



OPT OUT NOTICE

FEDERAL COURT OF AUSTRALIA

Federal Court of Australia Proceeding VID 996 of 2017

Michael Robert Luke (in his capacity as the co-executor of the estate of Robert Colin Luke, deceased) and others v Aveo Group Limited ACN 010 729 950

1.1.1

A. Why is this notice important?

- 1 A class action has been commenced in the Federal Court of Australia in Melbourne by Michael Robert Luke and three others named below under Section D against Aveo Group Limited (**Aveo**).
- 2 **If you bought, leased or held a licence to occupy a residential unit (Unit) in a retirement village that was or has become an Aveo-branded retirement village, and the “Aveo Way” contract has been introduced in that village, you should read this notice carefully.**
- 3 Aveo is an owner, developer and operator of Aveo-branded retirement villages in Australia. (**Aveo Villages**). Aveo Villages include retirement villages that Aveo (or a related entity) purchased and has since operated under the name and brand “Aveo”.
- 4 This Notice contains important information about:
 - (a) What a class action is.
 - (b) Whether you are a group member in this class action.
 - (c) What the class action against Aveo is about.
 - (d) Whether you will be responsible for paying for the class action, and how it is funded.
 - (e) Your right to “opt out” of the class action, what opt out is, and how you can opt out of this class action.
- 5 The class action is brought against Aveo on behalf of certain current and former residents of Units within Aveo Villages who hold, or once held, a Unit in an Aveo Village where a contract known as the “Aveo Way” has been introduced. For former residents who have passed away, the class action is brought on behalf of the executors or administrators of their estate.
- 6 The Federal Court has ordered that this notice be published for the information of persons who might be members of the class on whose behalf the action is brought and who may be affected by the action. **Under the Court’s rules, Aveo, its managers, and staff are not able to discuss the opt out notice with you.** Any questions you have concerning the matters contained in this notice should not be directed to the Court. If there is anything in the notice that you do not understand, you should seek legal advice or contact Levitt Robinson at aveo@levittrobinson.com (see further at paragraphs [60] and [61] below).



B. What is a class action?

- 7 A class action is a legal proceeding that is brought by one person (**Applicant**) on their own behalf and on behalf of a class or group of people (**group members**) against another person (**Respondent**) where the Applicant and the group members have similar claims against the Respondent.
- 8 Group members in a class action are not individually responsible for any legal costs associated with bringing the class action if the class action is unsuccessful. You may only be required to pay legal costs if the class action is successful. Any legal costs you may be required to pay will not exceed the amount of compensation or the assessed value of any benefits you may receive by being a part of the class action. The manner of any assessment of the value of any non-monetary benefits received by group members who do not sign funding agreements will be subject to the Court's direction or approval.
- 9 Group members are "bound" by the outcome in the class action, unless they have **opted out** of the proceeding. This means that if you **do not** opt out:
- (a) You may be able to share in any compensation or other benefit arising from a settlement; and
 - (b) If the class action proceeds to a trial and is successful, then:
 - (i) If you have already sold or surrendered your Unit, you may be able to share in any Court-awarded damages; and
 - (ii) If you have not sold or surrendered your Unit, you will not be able to share in any Court-awarded damages but you may have the benefit of Court orders that state what Aveo may or may not do in relation to the sale or surrender of Units (see paragraph 19 below); and
 - (c) You will be bound by the dismissal of the case if the class action fails; and
 - (d) You will not be able to sue about the matters that are the subject of the class action in separate legal proceedings.
- 10 A result that is binding on group members can happen in two ways, either by a judgment following a trial, or a settlement at any time.
- 11 In a judgment following trial, the Court will decide various factual and legal issues in respect of the claims made by the Applicant and group members. Unless those decisions are successfully appealed, they bind the Applicant, group members and the Respondent.
- 12 Importantly, if there are other legal proceedings between a group member and the Respondent, it may be that neither of them will be permitted to raise arguments in that proceeding which are inconsistent with a factual or legal issue decided in the class action.
- 13 In a settlement of a class action, if the settlement provides for compensation or other benefits to group members then the settlement terms may also extinguish all rights to compensation which a group member might have against the Respondent which arises in any way out of the events or transactions which are the subject-matter of the class action.



14 If you consider that you have claims against Aveo which are based on your individual circumstances, or that you have claims in addition to the claims described in the class action, then it is important that you seek independent legal advice about the potential binding effects of the class action before the deadline for opting out (see below).

C. Are you a group member?

15 Central to this class action is the introduction by Aveo of a form of contract (the **Aveo Way Contract**) under which Aveo leases Units in certain Aveo Villages. The Applicants in the class action allege that Aveo introduced the Aveo Way Contract pursuant to a programme (the **Aveo Way Programme**) that was rolled out in certain Aveo Villages from 2014.

