

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-

SUPERIOR COURT
(Commercial Division)

**IN THE MATTER OF A PROPOSED
ARRANGEMENT CONCERNING
COMINAR REAL ESTATE INVESTMENT
TRUST ET AL. PURSUANT TO SECTION
192 OF THE CANADA BUSINESS
CORPORATIONS ACT, RSC 1985, c C-44
(the “CBCA”):**

**COMINAR REAL ESTATE INVESTMENT
TRUST**, a trust duly constituted under the
laws of Québec, having a place of business
at 3400 De Maisonneuve Boulevard West,
Suite 1600, Montréal, Province of Québec,
in the district of Montréal, H3Z 3B8,
represented by its trustees **LUC
BACHAND, CHRISTINE BEAUBIEN,
PAUL D. CAMPBELL, MITCHELL COHEN,
SYLVAIN COSSETTE, ZACHARY R.
GEORGE, KAREN LAFLAMME, MICHEL
THÉROUX and RENÉ TREMBLAY**

Applicant

-and-

13217396 CANADA INC., a legal person
incorporated under the CBCA, having its
registered office at 3400 De Maisonneuve
Boulevard West, Suite 1600, Montréal,
Province of Québec, in the district of
Montréal, H3Z 3B8

Applicant

-and-

152523 CANADA INC., a legal person
incorporated under the CBCA, having a
place of business at 3400 De Maisonneuve
Boulevard West, Suite 1600, Montréal,

Province of Québec, in the district of
Montréal, H3Z 3B8

Applicant

-and-

6412432 CANADA INC., a legal person
incorporated under the CBCA, having a
place of business at 3400 De Maisonneuve
Boulevard West, Suite 1600, Montréal,
Province of Québec, in the district of
Montréal, H3Z 3B8

Applicant

-and-

IRIS ACQUISITION II LP, a limited
partnership formed under the laws of
Ontario, having its registered office at 199
Bay Street, Suite 5300, Toronto, Province of
Ontario, M5L 1B9

Impleaded Party

-and-

GROUPE MACH ACQUISITION INC., a
legal person incorporated under the
Business Corporations Act, CQLR c S-31.1,
having its registered office at 630 Saint Paul
West Street, Suite 600, Montréal, Province
of Québec, H3C 1L9

Impleaded Party

-and-

**BP COGNAC CANADA OWNER LIMITED
PARTNERSHIP**, a limited partnership
formed under the laws of Ontario, having its
registered office at 121 King Street West,
Suite 2100, Toronto, Province of Ontario,
M5H 3T9

Impleaded Party

-and-

THE DIRECTOR APPOINTED PURSUANT TO THE CBCA, a physical person appointed pursuant to Section 260 of the CBCA, having a principal place of business at 365 Laurier Avenue West, Jean Edmonds Tower South, 9th Floor, Ottawa, Province of Ontario, K1A 0C8

Impleaded Party

**APPLICATION FOR INTERIM AND FINAL ORDERS
IN CONNECTION WITH A PROPOSED ARRANGEMENT
(Sections 192 and 248 of the CBCA)**

TO ONE OF THE JUDGES OF THE SUPERIOR COURT OF QUÉBEC, SITTING IN THE COMMERCIAL DIVISION IN AND FOR THE DISTRICT OF MONTRÉAL, THE APPLICANT RESPECTFULLY SUBMITS AS FOLLOWS:

A. INTRODUCTION

1. On October 24, 2021, Cominar Real Estate Investment Trust (“**Cominar**” or the “**REIT**”), 13217396 Canada Inc. (“**ArrangementCo**”) and Iris Acquisition II LP (the “**Purchaser**”) entered into the Arrangement Agreement (as defined below) providing for various transactions resulting in the holders of Cominar’s outstanding Units receiving consideration of \$11.75 in cash per Unit in accordance with the terms described below (the “**Unit Transaction**”).
2. In connection with the Unit Transaction, Groupe Mach Acquisition Inc. (“**Mach**”), an affiliate of Mach Capital Inc. (“**Mach Capital**”), will acquire certain of Cominar’s retail and office properties (the “**Mach Acquisition**”), and BP Cognac Canada Owner Limited Partnership (“**BP Cognac**”) will acquire Cominar’s industrial portfolio (the “**Blackstone Acquisition**”) (collectively, the “**Asset Purchasers**”). The proceeds of the acquisition of these assets from Cominar (the “**Asset Purchase Transactions**”) will fund a portion of the consideration paid in connection with the Unit Transaction. The Purchaser intends to continue Cominar’s business by retaining a significant portion of Cominar’s retail portfolio, as well as components of Cominar’s office portfolio.
3. The contemplated Unit Transaction and Asset Purchase Transactions are dependent upon various transactions and steps which are conditional upon each other and which must be consummated through an orderly sequence of transactions described at paragraphs 84 and 89 of this Application. These transactions and steps involve, among other things, an amendment to the Contract of Trust and other Constating Documents of Cominar’s subsidiaries; the sale of certain properties (the Portfolio Assets) to certain purchasers (the Asset

Purchasers); the cancellation of Options, Deferred Units, Restricted Units and Performance Units in exchange for payments, and the redemption of the outstanding Units in exchange for the \$11.75 in cash per Unit consideration (the “**Consideration**”).

4. Because of the complexity of the Unit Transaction and Asset Purchase Transactions, they can only realistically be carried out through a statutory plan of arrangement pursuant to Section 192 of the CBCA (the “**Arrangement**”). The proposed Arrangement involves transactions contemplated by Section 192 of the CBCA by the Applicants ArrangementCo, 152523 Canada Inc. and 6412432 Canada Inc., which are all incorporated under the CBCA (collectively, the “**Cominar Corporate Applicants**”), as explained below. In addition, it is now well established that reorganizations involving income trusts can be undertaken pursuant to the arrangement provisions provided for in the CBCA and other corporate statutes, as explained below.
5. In connection with the Arrangement, Cominar and the Cominar Corporate Applicants (collectively, the “**Applicants**”) and the Impleaded Parties (other than the CBCA director) seek the following Orders from this Court:
 - (a) as a first step, an interim order pursuant to Section 192 of the CBCA (the “**Interim Order**”) governing various procedural matters, including the conduct of the Meeting where the Unitholders will be asked to vote upon and approve the Arrangement Resolution in favour of the Arrangement;
 - (b) as a second step, a final order pursuant to Section 192 of the CBCA (the “**Final Order**”) approving and sanctioning the Arrangement; and
 - (c) such other orders as counsel may request and this Court deems appropriate.
6. As the Arrangement requires certain minor amendments to Cominar’s Contract of Trust, the Arrangement Resolution submitted to the Unitholders will also provide for the approval of minor amendments necessary to implement the Arrangement, as explained below.
7. The Applicants file as **Exhibit P-1**, *en liasse*, a draft *Notice of Special Meeting of Unitholders of Cominar and Management Information Circular* and attachments thereto (collectively, the “**Circular**”), which includes the following related documents and materials (in draft form):
 - (a) the Notice of the Special Meeting of Unitholders of Cominar;
 - (b) the Circular, including the following appendices thereto:
 - i) Appendix A Glossary
 - ii) Appendix B Arrangement Resolution
 - iii) Appendix C Plan of Arrangement

- iv) Appendix D National Bank Financial Inc. Fairness Opinion
 - v) Appendix E BMO Capital Markets Fairness Opinion
 - vi) Appendix F Desjardins Securities Inc. Independent Valuation and Fairness Opinion
 - vii) Appendix G Interim Order
 - viii) Appendix H Notice of Presentation of Application for Interim and Final Orders
 - ix) Appendix I Section 190 of the CBCA
8. The terms and conditions of the contemplated transaction are set out in the arrangement agreement dated October 24, 2021 entered into between Cominar, ArrangementCo and the Purchaser, together with (Schedules “A” to “E”) (collectively, the “**Arrangement Agreement**”), attached as **Exhibit P-2**, *en liasse*. The terms and conditions of the Arrangement are set out in the plan of arrangement attached as Appendix C of the Circular (the “**Plan of Arrangement**”).
9. For purposes of this Application, all capitalized terms used, but not otherwise defined herein, shall have the same meaning as set out in the Glossary contained in the Circular (Exhibit P-1, *en liasse*, at pages A-1 to A-18 (pages 153 to 186 of the PDF)).

II. THE PARTIES

A. COMINAR

10. Cominar is a real estate investment trust formed under the laws of Québec pursuant to a Contract of Trust made as of March 31, 1998, as amended and restated as of May 8, 1998, May 13, 2003, May 11, 2004, May 15, 2007, May 14, 2008, May 18, 2010, May 16, 2012, May 16, 2018 and May 13, 2020. A copy of the Contract of Trust is attached as **Exhibit P-3**.
11. Cominar owns and manages a diversified portfolio consisting of office, retail, industrial and residential properties located primarily in the Province of Québec and in the Ottawa Area. As at September 30, 2021, Cominar’s portfolio included 310 properties, of which 193 were located in the Greater Montréal Area, 97 were located in the Greater Québec City Area and 20 were located in the Ottawa Area.
12. Cominar’s portfolio includes approximately 11.1 million square feet of office space, 9.4 million square feet of retail space, 15.3 million square feet of industrial and flex space, totalling approximately 35.7 million square feet of leasable area.
13. Cominar has its registered office at Complexe Jules-Dallaire – T3, 2820 Laurier Boulevard, Suite 850, Québec City, Québec. Its administrative office is located at Place Alexis Nihon, 3400 De Maisonneuve Boulevard West, Suite 1600, Montréal, Québec. The majority of Cominar’s properties are located in the Montréal Area, and all of its trustees residing in Québec are residents of the Montréal Area.

14. The Units of Cominar are traded on the Toronto Stock Exchange (the “**TSX**”) under the symbol “CUF.UN”, and Cominar is a reporting issuer in all of the provinces and territories of Canada.
15. As of September 30, 2021, 182,451,026 Units were issued and outstanding. In addition, 3,093,650 Options, 300,740 Performance Units, 395,646 Deferred Units and 1,391 Restricted Units were issued and outstanding.

B. THE COMINAR CORPORATE APPLICANTS

16. ArrangementCo is a corporation incorporated under the CBCA. ArrangementCo is a wholly-owned subsidiary of Cominar and is a party to the Arrangement Agreement. ArrangementCo is being arranged pursuant to Section 3.1(i) of the Plan of Arrangement by way of the assignment of its obligations under the Purchaser Loan.
17. 152523 Canada Inc., a CBCA corporation, is the legal title owner for the properties comprising Plaza Mauricie, Shawinigan, which are being acquired by Mach.
18. 6412432 Canada Inc., a CBCA corporation, is the legal title owner for a property situated at 400 Cooper Street, Ottawa, which is being acquired by Mach.
19. The Cominar Corporate Applicants 152523 Canada Inc. and 6412432 Canada Inc. are incorporated under the CBCA. They will effect a fundamental change in connection with the arrangement, namely the sale of their property for a cash consideration, as explained below.

C. THE PURCHASER

20. The Purchaser is an Ontario limited partnership created by a consortium led by an affiliate of Canderel Management Inc. (“**Canderel**”), and including FrontFour Capital Group LLC (“**FrontFour**”), Artis Real Estate Investment Trust (“**Artis**”) and partnerships managed by the Sandpiper Group (“**Sandpiper**”).
21. FrontFour holds or controls 15,364,827 Units of Cominar, which represents approximately 8.4% of all of the issued and outstanding Units. Canderel holds or controls 1,000,000 Units of Cominar, Sandpiper holds or controls 1,147,900 Units of Cominar, and Artis holds or controls 1,147,900 Units of Cominar, which in each case represents approximately 0.6% of all of the issued and outstanding Units. As such, members of the consortium currently hold or control an aggregate of approximately 10.2% of the Units of Cominar.
22. Canderel and its affiliate Canderel Real Estate Property Inc. are corporations incorporated under the CBCA. Canderel is a Canadian real estate investment, development and asset and property management company, based in Montréal and with offices across Canada. Canderel manages a portfolio of approximately 27 million square feet.

23. FrontFour, a limited liability corporation formed under the laws of Delaware, is an investment firm based in Greenwich, Connecticut. It is an employee-owned hedge fund advisor and has extensive experience in restructuring operations and implementing policy changes in the financial and real estate sectors.
24. Artis is an unincorporated real estate investment trust formed under the laws of Manitoba and is headquartered in Winnipeg. It is one of the largest diversified commercial real estate investment trusts in Canada and certain of its securities are traded on the TSX (under the symbols AX.PR.A., AX.ORE.E. and AX.PR.I) and its common units are traded in the United States.
25. Sandpiper is a Vancouver-based private equity firm focused on investing in real estate through direct property investments and securities. The limited partnerships participating in the Unit Transaction—Sandpiper Opportunity Fund 7 LP, Sandpiper Real Estate Fund 2 LP and Sandpiper Real Estate Fund 4 LP—are managed by general partners incorporated under the CBCA.

D. THE ASSET PURCHASERS

26. Mach, a corporation incorporated under the *Business Corporations Act*, CQLR c S-31.1 (“**QBCA**”), is an affiliate of Mach Capital and of Groupe Mach Inc. (“**Groupe Mach**”), which are also QBCA corporations.
27. Mach Capital, the guarantor of Mach’s obligations under the Mach Acquisition, is a closely-held private equity firm which holds approximately 5.2% of the Units and has entered into a voting and supporting agreement with the Purchaser pursuant to which it has agreed to vote its Units in favour of the Unit Transaction.
28. With a portfolio of over 170 properties representing approximately 30 million square feet and 10 million square feet of land, Groupe Mach is one of the largest private real estate owners and developers in Canada. Groupe Mach is currently developing over 15 million square feet of space, including world-class projects such as the Quartier des Lumières. Groupe Mach’s real estate holdings include some of Montreal’s landmark buildings such as the Sun Life Building, 1000 De La Gauchetière West, the CIBC Tower, Place Victoria, Tour KPMG 600 De Maisonneuve West, as well as numerous properties in Québec City and the Toronto area.
29. BP Cognac is a limited partnership formed under the laws of Ontario and is an affiliate of Blackstone Real Estate L.L.C, which is one of the largest real estate investment managers in the world with \$230 billion of investor capital under management.

E. THE DIRECTOR

30. The director (the “**Director**”) is appointed pursuant to Section 260 of the CBCA. The Director is entitled to notice of this Application pursuant to Subsection 192(5) of the CBCA.

