Account;
- (d) Defendants have not exercised their option to terminate the Stipulation (discussed below);

- (e) Entry of the Order and Final Judgment approving the proposed Settlement, approving final certification of the Settlement Class as an opt-out class for settlement purposes only, providing for the dismissal with prejudice of the Action as to Defendants (including Plaintiff), and approving the grant of releases discussed in paragraphs 72, et seq. herein; and
- (f) Final Approval of the Order and Final Judgment.

66. Prior to Final Approval of the Settlement, Defendants may, but are not obligated to, render this Stipulation null and void in the event that any claim relating to the subject matter of the Action is commenced or prosecuted against any of the Defendants' Released Persons and (subject to a motion by such Released Person(s)) such claims are not dismissed with prejudice or stayed in contemplation of the dismissal of the Action pursuant to the Settlement.

67. Defendants shall have the right (but not the obligation) to terminate the Settlement and to declare this Stipulation null and void and of no force and effect if the Settlement does not obtain Final Approval for any reason. If Defendants exercise this right, then this Stipulation shall not be deemed: (a) to prejudice in any way the respective claims, defenses, or positions of the Settling Parties with respect to the Action, including, but not limited to, any objection by any Defendant to any order or judgment or proposed order or judgment arising from any proposed settlement of claims by Plaintiff and any other Defendants, and any objection by Defendants to certification of the Settlement Class; or (b) to entitle any party to the recovery of costs and expenses incurred in connection with the intended implementation of the Settlement; provided, however, that EdR and/or its successor in interest shall be responsible for paying the costs of providing the notice to the Settlement Class regardless of whether the Settlement is approved.

68. In the event that the proposed Settlement is rendered null and void for any reason, the existence of or the provisions contained in this Stipulation shall not be deemed to prejudice in any way the respective claims, defenses, or positions of Plaintiff or Defendants with respect to the Action, including, but not limited to, the right to object to or oppose any order or judgment or proposed order or judgment arising from any proposed settlement of claims by Plaintiff and any other Defendants, and the right of the Defendants to oppose the certification of the Settlement Class in any future proceedings; nor shall they be deemed a presumption, a concession, or an admission by Plaintiff or any of the Defendants of any fault, liability or wrongdoing as to any facts, claims, or defenses that have been or might have been alleged or asserted in the Action or any other action or proceeding or each thereof; nor shall they be interpreted, construed, deemed, invoked, offered, or received in evidence or otherwise used by any Person in the Action or in any other action or proceeding.

**ATTORNEYS' FEES, EXPENSES, AND INCENTIVE AWARD**

69. Plaintiff's Counsel will submit an application for fees, expenses, and awards to be paid out of the Fund ("Fee and Expense Award") for: (i) reimbursement of Plaintiff's Counsel's expenses; (ii) an award of attorneys' fees based on the financial recovery to the Settlement Class; (iii) any interest on such attorneys' fees and expenses at the same rate and for the same periods as earned by the Fund (until paid); and (iv) a reasonable incentive award for Plaintiff for his time and effort in this Action. Defendants agree not to oppose such Fee and Expense Award application.

70. The Court may consider and rule upon the fairness, reasonableness, and adequacy of the Settlement independently of any Fee and Expense Award. The Fee and Expense Award, as awarded by the Court, shall be paid to Plaintiff's Counsel from the Fund, as ordered, within three (3) business days upon the execution by the Court both of the Order and Final Judgment and an order for the Fee and Expense Award, notwithstanding the existence of any timely filed objection thereto, any



appeal or potential for appeal therefrom, or collateral attack on the Settlement, any part thereof, or the Fee and Expense Award. The Court's failure to approve any requested Fee and Expense Award, in whole or in part, shall have no effect on the Settlement, and final resolution by the Court of any requested Fee and Expense Award shall not be a precondition to dismissal of the Action. In the event that the Settlement does not obtain, for any reason, Final Approval in accordance with paragraph 60, Plaintiff's Counsel are obligated to refund Defendants the full amount of the Fund, respectively, including without limitation the amount(s) by which the Fund was reduced in connection with any such Fee and Expense Award. In the event that the Settlement does obtain Final Approval in accordance with the terms and conditions set forth herein, and a Fee and Expense Award is nevertheless reversed or modified on appeal, Plaintiff's Counsel are obligated to refund to the Fund the amount by which any such Fee and Expense Award was reduced and all interest accrued or accumulated thereon, and to distribute all such amounts to the Settlement Class on a pro rata basis consistent with the provisions for distribution of monies from the Fund set forth in paragraph 61, et seq. herein.

71. Any Fee and Expense Award awarded by the Court shall be paid solely from the Fund. Except as provided above, Defendants and Defendants' Released Persons shall have no obligation to pay or reimburse any fees, expenses, costs, or damages alleged or incurred by any Settlement Class Member, by Plaintiff, by Plaintiff's Counsel, by Liaison Counsel, or by any other attorneys, experts, advisors, or representatives retained by Plaintiff or Plaintiff's Counsel with respect to this Action or the Released Claims. Defendants and Defendants' Released Persons shall have no responsibility or liability with respect to any fee and expense allocation between or among Plaintiff's Counsel.

## **EFFECT OF RELEASE**

72. The Releasing Persons and Plaintiff acknowledge, and the Settlement Class Members by operation of law shall be deemed to have acknowledged, that they may discover facts in addition to or different from those they now know or believe to be true with respect to the Released Claims, but that it is the Defendants' Released Persons' and Plaintiff's intention and, by operation of law, the intention of the Settlement Class Members, to completely, fully, finally, and forever compromise, settle, release, discharge, extinguish, and dismiss any and all Released Claims (including Unknown Claims), known or unknown, suspected or unsuspected, contingent or absolute, accrued or unaccrued, apparent or unapparent, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery of additional or different facts.

73. The Settlement is intended to extinguish all of the Released Claims and, consistent with such intention, upon Final Approval of the Settlement, Plaintiff shall expressly waive, relinquish, and release, and the Releasing Persons and each Settlement Class Member shall be deemed to have, and by operation of the Order and Final Judgment by the Court shall have, waived, relinquished, and released the provisions, rights, and benefits of any state, federal, or foreign law or principle of common law, which may have the effect of limiting the release set forth in this Stipulation. This shall include a waiver by Plaintiff, the Releasing Persons, and the Settlement Class of any rights pursuant to Section 1542 of the California Civil Code (or any similar, comparable, or equivalent provision of any federal, state, or foreign law, or principle of common law), which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

Plaintiff acknowledges, and the Releasing Persons and each Settlement Class Member shall be deemed by operation of the entry of Order and Final Judgment approving the Settlement to have acknowledged, that the foregoing waiver was separately bargained for, is an integral element of the Settlement, and was relied upon by each and all of the Defendants in entering into this Settlement.

74. Upon Final Approval, Defendants shall be deemed to have, and by operation of the judgment shall have, fully, finally, and forever released, relinquished, settled, extinguished, dismissed with prejudice, and discharged Plaintiff, Plaintiff's Counsel, and Liaison Counsel from any and all claims that have been or could have been asserted in the Action or any forum, which arise out of or relate in any way to the institution, prosecution, settlement, or dismissal of the Action, including any claims of bad faith or abuse of process against Plaintiff, Plaintiff's Counsel, or Liaison Counsel relating to their prosecution of the Action, except that this release shall not apply to the rights and obligations created by this Stipulation.

#### **BEST EFFORTS**

75. The Settling Parties and their counsel agree to cooperate fully with one another in seeking the Court's approval of this Stipulation and the Settlement, and to use their reasonable best efforts to effect, take, or cause to be taken all actions, and to do, or cause to be done, all things reasonably necessary, proper or advisable under applicable laws, regulations and agreements to consummate and make effective, as promptly as practicable, this Stipulation and the Settlement provided for hereunder (including, but not limited to, using their best efforts to resolve any objections raised to the Settlement) and the dismissal of the Action with prejudice and without costs, fees, or expenses to any party (except as provided for by paragraphs 69, et seq. herein).

76. Without further order of the Court, the Settling Parties may agree to reasonable extensions of time not expressly set forth by the Court in order to carry out any provisions of this Stipulation.

77. The Settling Parties also agree to use their reasonable best efforts to prevent, stay, seek dismissal of, or oppose entry of, any interim or final relief in favor of any Settlement Class Member in any other litigation against any of the Settling Parties, which litigation challenges the Settlement or involves, directly or indirectly, a Released Claim.

#### **NOT A CLAIMS-MADE SETTLEMENT**

78. This is not a claims-made settlement. As of the Effective Date, no Defendant, Defendants' Released Persons, or other Person shall have any right to the return of the Fund or any portion thereof for any reason. Upon the Effective Date, any and all remaining interest or right of Defendants or Defendants' Released Persons in or to the Fund, if any, shall be absolutely and forever extinguished. If the conditions specified in paragraph 65 hereof are not met, then this Stipulation shall be cancelled and terminated subject to paragraph 67, unless Plaintiff's Counsel and Defendants' Counsel mutually agree in writing to proceed with the Settlement.

#### **STAY OF PROCEEDINGS**

79. Pending Final Approval, Plaintiff and Plaintiff's Counsel agree to stay immediately the Action and not to initiate any other proceedings other than those incident to the Settlement itself.

80. The Settling Parties will request the Court to order (in the Preliminary Approval and Scheduling Order) that, pending final determination of whether the Settlement should be approved, Plaintiff and all Settlement Class Members are barred and enjoined from commencing, prosecuting, instigating, or in any way participating in the commencement or prosecution of any action asserting

any of the Released Claims, either directly, representatively, derivatively or in any other capacity, against any of the Defendants or Defendants' Released Persons.

**STIPULATION NOT AN ADMISSION**

81. The provisions contained in this Stipulation shall not be deemed a presumption, concession, or an admission by any of the Defendants of any fault, liability, or wrongdoing as to any facts or claims alleged or asserted in the Action, or any other actions or proceedings, and shall not be interpreted, construed, deemed, invoked, offered, or received in evidence or otherwise used by any Person in the Action, or in any other action or proceeding, whether civil, criminal or administrative, except for any litigation or judicial proceeding seeking to enforce or interpret the terms of this Stipulation or the Settlement contemplated herein.

**MISTAKE**

82. In entering into the Settlement, Plaintiff assumes the risk of any mistake of fact or law if Plaintiff should later discover that any fact he relied upon in entering into the Settlement is not true, or that his understanding of the facts or law was incorrect, and in such event Plaintiff shall not be entitled to seek rescission of the Settlement, or otherwise attack the validity of the Settlement, based on any such mistake. The Settlement is intended to be final and binding upon Plaintiff regardless of any mistake of fact or law.

**ENTIRE AGREEMENT; AMENDMENTS**

83. This Stipulation constitutes the entire agreement among the Settling Parties with respect to the subject matter hereof and may be modified or amended only by a writing signed by the signatories hereto.

### **GOVERNING LAW AND FORUM**

84. This Stipulation and the Settlement contemplated by it shall be governed by, and construed in accordance with, the laws of the State of Maryland, without regard to conflicts of laws principles. Any action to enforce or interpret this Stipulation and the Settlement contemplated by it shall be brought in the Circuit Court for Baltimore City, and the Settling Parties hereby consent to such jurisdiction and waive any objections thereto in any such action.

85. Plaintiff and Defendants acknowledge and agree, and by operation of law each Settlement Class Member shall be deemed to acknowledge and agree, that any controversy that may arise under this Stipulation is likely to involve complex and difficult issues, and therefore, hereby irrevocably and unconditionally waive any right he, she, or it may have to a trial by jury in respect of any litigation initiated by a party hereto or by a Settlement Class Member directly or indirectly arising out of or relating to the Settlement or this Stipulation. Plaintiff and each Defendant certify and acknowledge, and by operation of law each Settlement Class Member shall be deemed to certify and acknowledge that: (i) no representative, agent, or attorney of any other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce either of such waivers; (ii) he, she, or it understands and has considered the implications of such waivers; (iii) he, she, or it makes such waivers voluntarily; and (iv) he, she, or it has been induced to enter into this Stipulation by, among other things, the mutual waivers and certifications in this paragraph.