16 Group members in the class action are those who hold, or once held, an interest in a Unit at an Aveo Village where the Aveo Way Programme was introduced (**Residential Owners**).

17 A list of the Aveo villages which are the subject of the class action, including the date the Aveo Way Programme was introduced at each relevant village, is set out at Schedule 2 to this notice.

18 You are eligible to participate as a group member in the class action if you fall within the **Group Definition**, defined as follows:

(a) You:

(i) currently hold, a freehold interest in a Unit in an Aveo Village listed in Part 1 of Schedule 2 and you are subject to the terms of a non-Aveo Way Management Agreement (**Pre-Aveo Way Freehold Interest**), or you are an executor, administrator or lawful assignee of a person who has a freehold interest of that type; OR

(ii) previously held a freehold interest in a Unit in an Aveo Village listed in Part 1 or Part 2 of Schedule 2 and you were subject to the terms of a non-Aveo Way Management Agreement (**Pre-Aveo Way Freehold Interest**), or you are an executor, administrator or lawful assignee of a person who had a freehold interest of that type; and

(b) You have not settled your claims the subject of the proceedings,

(Freehold Group Members);

OR

(c) You:

(i) currently hold a leasehold interest in relation to, or a licence to occupy, a Unit in an Aveo Village listed in Part 1 of Schedule 2 and you are subject to the terms of a non-Aveo Way Management Agreement (**Pre-Aveo Way Leasehold Interest**), or you are an executor, administrator or lawful assignee of a person who has a leasehold interest of that type; OR

(ii) previously held a leasehold interest in relation to, or a licence to occupy, a Unit in an Aveo village listed in Part 1 or Part 2 of Schedule 2 and you were subject to the terms of a non-Aveo Way Management Agreement (**Pre-Aveo Way Leasehold Interest**), or you are an



executor, administrator or lawful assignee of a person who had a leasehold interest of that type; and

- (d) You have not settled your claims the subject of the proceedings,
(Leasehold Group Members).

- 19 The Freehold Group Members and the Leasehold Group Members fall into two principal subgroups: those who have sold or surrendered their Unit and seek compensation and damages, and those who have not yet sold or surrendered their Unit and who seek declarations and injunctions only. If judgment is entered in favour of the Applicants, group members who have not yet sold are entitled only to any declarations and injunctions the Court makes, and not to damages, although the declarations and injunctions may be of financial value to group members who have not yet sold.
- 20 Aveo has provided a list of all Aveo Way sales to Levitt Robinson. If you are a former resident, Levitt Robinson will be able to advise if you have sold under Aveo Way.
- 21 If you are unsure whether or not you are a group member, you should contact Levitt Robinson Solicitors on 02 9286 3133 or email aveo@levittrobinson.com or seek your own legal advice without delay.

2. D. What is this class action about?

- 22 This class action is brought by the following Applicants:
- (a) Michael Robert Luke and
(b) Meredith Anne Luke,
in their capacity as the co-executors of the estate of their late father, Robert Colin Luke,
known as the **Luke Lead Applicants**, who represent the Freehold Group Members;
and
- (c) Ann Mary Stroud and
(d) Neil Bernard Colombari,
in their capacity as co-executors of the estate of their late mother, Joan Mary Colombari, known as the **Colombari Lead Applicants**, who represent the Leasehold Group Members.
- 23 A summary of allegations made in the class action by the Applicants appears in the following three paragraphs.
- 24 The Applicants allege that:
- (a) In the case of a Pre-Aveo Way Freehold Interest, when an incoming resident for the Unit was found, Aveo (or a related body corporate) acquired the freehold title to the Unit held by the outgoing Residential Owner and Aveo then leased the Unit to the incoming resident under the Aveo Way Contract;
- (b) In the case of a Pre-Aveo Way Leasehold Interest, when an incoming resident for the Unit was found, Aveo (or a related body corporate) leased the unit to the incoming resident under the Aveo Way Contract;