III. THE CONTEMPLATED TRANSACTION

A. BACKGROUND TO THE ARRANGEMENT

31. The background of the contemplated transaction is more fully set out in the Circular (Exhibit P-1, *en liasse*) at pages 40 to 48 (pages 53 to 61 of the PDF).
32. The Arrangement is the result of extensive arm's length negotiations between representatives of the REIT, the Purchaser and the Asset Purchasers, as well as their respective advisors. The following is a summary of the main events that led to the execution of the Arrangement Agreement and the Asset Purchase Agreements (including related definitive transaction agreements) and certain meetings, negotiations, discussions and actions of the various parties that preceded the public announcement of the Arrangement.
33. The Board of Trustees and senior management of the REIT, as part of their ongoing mandate to act in the best interests of the REIT, including by strengthening its business, enhancing value for Unitholders and considering the interests of stakeholders, routinely consider and assess the REIT's performance, growth prospects, capital requirements, overall strategy and long-term strategic plans.
34. Entering the second half of 2020, it became a Board of Trustees mandated priority to pursue a review of the Strategic Alternatives available to the REIT for enhancing Unitholder value. On September 15, 2020, the Board of Trustees, upon recommendation of the Nomination and Governance Committee, constituted the Special Committee of independent trustees for such purpose, which was announced publicly via press release on the same date, on which the closing price of the Units on the TSX was \$7.20 per Unit (the "**Strategic Alternatives Announcement**"). The review was initiated in light of the prevailing operational and business prospects of the REIT resulting from limited financial flexibility, high relative leverage, negative free cash flow and the liquidity constraints imposed by its structure as a real estate investment trust. In addition, the REIT was impacted by its significant exposure to the brick-and-mortar retail sector and the capital needed to maintain and to pursue the redevelopment requirements of its portfolio. The COVID-19 pandemic further exacerbated this situation which brought additional uncertainty as to how such circumstances affected and will continue to affect the REIT's ability to execute on its business plan given its operational and financial context, including uncertainty in the office and retail sectors post-pandemic. Following the receipt of potential conflict disclosures regarding the REIT's review of its Strategic Alternatives, the Special Committee was initially composed of Mr. Luc Bachand (Chair), Mr. Paul D. Campbell, Mr. Mitchell Cohen, Mr. Zachary R. George and Ms. Karen Laflamme. Almost immediately following formation of the Special Committee, on September 23, 2020, Mr. George recused himself as a result of the potential participation by FrontFour, of which Mr. George is a co-founder, in a Strategic Alternative transaction with the REIT. Following Mr. George's recusal, he was promptly excluded from receiving any information or

participating in any deliberations of the Board or Special Committee concerning the Strategic Review Process (including the Arrangement) and had limited access to ongoing REIT matters from and after his recusal. Mr. George has informed the REIT that, in keeping with his fiduciary duties to the REIT, he did not participate in discussions or deliberations of FrontFour regarding the Arrangement.

35. The Special Committee first met on September 24, 2020 and has met 21 times in the furtherance of the above objective prior to the execution of the Arrangement Agreement. At its first meeting, the Special Committee retained Fasken to act as legal advisors to the Special Committee. NBF and BMO, financial advisors to the REIT, were engaged to act as financial advisors to the Special Committee. In addition, the Special Committee received, when requested, the support of Davies, the legal advisors to the REIT. At the meeting, Fasken provided the members of the Special Committee with an overview of their fiduciary duties as trustees of the REIT in the context of the review of the Strategic Alternatives.
36. The Special Committee, with the assistance of the Financial Advisors, Fasken and, when requested, Davies, and the support of management, began its review with a comprehensive “bottom-up” property-level financial assessment of the REIT and its assets. This involved numerous working sessions with management to better assess each asset class, properties and long-term outlook and financial forecast by asset class considering management’s various ongoing initiatives to enhance operational and financial results of the REIT. This was followed by a broad review of the various Strategic Alternatives that could be available to the REIT with an objective of continuing to enhance Unitholder value. This analysis surfaced several potential stand-alone plan alternatives aimed at further strengthening the REIT’s ability to achieve its strategic objectives, as well as other “structural” alternatives, which were broader in nature and aimed at resurfacing significant value from the REIT’s diversified asset base. Throughout the process, the REIT’s financial forecast and business outlook was periodically reviewed by management to take into consideration any required changes as a result of the evolving economic real estate and pandemic environment.
37. The main Strategic Alternatives that were reviewed included: (i) maintaining the status quo and continuing with the REIT’s business plan; (ii) a sale of Gare Centrale or other “crown jewel” assets; (iii) a sale of the Ottawa portfolio alone or in combination with other assets; (iv) a sale, joint venture, IPO or spin-off of the industrial portfolio; (v) a sale, joint venture, IPO or spin-off of the retail portfolio; (vi) a sale of the office portfolio or significant parts thereof; and (vii) an *en bloc* transaction involving all of the REIT’s issued and outstanding Units. These alternatives were reviewed, analysed, and benchmarked against each other based on the potential value they could generate for Unitholders, taking into consideration their associated benefits and risks as well as several variables which included, but were not limited to: (i) impact on NOI and AFFO; (ii) pro forma capital structure (leverage, liquidity and financial flexibility available to deploy capital required to maintain and reposition assets); (iii) impact on distributions and payout metrics; (iv) execution risks; (v) tax implications as provided by the REIT’s tax advisors and

management; (vi) other transaction leakage costs; (vii) pro forma market trading implications for RemainCo and NewCo in light of resulting asset mix and, if applicable, the standalone viability of any new publicly-traded entity created as a result of a spin-off. As the Strategic Review Process advanced, these alternatives were updated to reflect changes in management forecast, economic and pandemic environment as well as prevailing capital markets conditions.

38. On October 23, 2020 and October 30, 2020, the Special Committee met to discuss, and agreed to pursue, a dual-track process to evaluate the stand-alone plan and structural alternatives while entertaining a formal sale process primarily focused on the whole of the REIT. Beginning on November 6, 2020, the Financial Advisors began contacting potential buyers, formally contacting 33 parties (in addition to having several exploratory discussions with other parties). The parties contacted were believed to have potential interest and financial capacity to consider an *en bloc* transaction of this size and nature or that might demonstrate an interest in certain sizeable groups of assets or portfolios of the REIT. Of the parties contacted, several parties expressed preliminary interest in exploring a transaction and entered into non-disclosure and standstill agreements (each an “**NDA**”) with the REIT. Some interested parties did not accept entering into an NDA and wished to continue to evaluate the opportunity based on publicly disclosed information. Each party that executed an NDA had access to a phase 1 preliminary data room which allowed them to evaluate the opportunity to submit initial proposals and express an interest in all of the REIT or certain of its assets. Once these proposals were received, the Special Committee then determined which interested parties would be allowed to access a second phase data room to enable the completion of more fulsome due diligence and the submission of a final proposal by such interested party.
39. On November 17, 2020, the REIT entered into an NDA with each of Canderel and FrontFour.
40. On December 7, 2020, to fill the vacancy created by the aforementioned resignation of Mr. George, Mr. René Tremblay was appointed to the Special Committee by the Board of Trustees following the recommendation of Fasken.
41. On December 16, 2020, the Special Committee met to review the extensive analysis prepared by the Financial Advisors relating to the stand-alone plan and structural alternatives. At the meeting, the Financial Advisors provided a qualitative and quantitative overview of the various alternatives, including the status quo, and their potential implications for Unitholders, taking into account all the previously mentioned variables and considerations. Following such analysis, the Special Committee and the Financial Advisors decided to further refine a number of alternatives with a view to benchmark those against each other and to the *en bloc* scenario.
42. Among the groups that signed an NDA, Canderel and FrontFour jointly submitted on December 15, 2020, a written expression of interest with respect to an

acquisition of all Units at an indicative range of \$10.25 to \$10.75 per Unit. In addition, four other parties expressed an interest verbally on certain asset classes or properties of the REIT while not providing valuation ranges.

43. On December 18, 2020, the Special Committee met to review the proposals received in relation to the first phase of the *en bloc* sale process, and it was agreed to advance Canderel/FrontFour to the second phase which would begin in early January 2021. Given its interest for the retail assets, the Special Committee also decided to advance another participant (the “**Retail Portfolio Participant**”) to the second phase of the process, but with information limited to the retail portfolio. Discussions were also held with two other participants who had demonstrated an interest in a sizeable portion of the office portfolio and the entirety of the industrial portfolio, respectively. Based on the information available at the time with respect to the Strategic Alternatives being reviewed, discussions would eventually be suspended with these two previously mentioned parties.
44. Following the Strategic Alternatives Announcement, the REIT initiated discussions with Mach Capital during which it had conveyed its potential interest to acquire the REIT in an *en bloc* transaction but was not prepared to sign an NDA. Concurrently with the second phase of the process, management and the members of the Special Committee, with the support of the Financial Advisors, Davies and Fasken, began exchanging with Mach Capital. At the time, Mach Capital advised the REIT that it was confident in its ability to secure the support of Unitholders holding, along with Mach Capital, approximately 19.9% of the Units. As such, Mach Capital advised the REIT that it expected the REIT to weigh the importance of the foregoing.
45. The Retail Portfolio Participant was eventually eliminated from the second phase of the process given that it was perceived that its indicative proposal for the retail assets would not generate sufficient value for Unitholders in comparison to the other alternatives evaluated by the Financial Advisors.
46. In conjunction with the ongoing process, the REIT received two unsolicited summary recapitalization proposals from a Montreal-based real estate investment, advisory and asset management firm in December 2020 and January 2021, respectively. Based upon the review of such proposals together with the ongoing review of various Strategic Alternatives, these proposals were considered to be unattractive, taking into account the unit price, and the resulting significant dilution to all Unitholders. These proposals also did not include a clear proposed strategy to enhance Unitholder value.
47. On January 14, 2021, Mr. Campbell recused himself from the Special Committee due to potential conflicts of interest given his relationship with a party having a potential interest in a transaction involving the REIT. Following Mr. Campbell’s recusal, he was promptly excluded from receiving any information or participating in any deliberations of the Board or Special Committee concerning the Strategic Review Process (including the Arrangement).

48. On February 12, 2021, a first letter of intent was received from Mach Capital (the “**First Mach LOI**”) pursuant to which Mach Capital proposed to acquire all of the Units at an indicative price of between \$9.00 and \$9.25 per Unit.
49. On March 12, 2021, after discussions and negotiations with the Financial Advisors, Mach Capital delivered a second letter of intent (the “**Second Mach LOI**”), pursuant to which Mach Capital proposed to acquire all of the Units at an indicative price of between \$10.00 and \$10.50 per Unit. The Special Committee met on March 16, 2021 to review the terms of the Second Mach LOI; the Special Committee was informed that while Mach Capital had made progress on the indicative price per Unit, it remained lower than the indicative range provided by Canderel/FrontFour and there was still uncertainty regarding Mach Capital’s capacity to finance an *en bloc* transaction. A representative of the REIT management and a representative of Mach Capital, together with representatives of their respective financial advisors, then met again on March 22, 2021 with a view of settling on a purchase price at \$10.50 per Unit and improving the non-financial terms of the proposal. At the meeting, Mach Capital indicated that it would be willing to settle on a price of \$10.50 per Unit and to accept the inclusion of a “go-shop” with a 2% break fee on equity value and agreed to provide an irrevocable commitment to support a superior acquisition proposal in the event such a proposal was received during the “go-shop” period and it did not exercise its “right to match” (i.e., a “top or tender” provision).
50. On March 25, 2021, the Special Committee met to receive an update on the discussions with Canderel/FrontFour and Mach Capital, as well as to receive a market trading update, and an updated analysis of the REIT’s liquidity profile, upcoming maturities and refinancing requirements, future leverage levels, as well as updated financial projections provided by the REIT’s management and their related impact on the assessment of the stand-alone plan and structural alternatives analysed by the Financial Advisors. With respect to the Canderel/FrontFour proposal, the Financial Advisors indicated that the Canderel/FrontFour consortium had made significant progress on their due diligence and that they had secured an equity commitment which would enable them to complete a transaction provided that select office assets, including, without limitation, suburban office assets, were concurrently sold to a certain designated third-party “sub-purchaser” (the “**Asset Sub-Purchaser**”). However, the Financial Advisors indicated that facilitating such a concurrent sale to the Asset Sub-Purchaser would be difficult as the Asset Sub-Purchaser was not, at the time, interested in partnering with a consortium to acquire the REIT, and it was therefore unlikely that the Canderel/FrontFour consortium would be actionable at this time. At the meeting, the members of the Special Committee unanimously resolved to recommend that the Board of Trustees authorize the entering into of a 30-day exclusive negotiating period (subject to extension) with Mach Capital for the purposes of entering into an agreement with respect to the acquisition, by Mach Capital, of all of the REIT’s issued and outstanding Units.

51. On March 30, 2021, the Board of Trustees (excluding Messrs. Zachary R. George and Mr. Paul D. Campbell (the “**Non-Participating Trustees**”)) met to discuss the progress made by the Special Committee and the Mach Capital and Canderel/FrontFour proposals, as well as to receive the recommendation from the Special Committee. At the meeting, the Chair of the Special Committee provided an overview of the work undertaken by the Special Committee to date and its unanimous recommendation to pursue negotiations with Mach Capital on an exclusive basis. He explained that further to the advice received from the Financial Advisors, Fasken and, when requested, Davies, the Special Committee completed an in-depth analysis of each scenario and believed that the prevailing operational, business and financial prospects of the REIT created meaningful limitations on management’s ability deliver value to Unitholders beyond the current opportunity to effect an *en bloc* sale of the Units. The Board of Trustees resolved to suspend any decision on the exclusivity grant to Mach Capital until the planned meeting between representatives of the REIT management and Mach Capital, and their respective financial advisors on March 31, 2021.
52. Representatives of the REIT management and Mach Capital, as well as their respective financial advisors, met on March 31, 2021 and again on April 12, 2021 with representatives of the Special Committee present. At the April 12, 2021 meeting, a representative of Mach Capital agreed to increase Mach Capital’s indicative purchase price to \$10.55 per Unit and to improve other non-financial aspects of Mach Capital’s proposal.
53. On April 14, 2021, the Board of Trustees (excluding the Non-Participating Trustees) met to discuss the updated terms of Mach Capital’s proposal. Given the status of Canderel/FrontFour’s financing discussions (which did not yet appear actionable), the Board of Trustees unanimously resolved to authorize the entering into of a 45-day exclusivity period (subject to extension) with Mach Capital for the purposes of entering into an agreement with respect to the acquisition of the Units at a price of at least \$10.55 per Unit. A letter of intent and non-disclosure and standstill agreement with Mach Capital was subsequently executed on April 15, 2021 (the “**Third Mach LOI**”).
54. On April 27, 2021, Desjardins was retained by the Special Committee, and immediately began its due diligence and financial analysis work, in order to be in a position to provide an independent valuation and a fairness opinion should it be required by the Special Committee.
55. During the first weeks of May 2021, with the public health situation improving, Canadian diversified real estate investment trusts began seeing some trading momentum in their unit prices. At this time, the Units began trading at between \$10.00 to \$10.15 per Unit. In that context, the Special Committee requested that the Financial Advisors and Desjardins separately provide an updated preliminary assessment of the REIT in light of the developing situation. Following such assessments, it was clear that the \$10.55 per Unit price proposed by Mach Capital

was at the low end of the indicative range provided by both sets of financial advisors.

