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By Registered Mail, Email and Electronic Submission

Office of the Secretary to the Commission
Ontario Securities Commission
22nd Floor, 20 Queen Street West
Toronto, Ontario M5H 3S8

Dear Sirs/Mesdames:

Re: Notice and Request for a Hearing and Review – Toronto Stock Exchange Decision regarding Agellan Commercial Real Estate Investment Trust Management Internalization (TSX Transaction Number: T20171008143)

On behalf of Mr. Rafael Lazer, an independent trustee of Agellan Commercial Real Estate Investment Trust ("**Agellan**" or the "**REIT**"), and ELAD Canada Inc. ("**ELAD Canada**" and collectively with Mr. Lazer, the "**Applicants**"), Agellan's largest unitholder which owns approximately 19% of Agellan's issued and outstanding units (the "**Units**"), we hereby request a hearing and review by the Ontario Securities Commission (the "**Commission**") pursuant to sections 8, 21.7 and 127 of the *Securities Act*, R.S.O. 1990, c. S. 5 (the "**Act**") with respect to the decision (the "**TSX Decision**") of the Toronto Stock Exchange (the "**TSX**") set forth in the letter dated October 16, 2017 from the TSX to Mr. Michael Zackheim, of Torys LLP, legal counsel to Agellan, providing notice to the REIT of the acceptance by the TSX of the Proposed Internalization (as defined in the "Chronology of Events" section below) and conditional approval for the listing of up to 1,045,296 Units to be issuable in connection with the Proposed Internalization.

RELIEF SOUGHT

The Applicants seek the following relief:

(a) an order varying the TSX Decision pursuant to sections 8(3) and 21.7, or, in the alternative section 127(1), of the Act by imposing a condition to the acceptance by the TSX of the Proposed Internalization and the listing of the Units to be issuable in connection with the Proposed Internalization that the REIT obtain unitholder approval from a majority of holders of its Units at a duly called meeting of unitholders, excluding the votes attached to Units that are beneficially owned or over which control or direction is exercised by the ACPI Parties (as defined below);

(b) an order for an expedited hearing;

(c) an order staying the TSX Decision pursuant to sections 8(4) and 21.7(2), or in the alternative section 127(1), of the Act until such time as the Commission determines the issues herein; and

(d) such further and other relief as the Commission may deem appropriate.

BACKGROUND TO THE RELIEF SOUGHT

Parties

Mr. Lazer and ELAD Canada

Mr. Lazer is an independent member of the board of trustees (the "**Board**") of the REIT and the Chief Executive Officer of ELAD Canada.

ELAD Canada was established in 1997 and is part of the North American real estate conglomerate, ELAD Group, that acquires and develops residential and commercial properties. ELAD Canada's primary focus is the redevelopment of sites for mid- and high-rise condominiums within master planned communities. ELAD Canada is Agellan's largest unitholder holding 6,239,246 Units, which represent approximately 19% of the issued and outstanding Units, having acquired these Units between October 2016 and March 2017.

Agellan

Agellan is an unincorporated open-ended real estate investment trust governed by the laws of the Province of Ontario and existing pursuant to an amended and restated declaration of trust dated as of March 28, 2017. Agellan is externally managed by Agellan Capital Partners Inc. ("**ACPI**"), a privately held commercial real estate management company, pursuant to an External Management Agreement dated January 25, 2013 between ACPI, Agellan and Agellan Commercial REIT U.S. L.P. (the "**External Management Agreement**").