- (c) The sale price or resale price paid to the outgoing Residential Owner would be the ingoing contribution paid by the incoming resident under the Aveo Way Contract; and
 - (d) The outgoing Residential Owner paid fees to Aveo (or its related entity) in relation to the sale of the Unit in accordance with the Residential Owner's existing management agreement with Aveo.
- 25 The Applicants allege that the interest in the Unit obtained by the incoming resident under the Aveo Way Contract was less valuable than the interest that the outgoing Residential Owner held, because the Aveo Way Contract, in some or all cases:
- (a) Included a faster rate of accrual and higher ceiling in relation to the "Deferred Management Fee" associated with the Unit;
 - (b) (In respect of the interest held by freehold Residential Owners) Provided a leasehold interest to the incoming resident rather than a freehold interest;
 - (c) Denied to the incoming resident the possibility of receiving any capital gain upon the lease of the Unit to a subsequent incoming resident; and/or
 - (d) Imposed membership fees upon incoming residents that did not apply to Pre-Aveo Way Freehold Interests or Pre-Aveo Way Leasehold Interests.
- 26 The Applicants also allege that:
- (a) In relation to outgoing Residential Owners who have sold or surrendered their Pre-Aveo Way Interests, acquiring the Pre-Aveo Way Freehold Interests and Pre-Aveo Way Leasehold Interests had particular value to Aveo, such that Aveo would have been willing to acquire the outgoing Residential Owner's Unit for more than other potential purchasers;
 - (b) Aveo did not inform outgoing Residential Owners of the matters in subparagraph (a) above;
 - (c) Outgoing freehold Residential Owners were required to use, or enticed into using, Aveo (or a related entity) as the selling agent for their Unit when there was no need to appoint a selling agent because Aveo (or a related entity) would, under the Aveo Way Programme, be acquiring the freehold title to the Unit from the outgoing Residential Owner (rather than an incoming resident acquiring that freehold title to the Unit from the outgoing Residential Owner);
 - (d) Aveo engaged in misleading or deceptive conduct, and unconscionable conduct, by representing to outgoing Residential Owners that they would be "no worse off" as a result of the Aveo Way Programme; and
 - (e) Aveo engaged in an unconscionable system or scheme by introducing and implementing the Aveo Way Programme.
- 27 The claims against Aveo summarised in paragraphs 24 to 26 above are set out in the third further amended statement of claim, a copy of which can be obtained from Levitt Robinson via email sent to aveo@levittrobinson.com.
- 28 Aveo denies the Applicants' allegations and is defending the claims against it. Aveo's position is that the Applicants and Group Members have not, or will not, receive less monies by selling under the Aveo Way Programme. Aveo also says that Freehold Group Members are not obliged to sell under the Aveo Way Programme.
- 29 Pursuant to the current timetabling orders, the class action is set down for a Mediation to occur no later than 14 December 2022.



- 30 If the matter does not settle at the Mediation, a trial is scheduled for March 2023. This will be a hearing of the Applicants' cases, the claims of any sample group members, as well as certain common questions that affect all group members.
- 31 The claims of other group members will not be determined at this initial trial. No orders for compensation for other individual group members would be made at this point.
- 32 If the outcome of the trial warrants the consideration of the claims of other individual group members, and their claims have not been settled or resolved with Aveo, there may be a second stage trial or some other process for the assessment of the claims of the other group members after judgment in the first trial.

3. E. Will you be liable for legal costs if you remain a group member?

- 33 You may **become liable for legal costs** by remaining as a group member for the determination of the common questions. However, **the amount of these legal costs will not exceed the amount of compensation and, or alternatively, the assessed value of any other benefit you receive by being a part of the class action.** You will only become liable for legal costs if any of the following circumstances arise:
- (a) Your personal claim may require work to be done in relation to issues that are specific to you, in which case you may be liable for those costs (but see paragraph 46 below). You can ask Levitt Robinson Solicitors or other lawyers to do that work for you. A copy of the terms on which Levitt Robinson Solicitors are acting in the class action may be obtained from them by calling 02 9286 3133 or emailing aveo@levittrobinson.com. If the class action settles out of court, which often happens, then you may be able to claim from the settlement amount without retaining a lawyer;
 - (b) In the case of group members who have already sold or surrendered their units, if any compensation becomes payable to you as a result of any order, judgment or settlement in the class action, the Court may order that some of that compensation be used to help pay for the costs which were incurred by the Applicants in running the class action (as described at Section F below), including legal costs; and
 - (c) In the case of group members who have not sold or surrendered their Unit, if you receive a benefit (such as an increase in the value of your Unit because of the class action) or any compensation becomes payable to you as a result of any settlement in the class action, the Court may order that some of that compensation or the assessed value of the benefit be used to help pay a share of the costs which were incurred by the Applicants in running the class action (as described at Section F below), including legal costs.

4. F. How is the class action being funded?

- 34 The class action against Aveo is an Opt-Out, "No-Win, No-Fee" class action, and is fully funded by a third-party litigation funder, Galactic Aveo LLC (**the Funder**).
- 35 The Funder pays all legal costs upfront, indemnifies group members for costs orders (in the event Aveo wins), and lodges security for Aveo's costs with the Court. **This means that if Aveo wins, you will not be liable to pay for any legal costs.**
- 36 Costs in court proceedings are usually paid by the losing party. If the class action is successful, a court order for costs against Aveo may substantially offset the costs



outlaid by the Funder. However, the Funder is entitled under the funding agreements signed with some group members (**Funding Agreements**) to recover any difference from settlement or judgment verdict monies.