### **SUCCESSORS AND ASSIGNS**

86. This Stipulation, and all rights and powers granted hereby, shall be binding upon and inure to the benefit of the Settling Parties and their respective agents, executors, heirs, successors, affiliates, and assigns.

**REPRESENTATION AND WARRANTY**

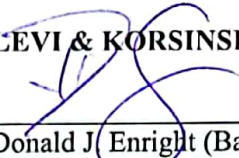
87. Plaintiff and Plaintiff's Counsel represent that: (i) Plaintiff was an EdR stockholder at all relevant times and continued to hold his stock in EdR as of the date of the Transaction; and (ii) none of Plaintiff's claims or causes of action referred to in the Action or this Stipulation, or any claims Plaintiff could have alleged, have been assigned, encumbered, or in any manner transferred in whole or in part.

**AUTHORITY**

88. The undersigned attorneys represent and warrant that they have the authority from their client(s) to enter into this Stipulation and bind their client(s) thereto.

Date: January 11, 2022

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Date: January 11, 2022

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*Counsel for Defendant Greystar Student  
Housing Growth and Income, successor by  
merger to Education Realty Trust, Inc.*

Date: January 11, 2022

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Date: January 11, 2022

**HOGAN LOVELLS US LLP**

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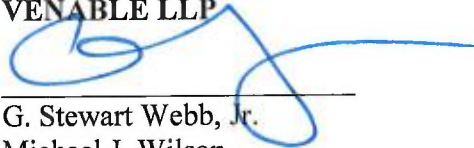
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Housing Growth and Income, successor by  
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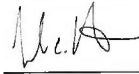
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*Counsel for Individual Defendants*

# **Exhibit A**

CASEY M. FRANK, Individually and  
on Behalf of All Others Similarly Situated,

Plaintiff,

v.

EDUCATION REALTY TRUST, INC., *et al.*,

Defendants.

**IN THE  
CIRCUIT COURT**

**FOR**

**BALTIMORE CITY, MARYLAND**

Case No. 24-C-19-005518

Judge: Jeffrey M. Geller

**[PROPOSED] ORDER OF PRELIMINARY APPROVAL AND FOR NOTICE AND  
SCHEDULING**

Plaintiff Casey M. Frank (“Plaintiff”), on the one hand, and Randall L. Churchey, Thomas Trubiana, John V. Arabia, Kimberly K. Schaefer, Howard A. Silver, John T. Thomas, Wendell W. Weakley (collectively, the “Individual Defendants”), and Education Realty Trust, Inc. (“EdR,” which together with the Individual Defendants, “Defendants,”) and Greystar Student Housing Growth and Income Trust (“Greystar” and together with EdR as successor by merger, the “Company,” and collectively with Plaintiff and the Defendants, the “Settling Parties”), having applied to the Circuit Court for Baltimore City, Maryland (the “Court”) pursuant to Maryland Rule 2-231(i) for an order approving the proposed Settlement of the above-captioned Action and determining certain matters in connection with the proposed Settlement as to all Defendants and for dismissal of the Action with prejudice on the merits as to Defendants, in accordance with the terms and conditions of the Stipulation and Agreement of Compromise, Settlement, and Release entered into by the Settling Parties and dated January 11, 2022 (the “Stipulation”); the Stipulation contemplating final certification by the Court of the Settlement Class, solely for the purposes of settlement; and the Court having read and considered the Stipulation and accompanying documents; and all Settling Parties having consented to the entry

of this Order of Preliminary Approval and for Notice and Scheduling (the “Order”).

IT IS HEREBY ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2022, that:

1. Except for terms defined herein, the Court adopts and incorporates the definitions in the Stipulation for purposes of this Order.

2. The Court preliminarily approves the Stipulation, including all exhibits thereto, and the Settlement set forth therein, and preliminarily finds that the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class (as defined below) to warrant notice to the Settlement Class Members and to schedule a final fairness hearing (“Settlement Hearing”), at which time the Court will hear any objections (subject to the procedures described below) and consider whether to enter an Order and Final Judgment approving the Settlement.

3. For settlement purposes only, the Action shall be preliminarily certified pursuant to Maryland Rules 2-231(a)-(c), and maintained as an opt-out class action, with the class defined as all record holders and all beneficial holders of EdR common stock who purchased, sold, or held such stock during the period from and including June 25, 2018, date of execution of the Merger Agreement, through and including, September 20, 2018, the Closing Date, including any and all of their respective predecessors, successors, trustees, executors, administrators, estates, legal representatives, heirs, assigns, and transferees (the “Settlement Class”). Excluded from the Settlement Class are: (i) Defendants; (ii) members of the immediate families of each Individual Defendant; (iii) EdR’s subsidiaries and affiliates; (iv) any entity in which any Defendant has a controlling interest; (v) the legal representatives, heirs, successors, administrators, executors, and assigns of each Defendant; and (vi) any Person or entity who properly excludes themselves by filing a valid and timely request for exclusion (collectively the “Excluded Stockholders”).

4. For settlement purposes only, Plaintiff is hereby certified as the Settlement Class representative, and Plaintiff's Counsel, Monteverde & Associates PC and Ademi LLP, are appointed as Co-Class Counsel for the Settlement Class.

5. The Settlement Hearing shall be held on [\_\_\_\_\_, 2022], at [\_\_\_\_:\_\_\_\_.\_\_\_\_].m. Eastern Time (a date one hundred and ten (110) calendar days after the Court signs and enters this Order), at the Circuit Court for Baltimore City, Clarence M. Mitchell, Jr. Courthouse, 100 North Calvert St., Baltimore, MD 21202 or via a remote link to determine: (a) whether the Court should grant final approval of the proposed Settlement on the terms and conditions provided for in the Stipulation as fair, reasonable, and adequate and in the best interests of the Settlement Class Members; (b) whether the Settlement Class should be finally certified for purposes of Settlement, and whether the designation of Plaintiff as Class representative and Plaintiff's Counsel as Co-Class Counsel should be made final; (c) whether the Court should approve the Plan of Allocation of the Settlement as fair, reasonable, and adequate, and in the best interests of the Settlement Class; (d) whether the Court should enter an Order and Final Judgment dismissing the Action on the merits and with prejudice as to the Defendants, and effectuating the releases described in the Stipulation; (e) whether the Court should grant the application of the Fee and Expense Award; and (f) such other matters as may properly come before the Court.

6. The Court reserves the right to approve the Settlement at or after the Settlement Hearing with such modification(s) as may be consented to by the Settling Parties to the Stipulation and without further notice to the Settlement Class.

7. The Court approves, in form and content, the Notice of Pendency and Proposed Settlement of Class Action ("Notice"), substantially in the form attached as Exhibit A-1 to the Stipulation, the Proof of Claim and Release form ("Proof of Claim and Release"), substantially in the

form attached as Exhibit A-2 to the Stipulation, and the Summary Notice, substantially in the form attached as Exhibit A-3 to the Stipulation, and finds that the mailing and distribution of the Notice, Proof of Claim and Release, and Summary Notice, as set forth in paragraphs 8-9 below, will fully satisfy the requirements of Maryland Rule 2-231(f) and other applicable law, and is the best notice practicable, and shall constitute due and sufficient notice of the Settlement and the Settlement Hearing and all other matters referred to in the Notice and Summary Notice. The date and time of the Settlement Hearing shall be included in the Notice and Summary Notice before they are mailed and published, respectively. All fees, costs, and expenses incurred in notifying Settlement Class Members shall be paid from the Fund and in no event shall any of the Defendants or Defendants' Released Persons bear any responsibility for such fees, costs, or expenses. All Settlement Class Members (except Excluded Stockholders) shall be bound by all determinations and judgments in the Litigation concerning the Settlement, including, but not limited to, the releases provided for therein, whether favorable or unfavorable to the Settlement Class, regardless of whether such Persons seek or obtain by any means, including, without limitation, by submitting a Proof of Claim and Release or any similar document, any distribution from the Fund or the Net Settlement Fund.

8. The Claims Administrator shall make reasonable efforts to identify all Settlement Class Members, and not later than                     , 2022 (a date twenty-one (21) calendar days after the Court signs and enters this Order) (the "Notice Date"), the Claims Administrator shall cause a copy of the Notice and Proof of Claim and Release, substantially in the forms annexed hereto, to be mailed by First-Class Mail to all Settlement Class Members who can be identified with reasonable effort and to be posted on the Settlement website at [www.com](http://www.com).

9. Not later than                     , 2022 (a date ten (10) calendar days after the Notice Date), Monteverde & Associates PC shall cause the Summary Notice to be published via *PRNewswire*.

10. Not later than \_\_\_\_\_, 2022 (a date ten (10) business days prior to the Settlement Hearing), Plaintiff's Counsel shall file with the Court proof, by affidavit or declaration, of such distribution of the Notice, Proof of Claim and Release, and Summary Notice.

11. Nominees who held, purchased, or acquired EdR common stock for the benefit of another Person during the Settlement Class Period shall be requested to send the Notice and Proof of Claim and Release to such beneficial owners of EdR common stock within fifteen (15) calendar days after receipt thereof, or, send a list of the names and addresses of such beneficial owners to the Claims Administrator within fifteen (15) calendar days of receipt thereof, in which event the Claims Administrator shall promptly mail the Notice and Proof of Claim and Release to such beneficial owners.

12. Settlement Class Members who wish to participate in the Settlement shall complete and submit the Proof of Claim and Release in accordance with the instructions contained therein. Unless the Court orders otherwise, all Proofs of Claim and Releases must be postmarked or submitted electronically no later than \_\_\_\_\_, 2022 (a date one hundred and twenty (120) calendar days from the Notice Date). Any Settlement Class Member who fails to submit a Proof of Claim and Release within the time provided, or whose Proof of Claim and Release is otherwise not approved, shall in all other respects be bound by all of the terms of the Stipulation and the Settlement, including the terms of the Order and Final Judgment and the releases provided for therein, and will be barred from asserting any Released Claims against any of the Defendants or Defendants' Released Persons. Notwithstanding the foregoing, Plaintiff's Counsel shall have the discretion (but not the obligation) to accept late-submitted claims for processing by the Claims Administrator so long as distribution of the Net Settlement Fund is not materially delayed thereby. No person shall have any claim against



Plaintiff, Plaintiff's Counsel, or the Claims Administrator by reason of the decision to exercise or not exercise such discretion.

13. The Proof of Claim and Release submitted by each Settlement Class Member must, unless otherwise ordered by the Court: (i) be properly completed, signed and submitted in a timely manner in accordance with the provisions of this paragraph; (ii) be accompanied by adequate supporting documentation for the transactions reported therein, in the form of broker confirmation slips, broker account statements, an authorized statement from the broker containing the transactional information found in a broker confirmation slip, or such other documentation deemed adequate by Plaintiff's Counsel or the Claims Administrator; (iii) include in the Proof of Claim and Release a certification of current authority to act on behalf of the Settlement Class Member if the person executing the Proof of Claim and Release is acting in a representative capacity; (iv) be complete and contain no material deletions or modifications of any of the printed matter contained therein; and (v) be signed under penalty of perjury.

14. By submitting a Proof of Claim and Release, a Settlement Class Member will be deemed to have submitted to the jurisdiction of this Court with respect to the Settlement Class Member's claim, including, but not limited to, all releases provided for in the Stipulation and in the Order and Final Judgment.

15. Any Settlement Class Member may enter an appearance in the Litigation, at his, her, or its own expense, individually or through counsel of their own choice. If they do not enter an appearance, they will be represented by Plaintiff's Counsel and Liaison Counsel.