ACPI Parties

Instead of itself being directly responsible for the salaries and other expenses of employing its senior management team, Agellan pays a variety of fees to ACPI which in turn employs the senior management team of the REIT. ACPI earns a profit on the fees which it receives from Agellan, which profit is for the benefit of the shareholders of ACPI (being such senior executive team of Agellan). Agellan has the right to terminate the External Management Agreement in January 2018 (upon paying to ACPI a termination fee in an amount equal to the amount of the fees paid to ACPI in the previous 18 months) in the event that the adjusted net earnings of Agellan ("**AFFO**") for the year ended December 31, 2017 are $0.989 per unit or less and, in the reasonable opinion of the trustees, they are not satisfied with the performance of ACPI and they believe that termination of the External Management Agreement is in the best interests of the REIT. In the event that this AFFO target is met (or the Board chooses not to exercise its right to terminate the External Management Agreement), the External Management Agreement is automatically renewed until January 23, 2023, at which time the External Management Agreement will terminate without any further rights of any party to renew.

According to public filings, ACPI owns 67,666 Units representing 0.21% of the issued and outstanding Units, and the shareholders of ACPI include, directly or indirectly, Mr. Frank Camenzuli ("**Camenzuli**"), Ms. Terra Attard ("**Attard**") and Mr. Daniel Millett ("**Millett**").

Camenzuli is the Chief Executive Officer of the REIT as an employee of ACPI pursuant to the External Management Agreement. Camenzuli is also a member of the Board. According to public filings, Camenzuli beneficially owns 681,878 Units[1], representing 2.08% of the issued and outstanding Units.

[1] Excluding Units held by ACPI.

Attard is the Secretary of the REIT as an employee of ACPI pursuant to the External Management Agreement. According to public filings, Attard beneficially owns 15,370 Units, representing 0.05% of the issued and outstanding Units.

Millett is the Chief Financial Officer of the REIT as an employee of ACPI pursuant to the External Management Agreement. According to public filings, Millett beneficially owns 6,686 Units, representing 0.02% of the issued and outstanding Units.

ACPI, Camenzuli, Attard and Millett and any of their respective related parties (within the meaning of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* ("**MI 61-101**")) or a joint actor with any of the foregoing are referred to herein as the "**ACPI Parties**". According to public filings, the ACPI Parties beneficially own, in the aggregate, 771,600 Units, representing 2.35% of the issued and outstanding Units.

Sandpiper Group

According to public filings, Sandpiper Real Estate Fund Limited Partnership, Sandpiper Opportunity Fund 3 Limited Partnership and Sandpiper GP Inc. (collectively, the "**Sandpiper Group**") beneficially own 3,940,346 Units, representing 12.0% of the issued and outstanding Units. On September 19, 2017, the Sandpiper Group requisitioned a meeting of unitholders of the REIT for the purposes of (i) reconstituting the Board, and (ii) holding an advisory vote of unitholders of the REIT with respect to the Proposed Internalization.

Chronology of Events

After ELAD Canada acquired 13.4% of the issued and outstanding Units in early October 2016, Mr. Lazer (on behalf of ELAD Canada) asked Agellan's management and the Board to nominate him to the Board. At the time, Agellan rejected this request.

After ELAD Canada acquired additional Units in January 2017, Agellan eventually acceded to this request for representation on the Board. Mr. Lazer was permitted to attend meetings of the Board as a non-voting observer until the next annual general meeting of the REIT (which was held in June 2017), at which time Mr. Lazer was nominated by the REIT and elected to the Board.

During the months preceding mid-August 2017, Mr. Lazer participated in a number of Board meetings (as an observer and then subsequently as a trustee) and had other discussions with his fellow trustees where he voiced significant opposition, including providing substantial supporting materials (including models and internally and externally prepared analysis), to the financial and other terms that were being discussed in respect of a proposal to internalize the management function of Agellan (the "**Proposed Internalization**"). The basis for Mr. Lazer's objections was generally that the non-financial terms being considered in this proposed non-arm's length transaction were off-market and the financial price that was being proposed to be paid significantly exceeded the value of the consideration to be received by Agellan in return. Remarkably (but perhaps not surprisingly given the facts set out below), notwithstanding the significant passage of time, the proposed terms were not materially different than the terms initially proposed by the ACPI Parties, including the aggregate consideration proposed (C$15.0 million). Mr. Lazer also objected to the plan to proceed with the Proposed Internalization without first obtaining "majority-of-the-minority" unitholder approval and expressed concerns with the manner in which the REIT was proceeding to consider, review and approve the Proposed Internalization.