- 37 Should the claim be successful, the Funder is also entitled to the commission that “funded group members” (being those who have signed a Funding Agreement) have agreed to pay the Funder under their funding agreements. Group members who have signed Funding Agreements and who receive any monetary compensation from any settlement or judgment have agreed to pay **35% of that monetary compensation** to the Funder.
- 38 For group members who do not receive any monetary compensation and still retain their pre-Aveo Way Programme interest in their Units, the current Funding Agreement says that those group members will have to pay to the Funder a portion equal to **25% of the assessed value of any benefit they receive** from any settlement or judgment from the proceeds of any subsequent sale of the Unit. The value of any benefit, such as the increase in value of the Unit in consequence of the class action, will be assessed and determined in the manner set out in paragraphs 10 to 12 of Schedule 1. It is important that you read and understand those paragraphs.
- 39 A summary of the current Funding Agreement is set out in the Schedule to this Notice. A copy of the current Funding Agreement is available from Levitt Robinson Solicitors by calling 02 9286 3133 or emailing aveo@levittrobinson.com. If you have questions concerning the Funding Agreement or how it operates, you are encouraged to contact Levitt Robinson or to seek your own legal advice.

Common Fund Order OR Funding Equalisation Order?

- 40 The Court may order that group members who benefit from a class action but who have not signed a Funding Agreement with the Funder should contribute equally with group members who have signed a Funding Agreement. There are two ways that the Court may order for this to happen. One is known as a Common Fund Order and the other is known as a Funding Equalisation Order.

Common Fund Order

- 41 The Funder may seek a **Common Fund Order**. A Common Fund Order is an order of the Court that provides for the Funder to receive a percentage that the Court considers to be fair and reasonable of any sum agreed to be paid in settlement of a class action, or of any judgment monies awarded by the Court. The effect of such an order is that all group members will be required to contribute an equal percentage of any settlement or judgment monies that group members are entitled to receive from the class action, whether or not group members have signed a Funding Agreement. The percentage will be lower than the 35% provided for in the Funding Agreements but may be as high as 25%, and will be subject to Court approval.
- 42 This sum would then be deducted from any settlement sum or judgment monies before distribution to group members. An application for a Common Fund Order would only be made after the case settles or after judgment. What percentage is fair and reasonable would be considered by the Court in all of the circumstances at the time that the Funder seeks a Common Fund Order.



Funding Equalisation Order

- 43 If the Court does not make a Common Fund Order, then at any settlement approval the Applicants will seek a **Funding Equalisation Order** in respect of any commission and any other costs (including any shortfall in legal costs) to which the Funder is entitled under the Funding Agreements that it has entered into with group members.
- 44 A Funding Equalisation Order is an order of the Court that requires the “unfunded group members” (being, those who have not signed a Funding Agreement with the Funder) to contribute equally to the commission and any other costs (including any shortfall in legal costs) that “funded group members” (being, those who have signed a Funding Agreement) have agreed to pay the Funder under their Funding Agreements. This means that all group members, both funded and unfunded, will contribute equally to the commission and any other costs that funded group members have agreed to pay to the Funder.
- 45 If the Court makes orders requiring group members to make a contribution from any compensation or other benefit(s) that they receive from the class action to the funding costs of the proceeding, this will not exceed the amount of compensation and, or alternatively, the assessed value of any benefit(s) you receive. The Court may make orders deferring contribution by group members if they have not sold or surrendered their Unit, including orders to ensure that group members make any required contribution from the sale proceeds of their Unit.
- 46 Some group members may need to take steps in the proceedings to have their individual claims determined. If that happens, the individual group members, and not the Applicants, will be liable for the costs associated with the determination of their individual claims. The Funder has agreed to fund those costs for group members that have signed Funding Agreements, so they will not have to pay anything unless they achieve a successful outcome.
- 47 The above information about the effect of a common fund order or a funding equalisation order is a summary only. If you want further information in relation to these matters or you want to inspect a copy of the Funding Agreement, you can contact Levitt Robinson Solicitors by calling 02 9286 3133 or emailing aveo@levittrobinson.com or you should seek your own legal advice.

5. G. What is ‘Opt Out’?

- 48 This is an Opt Out class action. This means that all individuals who fall within the Group Definition set out in Section C above are covered by the outcome of the class action. However, you will have an opportunity to opt out of the class action should you choose to.
- 49 The Applicant in a class action does not need to seek the consent of group members to commence a class action on their behalf or to identify a specific group member. However, group members can cease to be group members by opting out of the class action. An explanation of how group members are able to opt out is found just below, in Section H.