56. In the weeks that followed, the REIT and Mach Capital continued discussions, while Mach Capital was also concurrently carrying out due diligence, but failed to reach an agreement with respect to an increased purchase price and other key transaction terms, including Mach Capital's ability to obtain necessary financing commitments on terms satisfactory to Mach Capital to complete an *en bloc* transaction.
57. On June 3, 2021, the Financial Advisors received an unsolicited updated proposal from the Canderel/FrontFour consortium proposing to acquire all of the Units at an indicative price of \$11.25 per Unit (the "**Canderel/FrontFour Proposal**"). Such proposal contemplated the acquisition of the REIT's industrial portfolio by Blackstone and the acquisition of select suburban office assets by the Asset Sub-Purchaser, and indicated that the consortium had resolved its previously mentioned issue related to the concurrent sale of suburban office assets to the Asset Sub-Purchaser. Bound by the exclusivity arrangement with Mach Capital, the Financial Advisors did not engage in any discussions with Canderel/FrontFour or their representatives regarding the Canderel/FrontFour Proposal. Later that day, the REIT executed the documentation providing for the extension of the exclusivity and process periods with Mach Capital until June 17, 2021, in order to enable continued discussions on the price offered by Mach Capital as well as to permit Mach Capital the time to obtain the necessary financing commitments on terms satisfactory to Mach Capital.
58. On June 4, 2021, a representative of the REIT management informed a representative of Mach Capital that an unsolicited proposal had been received from another party and that there would be no further extensions of the exclusivity and process periods unless the parties could come to terms on price, and Mach Capital could provide sufficient evidence of committed financing to complete an *en bloc* transaction.
59. On June 16, 2021, representatives of the REIT management and Mach Capital met again with their respective financial advisors to discuss the indicative purchase price and the state of Mach Capital's financing commitments. At the meeting, a representative of Mach Capital indicated that an additional three-week extension to the exclusivity period would be required to obtain the necessary financing commitments, but that Mach Capital would be prepared to increase its indicative purchase price to \$11.00 per Unit provided that the REIT accept a material modification of the proposed non-financial terms of Mach Capital's proposal.
60. On June 17, 2021, the Board of Trustees (excluding the Non-Participating Trustees) met to receive an update on the discussions with Mach Capital and to review the terms of Mach Capital's proposed amendments to the Third Mach LOI. At the meeting, it was resolved not to extend the exclusivity or amend the Third Mach LOI, but to nevertheless continue discussions, on a non-exclusive basis, with

Mach Capital following the expiry of the exclusivity period while beginning to engage with Canderel/FrontFour regarding the Canderel/FrontFour Proposal received on June 3, 2021.

61. On June 18, 2021, the REIT received a letter from Mach Capital to the effect that it was withdrawing its proposed offer and that it was no longer interested in pursuing an *en bloc* transaction with the REIT.
62. During the weeks of July 5 and July 12, 2021, the Financial Advisors had several discussions with representatives of Canderel/FrontFour concerning the transaction price. During that period, the Unit price of the REIT continued to increase and began trading above \$11.00 per Unit. These discussions and negotiations eventually led to an increase in the purchase price from the initial price proposed in the Canderel/FrontFour Proposal of \$11.25 to \$11.85 per Unit, and discussions continued in respect thereof.
63. At a meeting held July 8, 2021, a representative of Mach Capital confirmed to a representative of the REIT management and the Financial Advisors that Mach Capital would be ready to increase its proposal to a price of \$11.50 per Unit subject to implementing the required financing, which would require three to four weeks, as well as requiring exclusivity.
64. On July 15, 2021, the Special Committee met to receive an update from the Financial Advisors on the discussions with Canderel/FrontFour. At the meeting, Desjardins presented an updated financial assessment and provided its preliminary views on the indicative pricing range.
65. On July 16, 2021, after negotiations, and solely on the basis of the arrangements (including purchase prices) then contemplated in respect of the industrial portfolio to be purchased by Blackstone and the suburban office assets to be purchased by the Asset Sub-Purchaser, Canderel/FrontFour confirmed that they would be prepared to pursue an offer at a price of \$12.00 per Unit subject to a “negative exclusivity” undertaking from the REIT to refrain from supporting any competing proposal or entering into any definitive agreement in respect of a competing proposal until the morning of July 26, 2021 and an undertaking to reimburse a portion of Canderel/FrontFour’s out-of-pocket costs and expenses up to a limited amount if no definitive agreement was entered into at the expiration of the negative exclusivity period after a good faith negotiation by Canderel/FrontFour. On July 18, 2021, a letter agreement to this effect was signed among parties.
66. As of July 21, 2021, the REIT and the Canderel/FrontFour consortium proceeded to negotiate the arrangement agreement and related documents, and the Canderel/FrontFour consortium concurrently negotiated asset purchase agreements and related documents with Blackstone and the Asset Sub-Purchaser. Over the course of such negotiations, the REIT was informed that one of the equity partners had withdrawn its participation in the Canderel/FrontFour consortium and that Artis and the Sandpiper Partnerships were expected to take its place. From

July 25, 2021, the REIT and the Canderel/FrontFour consortium began periodically extending their negative exclusivity undertaking as parties members of the consortium were working in good faith towards a transaction.

67. At a joint Board of Trustees and Special Committee meeting held August 2, 2021, in anticipation of a potential upcoming transaction announcement, each of the Financial Advisors and Desjardins provided preliminary views related to their fairness opinion work and Desjardins provided preliminary views on its independent valuation work, in all instances based on the July 30, 2021 Unit price and supported by a presentation detailing their analysis. However, no conclusions or opinions regarding fairness or valuation were delivered by the Financial Advisors and Desjardins at such meeting. Davies presented an overview of the transaction structure and arrangement agreement and provided an update of the status of outstanding items being negotiated. Fasken and Davies also reviewed and exchanged with the trustees regarding their fiduciary duties in the context of assessing the proposed transaction. The trustees also considered the contractual terms provided for in the Debenture Indenture and the interests of the holders of Unsecured Debentures.
68. Between August 4 and August 10, 2021, various discussions and negotiations were held between the parties, in particular with respect to fundamental unresolved issues with the Asset Sub-Purchaser, including the quantum of the termination fee payable by the Asset Sub-Purchaser in circumstances where it failed to close (including the ability of the Asset Sub-Purchaser to demonstrate financing capacity on a timely basis), the aggregate purchase price and assets to be acquired by the Asset Sub-Purchaser and the ability of the Asset Sub-Purchaser to obtain its necessary internal approvals on a timely basis. During that period, the Board of Trustees was provided with an update on negotiations and discussions with the Canderel/FrontFour consortium and the various parties involved.
69. In the days that followed, the REIT was informed by Canderel/FrontFour that the outstanding issues with Asset Sub-Purchaser remained unresolved and that, given the lack of resolution in its favour, the Asset Sub-Purchaser would no longer pursue an asset off-take transaction in connection with an *en bloc* transaction with the Canderel/FrontFour consortium. Nevertheless, discussions would continue with the Canderel/FrontFour consortium who believed that alternative arrangements with another asset off-take purchaser could be pursued and agreed in the context of an *en bloc* transaction with the Canderel/FrontFour consortium.
70. On August 20, 2021, the REIT received an unsolicited expression of interest which expressed the submitting party's interest in commencing discussions with the REIT so as to analyse various scenarios which could lead to a transaction with the REIT relating to all or a part of its portfolio. Given that such expression of interest was highly preliminary in nature (with no price put forward) and contained no indication as to the value, size or scope of the transaction or any financing sources and related execution capacity, given that such expression of interest was subject to lengthy due diligence, and given the advanced state of the discussions with the

Canderel/FrontFour consortium, and the negotiated exclusivity arrangement which remained in effect, the REIT did not engage in any discussions with the addresser regarding its expression of interest.

71. On August 23, 2021, the Canderel/FrontFour consortium contacted Mach Capital, which had previously demonstrated interest in the REIT, in order to ascertain if they would be interested in acquiring certain assets of the REIT in connection with a Canderel/FrontFour consortium *en bloc* transaction, and if any such interest could result in an alternative asset off-take transaction with Mach Capital that would sufficiently align with, and allow for the pursuit of, the Canderel/FrontFour consortium's offer.
72. In the weeks that followed, the Canderel/FrontFour consortium and Mach Capital held numerous discussions regarding the assets to be acquired by Mach Capital in an off-take acquisition, as well as the aggregate price and price allocation, and the terms and conditions thereof, all of which contained meaningful differences from the previously contemplated transaction with the Asset Sub-Purchaser. The REIT and the Special Committee facilitated these negotiations with the assistance of the Financial Advisors.
73. On October 5, 2021, and October 7, 2021, the Special Committee met to receive an update on the ongoing discussions with the Canderel/FrontFour consortium and the related negotiations with the asset off-takers.
74. On the morning of October 14, 2021, the parties came to an agreement on the outstanding legal and business issues. Later that evening, representatives of the REIT management, NBF and BMO met with representatives of Canderel, FrontFour, Artis and Sandpiper to receive a verbal offer from the Canderel/FrontFour consortium to acquire all of the REIT's issued and outstanding Units at a revised price of \$11.60 per Unit, subject to the REIT permanently ceasing distributions as of the announcement date. The Canderel/FrontFour consortium advised that this revised purchase price was reflective of the new dynamics within the consortium and the arrangements with Mach Capital as compared to the previously contemplated (and ultimately not actionable) arrangements with the Asset Sub-Purchaser.
75. On October 15, 2021, the Special Committee met to receive the revised proposal from the Canderel/FrontFour consortium, and later in the day a representative of the REIT management and the Financial Advisors met with representatives of the Canderel/FrontFour consortium to discuss the revised proposed purchase price and discuss certain financing arrangements with lenders to the asset off-takers. These discussions with the asset off-takers and lenders would continue over the days that followed.
76. On October 17 and October 18, 2021, after several discussions and negotiations, the Canderel/FrontFour consortium agreed to revise its purchase price up to \$11.75 per Unit. This revised proposal also reduced the distributions suspension

period to a three-and-a-half month period, and the acceptance of the asset off-takers to further increase their purchase price for the assets they intended to acquire.

77. On October 19, 2021, Mach Capital confirmed to the REIT that they would be partnering with a significant Unitholder to complete its off-take transaction and that its financing arrangements were being prepared on such basis. In the interim, the parties continued to work to finalize the arrangement agreement, the asset off-take agreements, as well as the related documents, notably the plan of arrangement, the voting and support agreements, the limited guarantees and the equity commitment letters.
78. At a joint Board of Trustees and Special Committee meeting held in the morning of October 22, 2021, the trustees were provided with an updated overview of the transaction structure and agreements as well as the challenges Mach Capital and the significant Unitholder were having in consummating their partnership in view of completing an off-take transaction with the Canderel/FrontFour consortium. Nevertheless, the Financial Advisors expressed a belief that Mach Capital would be in a position to complete its transaction, with or without the significant Unitholder, including reorganizing its financing arrangements, and expected to continue discussions with both parties over the course of the day in order to secure the necessary financing commitments. Each of the Financial Advisors and Desjardins indicated that they would be prepared to provide their fairness opinion verbally, as did Desjardins with regard to its independent valuation, if so requested by the Board of Trustees. At such meeting, the Special Committee confirmed to the Board of Trustees that they would be in a position to provide a unanimous recommendation to the Board of Trustees that it approve the proposed arrangement with the Canderel/FrontFour consortium upon request, subject to final and formal confirmation of the fairness opinions and the independent valuation.
79. Following the meeting, the Financial Advisors were informed by Mach Capital that the significant Unitholder would no longer be participating in an asset off-take transaction. On October 23, 2021, Mach Capital provided the Financial Advisors revised financing letters evidencing Mach Capital's ability to complete its asset off-take transaction without the significant Unitholder. The parties then proceeded to finalize the remaining transaction documents.
80. In the evening of October 24, 2021, the Board of Trustees (excluding the Non-Participating Trustees) met to consider the proposed transaction, the draft Arrangement Agreement and the other definitive transaction agreements, and the report and recommendation of the Special Committee. Davies provided members of the Board of Trustees with an overview of the material terms of the Arrangement Agreement, the Plan of Arrangement, the Debt Commitment Letter, the Equity Commitment Letter, the Mach Capital Voting and Support Agreement and other definitive agreements relating to the transaction. Counsel confirmed that all legal

advisors had approved the current versions of the transaction documents, including voting and support agreements.

81. Each of the Financial Advisors and Desjardins provided their fairness opinion verbally, as did Desjardins with regard to its independent valuation, with written opinions and independent valuation to follow upon request of the Board of Trustees.
82. Following the presentations by NBF, BMO and Desjardins, the Chair of the Special Committee presented the unanimous recommendation of the Special Committee to the other members of the Board of Trustees. After discussion, the Board of Trustees unanimously determined (except for the Non-Participating Trustees) that the Arrangement is in the best interests of the REIT and fair to the Unitholders (other than Mach Capital and the Rollover Unitholders in respect of the Rollover Units), and approved the Arrangement.
83. The Arrangement Agreement, the Asset Purchase Agreements and the Mach Capital Voting and Support Agreement and the other definitive transaction agreements were then entered into. On October 24, 2021 the Arrangement was publicly announced.