During the first week of August 2017, Mr. Lazer was advised that a special committee of the Board (the "**Special Committee**"), formed before his election to the Board, had approved the entering into of a non-binding term sheet in respect of the Proposed Internalization. None of Mr. Lazer's concerns had resulted in any meaningful change to the terms of the Proposed Internalization contained in the non-binding term

sheet as compared to the proposed terms that had been previously discussed. The last Board meeting at which the terms of the Proposed Internalization were discussed occurred on August 14, 2017.

On September 12, 2017, Camenzuli received an email from a representative of the Sandpiper Group to the effect that the Sandpiper Group had acquired approximately 10% of the Units and was seeking to replace a number of the existing trustees of the REIT with new independent trustees. The email from the Sandpiper Group noted that it had significant support from a number of institutional unitholders of Agellan, including ELAD Canada.

A copy of the email from the Sandpiper Group was forwarded to the Board, including Mr. Lazer, which subsequently met by telephone conference call on September 13, 2017 (the "**September 13 Board Meeting**"). The sole purpose for the September 13 Board Meeting, as stated by the Corporate Secretary of the REIT on behalf of the Chair (as defined below) in an emailed agenda and notice of meeting sent less than three hours prior to its commencement, was to "to discuss the recent email from Sandpiper Group". Mr. Lazer made an audio recording of the September 13 Board Meeting (the "**Audio Recording**").

At the conclusion of the September 13 Board Meeting, the Board decided that in response to the approach by the Sandpiper Group, it would issue a press release publicizing that it had received that approach and announcing Agellan's intention to internalize its management function. The stated purpose of this strategy was to get out "in front" of the Sandpiper Group's request from an investor relations point-of-view. Mr. Lazer abstained from this decision. The Board was advised that a draft of the press release would be circulated to each of the trustees in advance of its publication.

At no time during the September 13 Board Meeting or any other Board meeting held between mid-August 2017 and October 13, 2017 were the terms of the Proposed Internalization ever discussed and at no time were they ever approved by the Board until the trustees, on October 13, 2017 and one month after having signed the definitive agreements relating to the Proposed Internalization, "ratified" the decision that they had claimed they made a month earlier.

Since the Board did not actually approve this material related party transaction at the September 13 Board Meeting, Agellan did not feel that it was necessary to issue any timely disclosure about the Proposed Internalization. However, after the close of business on September 14, 2017, the Sandpiper Group issued its own press release announcing that it was then a holder of more than 10% of the Units and that it was seeking changes to the Board. Accordingly, the issuance of this press release by the Sandpiper Group served to undermine the strategy devised by the Board as it was no longer possible to get out "in-front" of the Sandpiper Group's requests, and any press release issued by Agellan would now have to be a reactive one.

Five days after the September 13 Board Meeting, on September 18, 2017, Agellan issued its own press release (the "**September 18 Press Release**"). Contrary to the assurances provided to the trustees at the September 13 Board Meeting, Mr. Lazer was not shown a draft of the press release in advance of dissemination. Rather than announce in that press release that the Proposed Internalization was being pursued (which would have been in accordance with the resolution of the Board at the September 13 Board Meeting), the press release stated that the Proposed Internalization had actually been approved and definitive agreements in connection with the Proposed Internalization had been signed. The terms of the Proposed Internalization are outlined further below.

Upon seeing the September 18 Press Release, Mr. Lazer promptly wrote to the Chair of the Board (the "**Chair**"), Mr. Richard Dansereau, asking when the Proposed Internalization had been approved and under what authority the definitive agreements had been entered into. To Mr. Lazer's amazement (and that of any reasonable person who listens to, or reads a transcript of, the Audio Recording), the Chair (who, at this point in time, was unaware of the Audio Recording) responded that it was the September 13 Board Meeting which Mr. Lazer had attended that provided the authority to enter into those definitive

agreements. It is clear from the Audio Recording that the Board, among other things, never (a) authorized the Proposed Internalization or the definitive agreements in respect thereof, or (b) received any advice, opinion or recommendation at the September 13 Board Meeting from the Special Committee or any financial advisor to the Special Committee, and Mr. Lazer plainly and promptly made his view known to the Chair that these matters had not been authorized when the Chair said they had.