6. H. How can you opt out of the class action and what will happen if you do?

- 50 If you opt out of the class action:
- (a) You will not be bound by, or entitled to share in any benefit of, any order, judgment or settlement in the class action; and



- (b) You will be able to bring your own claim against Aveo, provided that you issue court proceedings within the time limit applicable to your claim. If you wish to bring your own claim against Aveo, you should seek your own legal advice about your claim and the legal costs involved and the applicable time limit prior to opting out.

51 **If you do not wish to remain** a group member, you **must** opt out of the class action.

52 If you do not opt out, then as stated at [9] above:

- (a) You may be able to share in any compensation or other benefit arising from a settlement; and
- (b) If the class action proceeds to a trial and is successful, then:
 - (i) If you have already sold or surrendered your Unit, you may be able to share in any Court-awarded damages; and
 - (ii) If you have not sold or surrendered your Unit, you will not be able to share in any Court-awarded damages but you may have the benefit of Court orders that state what Aveo may or may not do in relation to the sale or surrender of Units; and
- (c) You will be bound by the dismissal of the case if the class action fails; and
- (d) You will not be able to sue about the matters that are the subject of the class action in separate legal proceedings.

53 **If you wish to remain** a group member, **you must not** opt out of the class action.

54 **If you wish to opt out** of the class action you **must** do so by completing an “**Opt Out Notice**” in the form attached to this notice and marked “A”, then returning it to the Registrar of the Federal Court of Australia by email or at the address on the form. **IMPORTANT: if you want to opt out the Notice must reach the Registrar by no later than 4:00 pm on 21 November 2022**, otherwise it will not be effective. The notice may be sent to the Victorian District Registry of the Federal Court of Australia, either via email to vicreg@fedcourt.gov.au or by post to the Registry, Federal Court of Australia, 305 William Street Melbourne VIC 3000.

55 Each group member seeking to opt out should fill out a separate form. If you are opting out on behalf of a company or business, please provide your name, the name of the company or business and your position within the company or business (e.g. director or partner).

56 **You are free to make up your own mind** whether to give an Opt-Out Notice or do nothing. You can also take advice about your options and the information contained in this Notice. Further information can be obtained by contacting Levitt Robinson as set out below or any other lawyer of your choice.

7. I. What will happen if you choose to remain a group member?

57 **If you wish to remain** a group member there is **nothing you need to do** at the present time. The Applicants will continue to bring the proceeding on your behalf up to the point where the Court determines those questions that are common to the claims of the Applicants and the group members. However, you are invited to contact the Applicants' lawyers, Levitt Robinson Solicitors, on (02) 9286 3133 and register as a group member so that future notices about the class action can be sent to your



preferred address. You can also do this by completing the registration form, which is Annexure “B” below, and sending it to Levitt Robinson Solicitors by post or email. Completing this form is voluntary. It is not necessary in order to be part of the Class Action.

- 58 If you have not signed a Funding Agreement and the Court makes a common fund order or a funding equalisation order, then any compensation payable to you or the assessed value of any benefit(s) you receive will be reduced and will be subject to the terms of the common fund order or funding equalisation order.
- 59 If the action against Aveo is unsuccessful or is not as successful as you might have wished, you will not be able to sue Aveo on the same claim in any other proceedings.

8. J. Where can you obtain copies of relevant documents?

- 60 Copies of relevant documents, including the third further amended statement of claim and defence filed by Aveo, may be obtained by:
- (a) Inspecting them between 9am and 5pm at the offices of Levitt Robinson Solicitors, contact details for which are available from www.levittrobinson.com or by e-mailing aveo@levittrobinson.com and requesting copies;
 - (b) By contacting a District Registry of the Federal Court (contact details are available at www.fedcourt.gov.au) and paying the appropriate inspection fee; or
 - (c) Inspecting them on the Federal Court website at <http://www.fedcourt.gov.au/law-and-practice/class-actions/class-actions>.
- 61 Please consider the above matters carefully. If there is anything of which you are unsure, you should contact Levitt Robinson Solicitors on 02 9286 3133 or aveo@levittrobinson.com or seek your own legal advice. **You should not delay in making your decision.**



Schedule 1

A. What is this Schedule?

1 This Schedule is a summary of the terms and effect of the current version of the Funding Agreement referred to in the Notice. It is a summary only, and not legal advice. If you have any questions or concerns, you should contact Levitt Robinson Solicitors on 02 9286 3133 or aveo@levittrobinson.com or seek your own legal advice.

B. Terms of the Funding Agreement

2 The Funding Agreement is an agreement executed as a deed between the Funder, Levitt Robinson and the group member (who becomes a client of Levitt Robinson). The Funding Agreement has been altered since it was originally prepared. What appears below concerns the current Funding Agreement that applies to group members who hold a freehold interest in their Unit. The current version of the Funding Agreement that applies to group members who hold a leasehold interest in their Unit is substantially the same, except where noted below.