16. Any Person falling within the definition of the Settlement Class may, upon request, be excluded or "opt-out" from the Settlement Class. Any such Person must submit to the Claims Administrator a request for exclusion ("Request for Exclusion"), by First-Class Mail such that it is

received no later than                     , 2022 (a date twenty-one (21) calendar days before the Settlement Hearing). A Request for Exclusion must be signed and state: (a) the name, address, and telephone number of the Person requesting exclusion; (b) the number of shares of EdR common stock held, purchased, acquired, or sold during the Settlement Class Period and the dates held during the Settlement Class Period; and (c) that the Person wishes to be excluded from the Settlement Class. All Persons who submit valid and timely Requests for Exclusion in the manner set forth in this paragraph shall have no rights under the Stipulation, shall not share in the distribution of the Net Settlement Fund, and shall not be bound by the Stipulation or any Order and Final Judgment.

17. Plaintiff's Counsel shall cause to be provided to Defendants' Counsel copies of all Requests for Exclusion and a list of all Settlement Class Members who have requested exclusion, and any written revocation of Requests for Exclusion, as expeditiously as possible and in any event no later than                     , 2022 (a date seventeen (17) calendar days prior to the Settlement Hearing).

18. Any Settlement Class Member may appear and object if he, she, or it has any reason why the proposed Settlement should not be approved as fair, reasonable, adequate, and in the best interests of the Settlement Class, or why a judgment should not be entered thereon, why the Plan of Allocation should not be approved, why the requested Fee and Expense Award should not be awarded to Plaintiff or Plaintiff's Counsel; provided, however, that no Settlement Class Member or any other Person shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement, or, if approved, the Order and Final Judgment to be entered thereon approving the same, or the order approving the Plan of Allocation, any Fee and Expense Award to be awarded to Plaintiff and Plaintiff's Counsel, unless written objections and copies of any papers and briefs are received via mail and in electronic format by Monteverde & Associates PC, Juan E. Monteverde, The Empire State Building, 350 Fifth Avenue, Suite 4405, New York, NY 10118, Email:

jmonteverde@monteverdelaw.com; Hogan Lovells US LLP, Jon Talotta, 8350 Broad Street, 17<sup>th</sup> Floor, Tysons, VA 21202, Email: jon.talotta@hoganlovells.com; and Morrison & Foerster LLP, Joel Haims, 250 West 55<sup>th</sup> Street, New York, NY 10019, Email: jhaims@mfo.com, no later than \_\_\_\_\_, 2022 (a date twenty-one (21) calendar days before the Settlement Hearing) and said objections, papers, and briefs are filed with the Clerk of Court of the Circuit Court for Baltimore City located at 111 North Calvert Street, Room 412, Baltimore, MD 21202, no later than \_\_\_\_\_, 2022 (a date fourteen (14) days before the Settlement Hearing). Any such objection must: (a) indicate the objector's name, address, and telephone number; (b) specify the reason(s) for the objection; (c) identify the date(s), price(s), and number(s) of shares of EdR common stock held, purchased, acquired, or sold during the Settlement Class Period by the objector; (d) provide documents demonstrating such holding(s), purchase(s), acquisition(s) and/or sale(s); and (e) be signed by the objector. Any Settlement Class Member who does not make his, her, or its objection in the manner provided for herein shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the proposed Settlement as incorporated in the Stipulation, to the Plan of Allocation, or to the Fee and Expense Award, unless otherwise ordered by the Court. Attendance at the Settlement Hearing is not necessary. However, Persons wishing to be heard orally in opposition to the approval of the Settlement, the Plan of Allocation, and/or the application for a Fee and Expense Award are required to indicate in their written objection their intention to appear at the Settlement Hearing. Settlement Class Members do not need to appear at the Settlement Hearing or take any other action to indicate their approval of the Settlement.

19. All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

20. All papers in support of the Settlement, Plan of Allocation, and application for the Fee and Expense Award shall be filed and served no later than                     , 2022 (a date thirty-five (35) calendar days prior to the Settlement Hearing) and any reply papers shall be filed and served no later than                     , 2022 (a date seven (7) calendar days prior to the Settlement Hearing).

21. Defendants and Defendants' Released Persons shall have no responsibility for the Plan of Allocation, any application for a Fee and Expense Award by Plaintiff and Plaintiff's Counsel, and such matters will be considered separately from whether the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class.

22. At or after the Settlement Hearing, the Court shall determine whether the Plan of Allocation and the Fee and Expense Award should be approved.

23. All reasonable expenses incurred in identifying and notifying Settlement Class Members as well as administering the Fund shall be paid as set forth in the Stipulation. In the event the Court does not approve the Settlement, or it otherwise fails to become effective, neither Plaintiff, Plaintiff's Counsel, nor Liaison Counsel, shall have any obligation to repay any amounts actually and properly incurred or disbursed pursuant to paragraph 51 of the Stipulation.

24. Neither the Stipulation, nor any of its terms or provisions, nor any of the negotiations, discussions, proceedings connected with it, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement may be construed as an admission, concession, or presumption by or against any of the Defendants or Defendants' Released Persons of the truth of any of the allegations in the Action, or of any liability, fault, or wrongdoing of any kind; or as a waiver by any of the Settling Parties of any arguments, defenses, or claims he, she, or it may have in the event the Stipulation is terminated; or offered or received in evidence, or otherwise used by any person in the Action, or in any other action or proceeding, whether civil, criminal, or administrative, in any

court, administrative agency, or other tribunal, except in connection with any proceeding to enforce the terms of the Stipulation and Settlement.

25. All proceedings in the Action, other than such proceedings as may be necessary to carry out the terms and conditions of the Settlement, are hereby stayed and suspended until further order of the Court. Pending final determination of whether the Settlement should be approved, Plaintiff and all Settlement Class Members are barred and enjoined from commencing, prosecuting, instigating, or in any way participating in the commencement or prosecution of any action asserting any Released Claims, either directly, representatively, derivatively or in any other capacity, against any of the Defendants or any of the Defendants' Released Persons.

26. If the Settlement (including any amendment or modification thereto made with the consent of the Settling Parties as provided for in the Stipulation) is not approved by the Court or shall not become effective for any reason whatsoever in accordance with the terms and conditions set forth in the Stipulation, the Settlement and temporary Settlement Class certification herein, and any actions taken or to be taken in connection therewith (including this Order and any judgment entered herein), shall be terminated and shall become void and of no further force and effect, except for the obligation of the Company to pay for any Notice and Administration Costs provided for by this Order. In that event, neither the Stipulation, nor any provision contained in the Stipulation, nor any action undertaken pursuant thereto, nor the negotiation thereof by any party shall be deemed an admission or received as evidence in this or any other action or proceeding.

27. The Court may, for good cause, extend any of the deadlines set forth in this Order without further notice to Settlement Class Members.

DATED: \_\_\_\_\_

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HON. JEFFREY M. GELLER  
CIRCUIT COURT FOR BALTIMORE CITY

# **Exhibit A-1**

**NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION**

**TO: ALL RECORD HOLDERS AND ALL BENEFICIAL HOLDERS OF EDUCATION REALTY TRUST, INC. (“EDR”) COMMON STOCK WHO PURCHASED, SOLD, OR HELD SUCH STOCK DURING THE PERIOD FROM AND INCLUDING JUNE 25, 2018, THE DATE THE MERGER AGREEMENT WAS EXECUTED CONCERNING THE MERGER BETWEEN GREYSTAR STUDENT HOUSING GROWTH AND INCOME TRUST (“GREYSTAR”) AND EDR (“TRANSACTION”), THROUGH AND INCLUDING SEPTEMBER 20, 2018, THE DATE THE TRANSACTION WAS CONSUMMATED (“CLOSING DATE”), INCLUDING ANY AND ALL OF THEIR RESPECTIVE PREDECESSORS, SUCCESSORS, TRUSTEES, EXECUTORS, ADMINISTRATORS, ESTATES, LEGAL REPRESENTATIVES, HEIRS, ASSIGNS AND TRANSFEREES (THE “SETTLEMENT CLASS”).**

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS MAY BE AFFECTED BY PROCEEDINGS IN THIS LITIGATION. PLEASE NOTE THAT IF YOU ARE A SETTLEMENT CLASS MEMBER, YOU MAY BE ENTITLED TO SHARE IN THE PROCEEDS OF THE SETTLEMENT DESCRIBED IN THIS NOTICE. TO CLAIM YOUR SHARE OF THE SETTLEMENT PROCEEDS, YOU MUST SUBMIT A VALID PROOF OF CLAIM AND RELEASE FORM (“PROOF OF CLAIM”) **POSTMARKED OR SUBMITTED ONLINE ON OR BEFORE [INSERT DATE].**

This Notice of Pendency and Proposed Settlement of Class Action (“Notice”) has been sent to you pursuant to Maryland Rule 2-231(f) and (g)(2) and by Order of the Circuit Court for Baltimore City, Maryland (the “Court”). The purpose of this Notice is to inform you of the proposed Settlement of the above-captioned Litigation<sup>1</sup> (the “Settlement”) and of the hearing to be held by the Court to consider whether the proposed Settlement, final certification of the Settlement Class, Plan of Allocation, and Plaintiff and his counsel’s application for attorneys’ fees, expenses and an incentive award are fair, reasonable, and adequate, and in the best interests of the Settlement Class Members. This Notice describes the rights you may have as a Settlement Class Member and what steps you may take in relation to the Settlement and this Litigation, or, alternatively, what steps you must take if you wish to be excluded from the Settlement Class.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>SUBMIT A PROOF OF CLAIM</b>	The only way to receive a payment. Proofs of Claim must be postmarked or submitted online on or before <b>[Insert Date]</b> .
<b>EXCLUDE YOURSELF</b>	Receive no payment. This is the only option that allows you to ever bring a lawsuit against Defendants concerning the legal claims at issue in this litigation. Exclusions must be received no later than <b>[Insert Date]</b> .
<b>OBJECT</b>	Write to Plaintiff’s Counsel, Defendants’ Counsel, and the Court about why you oppose the Settlement, the Plan of Allocation, and the Fee and Expense Award. You will still be a Settlement Class Member. Objections must be received by the Court and counsel on or before <b>[Insert Date]</b> .
<b>GO TO A HEARING</b>	Ask to speak in Court about the fairness of the Settlement. Requests to speak must be received by the Court and counsel on or before <b>[Insert Date]</b> . You are not required to attend the hearing.

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<sup>1</sup> All capitalized terms used in this Notice that are not otherwise defined herein shall have the meanings provided in the Stipulation and Agreement of Compromise, Settlement, and Release (“Stipulation”), which, along with other important documents, is available on the Settlement website, **[www.url.com](http://www.url.com)**.



<b>DO NOTHING</b>	Receive no payment from the Settlement. Settlement Class Members who do nothing remain bound by the terms of the Settlement.
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## SUMMARY OF THIS NOTICE

### Statement of Settlement Class Recovery

Pursuant to the Settlement described herein, the Settlement Amount is \$10 million. A Settlement Class Member's actual recovery will be a proportion of the Net Settlement Fund determined by that Claimant's claim as compared to the total claims of all Settlement Class Members who submit acceptable Proofs of Claim. An individual Settlement Class Member may receive more or less than the estimated average amount provided below depending on the number of claims submitted. *See* Plan of Allocation as set forth at page 11 below for more information on your claim.

### Statement of Potential Outcome of Litigation

The Settling Parties disagree on both liability and damages and do not agree on the amount of damages per share of EdR common stock that would be recoverable if the Settlement Class prevailed on each claim alleged. Defendants deny that they are liable to the Settlement Class and deny that the Settlement Class have suffered any damages.

### Reasons for the Settlement

The principal reason for the Settlement is the benefit to be provided to the Settlement Class now. This benefit must be compared to the risk that no recovery might be achieved after a contested trial and appeals, possibly years into the future.