B. THE PLAN OF ARRANGEMENT

84. As explained above, the proposed Transaction will be consummated through an orderly sequence of transactions. These transactions are set out in a statutory plan of arrangement proposed pursuant to Section 192 of the CBCA.
85. At a high-level, if the Arrangement is approved, the following sequential steps will be carried out, including the following:
 - (a) Cominar's Contract of Trust and the Constatting Documents of certain Cominar's Subsidiaries will be amended to the extent necessary to facilitate the Arrangement;
 - (b) the Unitholders' Rights Plan will be cancelled;
 - (c) certain of Cominar's Subsidiaries (the Portfolio Sellers) will sell the Portfolio Assets to the Asset Purchasers. These Subsidiaries include 152523 Canada Inc. and 6412432 Canada Inc., which will transfer the properties for which they hold title to the Asset Purchasers for a cash consideration. Aside from a nominal cash consideration, these titles constitute the only assets held by these corporations, as explained below;
 - (d) the proceeds of the sale of the Portfolio Assets, including those resulting from the sale of the assets of Applicants 152523 Canada Inc. and 6412432 Canada Inc., will be distributed (with its proportion of ownership) by the applicable Portfolio Seller to such Portfolio Seller's partners, shareholders or beneficiaries, as applicable, and then by such partner, shareholder or

beneficiary to such partner's, shareholder's or beneficiary's partners, shareholders or beneficiaries on a continuous basis until they are ultimately distributed to Cominar and will fund a portion of the Consideration;

- (e) Cominar will make a special distribution (Stub Distribution) to its Unitholders in accordance with Section 4.24(b) of the Arrangement Agreement;
 - (f) the Purchaser will make a loan to ArrangementCo, a CBCA corporation, which will be assigned to Cominar to pay the amounts payable to the holders of Options, Deferred Units, Restricted Units and Performance Units. Cominar. Each outstanding Option, Deferred Unit, Restricted Unit and Performance Unit will in turn be assigned, transferred and surrendered to Cominar for a cash payment;
 - (g) the Purchaser will subscribe for Subscription Units in Cominar and the Rollover Unitholders will subscribe to securities of the Purchaser (the Purchaser Units); and
 - (h) Cominar will repurchase all of the issued and outstanding Units of the Unitholders (other than the Subscription Units and the Rollover Units) for a price per Unit, which will result in each Unitholder (other than Rollover Unitholders or Subscribing Unitholders) receiving a price equal to the Consideration.
86. Specifically, the Plan of Arrangement entails the steps described below. At the Effective Time each of the following events shall occur and shall be deemed to occur sequentially as set out below without any further authorization, act or formality, in each case, unless stated otherwise, effective as at five minute intervals starting at the Effective Time (unless otherwise indicated):
- (a) the Contract of Trust and the Constatting Documents of the Subsidiaries of the REIT shall be amended, and deemed to be amended, to the extent necessary to facilitate the Arrangement and the implementation of the steps and transactions described herein;
 - (b) all Rights issued pursuant to the Unitholder Rights Plan shall be cancelled without any payment in respect thereof, the Unitholder Rights Plan shall terminate with the result that it will no longer have any force or effect, and thereafter no Person will have any further liability or obligation to the former holders of Rights under such Unitholder Rights Plan and the former holders of Rights will permanently cease to have any Rights under such Unitholder Rights Plan;
 - (c) each Unit held by a Dissenting Unitholder in respect of which Dissent Rights have been validly exercised shall be deemed to have been transferred without any further act or formality to the REIT in consideration for a debt claim against the REIT for the amount determined under Article 4 of the Plan of Arrangement and:

- i) such Dissenting Unitholders shall cease to be the holders of such Units and to have any rights as holders of such Units other than the right to be paid fair value by the REIT for such Units as set out in Section 4.1 of the Plan of Arrangement;
 - ii) such Dissenting Unitholders' names shall be removed as the holders of such Units from the registers of Units maintained by or on behalf of the REIT; and
 - iii) the REIT shall be deemed to be the transferee of such Units free and clear of all Liens, and such Units shall thereupon be cancelled;
- (d) pursuant to and in accordance with each Asset Purchase Agreement, the applicable Asset Purchaser will purchase all of the applicable Portfolio Assets from the applicable Portfolio Sellers for an aggregate cash purchase price equal to the applicable Portfolio Purchase Price;
- (e) each Portfolio Seller that is a partnership (other than any partnership (other than CJD LP) that is not, directly or indirectly, wholly-owned by the REIT) (A) shall be deemed to have been authorized by its partners or beneficiaries to wind-up, liquidate and dissolve, (B) shall immediately thereafter distribute the proceeds received from the sale of the Portfolio Assets (and any other property held by it at that time) to its partners or beneficiaries in consideration for the assumption by the transferees of all of its liabilities and obligations as a wind-up and liquidation distribution, and (C) shall immediately thereafter be deemed to have dissolved and cease to exist;
- (f) each Portfolio Seller that is a corporation or a trust (other than the REIT) shall distribute and/or advance the proceeds from the sale of the Portfolio Assets (less any applicable Taxes) to its shareholders or beneficiaries;
- (g) any Subsidiary of the REIT receiving a distribution or advance referred to in paragraphs (e) or (f) shall distribute or advance the proceeds of such distribution to its partners, beneficiary or shareholders, as applicable (less any applicable Taxes), such that all proceeds of the sale of the Portfolio Assets (less any applicable Taxes payable by the relevant Subsidiaries of the REIT in respect thereof) are received by the REIT;
- (h) the REIT shall pay out, as a special distribution on each Unit (excluding, for greater certainty, Units held by Dissenting Unitholders), the Stub Distribution;
- (i) the Purchaser shall make the Purchaser Loan, to the extent required by the REIT to pay the aggregate Option Payments, Deferred Unit Payments, Restricted Unit Payments and Performance Unit Payments payable to holders of Options, Deferred Units, Restricted Units and Performance Units (in each case, including any applicable withholdings);

- (j) each Option outstanding immediately prior to the Effective Time (whether vested or unvested), notwithstanding the terms of the Equity Incentive Plan, shall be deemed to be unconditionally vested and exercisable, and such Option shall, without any further action by or on behalf of a holder of Options, be deemed to be assigned, transferred and surrendered by such holder to the REIT in exchange for a cash payment from the REIT equal to the product obtained by multiplying (i) the amount by which the Consideration exceeds the exercise price per Unit of such Option by (ii) the number of Units into which such Option is exercisable (the "Option Payment"), less applicable withholdings (provided that where such amount is zero or negative, the holder of such Option shall not be entitled to receive any amount in respect of such Option, and all obligations in respect thereof shall be deemed to be fully satisfied, and provided further that where such amount is less than \$0.01, the consideration to be received in respect of such Option shall be \$0.01) and such Option shall immediately be cancelled.
- (k) if any Stub Distribution exists as of the Effective Time:
 - i) the additional Deferred Units that would, under section 9.4 of the Equity Incentive Plan, be credited to a Deferred Unit holder's account on the payment date of such Stub Distribution, shall be deemed to be credited to such holder's account;
 - ii) the additional Restricted Units that would, under section 8.4 of the Equity Incentive Plan, be credited to a Restricted Unit holder's account on the payment date of such Stub Distribution, shall be deemed to be credited to such holder's account; and
 - iii) the additional Performance Units that would, under section 7.8 of the Equity Incentive Plan, be credited to a Performance Unit holder's account on the payment date of such Stub Distribution, shall be deemed to be credited to such holder's account;
- (l) each Deferred Unit outstanding immediately prior to the Effective Time (whether vested or unvested), notwithstanding the terms of the Equity Incentive Plan shall, without any further action by or on behalf of a holder of such Deferred Unit, be deemed to be assigned and transferred by such holder to the REIT in exchange for a cash payment from the REIT equal to the Consideration per Unit (the "Deferred Unit Payment"), less applicable withholdings, and each such Deferred Unit shall immediately be cancelled and all obligations in respect thereof shall be deemed to be fully satisfied;
- (m) each Restricted Unit outstanding immediately prior to the Effective Time (whether vested or unvested), notwithstanding the terms of the Equity Incentive Plan shall, without any further action by or on behalf of a holder of such Restricted Unit, be deemed to be assigned and transferred by such

holder to the REIT in exchange for a cash payment from the REIT equal to the Consideration per Unit (the "Restricted Unit Payment"), less applicable withholdings, and each such Restricted Unit shall immediately be cancelled and all obligations in respect thereof shall be deemed to be fully satisfied;

- (n) each Performance Unit outstanding immediately prior to the Effective Time (whether vested or unvested), shall be deemed to be unconditionally vested based on the applicable Performance Unit Adjustment Factor (as defined in the Equity Incentive Plan), calculated in accordance with the terms of the Equity Incentive Plan as if the Effective Date were the vesting date of such Performance Units, and each such Performance Unit shall, without any further action by or on behalf of a holder of Performance Unit, be deemed to be assigned and transferred by such holder to the REIT in exchange for a cash payment from the REIT equal to the Consideration per Unit (the "Performance Unit Payment"), less applicable withholdings, and each such Performance Unit shall immediately be cancelled and all obligations in respect thereof shall be deemed to be fully satisfied;
- (o) (i) each holder of Options, Deferred Units, Restricted Units or Performance Units shall cease to be a holder of such Options, Deferred Units, Restricted Units or Performance Units, as the case may be, (ii) such holder's name shall be removed from each applicable register, (iii) the Equity Incentive Plan and all agreements relating to such Options, Deferred Units, Restricted Units and Performance Units shall be terminated and shall be of no further force and effect, and (iv) such holder shall thereafter have only the right to receive the Option Payment, the Deferred Unit Payment, the Restricted Unit Payment or the Performance Unit Payment to which they are entitled pursuant to paragraphs (i), (l), (m) and (n), as applicable, at the time and in the manner specified therein and contemplated hereby;
- (p) each:
 - i) Rollover Unitholder (other than a Related Rollover Unitholder) will subscribe for such number of Purchaser Units as is set out in such Rollover Unitholder's Rollover Agreement for an aggregate subscription price equal to the Rollover Subscription Amount, such subscription price to be satisfied by the issuance to the Purchaser of such Rollover Unitholder's Subscription Note; and
 - ii) Subscribing Unitholder will subscribe for such number of Purchaser Units as is set out in the Rollover Agreement of such Subscribing Unitholder's Related Rollover Unitholder for an aggregate subscription price equal to the Rollover Subscription Amount, such subscription price to be satisfied by the issuance to the Purchaser of such Subscribing Unitholder's Subscription Note;

- (q) at the time immediately before the step in paragraph (r), concurrently, (i) the REIT shall declare to be payable a special distribution on each Unit (excluding, for greater certainty, Units held by Dissenting Unitholders), in an amount, if any, to be determined by it prior to the Effective Time to be equal to its bona fide best estimate of the amount, if any, of its Taxable Income for the taxation year of the REIT that includes the Effective Time (the "Income Amount"), provided, for greater certainty, that the amount of the distribution under this paragraph (q) may be zero (the "Special Distribution"), and (ii) any Subsidiary of the REIT that is a trust shall declare to be payable a special distribution on each of its units or similar interests in an amount, if any, to be determined by it prior to the Effective Time to be equal to its bona fide best estimate of the amount, if any, of its Taxable Income for the taxation year of the Subsidiary that includes the Effective Time;
- (r) at the time immediately before the step in paragraph (s), concurrently, (i) the REIT shall pay the Special Distribution, such payment to be satisfied by the issuance of such number of Units equal to the quotient obtained when the Income Amount is divided by the closing price of the Units on the TSX on the last trading day immediately prior to the Effective Date, (ii) any Subsidiary that declared a special distribution on its units to be payable pursuant to the step in paragraph (q), shall pay such special distribution by issuing a promissory note having a principal amount equal to the amount of the special distribution, and (iii) each Direct Non-Resident Unitholder shall be deemed to have issued a promissory note to the REIT in an amount equal to its liability for withholding tax under the Tax Act in respect of such Special Distribution (each, a "Non-Resident Tax Note");
- (s) at the time immediately before the step in (t), the issued and outstanding Units will be consolidated to ensure that the number of outstanding Units after the payment of the Special Distribution pursuant to paragraph (r) remains the same as that immediately before the Special Distribution;
- (t) the Purchaser will subscribe for such number of Subscription Units as is equal to the Unit Subscription Amount for a subscription price equal to the sum of: (i) the Aggregate Redemption Price and (ii) the principal amount of the Trust Subscription Note, with the Aggregate Redemption Price being payable in cash and the principal amount of the Trust Subscription Note being satisfied through the issuance by the Purchaser of the Trust Subscription Note;
- (u) the REIT will redeem all of the issued and outstanding Units, other than the Subscription Units and the Rollover Units, for a cash redemption price per Unit equal to the Consideration and such aggregate redemption amount (less an amount equal to the aggregate Non-Resident Tax Notes) shall be delivered to, and held by, the Depositary as agent for and on behalf of the holders of such Units, and

- i) the holders of such Units shall cease to be the holders of such Units and to have any rights as holders of such Units other than the right to be paid the cash redemption price per Unit set out in this paragraph (u) for such Units;
 - ii) such holders' names shall be removed from the register of the Units maintained by or on behalf of the REIT;
 - iii) the REIT shall be deemed to be the transferee of such Units free and clear of all Liens, and such Units shall be cancelled; and
 - iv) each Non-Resident Tax Note shall be extinguished by way of set-off against the applicable portion of the cash redemption amount payable to the relevant Direct Non-Resident Unitholder;
- (v) concurrently with the step in paragraph (u), the REIT will redeem each Rollover Unitholder's Rollover Units for an aggregate redemption price equal to such Rollover Unitholder's Rollover Subscription Amount and will satisfy the redemption price by issuing to such Rollover Unitholder, such Rollover Unitholder's Redemption Note;
- (w) the Purchaser will transfer the Subscription Notes to the REIT in repayment of the Trust Subscription Note, each Related Rollover Unitholder of a Subscribing Unitholder will transfer its Redemption Note to such Subscribing Unitholder, and each Rollover Unitholder's or Subscribing Unitholder's Subscription Note will be set off against such Rollover Unitholder's Redemption Note or any Redemption Note transferred to a Subscribing Unitholder, as applicable, and the Subscription Notes and the Redemption Notes shall be cancelled;
- (x) the Purchaser Loan, if any, is capitalized in exchange for such number of Units as is equal to the quotient obtained when the aggregate principal amount of the Purchaser Loan is divided by the Per Unit Rollover Price; and
- (y) the existing trustees of the REIT shall resign, and the Purchaser Trustee(s) shall become the sole trustee of the REIT.

C. PROCEDURAL STEPS

87. The following procedural steps must be implemented in order for the proposed Arrangement to become effective:
- (a) the Arrangement Resolution (as defined below) must be approved by the Unitholders in the manner set forth in the Interim Order;
 - (b) the Court must grant the Final Order approving the Arrangement;

- (c) all conditions precedent to the proposed Arrangement, as set forth in the Arrangement Agreement, must be satisfied or waived by either Cominar or the Purchaser, or both as applicable; and
 - (d) the Articles of Arrangement must be sent to the Director and a Certificate of Arrangement must be issued by the Director.
88. Upon issuance of the Final Order and the satisfaction or waiver of the conditions precedent to the proposed Arrangement set forth in the Arrangement Agreement, the Articles of Arrangement and such other documents as may be required to give effect to the Arrangement will be filed with the Director pursuant to Section 192 of the CBCA.
89. Upon issuance of the Certificate of Arrangement by the Director, the transactions comprising the Arrangement shall occur and shall be deemed to have occurred in the order set out in the Plan of Arrangement without any further act or formality.
90. On November 12, 2021, the Commissioner of Competition issued a No-Action Letter in respect of the transactions contemplated by the Arrangement, the Mach Acquisition and the Blackstone Acquisition.

D. UNITHOLDERS' APPROVAL

91. The Arrangement Agreement provides that the Arrangement Resolution will have to be approved by not less than two-thirds (2/3) of the votes cast by Unitholders virtually present or represented by proxy and entitled to vote at the Meeting, which is the customary threshold in court-approved plans of arrangement implemented pursuant to corporate statutes.
92. As the Arrangement requires certain minor amendments to Cominar's Contract of Trust, the Unitholders will also be required to vote upon an ordinary resolution approving such amendments. The amendments contemplate authorizing Cominar to allocate "Distributable Income" (as defined in the Contract of Trust), net realized capital gains and net recapture income to the Unitholders at year-ends other than December 31.
93. Mach Capital, which holds approximately 5.2% of the Units, has entered into a voting and support agreement with the Purchaser pursuant to which it has agreed to vote its Units in favour of the Unit Transaction.

E. DISSENT RIGHTS

94. As mentioned above, pursuant to the terms of the Plan of Arrangement and the Interim Order sought herein, registered Unitholders will be entitled to exercise a right to dissent and, if the Arrangement becomes effective, to be paid the fair value of the Units (the "**Dissent Rights**").