3 The Funding Agreement provides that the Funder will pay the costs of the class action in the first instance. If the class action is not successful against Aveo, then the group member is not liable to pay any costs.

4 Should the Funder determine that it does not wish to continue to fund the class action, it will give 60 days' written notice to that effect. The Funder remains liable under the Funding Agreement up to the date of its withdrawal from the Funding Agreement. [This term is not part of the current version of the Funding Agreement that applies to group members who hold a leasehold interest.]

5 If the class action is successful then the Funder is entitled to be reimbursed the costs of the class action that the Funder has paid ("Funding Costs") and the "Additional Sum".

6 The Additional Sum is:

- (a) 35% of any compensation received by the group member from the class action; and
- (b) 25% of the value of any "Benefit" received by the group member from the class action.

7 The Funding Costs and the Additional Sum are paid out of the total of the entitlement from the class action of all group members who have signed Funding Agreements ("the Final Amount"). If a group member who has signed a Funding Agreement opts out of the class action and subsequently obtains compensation from Aveo, that group member will still be liable to pay the Funder its entitlements, as prescribed by the Funding Agreement.

8 If the Funding Costs and the Additional Sum is more than the Final Amount, then the Funder receives the Final Amount (rather than the Funding Costs and the Additional Sum).

9 "Benefit" is defined in the Funding Agreement to include increases in property value in consequence of the class action, and may also include the value of any financial concession or non-monetary compensation or other remedy. The value is measured



as at the date of settlement or court order, and these may be complex and difficult to assess.

- 10 The Funding Agreement contains a binding process for assessing and determining the value of any “Benefit”. This is particularly relevant to those group members who have not sold or surrendered their Unit when the class action settles or judgment is delivered by the Court following a trial.
- 11 Levitt Robinson Solicitors will, at their absolute discretion, appoint a barrister from Queensland of at least 12 years’ seniority to undertake the valuation of the Benefit (**Barrister’s Determination**). That barrister will have access to a written valuation prepared by an independent expert and any other further information or evidence that Levitt Robinson Solicitors may at their absolute discretion determine to be relevant, and will determine the value of the Benefit as at the date of judgment (or subsequent Court order) or settlement.
- 12 The Barrister’s Determination is binding unless the group member or the Funder seeks a review within 21 days of receiving the Barrister’s Determination, and provides their evidence and submissions with their review application. The group member and Funder may seek a review of the Barrister’s Determination from an independent barrister from New South Wales or Victoria of at least 12 years’ seniority, which barrister will be appointed by Levitt Robinson Solicitors at their absolute discretion. The review application is binding on the group member and the Funder.
- 13 Group members who have not sold or surrendered their Unit may pay out of their own pocket an amount equal to the Barrister’s Determination at the time the Barrister’s Determination is made. If the payment is not made at that time, then those group members will become personally liable to the Funder for an amount equal to the Barrister’s Determination which will be secured by a charge and caveat on the title of their Unit (**Deferred Sum**).
- 14 In relation to the Deferred Sum:
 - (a) The Funder may bring an application to the Court on behalf of all group members (and therefore incur legal costs on behalf of all group members) regarding any charge or caveat over the Unit;
 - (b) Interest accrues at 2.0% per annum calculated daily with a cap of 10% until the Deferred Sum is paid to the Funder; and
 - (c) This amount will only be due and payable to the Funder at the time the Unit is sold or disposed of.



Schedule 2 – List of Aveo villages

Legend:

ILU means ‘Independent Living Unit’

SA means ‘Serviced Apartment’