On September 28, 2017, 15 days after the September 13 Board Meeting where the Proposed Internalization had allegedly been approved, Agellan filed a material change report on SEDAR with respect to the Proposed Internalization (the "**Material Change Report**"). The Material Change Report repeated the false statement that the Proposed Internalization had been approved by the Board and added two further false statements: namely, that the Special Committee had recommended the transaction to the full Board (including that the Special Committee had, at the time, received a fairness opinion from its financial advisor, Ernst & Young LLP) and that Mr. Lazer indicated his agreement in principle to the Proposed Internalization but disagreed solely on the price and other terms. Mr. Lazer had not been provided with a draft of the Material Change Report prior to it having been filed on SEDAR. The asset purchase agreement purporting to effect the Proposed Internalization was concurrently filed on SEDAR. No draft of such agreement had ever been provided to Mr. Lazer or tabled at any Board meeting. Mr. Lazer, through us (i.e., his counsel), formally requested in writing on September 28, 2017, and subsequently reiterated such request on October 2, 2017, that Agellan correct its false and misleading public statements. However, this request has not been met with any reply whatsoever other than a denial on behalf of the REIT that any of its public statements are false.

On October 3, 2017, we, as counsel to Mr. Lazer and ELAD Canada, requested in writing to the TSX that, for many of the reasons outlined above, the TSX exercise its discretion to refrain from approving the Proposed Internalization unless a majority-of-the minority of unitholders of the REIT approved its terms. This request was reiterated in a second letter to the TSX dated October 10, 2017. The TSX never acknowledged receipt of these letters, nor responded to Mr. Lazer or ELAD Canada. Letters dated October 3, 2017 and October 4, 2017 were also sent by us, as counsel to Mr. Lazer and ELAD Canada, to Mr. Naizam Kanji, Director of the Office of Mergers and Acquisitions at the Commission, outlining many of the facts set out above.

Agellan issued a press release on October 10, 2017 stating that in response to the requisition of the Sandpiper Group it had called an annual and special meeting of unitholders of the REIT to be held on April 17, 2018.

On October 16, 2017, in the TSX Decision, the TSX accepted notice of the Proposed Internalization and conditionally approved for listing up to an additional 1,045,296 Units issuable in connection with the Proposed Internalization under sections 602 and 603 of the TSX Company Manual, subject to certain conditions, which conditions did not include approval by a majority-of-the-minority of unitholders of the REIT.

Terms of the Proposed Internalization

The terms of the Proposed Internalization generally include the acquisition by the REIT of certain discrete assets of ACPI and its affiliates (such as desks, chairs, computers, software, office leases, etc.), certain third party (i.e., not related to the REIT) property and asset management agreements pursuant to which ACPI and its affiliates provided property and asset management services and the termination of the External Management Agreement for total consideration payable by the REIT of C$15.0 million, consisting of (a) C$3.0 million in cash and (b) C$12.0 million through the issuance of approximately 1,045,296 Class B LP Units of the Partnership. The Class B Units of the Partnership are intended to provide the holder with substantially the same voting and economic rights as a holder of Units and will be exchangeable on a one-for-one basis for Units. In addition, as part of the Proposed Internalization, Agellan would directly enter into employment arrangements with each of the senior executives who had previously been employed by ACPI, including Camenzuli, Attard and Millett.

Ernst & Young LLP ("**EY**"), as financial advisor to the Special Committee, prepared a presentation with respect to the Proposed Internalization addressed to the Special Committee and the Board of Trustees of the REIT dated September 14, 2017. Despite being addressed to the Board of Trustees of the REIT and it underlying the purported September 14, 2017 fairness opinion of EY, such presentation was not provided to Mr. Lazer until October 16, 2017 and only after he had explicitly asked the Chair for such presentation numerous times.