95. To validly exercise their Dissent Rights, registered Unitholders must exercise such rights in the manner set forth in the Plan of Arrangement, the Interim Order and the provisions of Section 190 of the CBCA. Section 190 of the CBCA is substantially similar to Section 10.1 of the Contract of Trust.

IV. GROUNDS FOR THE ISSUANCE OF INTERIM AND FINAL ORDERS

96. Subsection 192(3) of the CBCA provides that where it is not practicable for a corporation that is not insolvent to effect a fundamental change in the nature of an arrangement under any provision of the CBCA, the corporation may apply to a Court for an Order approving an arrangement proposed by the corporation. The proposed Arrangement meets these conditions.

A. THE PLAN OF ARRANGEMENT IS AN "ARRANGEMENT"

97. First, the Plan of Arrangement is an arrangement under Section 192 of the CBCA, even if Cominar is an income trust.
98. The purpose of an arrangement is to permit the making of major changes in corporate structure while ensuring that individuals and groups whose rights may be affected are treated fairly. The essential characteristic of an arrangement is a fundamental change which could not be otherwise achieved under the CBCA.
99. Section 192(1) of the CBCA supports a wide and liberal interpretation of what may constitute an arrangement, as that subsection only states that arrangements may "include" the listed type of transactions and does not exhaustively set out the types of permissible transactions. Canadian courts have recognized that Section 192 of the CBCA is a flexible statutory provision capable of incorporating whatever tools and mechanisms of corporate law the ingenuity of their creators bring to the particular problem at hand.
100. The proposed Arrangement involves a combination of transactions which are referred to in Section 192 of the CBCA. It is in substance a going-private transaction. It involves fundamental changes to ArrangementCo., 152523 Canada Inc. and 6412432 Canada Inc., which are all incorporated under the CBCA. It can only be undertaken through a plan of arrangement. It consists of several complex transactions which cannot occur independently, and which are all conditional upon the realization of the other steps. This transaction could not be undertaken through a take-over bid, or under any other mechanism.
101. Furthermore, although income trusts are not corporations, they can nonetheless avail themselves of the arrangement provisions of the CBCA. Section 192 of the CBCA and its provincial counterparts have been routinely used to implement reorganizations or other transactions involving income trusts. These plans of arrangements involve not only conversions of income trusts into corporations, but also acquisitions of income trusts by corporations or other entities, including for a cash consideration.

102. Numerous arrangements with plans of arrangements involving income trusts have been sanctioned by the courts of Québec and elsewhere in Canada. These plans of arrangements involve not only conversions of income trusts into corporations, but also acquisitions of income trusts by corporations or other entities. Representative examples include:
- (a) the conversion of Yellow Pages Income Fund into a CBCA corporation, which was approved by the Superior Court of Québec on October 1, 2010. A copy of the plan of arrangement is attached as **Exhibit P-4**, a copy of the interim order is attached as **Exhibit P-5** and a press release announcing the granting of the final order is attached as **Exhibit P-6**;
 - (b) the conversion of Supremex Income Fund into a CBCA corporation, which was approved by the Superior Court of Québec on May 10, 2010. A copy of the plan of arrangement is attached as **Exhibit P-7**, a copy of the interim order is attached as **Exhibit P-8** and a press release announcing the granting of the final order is attached as **Exhibit P-9**;
 - (c) the conversion of Premium Brands Income Fund into a CBCA corporation, which was approved by the Superior Court of Québec. A copy of the plan of arrangement is attached as **Exhibit P-10**, a copy of the interim order dated June 11, 2009 is attached as **Exhibit P-11** and a press release announcing the completion of the arrangement is attached as **Exhibit P-12**;
 - (d) the acquisition by Choice Properties Real Estate Investment Trust of substantially all of the assets and liabilities of Canadian Real Estate Investment Trust, which was approved by the Superior Court of Justice of Ontario on April 24, 2018. A copy of the plan of arrangement is attached as **Exhibit P-13**, a copy of the interim order is attached as **Exhibit P-14** and a copy of the final order decision is attached as **Exhibit P-15**.
 - (e) the acquisition of Primaris Retail Real Estate Investment Trust by H&R Real Estate Investment Trust, which was approved by the Court of Queen's Bench of Alberta on March 22, 2013. A copy of the plan of arrangement is attached as **Exhibit P-16**, a copy of the interim decision is attached as **Exhibit P-17** and a press release announcing the completion of the arrangement is attached as **Exhibit P-18**;
 - (f) the acquisition of Pure Industrial Real Estate Trust by an affiliate of Blackstone Property Partners and Ivanhoé Cambridge, which was approved by the Supreme Court of British Columbia on March 29, 2018. A copy of the plan of arrangement is attached as **Exhibit P-19**, a copy of the interim order decision is attached as **Exhibit P-20** and a press release announcing the completion of the arrangement is attached as **Exhibit P-21**; and

- (g) the acquisition of the Northview Apartment Real Estate Investment Trust by partnerships affiliated with Starlight Holdings Inc. and KingSett Capital Inc., which was approved by the Court of Queen's Bench of Alberta on May 29, 2020. A copy of the plan of arrangement is attached as **Exhibit P-22**, a copy of the interim order decision is attached as **Exhibit P-23** and a press release announcing the granting of the final order is attached as **Exhibit P-24**.

B. THE APPLICANTS ARE NOT INSOLVENT AND ARE ABLE TO PAY THEIR LIABILITIES AS THEY BECOME DUE

103. It is well established that the solvency requirement is satisfied where at least one of the applicant companies is solvent.
104. Cominar and the Cominar Corporate Applicants are not insolvent within the meaning of paragraph 192(2)(a) of the CBCA as they are able to pay their liabilities as they become due.
105. Furthermore, Cominar and the Cominar Corporate Applicants are not insolvent within the meaning of paragraph 192(2)(b) of the CBCA as the realizable value of their assets is not less than the aggregate of their liabilities and their stated capital of all classes (in the case of Cominar, which is a trust, it does not have a stated capital).
106. Cominar's interim consolidated financial statements for the quarter ended September 30, 2021 is communicated *en liasse* as **Exhibit P-25** and Cominar's annual consolidated financial statements for the year ended December 31, 2020 communicated *en liasse* as **Exhibit P-26**.
107. The financial statements for 152523 Canada Inc. and 6412432 Canada Inc. and the properties for which they hold legal title are attached as **Exhibit P-27** and **Exhibit P-28**, respectively.
108. Similarly, ArrangementCo has no liabilities and it has a stated capital in the amount of \$1.00, as appears from its financial statement attached as **Exhibit P-29**. It also therefore meets the solvency test.
109. To the best of their knowledge, there has been no material change in Cominar and the Cominar Corporate Applicants' financial situation since September 30, 2021.

C. THE ARRANGEMENT IS THE ONLY PRACTICABLE WAY TO PROCEED WITH THE TRANSACTIONS

110. It would be impractical and far too onerous for the parties to carry out the steps required for the implementation of the Arrangement other than by way of the arrangement provisions provided for in Section 192 of the CBCA because:

- (a) the contemplated Unit Transaction and the Asset Purchase Transactions are dependent upon various transactions and steps which are conditional upon each other and which must be consummated through an orderly sequence of transactions, as explained above. This includes the sale of the Portfolio Assets to the Asset Purchasers, the loan between the Purchaser and ArrangementCo, the payment of the special distributions by Cominar and its Subsidiaries, the subscription by the Purchaser of the Subscription Units of Cominar, the redemption of the Units not held by the Rollover Unitholders, and the cancellation of the Options, Deferred Units, Restricted Units and Performance Units. It is essential that no element of the Arrangement occur unless there is certainty that all of the other elements of the Arrangement occur within the strict time periods provided and in the correct order. The only practical way to achieve this is through an arrangement under the CBCA;
- (b) It is an essential condition of the Unit Transaction and the Asset Purchase Transactions (without which the Purchaser would not have agreed to acquire Cominar) that the applicable Units, the Options, the Deferred Units, the Restricted Units and the Performance Units be redeemed and/or cancelled in a single transaction. The only practical way to achieve this is through an arrangement under the CBCA; and
- (c) the arrangement provisions of the CBCA offer greater certainty and flexibility than the provisions governing take-over bids under the *Securities Act* (Québec) and the CBCA, the whole while reducing delays and expenses. At the same time, the proposed Arrangement, by requiring both a vote of the Unitholders and a fairness hearing before the Court, ensures that all of the Unitholders are treated fairly by providing them a vote and right to be heard.

V. FAIRNESS AND REASONABLENESS OF THE ARRANGEMENT

- 111. The Arrangement is fair and reasonable, has a valid business purpose, and has been put forward in good faith by Cominar, the Cominar Corporate Applicants, and the Board of Trustees of Cominar.

B. UNANIMOUS RECOMMENDATION OF THE SPECIAL COMMITTEE AND UNANIMOUS APPROVAL BY THE TRUSTEES

- 112. As explained above, the Arrangement is the result of extensive arm's length negotiations between Cominar, the Purchaser and the Asset Purchasers, as well as their respective legal and financial advisors.
- 113. The Special Committee established by the Board of Trustees ultimately had responsibility to oversee, review and consider the Arrangement and make a recommendation to the Board of Trustees with respect to the Arrangement. The Special Committee is comprised entirely of independent trustees and it met on

numerous occasions both as a committee with solely its members and advisors present and with management and the full Board of Trustees present, where appropriate.

114. The Special Committee, after careful consideration, having taken into account such matters as it considered relevant and after receiving external legal and financial advice, unanimously determined that the Arrangement is in the best interests of Cominar and fair to the Unitholders other than Mach Capital and the Rollover Unitholders, and unanimously recommended that the Board of Trustees approve the Arrangement and recommend that the Unitholders vote for the Arrangement Resolution.
115. In forming its recommendation to the Board of Trustees, the Special Committee considered a number of factors, including, without limitation, those described at pages 49 to 58 of the Circular (pages 62 to 71 of the PDF). The Special Committee based its recommendation upon the totality of the information presented to and considered by it in light of the members of the Special Committee's knowledge of the business, financial condition and prospects of Cominar and after taking into account the advice of its and Cominar's financial and legal advisors and the advice and input of management of Cominar.
116. After careful consideration and taking into account, among other things, the recommendation of the Special Committee, the Board of Trustees, after receiving external legal and financial advice, unanimously (excluding the Non-Participating Trustees) determined that the Arrangement is in the best interests of Cominar and fair to the Unitholders other than Mach Capital and the Rollover Unitholders. Accordingly, the Board of Trustees unanimously (excluding the Non-Participating Trustees) recommends that the Unitholders vote for the Arrangement Resolution.
117. In forming its recommendation, the Board of Trustees considered a number of factors, including, without limitation, the recommendation of the Special Committee and the factors listed at pages 49 to 58 of the Circular (pages 62 to 71 of the PDF). The Board of Trustees based its recommendation upon the totality of the information presented to and considered by it in light of the knowledge of the members of the Board of Trustees of the business, financial condition and prospects of Cominar and after taking into account the advice of Cominar's financial and legal advisors and the advice and input of management of Cominar.
118. The following summary of the information and factors considered by the Special Committee and the Board of Trustees, as more fully described at pages 49 to 58 of the Circular (pages 62 to 71 of the PDF), is not intended to be exhaustive, but includes a summary of the material information and factors considered in approving the Arrangement. In view of the variety of factors and the amount of information considered in connection with the Arrangement, the Special Committee and the Board of Trustees did not find it practicable to, and did not, quantify or otherwise attempt to assign any relative weight to each of the specific factors considered in reaching its conclusions and recommendations. Individual

members of the Special Committee and the Board of Trustees may have assigned different weights to different factors:

- (a) **Culmination of an Extensive Strategic Review Process:** The Arrangement represents the culmination of an extensive and thorough Strategic Review Process publicly announced on September 15, 2020 and diligently pursued over a period of more than 13 months. The Strategic Review Process was initiated with the objective of identifying, reviewing and evaluating a broad set of Strategic Alternatives aimed at enhancing Unitholder value amid the REIT's operational and business outlook within its various asset classes and its important capital expenditure requirements, limited financial flexibility and important refinancing risk.
- (b) **Comprehensive Review of Strategic Alternatives:** As part of the Strategic Review Process, the Special Committee, with the assistance of its financial and legal advisors, identified, reviewed, evaluated and benchmarked a comprehensive set of Strategic Alternatives including:
 - i) Continuation of the status quo through the execution of the REIT's long-term business plan which was updated on a periodic basis throughout the process;
 - ii) Alternatives aimed at enhancing the status quo by enabling the REIT to deleverage, increasing financial flexibility and redeploying capital, namely by crystalizing the value of certain assets or portfolios;
 - iii) Alternatives more structural in nature that would meaningfully alter the business profile of the REIT with the objective of surfacing value from the REIT's major asset classes namely through large divestitures, joint ventures or spin-offs; and
 - iv) A potential *en bloc* sale of the REIT which was evaluated in parallel with the review and analysis of the above Strategic Alternatives as part of a dual-track process.

These Strategic Alternatives were reviewed, analysed, and benchmarked against each other based on the potential value they could generate for Unitholders, taking into consideration their associated benefits and risks as well as several variables which included, but were not limited to: (i) impact on net operating income (NOI) and adjusted funds from operations (AFFO); (ii) pro forma capital structure (leverage, liquidity and financial flexibility available to deploy capital required to maintain, reposition and further develop assets); (iii) impact on distributions and payout metrics; (iv) execution risks; (v) tax implications as provided by the REIT's tax advisors and management; (vi) other transaction leakage costs; (vii) pro forma market trading implications for RemainCo and NewCo in light of resulting

asset mix and, if applicable, the standalone viability of any new publicly-traded entity created as a result of a spin-off.