### Statement of Attorneys' Fees, Expenses, and Incentive Award Sought

Plaintiff's Counsel have not received any payment for their services in conducting this Litigation on behalf of the Settlement Class, nor have they been paid for their litigation expenses. If the Settlement is approved by the Court, Plaintiff's Counsel will apply to the Court for an award of attorneys' fees not to exceed one-third of the Fund, plus expenses not to exceed \$200,000 in connection with the Litigation. Since the Litigation's inception in August of 2018, Plaintiff's Counsel have expended considerable amounts of time and effort in the prosecution of this Litigation on a contingent fee basis and advanced the expenses of the Litigation in the expectation that, if they were successful in obtaining a recovery for the Settlement Class, they would be paid from such recovery. In this type of litigation, it is customary for counsel to be awarded a percentage of the common fund recovery as their attorneys' fees. In addition, as part of Plaintiff's Counsel's application for an award of fees and expenses, Plaintiff may seek up to \$10,000 for a reasonable incentive award for his time and expenses in connection with his representation of the Settlement Class (collectively, the "Fee and Expense Award"). The requested Fee and Expense Award is approximately \$0.08 per allegedly damaged share, but the average cost per allegedly damaged share will vary depending on the number of valid and timely Proofs of Claim submitted.

### Further Information

For further information regarding the Litigation, this Notice, or to review the Stipulation, please visit the website: [www.url.com](http://www.url.com) or contact the Claims Administrator toll-free at 1-phone. You may also contact Plaintiff's Counsel: Juan E. Monteverde, Monteverde & Associates PC, The Empire State Building, 350 Fifth Avenue, Suite 4405, New York, NY 10118, Tel.: (212) 971-1341, [www.monteverdela.com](http://www.monteverdela.com).

**Please Do Not Call the Court or Defendants with Questions About the Settlement.**

## BASIC INFORMATION

### 1. Why did I get this Notice package?

You or someone in your family may have purchased, sold, or held EdR common stock during the time period from and including June 25, 2018, through and including September 20, 2018 (“Settlement Class Period”).

The Court directed that this Notice be sent to Settlement Class Members because they have a right to know about the proposed Settlement of this class action lawsuit, and about all of their options, before the Court decides whether to approve the Settlement.

This Notice explains the Litigation, the Settlement, Settlement Class Members’ legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the Litigation is the Circuit Court for Baltimore City, Maryland, and the case is known as *Frank v. Education Realty Trust, Inc., et al.*, Case No. 24-C-19-005518 (the “Action” or “Litigation”). The case has been assigned to the Honorable Jeffrey M. Geller. Casey M. Frank is the plaintiff in this Action (referred to as “Plaintiff” in this Notice), and the parties who were sued and who have now settled are called the “Defendants.”

### 2. What is this lawsuit about?

On June 25, 2018, EdR and certain affiliates of Greystar Real Estate Partners, LLC (collectively, “Greystar Real Estate Partners”) announced that they had entered into an Agreement and Plan of Merger (“Merger Agreement”), pursuant to which Greystar Real Estate Partners would acquire all outstanding shares of EdR common stock for \$41.50 in cash per share of EdR common stock (the “Transaction”).

On August 13, 2018, EdR filed a Definitive Proxy Statement (“Proxy”) with the U.S. Securities and Exchange Commission (“SEC”) announcing that the special meeting of EdR’s shareholders to vote on the Transaction was set for September 14, 2018.

On August 22, 2018, Plaintiff filed his Class Action Complaint (“Complaint”) in the Circuit Court for Baltimore County, Maryland (“Circuit Court for Baltimore County”) against Defendants, and the case was assigned to Judge Mickey J. Norman with case number 03-C-18-008387. The Complaint alleged that Defendants breached their fiduciary duties by approving the Transaction and by adopting a portion of the bylaw on June 24, 2018, which designated the Circuit Court for Baltimore City and the United States District Court for the District of Maryland, Baltimore Division, as the sole venues for claims of this nature (“Exclusive Venue Designation”), because the Exclusive Venue Designation exceeded the jurisdiction-selection permitted by Md. Corps. & Ass’ns Code § 2-113 and contravened Maryland’s venue statutes.

On September 14, 2018, EdR’s shareholders voted to approve the Transaction, and on September 20, 2018, the Transaction was consummated (“Closing Date”).

On November 19, 2018, Plaintiff filed an Amended Class Action Complaint (“Amended Complaint”) in the Circuit Court for Baltimore County against Defendants claiming that in addition to the allegations raised in the Complaint, the Individual Defendants breached their fiduciary duties by, among other things: (i) abdicating control of the sales process to Defendant Churchey; and (ii) impeding other interested parties from making a superior offer. In response, on January 15, 2019, Defendants filed a Motion to Dismiss the Amended Complaint and also requested that the case be transferred to the Circuit Court for Baltimore City. On February 28, 2019, Plaintiff filed his Opposition to Defendants’ Motion to Dismiss and also requested that the Circuit Court for Baltimore County deem the Exclusive Venue Designation void and enjoin Defendants from enforcing it. Then, on April 1, 2019, Defendants filed their Reply in support of their Motion to Dismiss.

On September 30, 2019, Judge Norman denied Defendants’ Motion to Dismiss but granted Defendants’ request to transfer the case to the Circuit Court for Baltimore City. On October 25, 2019, this case was transferred to the Circuit Court for Baltimore City and assigned case number 24-C-19-005518, and later assigned to Judge Jeffrey M. Geller (the “Action”).

On November 14, 2019, Defendants filed their Answer to Plaintiff's Amended Complaint.

On January 22, 2020, Judge Geller entered a Stipulated Order Regarding Confidentiality of Discovery ("Confidentiality Agreement"), which effectively marked the commencement of extensive discovery by the Settling Parties in the Action. Plaintiff conducted extensive discovery that included reviewing 90,539 pages of documents produced by Defendants, 8,505 pages of documents produced by EdR's financial advisor in connection with the Transaction, Merrill Lynch, Pierce, Fenner & Smith Incorporated ("BofA"), and thousands of pages of documents produced by 13 third parties, and Plaintiff responded to Defendants' Request for Production and First Set of Interrogatories.

On December 2, 2020, the Settling Parties attended a mediation with Robert A. Meyer from JAMS but were unable to reach a settlement. Thereafter, the Settling Parties continued to engage in informal settlement discussions with the assistance of Mr. Meyer.

On January 25, 2021, Plaintiff filed his Motion for Class Certification under seal pursuant to the Confidentiality Agreement.

On May 14, 2021, Defendants took the deposition of Plaintiff. Thereafter, Plaintiff took the following eleven (11) depositions: (i) each of the seven Individual Defendants; (ii) EdR's former Chief Financial Officer, Edwin B. Brewer, Jr.; (iii) Christine Richards, EdR's former Chief Operating Officer and Executive Vice President; (iv) Robert A. Faith, Greystar Real Estate Partners' Founder, Chairman of the Board, and Chief Executive Officer; and (v) Jeffrey Horowitz, head of the BofA team that advised EdR in connection with the Transaction.

Plaintiff also obtained an affidavit from Robert Bronstein, President and co-founder of The Scion Group LLC, a bidder formerly interested in the acquisition of EdR, regarding Plaintiff's claims about the sales process.

Moreover, Plaintiff retained a valuation expert, M. Travis Keath, and a corporate governance expert, Professor Stephen J. Lubben, and Defendants retained valuation expert Dr. Stuart C. Gilson and corporate governance expert Steven Davidoff Solomon, and subsequently on July 16, 2021, Plaintiff and Defendants exchanged their respective expert reports. Then, on September 9, 2021, the Settling Parties exchanged rebuttal reports from each of their respective experts.

On November 4, 2021, after two months of settlement discussions facilitated by Mr. Meyer, Mr. Meyer issued a proposal to settle the Action for a \$10 million common fund. The Settling Parties accepted Mr. Meyer's proposal, and on November 15, 2021, the Settling Parties filed a Notice of Settlement informing the Court that the Settlement in principle for a \$10 million common fund had been reached to resolve the Action. On November 16, 2021, the Settling Parties memorialized the terms of the Settlement in a term sheet.

On January 11, 2022, the Settling Parties reduced the settlement terms into this Stipulation, which is now subject to Court approval.

### **3. Why is this a class action?**

In a class action, one or more people called a plaintiff sues on behalf of people who have similar claims. All of the people with similar claims are referred to as a class or class members. One court resolves the issues for all class members, except for those class members who exclude themselves from the class.

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

The Court has not decided in favor of or against the Defendants or the Settlement Class. Instead, both sides agreed to the Settlement to avoid the costs and risks of further litigation, including trial and appeals. Plaintiff agreed to the Settlement because Plaintiff (advised by Plaintiff's Counsel) considered the Settlement Amount to be a favorable recovery compared to the risk-adjusted possibility of recovery after trial and appeals, in light of Defendants' legal arguments that the Individual Defendants did not breach their fiduciary duties in connection with the Transaction, and their factual arguments that Defendants believed they complied with all applicable laws, and that the Settlement Class had not sustained any damages. The Defendants have denied and continue to deny any wrongdoing by or liability

against them arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Litigation. Plaintiff and Plaintiff's Counsel believe the Settlement is in the best interest of all Settlement Class Members, in light of the real possibility that continued litigation could result in no recovery at all.

### **WHO IS IN THE SETTLEMENT?**

To see if you will get money from this Settlement, you first must be a Settlement Class Member.

#### **5. How do I know if I am part of the Settlement?**

The Court directed that everyone who fits this description is a Settlement Class Member: all record holders and all beneficial holders of EdR common stock who purchased, sold, or held such stock during the period from and including June 25, 2018, date of execution of the Merger Agreement, through and including, September 20, 2018, the Closing Date, including any and all of their respective predecessors, successors, trustees, executors, administrators, estates, legal representatives, heirs, assigns, and transferees. Under the Plan of Allocation proposed by Plaintiff's Counsel and described below, only Settlement Class Members who were record holders or beneficial holders of EdR common stock at the Closing Date on September 20, 2018, and who submit a valid Proof of Claim to the Claims Administrator may share in the recovery. Certain persons are excluded from the Settlement Class, as described below.

#### **6. Are there exceptions to being included?**

Excluded from the Settlement Class are: (i) Defendants; (ii) members of the immediate families of each Individual Defendant; (iii) EdR's subsidiaries and affiliates; (iv) any entity in which any Defendant has a controlling interest; (v) the legal representatives, heirs, successors, administrators, executors, and assigns of each Defendant; and (vi) any Person or entity who properly excludes themselves by filing a valid and timely request for exclusion (collectively the "Excluded Stockholders").

#### **7. What if I am still not sure if I am included?**

If you are still not sure whether you are included, you can ask for free help. You can contact the Claims Administrator toll-free at [18009555111](tel:18009555111) or visit the Settlement website at [www.url.com](http://www.url.com), or you can fill out and return the Proof of Claim enclosed with this Notice package, to see if you qualify.

### **THE SETTLEMENT BENEFITS – WHAT YOU GET**

#### **8. What does the Settlement provide?**

In exchange for the Settlement and the release of the Released Claims (defined below) as well as dismissal of the Litigation, Defendants have agreed that a payment of \$10 million will be made by EdR, through its insurance carriers, to be distributed, after taxes, fees, and expenses, among all Authorized Claimants.

#### **9. How much will my payment be?**

Pursuant to the Settlement described herein, the Settlement Amount is \$10,000,000.00. Under the Plan of Allocation proposed by Plaintiff's Counsel, only Settlement Class Members who were record holders or beneficial holders of EdR common stock at the Closing Date on September 20, 2018, and who submit a valid Proof of Claim to the Claims Administrator, may share in the recovery, pro rata with their stock holdings (the proposed "Plan of Allocation"). Your actual recovery will be a proportion of the Net Settlement Fund determined by your claim as compared to the total claims of all eligible Settlement Class Members who submit acceptable Proofs of Claim. You may receive more or less than the estimated average amount provided below depending on the number of claims submitted. Plaintiff's Counsel estimates that approximately 80,790,667 shares of EdR common stock are in the Settlement Class. Assuming 100% of the shares in the Settlement Class submit a valid proof of claim, the average distribution will be approximately \$0.12 per share, before payment of expenses of notice and administration of the Settlement, Taxes and Tax Expenses, and the Fee and Expense Award described in Question 17 below (estimated to be approximately \$0.08 per share), and

interest as may be awarded by the Court (the “Net Settlement Fund”). Historically, fewer than all eligible investors submit claims, resulting in higher average distributions per share.