Based on such presentation, EY estimated that if the Proposed Internalization does not occur Agellan would pay between C$4.0 million and C$5.2 million per year for the next five years to ACPI pursuant to the terms of the External Management Agreement (if such agreement were not terminated in advance of its end date, January 23, 2023). EY also estimated that, in the event the Proposed Internalization is completed, Agellan will have incremental costs of between C$2.52 million and C$2.84 million per year (mainly the compensation it will need to pay to the senior executives whose compensation is currently paid by ACPI). In short, Agellan will save between approximately C$1.5 million and C$2.0 million per year in operating costs should the Proposed Internalization be completed and, according to EY, it will take approximately nine years for Agellan to recoup the C$15.0 million purchase price through these savings.

Potential Prior Valuation

It has come to the Applicants' attention through the TSX Decision (which references the "publication of the [EY] valuation of [ACPI] as at August 31, 2017") and a publicly filed affidavit of the Chair (which states that "[o]n October 2, 2017, [EY] provided its independent formal valuation … in respect of the [Proposed] Internalization"), that a formal valuation prepared by EY exists. Mr. Lazer has never been provided with a copy of such valuation, nor has such valuation (which appears to constitute a "prior valuation" under MI 61-101) been publicly filed or otherwise made available to unitholders. We submit that this constitutes, not only a violation of MI 61-101, but additional evidence of insufficient governance and disclosure practices by the REIT.

BASIS FOR RELIEF SOUGHT

This application is not one of a disgruntled unitholder and meddlesome director. The Applicants accept that in the vast majority of circumstances boards of trustees/directors have the power to authorize transactions similar to the Proposed Internalization. Where such a transaction does not legally require a vote of security holders, it will generally be acceptable for an issuer to proceed without such a vote. However, the Proposed Internalization does not fall within these parameters. It is a transaction that has been motivated primarily by a desire to confer a benefit on the senior executive team of Agellan and as a perceived tool to entrench the existing trustees of the REIT in the face of a requisitioned unitholders' meeting. The alarmingly deficient governance and disclosure processes – the full extent of which have not been previously considered or made available to the TSX – illustrate this motivation and we submit it is inappropriate and incorrect for the TSX to have rendered the TSX Decision for the Proposed Internalization without requiring unitholder approval given the long list of securities laws violations, breaches of the TSX Company Manual and departures from corporate governance best practices employed by the trustees in pursuing the Proposed Internalization. Further, we believe the TSX failed to follow due process in that it did not acknowledge, or at all appear to consider, the correspondence from the Applicants' counsel to the TSX on this matter. To allow the Proposed Internalization to proceed in the face of this record would be an abdication of the important gatekeeper function played by the TSX and the Commission and would bring disrepute to Canadian capital markets.

Appeal of the TSX Decision

Under section 602 of the TSX Company Manual, Agellan would not be permitted to proceed with the Proposed Internalization unless the Proposed Internalization was accepted by the TSX. The TSX has the discretion to, among other things, accept notice of the Proposed Internalization and to impose conditions on the Proposed Internalization under section 603 of the TSX Company Manual. In exercising this

discretion, the TSX was required to consider the effect that the Proposed Internalization may have on the quality of the marketplace provided by TSX, based on factors that include the following:

(i) the involvement of insiders or other related parties of Agellan;

(ii) Agellan's corporate governance practices; and

(iii) Agellan's disclosure practices;

The above factors, as well as considerations related to the quality of the marketplace provided by the TSX generally, are discussed in turn below.