In addition, while the Special Committee reviewed a broad set of Strategic Alternatives, several key considerations surfaced related to the REIT important limitations which impacted the scope of potential alternatives that were available to the REIT. These considerations included, but were not limited to: (i) the REIT's high leverage which currently stands as one of the highest leverage levels among Canadian real estate investments trusts of similar size; (ii) limitations imposed by outstanding debt covenants; (iii) the REIT's significant upcoming debt maturities, and the associated important refinancing risks thereof, in part due to the limited availability of mortgageable assets under its current financial and covenant structure and the requirement to transition its bank facilities to a smaller secured facility; (iv) limited financial flexibility that could, together with the REIT's leverage level and upcoming debt maturities, lead to Unitholder dilution through potential equity issuance(s) to stabilize the REIT's financial position; and (v) the REIT's inherent "diversified" REIT status through its balanced exposure to three distinct asset classes, restraining the REIT's ability to effectively pursue a "pure-play" strategy focused on surfacing value within its individual asset classes. These considerations, together with the several previously mentioned variables, narrowed down the scope of potential Strategic Alternatives available to the REIT

- (c) **Robust Dual-Track Process:** In parallel with the review of Strategic Alternatives, the Financial Advisors conducted a comprehensive process, contacting 33 parties (25 potential financial investors and eight (8) potential strategic investors), interested in the whole or parts of the REIT. This process led to the signing of ten (10) confidentiality agreements (seven (7) with potential financial investors and three (3) with potential strategic investors), and enabled parties to conduct fulsome due diligence work on the REIT. While the REIT and its Financial Advisors held advanced discussions with a number of such interested parties in respect of potential transactions involving the REIT and certain of its assets, no offers were received that were as favourable to the REIT as the Arrangement and no other party demonstrated the interest and the financial capacity to acquire the entirety of the REIT's issued and outstanding Units in an *en bloc* transaction at the proposed Unit price. Moreover, the discussions and expressions of interests received from several parties on various assets or portfolios throughout this dual-track process helped further validate and refine the analysis and conclusions resulting from the review of Strategic Alternatives other than the *en bloc* sale.
- (d) **The Arrangement Represents the Most Favourable Outcome from the Strategic Review Process for the REIT and its Stakeholders:** Through the Strategic Review Process, it was concluded that the Arrangement is in the best interest of the REIT, its Unitholders and various stakeholders. The

value derived from the Arrangement is more favourable than what could have been realized through pursuing other alternatives reasonably available to the REIT, including a continuation of the status quo. The Special Committee concluded that the Arrangement represents the most favourable outcome from the Strategic Review Process by taking into consideration several variables which include, but are not limited to several factors described on pages 51 to 54 of the Circular (Exhibit P-1) (pages 64 to 67 of the PDF).

- (e) **Compelling Value to Unitholders:** The Consideration of \$11.75 in cash represents a premium of 16.3% to the REIT's 20-day volume-weighted average price per Unit on the TSX for the period ending on October 22, 2021, the last trading day prior to the announcement of the Arrangement, and a premium of 63.2% to the closing Unit price on September 15, 2020, the last trading day prior to the announcement of the Strategic Review Process. As previously mentioned, the Consideration was benchmarked against the value that could be derived from other Strategic Alternatives, including the status quo. Taking into account the associated risks and several other factors, the Special Committee concluded that the Consideration represented compelling value for Unitholders compared to other alternatives, including the status quo.
- (f) **Certainty of Value and Immediate Liquidity:** The Arrangement allows Unitholders to immediately realize an attractive price for their Units through an all-cash offer, thereby providing certainty of value and immediate liquidity. The Arrangement removes the risks associated with the REIT remaining a public entity in pursuit of its stand-alone plan or any of the other Strategic Alternatives that may be available to the REIT (including, without limiting the generality of the foregoing, the potentially adverse effect of the sale of assets namely on NOI and AFFO, tax consequences, the REIT's liquidity profile, structural changes resulting from the COVID-19 pandemic and the challenges of acquiring and/or repositioning key assets on an accretive basis in light of the REIT's limited financial flexibility and an increasingly competitive environment).
- (g) **Highest Actionable Proposal and Arm's-Length Negotiations:** As part of the publicly announced Strategic Review Process, potentially interested parties were made aware of the process, numerous potential financial and strategic purchasers were contacted directly, and the duration of the Strategic Review Process provided ample time for any interested party to appropriately assess the opportunity. The Arrangement Agreement is the result of extensive arm's-length negotiations between the REIT and the Purchaser with oversight and participation of the Special Committee and the REIT's external financial and legal advisors and represents the best and highest actionable proposal received as part of the Strategic Review Process.

- (h) **Fair Treatment of other Stakeholders:** The Special Committee and the Board of Trustees believe that the terms of the Arrangement Agreement treat the stakeholders of the REIT fairly. The Arrangement complies with the Debenture Indenture governing the issued and outstanding Unsecured Debentures issued by the REIT. The Debenture Indenture allows the holders of Unsecured Debentures to request the repurchase of their Unsecured Debentures in the event of a "Change of Control", subject to the Debt Transactions which the REIT may contractually undertake or agree upon with the holders of Unsecured Debentures. The Arrangement will provide significant benefits to key stakeholders, including tenants, by leveraging the resources of new ownership groups with deep Québec ties. Further, the portfolios of REIT Assets being sold under the Arrangement are being purchased by the Asset Purchasers who possess the required capabilities, as well as the necessary financial and other resources, to successfully manage such asset portfolios.
- (i) **Independent Valuation and Fairness Opinion:** Pursuant to its engagement by the Special Committee on April 27, 2021, Desjardins provided the Desjardins Independent Valuation and Fairness Opinion to the Special Committee and the Board of Trustees, which determined that, as at October 24, 2021, based upon and subject to the assumptions, limitations and qualifications contained therein, (i) the fair market value of the Units ranged from \$11.00 to \$12.50 per Unit; and (ii) the Consideration to be received by Unitholders under the Arrangement is fair, from a financial point of view, to such holders other than Mach Capital and the Rollover Unitholders. A copy of the Desjardins Independent Valuation and Fairness Opinion is attached to the Circular (Exhibit P-1) as Appendix F.
- (j) **Two Additional Fairness Opinions:** The Board of Trustees received from NBF and BMO, the financial advisors to the REIT, the NBF Fairness Opinion and the BMO Fairness Opinion, each to the effect that, as at October 24, 2021, the Consideration to be received by Unitholders under the Arrangement is fair, from a financial point of view, to such holders other than Mach Capital and the Rollover Unitholders, in each case subject to the respective limitations, qualifications, assumptions, and other matters to be set forth in such opinion. Copies of the NBF Fairness Opinion and the BMO Fairness Opinion are attached to the Circular (Exhibit P-1) as Appendices D and E, respectively.
- (k) **Terms of the Arrangement Agreement:** The terms of the Arrangement Agreement, including the fact that the Board of Trustees remains able to respond to Acquisition Proposals and enter into a Superior Proposal, and the Termination Fee payable in certain circumstances to the Purchaser in connection with a termination of the Arrangement Agreement, all in accordance with the terms and conditions of the Arrangement Agreement, are reasonable in the circumstances.

- (l) **Reasonable Likelihood of Completion:** Canderel and FrontFour, as well as their consortium partners, have demonstrated commitment, credit worthiness and a consistent track record of completing large-scale real estate investments which is indicative of the ability of Canderel and FrontFour and equity partners Artis, Sandpiper and KREI to complete the transactions contemplated by the Arrangement. The Asset Purchasers are credible and reputable and have equally demonstrated their successful execution of significant real estate transactions. In addition, the Arrangement is not subject to any due diligence condition or financing condition and the Special Committee and the Board of Trustees believe that there are limited closing conditions that are outside of the control of the REIT and, as such, there is a reasonable likelihood of completion. The obligations of the Purchaser and the Asset Purchasers to complete the Arrangement are subject to a limited number of customary conditions which the Special Committee and the Board of Trustees believe are reasonable in the circumstances.
- (m) **Reverse Termination Fee:** The Purchaser is obligated to pay to the REIT the Reverse Termination Fee of \$110 million (representing approximately 5% of the undiluted equity value of the REIT) in certain circumstances, including in connection with certain breaches of the Arrangement Agreement by the Purchaser or a failure to consummate the Arrangement if the relevant conditions are satisfied.
- (n) **Guarantee of the Reverse Termination Fee:** 8180580 Canada Inc. (an affiliate of Canderel), FrontFour, Iris Fund III L.P. (a fund managed by FrontFour), AX L.P. (an affiliate of Artis), the Sandpiper Partnerships and KREI have unconditionally and irrevocably guaranteed the Reverse Termination Fee in accordance with each such guarantor's respective proportion of the guarantee, up to an aggregate liability under the guarantee of \$110 million. The Reverse Termination Fee is further guaranteed in the circumstance where a Purchaser's default under the Arrangement Agreement is caused by an Asset Purchaser's default under its respective Asset Purchase Agreement with the Purchaser, as in such circumstance the applicable Asset Purchaser (or certain of its affiliates) must pay to the Purchaser a termination fee of \$110 million, which has been unconditionally and irrevocably guaranteed by related, creditworthy entities of the applicable Asset Purchaser.
- (o) **Unitholder Support:** Mach Capital, which holds approximately 5.2% of REIT's issued and outstanding Units, has entered into a customary voting and support agreement pursuant to which Mach Capital will vote the Units over which they own or exercise voting control in favour of the Arrangement, subject to certain exceptions. Members of the consortium hold or control an aggregate of approximately 10.2% of the issued and outstanding Units and will vote in favour of the Arrangement. In addition, all members of the Board of Trustees and Senior Management (as defined in the Circular (Exhibit P-

1)), which hold an aggregate of approximately 0.2% of the REIT's issued and outstanding Units, intend to vote their Units in favour of the Arrangement.

- (p) **Required Unitholder and Court Approvals:** The Arrangement will become effective only if it is approved by at least two-thirds of the votes cast by Unitholders at the Meeting and the Superior Court of Québec, after considering the procedural and substantive fairness of the Arrangement.
 - (q) **Exercise of Dissent Rights:** Registered Unitholders who oppose the Arrangement may, upon compliance with certain conditions, exercise Dissent Rights and receive the fair value of their Units.
119. In making their determinations and recommendations, the Special Committee and the Board of Trustees also considered a number of uncertainties, risks and other potentially negative factors concerning the Arrangement (which the Special Committee and the Board of Trustees concluded were outweighed by the potential benefits described above), which are described more fully at pages 57 to 58 of the Circular (Exhibit P-1) (pages 70 to 71 of the PDF).
120. In reaching their respective determinations, the Special Committee and the Board of Trustees also considered and evaluated, among other things:
- (a) current industry, economic and market conditions and trends, including the impact of the COVID-19 pandemic; and
 - (b) other stakeholders, including creditors, employees, tenants and the communities in which the REIT operates, and noted in this regard the longer-term perspective of the Purchaser and the Asset Purchasers whose financial and strategic resources are well-suited to the underlying nature of the REIT's business.
121. Since the public announcement of the Arrangement on October 24, 2021, neither Cominar nor the Financial Advisors have received any indication of interest of any person wishing to present a "Superior Proposal" (as defined in the Arrangement Agreement) or any other proposal that would constitute an "Acquisition Proposal" (as defined in the Arrangement Agreement).

C. FAIRNESS OPINIONS AND INDEPENDENT VALUATION

122. As mentioned above, in determining to approve the Arrangement and in making its recommendation to the Unitholders, the Board of Trustees considered a number of factors described above, including the fairness opinions delivered by NBF and BMO, i.e., the Financial Advisors (the "**Financial Advisors' Fairness Opinions**"), and the fairness opinion of Desjardins (the "**Independent Fairness Opinion**") and the independent valuation by Desjardins (the "**Independent Valuation**"), as described at pages 58 to 71 of the Circular (pages 71 to 84 of the PDF) (Exhibit P-1, *en liasse*).

123. The full text of the Financial Advisors' Fairness Opinions, which set forth, among other things, the credentials of the Financial Advisors, as applicable, the assumptions made, information reviewed and matters considered, and the limitations and qualifications on the review undertaken by the Financial Advisors in connection with their Fairness Opinion are attached to the Circular (Exhibit P-1) as Appendices D and E.
124. The full text of the Independent Fairness Opinion and the Independent Valuation, which set forth, among other things, the independence and credentials of Desjardins, the assumptions made, information reviewed and matters considered, and the limitations and qualifications on the review undertaken by Desjardins in connection with the Independent Fairness Opinion and the Independent Valuation are attached to the Circular (Exhibit P-1) as Appendix F.

VI. THE MEETING

125. Given the current COVID-19 pandemic, it is inadvisable, if not dangerous to the health and safety of the Unitholders, to hold the Meeting in person.
126. Accordingly, and in accordance with the authority of the Board of Trustees under the Contract of Trust, Cominar has engaged LUMI to provide a virtual-only format for the Meeting.
127. The virtual format will allow registered Unitholders and duly appointed proxyholders to participate and vote at the Meeting by going to a website (<https://web.lumiagm.com/473746837>) via live audio webcast.
128. Moreover, non-registered Unitholders may follow the procedures set out at pages 32 to 38 of the Circular (pages 45 to 51 of the PDF) (Exhibit P-1) to appoint themselves as proxyholders to participate, ask questions, and vote at the Meeting.
129. Non-registered Unitholders who fail to comply with the procedures outlined to attend the Meeting may nonetheless listen to the live audio webcast of the Meeting by going to the same URL as above, clicking on "I am a guest" and completing the online form.

VII. NOTICE TO THE DIRECTOR

130. In accordance with Subsection 192(5) of the CBCA, the Director has received notice of the present Application, including the exhibits and the sworn statement in support of it.

VIII. THE ORDERS SOUGHT

131. In accordance with Section 192 of the CBCA, a Judge of the Superior Court has jurisdiction to hear the Application for Interim Order on an *ex parte* basis and to dispense the Applicants of their obligation, if any, to notify any person other than the Director.

132. The Applicants therefore seek an Interim Order in the form set out below to address the calling, holding and conduct of the Meeting.
133. Cominar proposes to call, hold and conduct the Meeting on December 21, 2021 at 10:00 a.m. (Eastern Time) to consider and, if thought appropriate, to pass, with or without variation, the Arrangement Resolution.
134. The Applicants further request this Court to order that for the Arrangement to be effective, the Arrangement Resolution, with or without variation, must be approved by not less than two-thirds (2/3) of the votes cast by Unitholders virtually present or represented by proxy and entitled to vote at the Meeting.
135. Should the Arrangement Resolution be approved by the Unitholders at the Meeting in accordance with the terms of the Interim Order, the Applicants will apply to this Court for a Final Order sanctioning the Arrangement.
136. The Applicants further request this Court to provide that the Unitholders who validly exercise their Dissent Rights will be entitled to apply to this Court to fix a fair value for the Units in respect of which Dissent Rights have been duly exercised.
137. In order to print and mail the Notice Materials in time to meet the deadlines provided for in the Interim Order, the Applicants respectfully request that the Interim Order be issued and granted on November 19, 2021, which is the day of the hearing of the Application for an Interim Order.
138. Following the Meeting, the Applicants will accordingly, at the final stage, request that this Court issue a Final Order providing, *inter alia*:
 - (a) that the Arrangement be approved and sanctioned; and
 - (b) any other Order that this Court deems appropriate in the circumstances.
139. This Application is well founded in fact and in law.