The Net Settlement Fund will be distributed to Settlement Class Members who submit valid, timely Proof of Claim forms (“Claimants”) on a pro rata basis. However, no distributions will be made to Claimants who would otherwise receive a distribution of less than \$5.00.

Defendants expressly deny that any damages were suffered by Plaintiff or the Settlement Class.

Payments shall be conclusive against all Claimants. No Person shall have any claim against Plaintiff, Plaintiff’s Counsel, Liaison Counsel, the Claims Administrator, Defendants, and Defendants’ Released Persons, or any Person designated by Plaintiff’s Counsel based on distributions made substantially in accordance with the Stipulation and the Settlement contained therein, or further order(s) of the Court. No Settlement Class Member shall have any claim against Defendants or Defendants’ Released Persons for any Released Claims. All Settlement Class Members who fail to complete and file a valid and timely Proof of Claim shall be barred from participating in distributions from the Net Settlement Fund (unless otherwise ordered by the Court), but otherwise shall be bound by all of the terms of the Stipulation, including the terms of any judgment entered and the releases given.

## HOW YOU GET A PAYMENT – SUBMITTING A CLAIM FORM

### 10. How can I receive a payment?

To qualify for a payment, you must submit a Proof of Claim. A Proof of Claim is enclosed with this Notice or it may be downloaded at [www.url.com](http://www.url.com). Read the instructions carefully, fill out the Proof of Claim, include all the documents the form asks for, sign it, and return it so that it is postmarked, if mailed, or received, if submitted online, no later than \_\_\_\_\_, 2022. Pursuant to its directions, the Proof of Claim may be submitted online at [www.url.com](http://www.url.com).

### 11. When would I receive my payment?

The Court will hold a Settlement Hearing on \_\_\_\_\_, 2022, to decide whether to approve the Settlement. Settlement Class Members should check the Settlement Class website or the Court’s site in advance of the Settlement Hearing to determine whether that hearing will occur in person or via a remote link, and whether the date has changed. The Settlement Hearing date may change without further notice to the Settlement Class. If the Court approves the Settlement, there might be appeals. It is always uncertain how appeals would be resolved by the appellate court, and resolving them can take time, perhaps more than a year. It also takes time for all the Proofs of Claim to be processed. Please be patient.

### 12. What am I giving up to receive a payment or to stay in the Settlement Class?

Unless you timely and validly exclude yourself, you are staying in the Settlement Class, and that means that you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or Defendants’ Released Persons about the Released Claims in this case. It also means that all of the Court’s orders will apply to you and legally bind you and you will release your claims in this case against Defendants and Defendants’ Released Persons. The terms of the release are included in the enclosed Proof of Claim form and are also set forth below:

- “Plaintiff’s Released Claims” means any and all claims, rights and causes of action, duties, obligations, demands, actions, debts, sums of money, suits, contracts, agreements, promises, damages and liabilities, whether known or unknown, contingent or non-contingent, or suspected or unsuspected, including all claims arising under federal or state statutory or common law or any other law, rule or regulation, whether foreign or domestic, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims by Plaintiff, any other Settlement Class Members, Plaintiff’s Counsel, or Liaison Counsel against the Defendants, except for claims relating to the enforcement of this Settlement.
- “Released Claims” means any and all claims, rights and causes of action, duties, obligations, demands, actions, debts, sums of money, suits, contracts, agreements, promises, damages and liabilities, whether

known or unknown, contingent or non-contingent, derivative or direct, or suspected or unsuspected, including any claims arising under federal or state statutory or common law or any other law, rule or regulation, whether foreign or domestic, that have been asserted, could have been asserted, or could be asserted in the future against Defendants' Released Persons that arise out of or relate in any way to the Merger Agreement, the Transaction, the Proxy, or the Action; provided, however, that the Released Claims do not include any claims to enforce the Settlement or any claims against Settlement Class Members that properly seek to opt-out of the Settlement.

- “Unknown Claims” means (i) any of the Plaintiff’s Released Claims which Plaintiff or any Settlement Class Member, or any of their agents or attorneys, does not know or suspect to exist in such Person’s favor at the time of the release of the Plaintiff’s Released Claims; and (ii) any of the Released Claims that the Defendants’ Released Persons do not know or suspect to exist in his, her, or its favor at the time of the release of the Released Claims, which, in the case of both (i) and (ii), if known by such Person, might have affected such Person’s decision with respect to this Settlement, including, without limitation, such Person’s decision not to object to this Settlement or not to exclude himself, herself, or itself from the Settlement Class. Unknown Claims include those Plaintiff’s Released Claims and Released Claims in which some or all of the facts comprising the claim may be suspected, or even undisclosed or hidden. With respect to any and all Plaintiff’s Released Claims and Released Claims, Plaintiff and Defendants shall expressly, and each of the Settlement Class Members and Defendants’ Released Persons shall be deemed to have, and by operation of the Order and Final Judgment shall have, expressly waived to the fullest extent permitted by law, the provisions, rights, and benefits of California Civil Code § 1542, which provides:

**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**

Plaintiff and Defendants shall expressly, and each of the Settlement Class Members and Defendants’ Released Persons shall be deemed to have, and by operation of the Order and Final Judgment, shall have expressly waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to California Civil Code § 1542. Plaintiff, Settlement Class Members, and the Defendants’ Released Persons may hereafter discover facts in addition to or different from those which such party now knows or believes to be true with respect to the subject matter of Plaintiff’s Released Claims and the Released Claims, but Plaintiff and Defendants shall expressly, and each Settlement Class Member and Defendants’ Released Persons shall be deemed to have, and by operation of the Order and Final Judgment shall have fully, finally, and forever settled and released any and all Plaintiff’s Released Claims or Released Claims, as the case may be, including Unknown Claims, whether or not known or unknown, suspected or unsuspected, contingent or non-contingent, and whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, reckless, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts, whether or not previously or currently asserted in any action. Plaintiff and Defendants acknowledge, and the Settlement Class Members and Defendants’ Released Persons shall be deemed by operation of the Order and Final Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.

You may maintain your own lawsuit only if you exclude yourself from the Settlement.

## EXCLUDING YOURSELF FROM THE SETTLEMENT CLASS

If you do not want a payment from this Settlement, and you want to keep the right to sue the Defendants and Defendants' Released Persons, on your own, about the legal issues in this Litigation, then you must take steps to remove yourself from the Settlement. This is called excluding yourself.

### 13. How do I get out of the proposed Settlement?

To exclude yourself from the Settlement, you must send a letter by mail saying that you want to be excluded from the Settlement Class in *Frank v. Education Realty Trust, Inc., et al.*, Case No. 24-C-19-005518. You must provide the following information: (a) name; (b) address; (c) telephone number; (d) the amount of EdR common stock bought, sold, or held during the period from and including June 25, 2018, through and including September 20, 2018; and (e) a statement that you wish to be excluded from the Settlement Class. You must mail your exclusion request postmarked no later than \_\_\_\_\_, 2022 to:

*Education Realty Trust, Inc. Securities Litigation*  
c/o INSERT

You cannot exclude yourself on the phone or by e-mail. If you ask to be excluded, you will not receive any settlement payment, and you may not object to the Settlement. If you are excluded from the Settlement Class, you will not be legally bound by the terms of this Settlement.

### 14. If I do not exclude myself, can I sue the Defendants and the Defendants' Released Persons for the same thing later?

No. Unless you exclude yourself, you give up any rights to sue the Defendants and the Defendants' Released Persons for any and all Released Claims. If you have a pending lawsuit against the Defendants or the Defendants' Released Persons regarding any Released Claims, speak to your lawyer in that case immediately. You must exclude yourself from this Litigation to continue your own lawsuit. Remember, the exclusion deadline is \_\_\_\_\_, 2022.

### 15. If I exclude myself, can I get money from the proposed Settlement?

No. If you exclude yourself, you may not send in a Proof of Claim to ask for any money.

## THE LAWYERS REPRESENTING YOU

### 16. Do I have a lawyer in this case?

Yes. Monteverde & Associates PC and Ademi LLP are serving as Co-Class Counsel and Levi & Korsinsky, LLP is serving as Liaison Counsel, to lead the Litigation which Plaintiff brought on behalf of himself and all other Settlement Class Members. You will not be charged directly for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

### 17. How will the lawyers be paid?

This Action has been pending since 2018. Plaintiff's Counsel have not been paid for their services on behalf of Plaintiff and the Settlement Class, nor for their substantial expenses. The fee requested is to compensate Plaintiff's Counsel for their work investigating the facts, litigating the case from inception in 2018 and negotiating the Settlement.

Plaintiff's Counsel will request the Court to award attorneys' fees not to exceed one-third of the Settlement Amount, plus expenses not to exceed \$200,000 in connection with the Litigation, plus interest on such fees and expenses at the same rate as earned by the Fund. Such sums as may be approved by the Court will be paid from the Fund.

## OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the Settlement or any part of it.

### 18. How do I tell the Court that I object to the proposed Settlement?

You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a different settlement; the Court can only approve or reject the Settlement. If the Court denies approval, no settlement payments will be sent out and the Litigation will continue. If that is what you want to happen, you must object.

Any objection to the proposed Settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Settlement Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number (*Frank v. Education Realty Trust, Inc., et al.*, Case No. 24-C-19-005518), (b) include your name, address, telephone number, and your signature, (c) identify the date(s), price(s), and number(s) of shares of EdR common stock you held, acquired, or sold during the Settlement Class Period, and state the reasons why you object, and (d) you must also include copies of documents demonstrating such holding(s), acquisition(s), and/or sale(s). Your objection must be filed with the Court and mailed or delivered and emailed to each of the following addresses such that it is received no later than **[INSERT DATE]**.

COURT	PLAINTIFF'S COUNSEL	DEFENDANTS' COUNSEL
Clerk of Court Circuit Court for Baltimore City, Maryland 111 North Calvert St., Room 412 Baltimore, MD 21202	Juan E. Monteverde Monteverde & Associates PC The Empire State Building 350 Fifth Avenue, Suite 4405 New York, NY 10118 jmonteverde@monteverdelaw.com	Jon Talotta Hogan Lovells US LLP 8350 Broad Street, 17 <sup>th</sup> Floor Tysons, VA 21202 jon.talotta@hoganlovells.com  Joel Haims Morrison & Foerster LLP 250 West 55 <sup>th</sup> Street New York, NY 10019 jhaims@mofo.com

### 19. What is the difference between objecting and excluding myself?

Objecting is simply telling the Court that you do not like something about the proposed Settlement, the Plan of Allocation, or the Fee and Expense Award. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class.

## THE COURT'S SETTLEMENT HEARING

The Court will hold a hearing to decide whether to approve the proposed Settlement. You may attend and you may ask to speak, but you do not have to.

### 20. When and where will the Court decide whether to approve the proposed Settlement?

The Court will hold a Settlement Hearing at **\_\_\_: \_\_\_ .m., on \_\_\_ day, \_\_\_\_\_, 2022**. Settlement Class Members should check the Settlement Class website in advance of the Settlement Hearing to determine whether that hearing will occur in person at the Circuit Court for Baltimore City, Clarence M. Mitchell, Jr. Courthouse, 100 North Calvert St., Baltimore, MD 21202, or via a remote link. At the hearing the Court will consider: (a) whether the Court should grant final approval of the proposed Settlement on the terms and conditions provided for in the Stipulation as fair, reasonable, and adequate and in the best interests of the Settlement Class Members; (b) whether the Settlement Class should be finally certified for purposes of Settlement, and whether the designation of Plaintiff as Class representative and Plaintiff's Counsel as Co-Class Counsel should be made final; (c) whether the Court should approve



the Plan of Allocation of the Settlement as fair, reasonable, and adequate and in the best interests of the Settlement Class Members; (d) whether the Court should enter an Order and Final Judgment dismissing the Action on the merits and with prejudice as to the Defendants and effectuating the releases described in the Stipulation; (e) whether the Court should award the Fee and Expense Award to Plaintiff and Plaintiff's Counsel; and (f) such other matters as may properly come before the Court.