Quality of the Marketplace

We submit that, unless it is amended or overturned, the TSX Decision effectively sanctions the REIT's blatantly false and misleading disclosure to investors and the public regarding a material transaction with insiders. As has been held by the Commission on numerous occasions, the bedrock of Canadian securities laws (including the rules of stock exchanges operating in Canada) is disclosure. This disclosure-based regime is the principal manner in which the Commission provides protection to investors from unfair, improper or fraudulent practices; and fosters fair and efficient capital markets and confidence by the public in those markets.

The following is a list of the fictitious statements currently known to the Applicants that have been made by Agellan either in its public disclosure or to the Commission in the REIT's clearly deliberate attempt to give others the blatantly false impression that the Board was following appropriate corporate governance practices and to ensure that the Proposed Internalization is completed on the terms it is proposing (including for the purposes of furthering the trustees' belief that this will endear them to the unitholders of Agellan in the proxy contest that has been initiated by the Sandpiper Group):

1. The Proposed Internalization was approved by the Board at the September 13 Board Meeting.

2. The Board determined at the September 13 Board Meeting that the Proposed Internalization was in the best interests of all unitholders of the REIT.

3. The Proposed Internalization was recommended at the September 13 Board Meeting to the Board by the Special Committee or that the Proposed Internalization was otherwise "recommended" (as such term is commonly used on the context of board committees) to the Board prior to the September 13 Board Meeting.

4. Camenzuli abstained from the Board vote on the Proposed Internalization at the September 13 Meeting.

5. Mr. Lazer expressed at the September 13 Board Meeting his support in principle for the Proposed Internalization.

6. Mr. Lazer abstained at the September 13 Board Meeting on a vote to approve the Proposed Internalization.

7. The Board convened a Special Committee meeting to decide on how to respond to the Sandpiper Group's September 12, 2017 request.

8. The Special Committee, at the September 13 Board Meeting, advised the Board of the status of negotiations and documentation relating to the Proposed Internalization.

The facts set out above clearly demonstrate that the disclosure and general governance practices at Agellan have broken down – likely irretrievably. The fabrication of board approvals and deliberations is, by itself, startling, but to repeatedly and in the face of incontrovertible evidence to the contrary (i.e., Mr. Lazer's prompt and continued notices to the other trustees of his differing recollection of what transpired at the September 13 Board Meeting and that he had an the Audio Recording which supported his recollection) make false and misleading statements to the investors and regulators regarding material matters of the issuer is the absolute antithesis of fostering confidence in the capital markets and maintaining a quality marketplace on the TSX.

Involvement of Insiders or other Related Parties of Agellan

Not only are the sole parties to the Proposed Internalization insiders of Agellan, but such transaction involves, and we submit confers a significant benefit upon, the three most senior executives of the REIT. It is also a transaction that, as the record will demonstrate, was not appropriately scrutinized by the other members of the Board or the Special Committee principally tasked with such responsibility, but instead was a march towards providing such executives with virtually all of the terms initially requested by them, including as it relates to aggregate consideration. The timing of the Proposed Internalization is also questionable given the flexibility of Agellan under the External Management Agreement to terminate that agreement and capture the primary benefit of the Proposed Internalization as soon as January 2018 for a fraction of the cost that is proposed to be paid in the Proposed Internalization.

The investing public and the Commission generally expect that any transaction involving insiders be approached in a considered manner by the board of the applicable reporting issuer. This was most recently underscored in Multilateral CSA Staff Notice 61-302 *Staff Review and Commentary on Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions* ("**Staff Notice 61-302**") which, among other things, discussed the role of boards of directors and/or special committees of independent directors in negotiating, reviewing, and approving or recommending material conflict of interest transactions (which would include the Proposed Internalization). Staff Notice 61-302 included a focus on whether the process employed by an issuer's board of directors in negotiating and reviewing a proposed transaction (including the existence or non-existence of a special committee of independent directors) raises concerns that the interests of minority security holders have not been adequately protected and whether that process is adequately disclosed.

In the case of the Proposed Internalization, it is clear that the Board's review of the Proposed Internalization was not only severely deficient, but that is was disclosed in a false and misleading manner.