WHEREFORE MAY IT PLEASE THIS COURT TO:

- [1] **GRANT** the Interim Order sought therein;
- [2] **DISPENSE** the Applicants of the obligation, if any, to notify any person other than the Director with respect to the Interim Order;
- [3] **ORDER** that all holders or beneficial owners of the units of Cominar (the “**Units**”), all holders or beneficial owners of the Options (the “**Option Holders**”), all holders or beneficial owners of the Performance Units (the “**PU Holders**”), the Restricted Units (the “**RU Holders**”) and the Deferred Units (the “**DU Holders**”), as respectively defined in the Circular (Exhibit P-1), be deemed parties, as Impleaded Parties, to the present proceedings and be bound by the terms of any Order rendered herein;

As to the Interim Order sought herein:

ii. The Meeting

- [4] **ORDER** that Cominar may convene, hold and conduct the Meeting on December 21, 2021, commencing at 10:00 a.m. (Eastern Time), in a virtual-only format conducted by live audio webcast, at which time the Unitholders will be asked, among other things, to consider and, if thought appropriate, to pass, with or without variation, the Arrangement Resolution substantially in the form set forth in Appendix B of the Circular to, among other things, authorize, approve and adopt the Arrangement, to amend the Contract of Trust, and to transact such other business as may properly come before the Meeting, or any postponement or adjournment thereof, the whole in accordance with the notice of the Meeting, terms, restrictions and conditions of the Contract of Trust, the Trustees' regulations, this Interim Order, and the rulings and directions of the chair of the Meeting, provided that to the extent there is any inconsistency between this Interim Order and the terms, restrictions and conditions of the Contract of Trust, the Trustees' regulations or the CBCA, this Interim Order shall prevail;
- [5] **ORDER** that in respect of the vote on the Arrangement Resolution or any matter determined by the Chair of the Meeting to be related to the Arrangement, each registered holder of Units shall be entitled to cast one vote in respect of each such Unit held;
- [6] **ORDER** that, on the basis that each registered holder of Units be entitled to cast one vote in respect of each such Unit for the purpose of the vote on the Arrangement Resolution, the quorum for the Meeting is fixed at two (2) persons present virtually and who are entitled to vote at such meeting, or a proxyholder for an absent Unitholders entitled to vote at such meeting, and representing personally or by proxy, in aggregate, twenty-five (25%) of the total number of issued Units of Cominar;
- [7] **ORDER** that the only persons entitled to attend, be heard or vote at the Meeting (as it may be adjourned or postponed) shall be the registered Unitholders as at 5:00 p.m. (Eastern Time) on November 10, 2021 (the "**Record Date**"), their proxyholders, and the directors, trustees and advisors of the Applicants, the Purchaser, Asset Purchaser A and Asset Purchaser B, provided however that such other persons having the permission of the Chair of the Meeting shall also be entitled to attend and be heard at the Meeting;
- [8] **TAKE ACT** that Cominar has published notice of the Record Date on November 3, 2021, as appears from the notice of the meeting and record date (**Exhibit P-30**);

- [9] **ORDER** that for the purpose of the vote on the Arrangement Resolution or any other vote taken by ballot at the Meeting, any spoiled ballots, illegible ballots and defective ballots shall be deemed not to be votes cast by Unitholders and further **ORDER** that proxies that are properly signed and dated but which do not contain voting instructions shall be voted in favour of the Arrangement Resolution;
- [10] **ORDER** that Cominar, if it deems it advisable, in accordance with the Arrangement Agreement (**Exhibit P-2**), be authorized to adjourn or postpone the Meeting on one or more occasions (whether or not a quorum is present), without the necessity of first convening the Meeting or first obtaining any vote of Unitholders respecting the adjournment or postponement; further **ORDER** that notice of any such adjournment or postponement shall be given on Cominar's website (www.cominar.com), by press release, newspaper advertisement or by mail, as determined to be the most appropriate method of communication by the Board of Trustees; further **ORDER** that any adjournment or postponement of the Meeting will not change the Record Date for Unitholders entitled to notice of, and to vote at, the Meeting, unless required by applicable securities laws; and further **ORDER** that any subsequent reconvening of the Meeting, all proxies will be voted in the same manner as the proxies would have been voted at the original convening of the Meeting, except for any proxies that have been effectively revoked or withdrawn prior to the subsequent reconvening of the Meeting;
- [11] **ORDER** that the Applicants and the Purchaser (collectively, the "**Parties**") may amend, modify and/or supplement the Plan of Arrangement at any time and from time to time prior to the Effective Time, provided that each such amendment, modification and/or supplement must be (i) set out in writing, (ii) approved by the Parties, each acting reasonably, (iii) filed with the Court and, if made following the Meeting, approved by the Court, and (iv) communicated to the Unitholders, the Option Holders, PU Holders, the RU Holders and the DU Holders (collectively the "**Affected Securityholders**") if and as required by the Court;
- [12] **ORDER** that notwithstanding paragraph [11] of the Order sought, any amendment, modification or supplement to this Plan of Arrangement may, subject to the terms and conditions of the Arrangement Agreement, be proposed by any of the Parties at any time prior to the Meeting (provided that the other Parties shall, subject to the terms and conditions of the Arrangement Agreement, have consented thereto) with or without any other prior notice or communication, and if so proposed and accepted by the Persons voting at the Meeting (other than as may be required under the Interim Order), shall become part of this Plan of Arrangement for all purposes;

- [13] **ORDER** that notwithstanding paragraph [11] of the Order sought, any amendment, modification or supplement to this Plan of Arrangement that is approved or directed by the Court following the Meeting shall be effective only if (i) it is consented to in writing by each of the Parties (in each case, acting reasonably), and (ii) if required by the Court, it is consented to by some or all of the Unitholders voting in the manner directed by the Court. Any amendment, modification or supplement to this Plan of Arrangement may be made following the granting of the Final Order without filing such amendment, modification or supplement with the Court or seeking Court approval, provided that (i) it concerns a matter which, in the reasonable opinion of the Parties, is of an administrative nature required to better give effect to the implementation of this Plan of Arrangement and is not adverse to the interest of any Unitholders or (ii) is an amendment contemplated in paragraph [14] of the Order sought;
- [14] **ORDER** that notwithstanding paragraph [11] of the Order sought, any amendment, modification or supplement to this Plan of Arrangement may be made following the Effective Date unilaterally by the Purchaser, without communication to former Affected Securityholders, provided that it concerns a matter which, in the reasonable opinion of the Purchaser, is of an administrative nature required to better give effect to the implementation of this Plan of Arrangement and is not adverse to the economic interest of any former Affected Securityholders, Asset Purchaser A or Asset Purchaser B;
- [15] **ORDER** that, notwithstanding anything to the contrary herein or in the Arrangement Agreement, Section 3.1(d) and Section 6.1(e) of the Plan of Arrangement may not be amended, modified or waived in a manner that is adverse in any respect to Asset Purchaser A or Asset Purchaser B without the prior written consent of Asset Purchaser A or Asset Purchaser B, as applicable, such consent not to be unreasonably withheld, conditioned or delayed, it being understood and agreed that any modification(s) to this Plan of Arrangement with respect to the completion of the transactions contemplated by the Asset Purchaser A Agreement or Asset Purchaser B Agreement (each as defined in the Arrangement Agreement) pursuant to Section 3.1(d) shall be deemed to be adverse to Asset Purchaser A or Asset Purchaser B, as applicable;
- [16] **ORDER** that Cominar is authorized to use proxies at the Meeting; that Cominar is authorized, at its expense, to solicit proxies on behalf of its management, directly or through its officers, trustees and employees, and through such agents or representatives as it may retain for that purpose, and by mail or such other forms of personal or electronic communication as it may determine; and that Cominar may waive, in its discretion, the time limits for the deposit of proxies by the Unitholders if it considers it advisable to do so;

[17] **ORDER** that, to be effective, the Arrangement Resolution, with or without variation, must be approved by the affirmative vote of not less than two-thirds of the votes cast at the Meeting by Unitholders virtually present or represented by proxy and entitled to vote at the Meeting and further **ORDER** that such vote shall be sufficient to authorize and direct Cominar to do all such acts and things as may be necessary or desirable to give effect to the Arrangement and the Plan of Arrangement on a basis consistent with what has been disclosed to the Unitholders in the Notice Materials (as defined below);

iii. **The Notice Materials**

[18] **ORDER** that Cominar shall give notice of the Meeting, and that service of the Application for a Final Order shall be made by mailing or delivering, in the manner hereinafter described and to the persons hereinafter specified, a copy of this Interim Order, together with the following documents, with such non-material amendments thereto as Cominar may deem to be necessary or desirable, provided that such amendments are not inconsistent with the terms of this Interim Order (collectively, the “**Notice Materials**”):

- (a) the Notice of Meeting substantially in the same form as contained in Exhibit P-1;
- (b) the Circular substantially in the same form as contained in Exhibit P-1;
- (c) for registered Unitholders only, a Form of Proxy substantially in the same form as contained in the draft attached as **Exhibit P-31**;
- (d) for non-registered Unitholders only, a Voting Instruction Form substantially in the same form as contained in the draft attached as **Exhibit P-32**;
- (e) for the registered Unitholders only, a Letter of Transmittal substantially in the same form as contained in the draft attached as **Exhibit P-33**;
- (f) a notice substantially in the form of the draft filed as **Exhibit P-34** providing, among other things, the date and time for the hearing of the Application for a Final Order, and that a copy of the Application can be found on Cominar’s website (www.cominar.com) (the “**Notice of Presentation of Application for Final Order**”);

[19] **ORDER** that the Notice Materials shall be distributed:

- (a) to the registered Unitholders, by mailing the same to such persons in accordance with the Contract of Trust at least twenty-one (21) days prior to the date of the Meeting;
 - (b) to the non-registered Unitholders, in compliance with National Instrument 54-101 – *Communication with Beneficial Owners of Securities of a Reporting Issuer* (in Québec, *Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer*);
 - (c) to the holders of the Options, Deferred Units, Restricted Units and Performance Units, by delivering same at least twenty-one (21) days prior to the date of the Meeting in person, by e-mail or by recognized courier services, provided, however, that if such a holder is also a Unitholders, the distribution of the materials in accordance with paragraphs (a) and (b) above will comply with the notice requirement;
 - (d) to Cominar's trustees and auditors, by delivering same at least twenty-one (21) days prior to the date of the Meeting by e-mail or by recognized courier service; and
 - (e) to the Director, by delivering same at least twenty-one (21) days prior to the date of the Meeting by e-mail or by recognized courier service;
- [20] **ORDER** that a copy of the Application be posted on Cominar's website (www.cominar.com) contemporaneously with the distribution of the Notice Materials;
- [21] **ORDER** that the Record Date for the determination of the Unitholders entitled to receive the Notice Materials and to attend and be heard at the Meeting and vote on the Arrangement Resolution shall be 5:00 p.m. (Eastern Time) on November 10, 2021;
- [22] **ORDER** that Cominar, subject to compliance with the terms of the Arrangement Agreement, may make, in accordance with the Interim Order, such additions, amendments or revision to the Notice Materials as it determines to be appropriate (the "**Additional Materials**"), which shall be distributed to the persons entitled to receive the Notice Materials pursuant to this Interim Order by the method and in the time determined by Cominar to be most practicable in the circumstances;
- [23] **DECLARE** that the mailing or delivery of the Notice Materials and any Additional Materials in accordance with this Interim Order as set out above constitutes good and sufficient notice of the Meeting upon all persons, and that no other form of service of the Notice Materials and any Additional Materials or any portion thereof, or of the Application need be made, or notice given or other material served in respect of the Meeting to any persons;

- [24] **ORDER** that that the Notice Materials and any Additional Materials shall be deemed, for the purposes of the present proceedings, to have been received and served upon:
- (a) in the case of distribution by mail, three (3) business days after delivery thereof to the post office;
 - (b) in the case of delivery in person or by courier, upon receipt thereof at the intended recipient's address; and
 - (c) in the case of delivery by facsimile transmission or by e-mail, on the day of transmission;
- [25] **DECLARE** that the accidental failure or omission to give notice of the Meeting to, or the non-receipt of such notice by, one or more of the persons specified in the Interim Order shall not invalidate any resolution passed at the Meeting or the proceedings herein, and shall not constitute a breach of the Interim Order or defect in the calling of the Meeting, provided that if any such failure or omission is brought to the attention of Cominar, it shall use reasonable efforts to rectify such failure or omission by the method and in the time it determines to be most reasonably practicable in the circumstances;

iv. **Dissent Rights**

- [26] **ORDER** that the registered Unitholders shall be entitled to exercise the dissent rights to be paid the fair value of their Unitholders (the "**Dissent Rights**") in accordance with the "Dissent Rights" mechanism set forth in Section 190 of the CBCA as modified by the proposed Plan of Arrangement;
- [27] **ORDER** that, in the event that a registered Unitholder validly exercises a Dissent Right, the fair value to be paid shall be offered and, when due, paid by Cominar;
- [28] **TAKE ACT** that the Units in respect of which Dissent Rights have been validly exercised shall be deemed to have been transferred without any further act or formality to Cominar in consideration for a debt claim for the amount determined under Article 4 of the Plan of Arrangement;
- [29] **ORDER** that in accordance with the provisions relating to the Dissent Rights set forth in the Plan of Arrangement, notwithstanding Section 10.1 of the Contract of Trust, any registered Unitholder who wishes to exercise a Dissent Right must provide a Dissent Notice so that it is received by Cominar (Attention: Brigitte Dufour) by e-mail (brigitte.dufour@cominar.com) by no later than 5:00 p.m. (Eastern Time) on the second Business Day preceding the Meeting (as it may be adjourned or postponed from time to time);

- [30] **ORDER** that any registered Unitholder wishing to exercise its Dissent Rights must exercise all of its voting rights in the Units against the adoption and approval of the Arrangement Resolution, failing which any Dissent Notice shall be null and void;
- [31] **DECLARE** that a registered Unitholder who has submitted a Dissent Notice and who votes in favour of the Arrangement Resolution shall no longer be considered as having exercised its Dissent Rights with respect to all of the Units held by such Unitholder, and that a vote against the Arrangement Resolution, or an abstention, shall not constitute a Dissent Notice;
- [32] **ORDER** that any registered Unitholder wishing to apply to a Court to fix a fair value for Units in respect of which Dissent Rights have been duly exercised must apply to the Superior Court of Québec (district of Montréal) and further **ORDER** that the Dissent Rights shall be governed by Section 190 of the CBCA, as modified by the Plan of Arrangement and the Interim Order;

v. **The Final Order Hearing**

- [33] **ORDER** that, subject to the approval by the Unitholders of the Arrangement Resolution in the manner set forth in this Interim Order, the Applicants may apply for this Court to sanction the Arrangement by way of a final judgment (the “**Application for a Final Order**”);
- [34] **ORDER** that the Application for a Final Order be presented on December 23, 2021 before the Superior Court of Québec, sitting in the Commercial Division in and for the district of Montréal at the Montréal Courthouse, by Microsoft Teams at 9:00 a.m. (Eastern Time), or so soon thereafter as counsel may be heard, in virtual room 16.04 (coordinates available at <https://coursuperieureduquebec.ca/en/roles-de-la-cour/audiences-virtuelles>), or by telephone conference at the following number +1-581-319-2194 or (833)-450-1741, conference number 516 211 860#, or by videoconference system at teams@teams.justice.gouv.qc.ca, VTC conference number 1149478699, or in any other virtual room or at any other date this Court may see fit;
- [35] **ORDER** that to the extent that a hearing in person of the Application for a Final Order is possible, Cominar shall provide notice thereof on its website (www.cominar.com), including the date, time, location and room number, at least one (1) day prior to such hearing;
- [36] **ORDER** that the mailing or delivery of the Notice Materials constitutes good and sufficient service of the Application and good and sufficient notice of presentation of the Application for a Final Order to all persons, whether those persons reside within Québec or in another jurisdiction;