Aveo Village	Accom. Type	State	Date of first Aveo Way Sale
PART 1: VILLAGES WHERE THE AVEO WAY HAS BEEN INTRODUCED, AVEO WAY CONTRACTS ARE PRESENTLY OFFERED TO INCOMING RESIDENTS AND AN AVEO WAY SALE MAY TAKE PLACE IN THE FUTURE			
Aveo The Parks, Earlville	ILU	Qld	16-Jul-15
Aveo Lindsay Gardens, Buderim	ILU	Qld	11-Sep-15
Aveo Lindsay Gardens, Buderim	SA	Qld	26-Oct-15
Aveo Peregian Springs Country Club, Peregian Springs	ILU	Qld	29-Jun-15
Aveo Peregian Springs Country Club, Peregian Springs	SA	Qld	30-Jun-15
Aveo Albany Creek, Albany Creek	ILU only	Qld	29-Apr-15
Aveo Aspley Court, Aspley	ILU	Qld	30-Jun-15
Aveo Aspley Court, Aspley	SA	Qld	30-Jun-15
Aveo Bridgeman Downs, Bridgeman Downs	ILU	Qld	10-Aug-15
Aveo Bridgeman Downs, Bridgeman Downs	SA	Qld	30-Jun-15
Aveo Cleveland, Cleveland	ILU	Qld	4-May-15
Aveo Cleveland, Cleveland	SA	Qld	23-Apr-15
Aveo Cleveland Gardens, Ormiston	ILU only	Qld	17-Jul-15
Aveo Durack, Durack	ILU	Qld	31-Mar-15
Aveo Durack, Durack	SA	Qld	21-Apr-15
Aveo Manly Gardens, Manly	ILU	Qld	15-Apr-15
Aveo Sunnybank Green, Sunnybank	ILU	Qld	1-Jul-15
Aveo Taringa, Taringa	ILU	Qld	26-Jun-15
Aveo Taringa, Taringa	SA	Qld	7-May-15
The Clayfield, Albion	ILU	Qld	30-Apr-14
Aveo Amity Gardens, Ashmore	ILU	Qld	1-Jul-15
Aveo Robertson Park, Robertson	ILU only	Qld	25-Sep-15
Aveo Robina, Robina	ILU	Qld	25-Jun-15
Aveo Southport Gardens, Southport	ILU	Qld	16-Oct-15
Aveo The Domain Country Club, Ashmore	ILU	Qld	22-Jun-15
Aveo The Domain Country Club, Ashmore	SA	Qld	24-Jun-15
Aveo Tranquility Gardens, Helensvale	ILU	Qld	15-Jun-15
Aveo Banora Point, Banora Point	ILU	NSW	9-Sep-15
Aveo Bayview Gardens, Bayview	ILU	NSW	19-Nov-14



Aveo Bayview Gardens, Bayview	SA	NSW	24-Aug-15
Aveo Camden Downs, Camden South	ILU	NSW	11-Apr-16
Aveo Lindfield Gardens, East Lindfield	ILU	NSW	26-Nov-14
Aveo Lindfield Gardens, East Lindfield	SA	NSW	15-Dec-14
Aveo Maple Grove, Casula	ILU	NSW	5-Dec-14
Aveo Minkara Resort, Bayview	ILU	NSW	24-Nov-14
Aveo Minkara Resort, Bayview	SA	NSW	28-Apr-15
Aveo Peninsula Gardens, Bayview	ILU	NSW	4-Jun-15
Aveo Peninsula Gardens, Bayview	SA	NSW	16-Oct-15
Aveo Fernbank, St Ives	SA only	NSW	23-Dec-15
Aveo Island Point, St Georges Basin	ILU	NSW	10-Aug-15
Aveo Mountain View, Murwillumbah	ILU	NSW	4-Sep-15
Aveo Mountain View, Murwillumbah	SA	NSW	12-Feb-16
Pittwater Palms, Avalon	SA only	NSW	29-Mar-22
The Manors of Mosman, Mosman	SA only	NSW	22-Dec-17
Aveo Ackland Park, Everard Park	ILU only	SA	28-Nov-16
Aveo Carisfield, Seaton	ILU	SA	27-Jan-16
Aveo Crestview, Hillcrest	ILU	SA	14-Oct-15
Aveo Fulham, Fulham	ILU	SA	24-Sep-15
Aveo Fulham, Fulham	SA	SA	3-Jun-15
Aveo Glynde Lodge, Glynde	ILU	SA	3-Nov-15
Aveo Gulf Point, North Haven	ILU	SA	14-Nov-16
Aveo Kings Park, Kings Park	ILU	SA	8-Apr-16
Aveo Kings Park, Kings Park	SA	SA	16-Dec-15
Aveo Leabrook Lodge, Rostrevor	ILU	SA	27-Nov-15
Aveo Leisure Court, Fulham Gardens	ILU	SA	17-Mar-17
Aveo Manor Gardens, Salisbury East	ILU	SA	22-Jul-15
Aveo Manor Gardens, Salisbury East	SA	SA	30-Jun-15
Aveo Melrose Park, Melrose Park	ILU	SA	27-Jan-16
Aveo Melrose Park, Melrose Park	SA	SA	6-Aug-15
Aveo Riverview, Elizabeth Vale	ILU	SA	28-Sep-15
Aveo The Braes, Reynella	ILU	SA	24-Jun-15
Aveo The Braes, Reynella	SA	SA	18-Jun-15
Aveo The Haven, North Haven	ILU	SA	14-Aug-15
Aveo The Haven, North Haven	SA	SA	21-Aug-15
Aveo Westport, Queenstown	ILU	SA	31-Jul-15
Aveo Botanic Gardens, Cranbourne	ILU	Vic	21-Mar-16
Aveo Cherry Tree Grove, Croydon	ILU	Vic	1-Oct-15
Aveo Cherry Tree Grove, Croydon	SA	Vic	11-Dec-15
Aveo Domainé, Doncaster	ILU	Vic	11-Jan-16
Aveo Edrington Park, Berwick	ILU only	Vic	20-Aug-15
Aveo Fountain Court, Burwood	ILU only	Vic	2-Nov-15
Aveo Hampton Heath, Hampton Park	ILU	Vic	21-Aug-15