Agellan's Corporate Governance Practices and Agellan's Disclosure Practices

We submit that the facts outlined above demonstrate a complete disregard for generally accepted good governance practices, including those highlighted in Staff Notice 61-302, and startlingly deficient disclosure practices. The most troubling of the governance and disclosure practices are the disclosure violations contained in the September 18 Press Release and the Material Change Report. However, it is these blatant securities law violations coupled with the list of governance and disclosure practices deficiencies at the REIT as a whole that demonstrates a pattern of behaviour by the trustees. That list includes the following:

1. *Lack of independent counsel.* Although the Board established a committee of independent trustees to negotiate the terms of the Proposed Internalization, that committee chose to use the same legal counsel that has acted for Agellan since its initial public offering. In most other REIT external manager internalizations, and especially those which contain economic terms that are controversial, boards or independent committees choose to use legal counsel which is independent of the management team whose business is being acquired. As a result, the Special Committee did not receive any independent advice with respect to the decision to avoid obtaining unitholder approval and with respect to any of the legal terms of the asset purchase agreement,

including the length of the non-compete clauses and the length of the hold period for the Units being issued to the senior executive team as payment to them in the transaction – in both cases these periods of time are significantly shorter than in other precedent transactions. From the outset, this poor corporate governance decision of the Special Committee set the tone and the roadmap for how this transaction has unfolded.

2. *Valuation issues with respect to the Proposed Internalization.* Although the material change report filed by Agellan in connection with the Proposed Internalization attaches a cursory, "short form" fairness opinion, nowhere have unitholders been provided with meaningful disclosure regarding the valuation/financial metrics surrounding the Proposed Internalization, something that Commission staff have noted in Staff Notice 61-302 should be included in any disclosure document prepared in connection with a transaction such as the Proposed Internalization. This lack of disclosure results in the following issues with the valuation and financial metrics of the Proposed Internalization being withheld from unitholders of the REIT.

   (i) The most significant valuation issue is that in order to justify a C$15.0 million acquisition price, EY was required in its valuation work to assume that the value of the business of ACPI and its affiliates will grow perpetually after 2019 at a rate of 3%. This might be an appropriate assumption for a business whose only revenue source is a contract that has a perpetual term. However, the External Management Agreement may be terminated in early 2018 in the event that Agellan's AFFO target is not reached, and in the event that the AFFO target is reached, then the contract will be extended for a single five-year period. In no event will Agellan be required to continue with the External Management Agreement perpetually (or beyond January 2023). This assumption, or in our view, deficiency, in EY's work is not disclosed to unitholders of the REIT.

   Put simply, the EY valuation plainly states that it will take until the year 2028 before Agellan will have received sufficient benefit from the payment of C$15 million to its senior executive team; however in the event that the Proposed Internalization does not occur, Agellan will have the right to terminate the External Management Agreement in either 2.5 months or in January 2023. It will be significantly less expensive for Agellan to internalize its management function simply by waiting for the External Management Agreement to end in accordance with its terms (even if it has to wait until 2023 to do so).

   (ii) Notably, in its March 31, 2017 preliminary presentation to the Special Committee with carriage of the Proposed Internalization, EY included an analysis showing that, at such time (nine months prior to the date that the AFFO threshold would be tested), it was likely that the AFFO target would be met. Such analysis was omitted from its September 14, 2017 presentation – presumably on the basis that it is now less likely that the target will be met 2.5 months from now.

   (iii) The most recent historical financial information of ACPI in the last EY presentation dated September 14, 2017 is historical information for the period ending October 2016. EY did not provide any more recent historical financial information, and the members of the Special Committee did not request any such information.

3. *Proposed Internalization is being used as a defensive tactic*. The Proposed Internalization is being used as a blatant "defensive tactic" to entrench the REIT's incumbent trustees as demonstrated by the rushed and deficient approval process outlined above and the fact that the response of the REIT to the Sandpiper Group's requests consists principally of the disclosure of the Proposed Internalization. Matters that are as significant to an issuer as the Proposed Internalization is to Agellan demand prudence and a considered decision-making process. The facts demonstrate that the trustees neither exercised prudence nor engaged in a considered

decision-making process, instead choosing to fabricate approvals in order to protect their seats on the Board.