**21. Do I have to come to the hearing?**

No. Plaintiff's Counsel will answer questions the Court may have, but you are welcome to come at your own expense. If you send an objection or statement in support of the Settlement, you are not required to come to Court to discuss it. As long as you mailed your objection on time, the Court will consider it. You may also pay your own lawyer to attend, but you are not required to do so. Settlement Class Members do not need to appear at the hearing or take any other action to indicate their approval.

**22. May I speak at the hearing?**

If you object to the Settlement, the Plan of Allocation, or the Fee and Expense Award, you may ask the Court for permission to speak at the Settlement Hearing. To do so, you must include with your objection (see Question 18 above) a statement saying that it is your "Notice of Intention to Appear in the *Education Realty Trust, Inc. Securities Litigation*." Persons who intend to object to the Settlement, the Plan of Allocation, and/or any Fee and Expense Award, and desire to present evidence at the Settlement Hearing must include in their written objections the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the Settlement Hearing.

You cannot speak at the hearing if you exclude yourself.

**IF YOU DO NOTHING**

**23. What happens if I do nothing at all?**

If you do nothing, you will get no money from this Settlement. But, unless you exclude yourself, you will not be able to start a lawsuit or be part of any other lawsuit against the Defendants or any other Defendants' Released Persons about the issues raised in this case ever again.

**GETTING MORE INFORMATION**

**24. Are there more details about the proposed Settlement?**

This Notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, please see the Stipulation and Agreement of Compromise, Settlement, and Release available at [www.url.com](http://www.url.com), by contacting Plaintiff's Counsel, Monteverde & Associates PC at (212) 971-1341, or by visiting the office of the Clerk of Court of the Circuit Court for Baltimore City at 111 North Calvert St., Room 412, Baltimore, MD 21202, between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

**25. How do I get more information?**

For more information, you can visit [www.url.com](http://www.url.com) or call toll-free [1-phone](tel:1-800-123-4567). You can also contact the attorney for Plaintiff, listed below:

Juan E. Monteverde  
Monteverde & Associates PC  
350 Fifth Ave, Suite 4405  
New York, NY 10118  
(212) 971-1341

## PLAN OF ALLOCATION OF NET SETTLEMENT FUND AMONG SETTLEMENT CLASS MEMBERS

Plaintiff's Counsel have proposed a Plan of Allocation described below in Question 26, which will be submitted for the Court's approval. The Net Settlement Fund (the Settlement Amount plus interest less Taxes, Tax Expenses, Notice and Administration Costs, and the Fee and Expense Award) will be distributed to Settlement Class Members who, in accordance with the terms of the Stipulation, are entitled to a distribution from the Net Settlement Fund pursuant to any plan of allocation or any order of the Court and who submit a valid and timely Proof of Claim under the Plan of Allocation described below.

### 26. How will my claim be calculated?

As stated above, the Settlement Amount is \$10,000,000. Under the Plan of Allocation proposed by Plaintiff's Counsel, only Settlement Class Members who were record holders or beneficial holders of EdR common stock at the Closing Date on September 20, 2018, and who submit a valid Proof of Claim to the Claims Administrator, may share in the recovery, pro rata with their stock holdings (the proposed "Plan of Allocation"). Your actual recovery will be a proportion of the Net Settlement Fund determined by your claim as compared to the total claims of all eligible Settlement Class Members who submit acceptable Proofs of Claim. You may receive more or less than the estimated average amount provided below depending on the number of claims submitted. The Court may approve this proposed Plan of Allocation, or modify it, without additional notice to the Settlement Class. Any order modifying the Plan of Allocation will be posted on the Settlement website, [www.url.com](http://www.url.com).

As of September 20, 2018, the Closing Date, there were approximately 81,341,958 shares of EdR common stock outstanding. Of those 81,341,958 shares of EdR common stock outstanding, EdR's directors and officers owned approximately 551,291 shares (excluded shares), meaning that the Settlement Class is comprised of 80,790,667 shares of EdR common stock as of September 20, 2018. Assuming that all of the shares held by Settlement Class Members participate in the Settlement, Plaintiff's Counsel estimates that the average distribution will be approximately \$0.12 per share of EdR common stock before the deduction of Court-approved fees and expenses, as described in Question 17 above (estimated to be approximately \$0.08 per share), and the cost of notice and claims administration. Historically, less than all eligible investors submit claims, resulting in higher average distributions per share. The Net Settlement Fund will be distributed to Settlement Class Members who submit valid, timely Proof of Claim forms ("Claimants") on a pro rata basis. However, no distributions will be made to Claimants who would otherwise receive a distribution of less than \$5.00.

Payments shall be conclusive against all Authorized Claimants. No Person shall have any claim against Plaintiff, Plaintiff's Counsel, Liaison Counsel, the Claims Administrator, Defendants, or Defendants' Released Persons, or any Person designated by Plaintiff's Counsel based on distributions made substantially in accordance with the Stipulation and the Settlement contained therein, or further order(s) of the Court. No Settlement Class Member shall have any claim against Defendants or Defendants' Released Persons for any Released Claims. All Settlement Class Members who fail to complete and submit a valid and timely Proof of Claim shall be barred from participating in distributions from the Net Settlement Fund (unless otherwise ordered by the Court), but otherwise shall be bound by all of the terms of the Stipulation, including the terms of any judgment entered and the releases given.

### **SPECIAL NOTICE TO NOMINEES**

The Court has ordered that if you held any EdR common stock at any point in time from June 25, 2018, through September 20, 2018, as nominee for a beneficial owner, then, within fifteen (15) calendar days after you receive this Notice, you must either: (1) send a copy of this Notice by first class mail to all such Persons; or (2) provide a list of the names and addresses of such Persons to the Claims Administrator:

*Education Realty Trust, Inc. Securities Litigation*  
*c/o INSERT*

If you choose to mail the Notice and Proof of Claim yourself, you may obtain from the Claims Administrator (without cost to you) as many additional copies of these documents as you will need to complete the mailing.

Regardless of whether you choose to complete the mailing yourself or elect to have the mailing performed for you, you may obtain reimbursement for or advancement of reasonable administrative costs actually incurred or expected to be incurred in connection with forwarding the Notice and which would not have been incurred but for the obligation to forward the Notice, upon submission of appropriate documentation to the Claims Administrator.

**DO NOT TELEPHONE THE COURT REGARDING THIS NOTICE**

DATED: \_\_\_\_\_

**BY ORDER OF THE COURT  
CIRCUIT COURT FOR  
BALTIMORE CITY, MARYLAND**

# **Exhibit A-2**

## **PROOF OF CLAIM AND RELEASE**

### **I. GENERAL INSTRUCTIONS**

1. To recover as a Settlement Class Member based on your claims in the action entitled *Frank v. Education Realty Trust, Inc., et al.*, Case No. 24-C-19-005518 (the “Litigation”), you must complete on page 3 and sign on page 6 hereof, this Proof of Claim and Release. If you fail to submit a properly addressed (as set forth in paragraph 3 below) Proof of Claim and Release, postmarked or received by the date shown below, your claim may be rejected and you may be precluded from any recovery from the Net Settlement Fund created in connection with the proposed Settlement of the Litigation.

2. Submission of this Proof of Claim and Release, however, does not assure that you will share in the proceeds of the Settlement.

3. YOU MUST MAIL OR SUBMIT ONLINE YOUR COMPLETED AND SIGNED PROOF OF CLAIM AND RELEASE, ACCOMPANIED BY COPIES OF THE DOCUMENTS REQUESTED HEREIN, NO LATER THAN \_\_\_\_\_, 2022 TO THE COURT-APPOINTED CLAIMS ADMINISTRATOR IN THIS CASE, AT THE FOLLOWING ADDRESS:

***Education Realty Trust, Inc. Securities Litigation***

***c/o INSERT***

**Online Submissions: [www.url.com](http://www.url.com)**

If you are NOT a Settlement Class Member (as defined in the Notice of Pendency and Proposed Settlement of Class Action (the “Notice”)), DO NOT submit a Proof of Claim and Release.

4. If you are a Settlement Class Member and you do not timely request exclusion in connection with the proposed Settlement, you will be bound by the terms of any judgment entered in the Litigation, including the releases provided therein, WHETHER OR NOT YOU SUBMIT A PROOF OF CLAIM AND RELEASE.

### **II. CLAIMANT IDENTIFICATION**

Pursuant to the Plan of Allocation proposed by Plaintiff’s Counsel, only Settlement Class Members who were record holders or beneficial holders of Education Realty Trust, Inc. (“EdR”) common stock as of September 20, 2018, the date the Transaction was consummated (“Closing Date”), and who submit a valid Proof of Claim and Release to the Claims Administrator may share in the recovery.

If you purchased, sold, or held EdR common stock during the period from and including June 25, 2018, through and including September 20, 2018 (the “Settlement Class Period”), and held the shares in your name, you are both the beneficial holder, purchaser, or acquirer of the stock and the record holder, purchaser, or acquirer of the stock. If, however, you held, purchased, or acquired EdR common stock during the Settlement Class Period and the shares were registered in the name of a third party, such as a nominee or brokerage firm, you are the beneficial holder, purchaser, or acquirer of the stock, but not the record holder, purchaser, or acquirer of the stock. The third party is the record holder, purchaser, or acquirer of the stock.

Use Part I of this form entitled “Claimant Identification” to identify each holder, purchaser, or

acquirer of record (“nominee”), if different from the beneficial holder, purchaser, or acquirer of the common stock which form the basis of this claim. THIS CLAIM MUST BE FILED BY THE ACTUAL BENEFICIAL HOLDER(S), PURCHASER(S), OR ACQUIRER(S), OR THE LEGAL REPRESENTATIVE OF SUCH HOLDER(S), PURCHASER(S), OR ACQUIRER(S) OF THE EDR COMMON STOCK UPON WHICH THIS CLAIM IS BASED.

All joint holders, purchasers, or acquirers must sign this claim. Executors, administrators, guardians, conservators, and trustees must complete and sign this claim on behalf of persons represented by them and their authority must accompany this claim and their titles or capacities must be stated. The Social Security (or taxpayer identification) number and telephone number of the beneficial owner may be used in verifying the claim. Failure to provide the foregoing information could delay verification of your claim or result in rejection of the claim.

If you are acting in a representative capacity on behalf of a Settlement Class Member (for example, as an executor, administrator, trustee, or other representative), you must submit evidence of your current authority to act on behalf of that Settlement Class Member. Such evidence would include, for example, letters testamentary, letters of administration, or a copy of the trust documents.

NOTICE REGARDING ELECTRONIC FILES: Certain Claimants with large numbers of transactions may request to, or may be requested to, submit information regarding their transactions in electronic files. **All Claimants MUST submit a manually signed paper Proof of Claim and Release listing all their transactions whether or not they also submit electronic copies.** If you wish to file your claim electronically, you must contact the Claims Administrator at [info@insert.com](mailto:info@insert.com) to obtain the required file layout. No electronic files will be considered to have been properly submitted unless the Claims Administrator issues to the Claimant a written acknowledgement of receipt and acceptance of electronically submitted data.

### III. CLAIM FORM

Use Part II of this form entitled “Holdings in EdR Common Stock” to state the number of shares of EdR common stock that you held at the Closing Date on September 20, 2018. You must provide copies of broker confirmations or other documentation of your holdings in EdR common stock as attachments to your claim. If any such documents are not in your possession, please obtain a copy or equivalent documents from your broker because these documents are necessary to prove and process your claim. Failure to provide this documentation could delay verification of your claim or result in rejection of your claim.