Aveo Kingston Green, Cheltenham	ILU only	Vic	17-Aug-15
Aveo Mingarra, Croydon	ILU	Vic	25-Sep-15
Aveo Oak Tree Hill, Glen Waverley	ILU only	Vic	30-Oct-15
Aveo Roseville, Doncaster East	ILU only	Vic	30-Oct-15
Aveo Springthorpe, Macleod	ILU	Vic	17-Jun-16
Aveo Sunbury, Sunbury	ILU	Vic	12-Feb-16
Aveo Veronica Gardens, Northcote	ILU only	Vic	29-Apr-16
Aveo Hunters Green, Cranbourne East	ILU	Vic	17-Aug-18
Aveo Derwent Waters, Claremont	ILU	Tas	21-Sep-15
Aveo Derwent Waters, Claremont	SA	Tas	1-Jun-17
Aveo Mowbray Links, Mowbray (Previously known as Freedom Aged Care Launceston)	ILU	Tas	18-Aug-20

Aveo Village	Accom. Type	State	Date of first Aveo Way Sale
PART 2: VILLAGES WHERE THE AVEO WAY HAS BEEN INTRODUCED BUT AVEO WAY SALES WILL NO LONGER TAKE PLACE			
Aveo Albany Creek, Albany Creek / Freedom Aged Care Albany Creek	SA only	Qld	29-May-15
Freedom Aged Care Ormiston (previously described as Freedom Aged Care Cleveland or Aveo Cleveland Gardens)	SA only	Qld	11-Jun-15
Aveo Mosman Grove, Mosman	SA only	NSW	19-Dec-14
Aveo Edrington Park, Berwick / Freedom Aged Care Berwick, Berwick	SA only	Vic	11-Oct-16
Aveo Fountain Court, Burwood / Freedom Aged Care Burwood	SA only	Vic	25-Sep-15
Aveo Roseville, Doncaster East / Freedom Aged Care Doncaster	SA only	Vic	23-Dec-16
Freedom Concierge Balwyn, Balwyn (Previously known as Aveo Concierge Balwyn)	ILU	Vic	28-Sep-15
Freedom Concierge Bayside, Hampton (Previously known as Aveo Concierge Bayside)	ILU	Vic	10-Aug-15
Freedom Aged Care Sandringham, Sandringham (Previously known as Aveo The George)	ILU	Vic	6-Nov-15
Freedom Aged Care Sandringham, Sandringham (Previously known as Aveo The George)	SA	Vic	4-Sep-15



“A”

Complete and return this form ONLY if you do NOT want to be a part of the class action

Form 21
Rule 9.34

Opt out notice

No. 996 of 2017

Federal Court of Australia
District Registry: Victoria
Division: General

Michael Robert Luke (in his capacity as the co-executor of the estate of Robert Colin Luke, deceased) and others
Applicants

Aveo Group Limited ACN 010 729 950
Respondent

To: The Registrar
Federal Court of Australia at Melbourne
Owen Dixon Commonwealth Law Courts Building
305 William Street
Melbourne VIC 3000
(Street and postal address) OR by Email: vicreg@fedcourt.gov.au

The person named below as a group member in this representative proceeding, gives notice under section 33J of the *Federal Court of Australia Act 1976* (Cth), that the group member is opting out of the representative proceeding.

Name of group member:	
Capacity of group member (Are you an Owner, a former Owner, an Executor or an Administrator or do you hold a power of Attorney? Please specify:	
Unit No and Village	

Date:

Signed:

.....

Name (please print):

Capacity [eg group member, lawyer for group member, director of group member]



“B”

Complete and return this form if you want to register for the Class Action and receive updates from Levitt Robinson about the Class Action.

Aveo Class Action Registration Form

To: Levitt Robinson Solicitors
Ground Floor, 167 Goulburn Street
Surry Hills NSW 2010
aveo@levittrobinson.com

Name of group member:	
Capacity (Are you an Owner, a former Owner, an Executor or an Administrator or do you hold a power of Attorney? Please specify. If you are an Executor, Administrator or hold Power of Attorney please provide your name, the name of the resident or former resident and the unit address)	
Address:	
Email:	
Telephone:	

Date:

Signed:

Name (please print):