Request for a Stay

A stay of the TSX Decision is warranted for the following reasons:

(a) there is a serious issue to be tried, as described above, and this application is not vexatious or frivolous;

(b) the completion of the Proposed Transaction will result in irreparable harm to ELAD Canada, as a unitholder of the REIT, and all other unitholders of the REIT as neither the Commission nor the TSX has the unilateral ability to reverse all elements of the Proposed Transaction; and

(c) the balance of convenience favours the Applicants as (i) ACPI will continue to act in the ordinary course as the external manager of the REIT under the current terms of the Existing Management Agreement, (ii) the "drop dead date" under the asset purchase agreement in connection with the Proposed Internalization (i.e., the date following which any party may choose to terminate the agreement prior to the completion of the Proposed Internalization) is January 31, 2018 allowing the REIT sufficient time to, if permitted, complete the Proposed Internalization on the terms currently being proposed without a risk that the counterparties will not be required to proceed therewith, and (iii) there has been no suggestion by the REIT that the Proposed Internalization be completed on an expedited basis – in fact, to the contrary, the Proposed Internalization has been the subject of ongoing discussions at the REIT for more than a year and appears only to have been expedited as an impermissible defensive tactic.

Hearing and Review by the Commission under Sections 8 and 21.7 of the Act

Pursuant to section 21.7 of the Act, Mr. Lazer and ELAD Canada are directly affected by the TSX Decision and each has standing to bring this application given that Mr. Lazer is a trustee of the REIT and ELAD Canada is the largest unitholder of the REIT.

The failure of the TSX to impose a condition to the acceptance by the TSX of the Proposed Internalization and the listing of the Units to be issuable in connection with the Proposed Internalization that the REIT obtain unitholder approval warrants intervention by the Commission under section 21.7 of the Act. The facts set out in this application (e.g., the deficient governance and disclosure practices of the REIT) and the presumed unavailability of the Audio Recording to the TSX resulted in, among other things, the TSX not being able to adequately consider the effect that the Proposed Internalization may have on the quality of the marketplace provided by the TSX. Accordingly: (i) the TSX proceeded on incorrect principles and erred in law when applying section 603 of the TSX Company Manual; (ii) the TSX overlooked (or did not have access to) material evidence, including new and compelling evidence that can be presented to the Commission; and (iii) the TSX failed or appears to have failed to follow the principles of due process in making the TSX Decision.

Section 127(1)/"Public Interest" Relief

While the facts and reasons set out above support the granting by the Commission of the relief sought under sections 8 and 21.7 of the Act, they equally warrant Commission intervention to protect the public interest under section 127(1) of the Act due to, among other things, the fundamental and egregious securities law violations related to timely and accurate disclosure. Accordingly, the requested relief should, as applicable, be granted under section 127(1) of the Act.

With respect to the Applicant's alternative grounds for relief under section 127(1) of the Act, the Commission has the discretion to permit a private party to bring such an application and we submit that

the circumstances surrounding the REIT, its governance and disclosure practices and the Proposed Internalization call for the Commission to permit the Applicants to do so.

CONCLUSION

On the basis of the above, we submit that a stay of the TSX Decision be granted and a hearing be convened by the Commission at the earliest opportunity to review the TSX Decision.

The Applicants intend to rely upon affidavit evidence, to be sworn, and written submissions to be delivered in advance of the hearing.

We request the record of the TSX Decision and any reasons for such decision for filing with the Commission. The Applicants reserve the right to amend or supplement this application once the TSX Decision, and the associated record and reasons (if any) have been made available to them.

Sincerely,

"*Eliot N. Kolers*" (signed)

Eliot N. Kolers

EK/lp
cc. Andrew Gray, *Torys LLP*
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