IN THE CIRCUIT COURT FOR  
BALTIMORE CITY, MARYLAND  
*Frank v. Education Realty Trust, Inc., et al.*  
Case No. 24-C-19-005518

PROOF OF CLAIM AND RELEASE

**Must Be Postmarked or Received No Later Than:**  
**\_\_\_\_\_, 2022**

Please Type or Print

**PART I: CLAIMANT IDENTIFICATION**

Name:		
Address:		
City:	State:	Zip or Postal Code:
Foreign Province:	Foreign Country:	
Day Phone:	Evening Phone:	
Email:		
Claimant Type (Individual, Joint, Corporation, etc.): _____		
Record Owner's Name: (If different from beneficial owner listed above)		
Social Security Number (for individuals):	OR	Taxpayer Identification Number (for estates, trusts, corporations, etc.)

**PART II: HOLDINGS IN EDR COMMON STOCK**

A. Number of shares of EdR common stock you held at the Closing Date on September 20, 2018: \_\_\_\_\_

Proof enclosed?      \_\_\_\_\_ yes      \_\_\_\_\_ no

**YOUR SIGNATURE ON PAGE 6 WILL CONSTITUTE YOUR ACKNOWLEDGMENT OF THE RELEASE DESCRIBED IN PART IV BELOW.**

**SUBMISSION TO JURISDICTION OF COURT AND ACKNOWLEDGMENTS**

I (We) submit this Proof of Claim and Release under the terms of the Stipulation and Agreement of Compromise, Settlement, and Release described in the Notice. I (We) also submit to the jurisdiction of the Circuit Court for Baltimore City, Maryland, with respect to my (our) claim as a Settlement Class Member and for purposes of enforcing the release set forth herein. I (We) further acknowledge that I am (we are) bound by and subject to the terms of any judgment that may be entered in the Litigation. I (We) agree to furnish additional information to the Claims Administrator to support this claim if requested to do so. I (We) have not submitted any other claim in connection with the purchase or acquisition of EdR common stock (or holding EdR common stock) during the period from and including June 25, 2018, the date the Merger Agreement was executed, through and including September 20, 2018, the Closing Date,

and know of no other person having done so on my (our) behalf.

#### **IV. RELEASE**

1. I (We) hereby acknowledge full and complete satisfaction of, and do hereby fully, finally and forever release, covenant not to sue, relinquish, and discharge each and all of the Defendants and the Defendants' Released Persons from the Released Claims as provided in the Stipulation and Agreement of Compromise, Settlement, and Release.

2. "Defendants' Released Persons" means, Defendant EdR, the Individual Defendants (Randall L. Churchey, Thomas Trubiana, John V. Arabia, Kimberly K. Schaefer, Howard A. Silver, John T. Thomas, and Wendell W. Weakley), Greystar Student Housing Growth and Income Trust (successor by merger to EdR), and any and all of their related parties, including, without limitation, as well as each of their respective past or present family members, spouses, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, distributees, foundations, agents, employees, fiduciaries, partners, control persons, partnerships, general or limited partners or partnerships, joint ventures, member firms, limited liability companies, corporations, affiliates, parents, subsidiaries, divisions, associated entities, stockholders, principals, officers, managers, directors, managing directors, members, managing members, managing agents, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, financial or investment advisors, advisors, consultants, investment bankers, entities providing any fairness opinion, underwriters, brokers, dealers, lenders, commercial bankers, attorneys, personal or legal representatives, accountants, insurers, co-insurers, reinsurers, and associate.

3. "Released Claims" means any and all claims, rights and causes of action, duties, obligations, demands, actions, debts, sums of money, suits, contracts, agreements, promises, damages and liabilities, whether known or unknown, contingent or non-contingent, derivative or direct, or suspected or unsuspected, including any claims arising under federal or state statutory or common law or any other law, rule or regulation, whether foreign or domestic, that have been asserted, could have been asserted, or could be asserted in the future against Defendants' Released Persons that arise out of or relate in any way to the Merger Agreement, the Transaction, the Proxy, or the Action; provided, however, that the Released Claims do not include any claims to enforce the Settlement or any claims against Settlement Class Members that properly seek to opt-out of the Settlement.

4. "Plaintiff's Released Claims" means any and all claims, rights and causes of action, duties, obligations, demands, actions, debts, sums of money, suits, contracts, agreements, promises, damages and liabilities, whether known or unknown, contingent or non-contingent, or suspected or unsuspected, including all claims arising under federal or state statutory or common law or any other law, rule or regulation, whether foreign or domestic, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims by Plaintiff, any other Settlement Class Members, Plaintiff's Counsel, or Liaison Counsel against the Defendants, except for claims relating to the enforcement of this Settlement.

5. "Unknown Claims" means (i) any of the Plaintiff's Released Claims which Plaintiff or any Settlement Class Member, or any of their agents or attorneys, does not know or suspect to exist in such Person's favor at the time of the release of the Plaintiff's Released Claims; and (ii) any of the Released Claims that the Defendants' Released Persons do not know or suspect to exist in his, her, or its favor at the time of the release of the Released Claims, which, in the case of both (i) and (ii), if known by such Person, might have affected such Person's decision with respect to this Settlement, including, without limitation, such Person's decision not to object to this Settlement or not to exclude himself, herself, or itself from the Settlement Class. Unknown Claims include those Plaintiff's Released Claims and Released Claims in which some or all of the facts comprising the claim may be suspected, or even undisclosed or hidden. With respect to any and all Plaintiff's Released Claims and Released Claims, Plaintiff and



Defendants shall expressly, and each of the Settlement Class Members and Defendants' Released Persons shall be deemed to have, and by operation of the Order and Final Judgment shall have, expressly waived to the fullest extent permitted by law, the provisions, rights, and benefits of California Civil Code § 1542, which provides:

**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**

Plaintiff and Defendants shall expressly, and each of the Settlement Class Members and Defendants' Released Persons shall be deemed to have, and by operation of the Order and Final Judgment, shall have expressly waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to California Civil Code § 1542. Plaintiff, Settlement Class Members, and the Defendants' Released Persons may hereafter discover facts in addition to or different from those which such party now knows or believes to be true with respect to the subject matter of Plaintiff's Released Claims and the Released Claims, but Plaintiff and Defendants shall expressly, and each Settlement Class Member and Defendants' Released Persons shall be deemed to have, and by operation of the Order and Final Judgment shall have fully, finally, and forever settled and released any and all Plaintiff's Released Claims or Released Claims, as the case may be, including Unknown Claims, whether or not known or unknown, suspected or unsuspected, contingent or non-contingent, and whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, reckless, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts, whether or not previously or currently asserted in any action. Plaintiff and Defendants acknowledge, and the Settlement Class Members and Defendants' Released Persons shall be deemed by operation of the Order and Final Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.

6. This release shall be of no force or effect unless and until the Court approves the Stipulation and Agreement of Compromise, Settlement, and Release and the Settlement becomes effective on the Effective Date.

7. I (We) hereby warrant and represent that I (we) have not assigned or transferred or purported to assign or transfer, voluntarily or involuntarily, any claim or matter released pursuant to this release or any other part or portion thereof.

8. I (We) hereby warrant and represent that I (we) have included information (including supporting documentation) about the number of shares of EdR stock held by me (us) at the Closing Date on September 20, 2018.

9. I (We) hereby warrant and represent that I am (we are) not a Defendant or other person excluded from the Settlement Class.

I declare under penalty of perjury under the laws of Maryland and the United States of America that the foregoing information supplied by the undersigned is true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_ (Month/Year)

in \_\_\_\_\_

(City)

(State/Country)

\_\_\_\_\_  
(Sign your name here)

\_\_\_\_\_  
(Type or print your name here)

\_\_\_\_\_  
(Capacity of person(s) signing, *e.g.*, Beneficial Purchaser or Acquirer, Executor or Administrator)

**ACCURATE CLAIMS PROCESSING TAKES A SIGNIFICANT AMOUNT OF TIME. THANK YOU FOR YOUR PATIENCE.**

Reminder Checklist:

1. Please sign the above release and declaration.
2. Remember to attach copies of supporting documentation, if available.
3. Do not send originals of stock certificates or other documentation as they will not be returned.
4. Keep a copy of your Proof of Claim and Release and all supporting documentation for your records.
5. If you desire an acknowledgment of receipt of your Proof of Claim and Release, please send it Certified Mail, Return Receipt Requested.
6. If you move, please send your new address to the address below.
7. Do not use red pen or highlighter on the Proof of Claim and Release or supporting documentation.

THIS PROOF OF CLAIM AND RELEASE MUST BE SUBMITTED ONLINE BY [REDACTED], 2022, OR, IF MAILED, POSTMARKED NO LATER THAN [REDACTED], 2022, ADDRESSED AS FOLLOWS:

*Education Realty Trust, Inc. Securities Litigation*  
*c/o INSERT*

# **Exhibit A-3**

**SUMMARY NOTICE**

**TO: ALL RECORD HOLDERS AND ALL BENEFICIAL HOLDERS OF EDUCATION REALTY TRUST, INC. (“EDR”) COMMON STOCK WHO PURCHASED, SOLD, OR HELD SUCH STOCK DURING THE PERIOD FROM AND INCLUDING, JUNE 25, 2018, THE DATE THE MERGER AGREEMENT WAS EXECUTED CONCERNING THE MERGER BETWEEN GREYSTAR STUDENT HOUSING GROWTH AND INCOME TRUST (“GREYSTAR”) AND EDR (“TRANSACTION”), THROUGH AND INCLUDING SEPTEMBER 20, 2018, THE DATE THE TRANSACTION WAS CONSUMMATED (“CLOSING DATE”), INCLUDING ANY AND ALL OF THEIR RESPECTIVE PREDECESSORS, SUCCESSORS, TRUSTEES, EXECUTORS, ADMINISTRATORS, ESTATES, LEGAL REPRESENTATIVES, HEIRS, ASSIGNS, AND TRANSFEREES.**

YOU ARE HEREBY NOTIFIED, pursuant to an Order of the Circuit Court for Baltimore City, Maryland, that a hearing will be held on \_\_\_\_\_, 2022, at \_\_\_\_:\_\_\_\_ \_\_.m., before the Honorable Jeffrey M. Geller. Settlement Class Members should check the Settlement Class website in advance of the Settlement Hearing to determine whether that hearing will occur in person at the Circuit Court for Baltimore City, Maryland, Clarence M. Mitchell, Jr. Courthouse, 100 North Calvert St., Baltimore, MD 21202, or via a remote link. The hearing will be held for the purpose of determining: (a) whether the Court should grant final approval of the proposed Settlement of \$10 million on the terms and conditions provided for in the Stipulation as fair, reasonable, and adequate, and in the best interests of the Settlement Class Members; (b) whether the Settlement Class should be finally certified for purposes of Settlement, and whether the designation of Plaintiff as Class representative and Plaintiff’s Counsel as Co-Class Counsel should be made final; (c) whether the Court should approve the Plan of Allocation of the Settlement as fair, reasonable, and adequate, and in the best interests of the Settlement Class Members; (d) whether the Court should enter an Order and Final Judgment dismissing the Action on the merits and with prejudice as to the Defendants and effectuating the releases described in the Stipulation; (e) whether the application of Plaintiff’s Counsel for the payment of attorneys’ fees and expenses

and an incentive award for Plaintiff should be approved; and (f) such other matters as may properly come before the Court.

IF YOU PURCHASED, SOLD, OR HELD EDR COMMON STOCK DURING THE PERIOD FROM AND INCLUDING JUNE 25, 2018, THROUGH AND INCLUDING SEPTEMBER 20, 2018 (THE “SETTLEMENT CLASS PERIOD”), YOUR RIGHTS MAY BE AFFECTED BY THE SETTLEMENT OF THIS LITIGATION, INCLUDING THE RELEASE AND EXTINGUISHMENT OF CLAIMS YOU MAY POSSESS RELATING TO YOUR PURCHASE OR ACQUISITION OF EDR COMMON STOCK DURING THE SETTLEMENT CLASS PERIOD. If you have not received a detailed Notice of Pendency and Proposed Settlement of Class Action (“Notice”) and a copy of the Proof of Claim and Release form, you may obtain copies by writing to *Education Realty Trust, Inc. Securities Litigation*, Claims Administrator, 1-  
phone, or on the Internet at [www.url.com](http://www.url.com). If you are a Settlement Class Member, in order to share in the distribution of the Net Settlement Fund, you must submit a Proof of Claim and Release by mail (*postmarked no later than \_\_\_\_\_, 2022*), or online at [www.url.com](http://www.url.com) *no later than \_\_\_\_\_, 2022*, establishing that you are entitled to recovery.

If you purchased, sold, or held EdR common stock during the Settlement Class Period and you desire to be excluded from the Settlement Class, you must submit a request for exclusion so that it is *received no later than \_\_\_\_\_, 2022*, in the manner and form explained in the detailed Notice referred to above. All Settlement Class Members who do not timely and validly request exclusion from the Settlement Class will be bound by any judgment entered in the Litigation pursuant to the Stipulation and Agreement of Compromise, Settlement, and Release.

Any objection to the Settlement, the Plan of Allocation, Plaintiff’s Counsel’s request for the payment of attorneys’ fees and expenses, and any incentive award to Plaintiff must be received

by each of the following recipients via hard copy and email *no later than* \_\_\_\_\_,

**2022:**

**CLERK OF COURT**  
CIRCUIT COURT FOR  
BALTIMORE CITY, MARYLAND  
111 North Calvert Street, Room 412  
Baltimore, MD 21202

**Plaintiff's Counsel:**  
Monteverde & Associates PC  
Juan E. Monteverde  
The Empire State Building  
350 Fifth Avenue, Suite 4405  
New York, NY 10118  
jmonteverde@monteverdelaw.com

**Defendants' Counsel:**  
Hogan Lovells US LLP  
Jon Talotta  
Thomas Hunt  
8350 Broad Street, 17th Floor  
Tysons, VA 21202  
jon.talotta@hoganlovells.com  
thomas.hunt@hoganlovells.com

Morrison & Foerster LLP  
Joel Haims  
250 West 55th Street  
New York, NY 10019  
JHaims@mofo.com

**PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE REGARDING THIS NOTICE.** If you have any questions about the Settlement, you may contact Monteverde & Associates PC, at the address listed above.

Dated: \_\_\_\_\_

BY ORDER OF THE COURT  
CIRCUIT COURT FOR  
BALTIMORE CITY, MARYLAND

# **Exhibit B**



CASEY M. FRANK, Individually and  
on Behalf of All Others Similarly Situated,

Plaintiff,

v.

EDUCATION REALTY TRUST, INC., *et al.*,

Defendants.

**IN THE**

**CIRCUIT COURT**

**FOR**

**BALTIMORE CITY, MARYLAND**

Case No. 24-C-19-005518

Judge: Jeffrey M. Geller

**ORDER AND FINAL JUDGMENT**

A hearing having been held before this Court on [REDACTED], 2022, pursuant to the Court's Order of Preliminary Approval and for Notice and Scheduling, dated [REDACTED], 2022 (the "Preliminary Approval and Scheduling Order"), upon the Stipulation and Agreement of Compromise, Settlement, and Release, dated January 11, 2022 (the "Stipulation"), which Preliminary Approval and Scheduling Order and Stipulation are incorporated herein by reference, of the above-captioned Action, and the Settlement contemplated thereby, which Stipulation was entered into between Plaintiff Casey M. Frank ("Plaintiff"), on the one hand, and Randall L. Churchey, Thomas Trubiana, John V. Arabia, Kimberly K. Schaefer, Howard A. Silver, John T. Thomas, Wendell W. Weakley (collectively, the "Individual Defendants"), and Education Realty Trust, Inc. ("EdR," which together with the Individual Defendants, "Defendants,") and Greystar Student Housing Growth and Income Trust ("Greystar" and together with EdR as successor by merger, the "Company," and collectively with Plaintiff and the Defendants, the "Settling Parties"), all by and through their undersigned attorneys; and the Circuit Court for Baltimore City, Maryland (the "Court") having determined that notice of said hearing was given to the Settlement Class in accordance with the Preliminary Approval and

Scheduling Order and that said notice was adequate and sufficient; and the Settling Parties having appeared by their attorneys of record; and the attorneys for the respective Settling Parties having been heard in support of the Settlement, and an opportunity to be heard having been given to all other persons desiring to be heard as provided in the notice; and the entire matter of the Settlement having been considered by the Court;

IT IS HEREBY ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2022, as follows:

1. Unless otherwise defined herein, all defined terms shall have the meanings as set forth in the Stipulation.

2. The Notice of Pendency and Proposed Settlement of Class Action (“Notice”) and the Proof of Claim and Release have been given to the Settlement Class (as defined herein) pursuant to and in the manner directed by the Preliminary Approval and Scheduling Order, proof of the dissemination of the notice has been filed with the Court, and a full opportunity to be heard has been offered to all Settling Parties, the Settlement Class, and Persons in interest. The Notice provided the Settlement Class Members with their right to object to any aspect of the proposed Settlement, exclude themselves from the Settlement Class, and/or appear at the Settlement Hearing. The form and manner of the Notice is hereby determined to have been the best notice practicable under the circumstances and to have been given in full compliance with each of the requirements of Rule 2-231(f) and 2-231(g)(2) of the Maryland Rules, due process, and applicable law, and it is further determined that all Settlement Class Members, except those that properly excluded themselves from the Settlement Class, are bound by the Order and Final Judgment herein.

3. Pursuant to Maryland Rule 2-231, the Court hereby affirms its finding from the Preliminary Approval and Scheduling Order that for purposes of settlement only, the

prerequisites for a class action have been satisfied in that: (i) the Settlement Class (as defined below) is so numerous that joinder of all members is impracticable. As of September 20, 2018, the Closing Date of the Transaction, there were approximately 80,790,667 shares of EdR common stock that comprised the Settlement Class; (ii) there are questions of law and fact common to the Settlement Class, including whether Defendants breached their fiduciary duties in connection with approval of the Transaction; (iii) Plaintiff's claims are typical of the claims of the Settlement Class; (iv) Plaintiff and Plaintiff's Counsel have fairly and adequately protected the interests of the Settlement Class; (v) the prosecution of separate actions by individual members of the Settlement Class would create a risk of inconsistent and varying adjudications, which would establish incompatible standards of conduct for the Defendants; (vi) as a practical matter, the disposition of this Action will influence the disposition of any pending or future identical cases brought by absent Settlement Class Members; and (vii) there were allegations that the Defendants acted or refused to act on grounds generally applicable to the Settlement Class. Therefore, the requirements of Maryland Rule 2-231 have been satisfied, and the Action has been properly maintained as a class action.

4. The Action is hereby finally certified as an opt-out class action pursuant to Maryland Rule 2-231, and the Settlement Class is defined as: all record holders and all beneficial holders of EdR common stock who purchased, sold, or held such stock during the period from and including June 25, 2018, date of execution of the Merger Agreement, through and including, September 20, 2018, the Closing Date, including any and all of their respective predecessors, successors, trustees, executors, administrators, estates, legal representatives, heirs, assigns, and transferees. Excluded from the Settlement Class are: (i) Defendants; (ii) members of the immediate families of each Individual Defendant; (iii) EdR's subsidiaries and affiliates; (iv) any

entity in which any Defendant has a controlling interest; (v) the legal representatives, heirs, successors, administrators, executors, and assigns of each Defendant; and (vi) any Person or entity who properly excludes themselves by filing a valid and timely request for exclusion (collectively, the “Excluded Stockholders”).

5. Administration of the Fund shall be accomplished pursuant to the Plan of Allocation.

6. Plaintiff is hereby certified as Class representative, and Plaintiff’s Counsel, Monteverde & Associates PC and Ademi LLP, are hereby appointed as Co-Class Counsel for the Settlement Class.

7. The Settlement is found to be fair, reasonable, adequate, and in the best interests of the Settlement Class, and it is hereby approved pursuant to Maryland Rule 2-231(i). The Settling Parties are hereby authorized and directed to comply with and to consummate the Settlement in accordance with its terms and provisions, and the Clerk is directed to enter and docket this Order and Final Judgment in the Action.

8. This Order and Final Judgment shall not constitute any evidence or admission by any of the Settling Parties that any acts of wrongdoing have been committed by any of the Settling Parties and should not be deemed to create any inference that there is any liability therefore.

9. The Action is hereby dismissed (i) with prejudice in its entirety as to the Defendants and against Plaintiff and all Settlement Class Members on the merits, and (ii) without costs (except as specifically provided below).

10. Any and all manner of claims, rights and causes of action, duties, obligations, demands, actions, debts, sums of money, suits, contracts, agreements, promises, damages and

liabilities, whether known or unknown, contingent or non-contingent, derivative or direct, or suspected or unsuspected, including any claims arising under federal or state statutory or common law or any other law, rule or regulation, whether foreign or domestic, that have been asserted, could have been asserted, or could be asserted in the future by the Releasing Persons against Defendants and Defendants' Released Persons, that arise out of or relate in any way to the Released Claims (including Unknown Claims), are hereby dismissed with prejudice, barred, settled, and released; provided, however, that the Released Claims do not include any claims to enforce the Settlement or any claims against Settlement Class Members that properly seek to opt-out of the Settlement.

11. The Releasing Persons are hereby permanently barred and enjoined from asserting, commencing, prosecuting, assisting, instigating, continuing, or in any way participating in the commencement or prosecution of any action, whether directly, representatively, derivatively, or in any other capacity, asserting any claims that are, or relate in any way to, the Released Claims (including Unknown Claims) that are released pursuant to this Order and Final Judgment or under the Stipulation against Defendants or any of the Defendants' Released Persons, except for claims relating to the enforcement of this Settlement.

12. Defendants and Defendants' Released Persons shall be deemed to have, and by operation of this Order and Final Judgment shall have, fully, finally, and forever released, relinquished, settled, extinguished, dismissed with prejudice, and discharged Plaintiff, the Settlement Class Members, Plaintiff's Counsel, and Liaison Counsel from any and all claims that have been or could have been asserted in the Action or any forum, which arise out of or relate in any way to the institution, prosecution, settlement, or dismissal of the Released Claims (including Unknown Claims), or the administration/distribution of the Fund, except that this

release shall not apply to the rights and obligations created by this Stipulation.

13. Moreover, the Settlement Class shall be deemed to have, and by operation of the Order and Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged Plaintiff, Plaintiff's Counsel, and Liaison Counsel from all claims based upon or arising out of the institution, prosecution, assertion, settlement or resolution of the Released Claims, or the administration/distribution of the Fund, except that this release shall not apply to the rights and obligations created by this Stipulation.

14. Plaintiff's Counsel are awarded attorneys' fees and reimbursement of expenses in the aggregate amount of \$\_\_\_\_\_, plus any interest on such attorneys' fees and expenses at the same rate and for the same periods as earned by the Fund (until paid), which amount the Court finds to be fair and reasonable, and which shall be paid out of the Fund in accordance with the terms of the Stipulation and per the instructions of the Claims Administrator. Plaintiff is hereby awarded an incentive award in the aggregate amount of \$\_\_\_\_\_, which amount the Court finds to be fair and reasonable, and which shall be paid out of the Fund in accordance with the terms of the Stipulation and per the instructions of the Claims Administrator.

15. Without affecting the finality of this Order and Final Judgment in any way, this Court reserves jurisdiction over all matters necessary to effectuate the Settlement and its administration/distribution.

Dated: \_\_\_\_\_

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HON. JEFFREY M. GELLER  
CIRCUIT COURT FOR BALTIMORE CITY