[37] **ORDER** that the only persons entitled to appear and be heard at the hearing of the Application for a Final Order shall be the Applicants, the Purchaser, the Asset Purchasers and any person that:

- (a) by service upon counsel to the Applicants, Davies Ward Phillips & Vineberg LLP (Attention Mtre Louis-Martin O'Neill), either by fax (514-841-6499) or e-mail (lmoneill@dwpv.com), with a copy to the Purchaser by service upon counsel thereof, Stikeman Elliott LLP (Attention Mtre Stéphanie Lapierre), either by fax (514-397-3222) or e-mail (slapierre@stikeman.com), serves a notice of appearance in the form required by the rules of the Court, and any additional affidavits or other materials on which a party intends to rely in connection with any submissions at such hearing, as soon as reasonably practicable, and, in any event, no later than 4:30 p.m. (Eastern Time) at least five (5) Business Days immediately preceding the date of the Meeting (as it may be adjourned or postponed from time to time); and
- (b) if such appearance is with a view to contesting the Application for a Final Order, serves on counsel for the Applicants (at the above e-mail address or facsimile number), with copy to counsel for the Purchaser (at the above e-mail address or facsimile number), no later than 4:30 p.m. (Eastern Time) at least five (5) Business Days immediately preceding the date of the Meeting (as it may be adjourned or postponed from time to time), a written contestation supported as to the facts alleged by affidavit(s), and exhibit(s), if any;

[38] **ALLOW** the Applicants and the Purchaser to file any further evidence they deem appropriate, by way of supplementary affidavits or otherwise, in connection with the Application for a Final Order;

vi. **Miscellaneous**

[39] **DECLARE** that the Applicants shall be entitled to seek leave to vary this Interim Order upon such terms and such notice as this Court deems just;

[40] **REQUEST** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada, the Federal Court of Canada and any judicial, regulatory or administrative of body of any other nation or state, to assist the Applicants and their agents in carrying the terms of the Interim Order;

[41] **ORDER** provisional execution of this Interim Order notwithstanding any appeal therefrom and without the necessity of furnishing any security;

[42] **DECLARE** that this Court shall remain seized of this matter to resolve any difficulty which may arise in relation to, or in connection with the Interim Order sought;

[43] **RENDER** any other Order that this Court deems appropriate in the circumstances;

THE WHOLE without costs, save and except in case of contestation, in which case with costs against any contesting party;

vii. **As to the Final Order sought herein**

[44] **GRANT** the Final Order sought herein;

[45] **DECLARE** that service of the Application has been made in accordance with the Interim Order, is valid and sufficient, and amounts to valid service of same;

[46] **DECLARE** that the Arrangement has been duly adopted in accordance with the Interim Order and that the Contract of Trust has been amended in accordance with its terms;

[47] **DECLARE** that the Arrangement conforms with the requirements of the CBCA, has a valid business purpose, resolves in a fair and balanced way the objections of those whose legal rights are being arranged, and is fair and reasonable;

[48] **DECLARE** that the terms and conditions of the Arrangement are procedurally and substantively fair and reasonable to the Unitholders and to the Applicants;

[49] **DECLARE** that the Arrangement is hereby approved and ratified and **ORDER** that the Arrangement, as it may be amended in accordance with the Interim Order, shall take effect in accordance with the terms of the Plan of Arrangement at the Effective Time, as defined therein;

[50] **ORDER** provisional execution of the Final Order sought notwithstanding any appeal therefrom and without the necessity of furnishing any security;

[51] **REQUEST** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada, the Federal Court of Canada and any judicial, regulatory or administrative of body of any other nation or state, to assist the Applicants and their agents in carrying the terms of the Final Order;

[52] **DECLARE** that this Court shall remain seized of this matter to resolve any difficulty which may arise in relation to, or in connection with the implementation of the Arrangement;

[53] **RENDER** any other Order that this Court deems appropriate in the circumstances;

THE WHOLE without costs, save and except in case of contestation, in which case with costs against any contesting party.

Montréal, November 17, 2021

Davies Ward Phillips & Vineberg LLP

DAVIES WARD PHILLIPS & VINEBERG LLP
Counsel for the Applicants Cominar Real Estate
Investment Trust, 13217396 Canada Inc., 152523
Canada Inc. and 6412432 Canada Inc.

Mt#: 3783585

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-

SUPERIOR COURT
(Commercial Division)

**IN THE MATTER OF A PROPOSED
ARRANGEMENT CONCERNING
COMINAR REAL ESTATE INVESTMENT
TRUST ET AL. PURSUANT TO SECTION
192 OF THE CANADA BUSINESS
CORPORATIONS ACT, RSC 1985, c C-44
(the “CBCA”):**

**COMINAR REAL ESTATE INVESTMENT
TRUST et al.**

Applicants

-and-

IRIS ACQUISITION II LP et al.

Impleaded Parties

-and-

**THE DIRECTOR APPOINTED PURSUANT
TO THE CBCA**

Impleaded Party

SWORN STATEMENT OF ANTOINE TRONQUOY

I, the undersigned, having a place of business at 3400 De Maisonneuve Boulevard West, Suite 1600, in the City of Montréal, Province of Québec, H3Z 3B8, having solemnly affirmed to tell the truth, do hereby depose and say:

1. I am Chief Financial Officer of the Applicant Cominar Real Estate Investment Trust;
2. I have reviewed the present *Application for Interim and Final Orders in Connection with Proposed Arrangement* dated November 17, 2021;
3. All of the facts alleged in the Application are true.

AND I HAVE SIGNED:

Antoine Tronquoy

Antoine Tronquoy

SOLEMNLY AFFIRMED BEFORE ME,
in Montréal, Québec this 17th day of
November, 2021 by Antoine Tronquoy,
whose oath was taken in the City of
Montréal, Québec and received in
Montréal, Québec, the whole by
technological means and in accordance
with the memorandum of the Québec
Ministry of Justice dated March 20, 2020

Anna

Commissioner for Oaths for Québec
and for outside of Québec



CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Commercial Division)

No.: 500-11-

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TRUST et al.**

Applicants

-and-

IRIS ACQUISITION II LP et al.

Impleaded Parties

-and-

**THE DIRECTOR APPOINTED
PURSUANT TO THE CBCA**

Impleaded Party

**NOTICE OF PRESENTATION OF
AN APPLICATION FOR AN INTERIM ORDER
Application before a Judge
(Virtual Hearing)**

TO : Mtre Stéphanie Lapierre
Stikeman Elliott LLP
1155 Boulevard René-Lévesque
West, Suite 4100
Montréal QC H3B 3V2
slapierre@stikeman.com

Lawyers for the Impleaded Party, Iris
Acquisition II LP

Mtre Geneviève Gobeil
Mtre Riu Xiu Li
Corporations Canada
355 Laurier Avenue West, Jean
Edmonds Tower South, 9th Floor
Ottawa, ON K1A 0C8
genevieve.gobeil@ised-isde.gc.ca
ruixiu.li@canada.ca
Lawyers for the Impleaded Party, the
Director appointed pursuant to CBCA

AND TO: Mtre Hugo Babos-Marchand
Mtre Paul Blanchard
MCarthy Tétrault LLP
1000 De La Gauchetière Street West
Montréal, QC H3B 0A2
hbmarchand@mccarthy.ca
pblanchard@mccarthy.ca

Mtre Alfred Buggé
630 Saint Paul West Street, Suite
600, Montréal, QC H3C 1L9
abugge@groupemach.com

Lawyer for the Impleaded Party,
Groupe Mach Acquisition Inc.

Lawyers for the Impleaded Party, BP
Cognac Canada Owner Limited
Partnership

1. PRESENTATION OF THE PROCEEDING

TAKE NOTE that the *Application for Interim and Final Orders* of the Applicants with respect to the Interim Order sought therein, will be presented before the Honourable Louis-Joseph Gouin, Judge of the Superior Court of Québec, District of Montréal, sitting in commercial division, in a courtroom of the Montréal Courthouse during a virtual hearing in **Room 16.04** on **November 19, 2021** at **11:00 a.m.**, or as soon as counsel may be heard.

2. HOW TO JOIN THE VIRTUAL HEARING

The contact information to join the hearing is as follows:

- a) **Using Teams:** click on the link available on the site <http://www.tribunaux.qc.ca>

You must then enter your name and click “Join Now”. To facilitate the process and the identification of participants, we ask that you enter your name in the following manner:

Attorneys: Me **[Name Surname (name of party represented)]**

Trustees: **[Name Surname]** (trustee)

Superintendent: **[Name Surname]** (superintendent)

Parties not represented by an attorney: **[Name Surname (Specify: plaintiff, defendant, applicant, respondent, creditor, opposing party, other)]**

Persons attending a public hearing may simply indicate “public”.

- b) **By telephone:**

Canada, Québec (Charges will apply): +1 581-319-2194

Canada (Toll free): (833) 450-1741

Conference ID: 516 211 860#

c) **By videoconference:** teams@teams.justice.gouv.qc.ca

VTC Conference ID: 1149478699

d) **In person:** if and only if you do not have access to one of the above-mentioned technological means. You may then go to Room 16.04 of the Montréal Courthouse, located at: 1 Notre-Dame Street. East, Montréal, Québec.

3. FAILURE TO PARTICIPATE IN THE VIRTUAL HEARING

TAKE NOTE that if you wish to contest the proceeding, you must inform in writing the party that initiated the proceeding at the contact information indicated in this notice of presentation at least 48 hours before the date of presentation of the proceeding and participate in the virtual calling of the roll. Otherwise, a judgement may be rendered against you during the presentation of the proceeding, without further notice or delay.

4. OBLIGATIONS

4.1 Duty of cooperation

TAKE NOTE that you are duty-bound to co-operate and, in particular, to keep one another informed at all times of the facts and particulars conducive to a fair debate and to make sure that relevant evidence is preserved (*Code of Civil Procedure*, art. 20).

4.2 Dispute prevention and resolution processes

TAKE NOTE that before referring your dispute to the Court, you must consider private dispute prevention and resolution processes, which consist of negotiation between the parties as well as mediation and arbitration, in which the parties call on a third person to assist them (*Code of Civil Procedure*, art. 2).

PLEASE GOVERN YOURSELF ACCORDINGLY.

Montréal, November 17, 2021

Davies Ward Phillips & Vineberg LLP

DAVIES WARD PHILLIPS & VINEBERG LLP

Counsel for the Applicants: Cominar Real Estate Investment Trust, 13217396 Canada Inc., 152523 Canada Inc. and 6412432 Canada Inc.

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-

SUPERIOR COURT
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**COMINAR REAL ESTATE INVESTMENT
TRUST, et al.**

Applicants

-and-

IRIS ACQUISITION II LP et al.

Impleaded Parties

-and-

**THE DIRECTOR APPOINTED PURSUANT
TO THE CBCA**

Impleaded Party

**LIST OF EXHIBITS OF
COMINAR REAL ESTATE INVESTMENT TRUST ET AL.
APPLICATION FOR INTERIM AND FINAL ORDERS IN CONNECTION WITH
A PROPOSED ARRANGEMENT
(Section 192 of the CBCA)**

EXHIBIT	DESCRIPTION
Exhibit P-1	<i>A draft Notice of Special Meeting of Unitholders of Cominar and Management Information Circular and attachments thereto, en liasse:</i> <ul style="list-style-type: none">(a) the Notice of the Special Meeting of Unitholders of Cominar;(b) the Circular, including the following appendices thereto:<ul style="list-style-type: none">i) Appendix A - Glossaryii) Appendix B - Arrangement Resolution

	<ul style="list-style-type: none"> iii) Appendix C - Plan of Arrangement iv) Appendix D - NBF Fairness Opinion v) Appendix E - BMO Fairness Opinion vi) Appendix F Desjardins Independent Valuation and Fairness Opinion vii) Appendix G - Interim Order viii) Appendix H - Notice of Presentation of Application for Final Order ix) Appendix I - Section 190 of the CBCA
Exhibit P-2	Arrangement agreement dated October 24, 2021 entered into between Cominar, ArrangementCo and the Purchaser, together with (Schedules A to E), <i>en liasse</i>
Exhibit P-3	Contract of Trust made as of March 31, 1998, as amended and restated as of May 8, 1998, May 13, 2003, May 11, 2004, May 15, 2007, May 14, 2008, May 18, 2010, May 16, 2012, May 16, 2018 and May 13, 2020
Exhibit P-4	Plan of Arrangement concerning Yellow Pages Income Fund
Exhibit P-5	Copy of Interim Order dated March 24, 2010 concerning the arrangement of Yellow Pages Income Fund
Exhibit P-6	Press release dated October 1, 2010 announcing the granting of the final order concerning the arrangement of Yellow Pages Income Fund
Exhibit P-7	Plan of Arrangement concerning Supremex Income Fund
Exhibit P-8	Copy of Interim Order dated March 24, 2010 concerning the arrangement of Supremex Income Fund
Exhibit P-9	Press release dated May 10, 2010 announcing the granting of the final order concerning the arrangement of Supremex Income Fund
Exhibit P-10	Plan of Arrangement concerning Premium Brands Income Fund
Exhibit P-11	Copy of Interim Order dated June 11, 2009 concerning the arrangement of Premium Brands Income Fund
Exhibit P-12	Press release dated July 22, 2009 announcing the completion of the arrangement concerning Premium Brands Income Fund

Exhibit P-13	Plan of Arrangement concerning Canadian Real Estate Investment Trust
Exhibit P-14	Copy of Interim Order dated March 9, 2018 concerning the arrangement of Canadian Real Estate Investment Fund
Exhibit P-15	Reasons for Final Order dated April 28, 2018 concerning the arrangement of Canadian Real Estate Investment Fund
Exhibit P-16	Plan of Arrangement concerning Primaris Retail Real Estate Investment Trust
Exhibit P-17	Copy of Interim Order dated February 19, 2013 concerning the arrangement of Primaris Retail Real Estate Investment Trust
Exhibit P-18	Press release dated April 4, 2013 announcing the completion of the arrangement concerning Primaris Retail Real Estate Investment Trust
Exhibit P-19	Plan of Arrangement concerning Pure Industrial Real Estate Trust
Exhibit P-20	Copy of Interim Order dated February 13, 2018 concerning the arrangement of Pure Industrial Real Estate Trust
Exhibit P-21	Press release dated May 24, 2018 announcing the completion of the arrangement concerning Pure Industrial Real Estate Trust
Exhibit P-22	Plan of Arrangement concerning Northview Apartment Real Estate Investment Trust
Exhibit P-23	Copy of Interim Order dated April 23, 2020 concerning the arrangement of Northview Apartment Real Estate Investment Trust
Exhibit P-24	Press release dated May 29, 2020 announcing the granting of the final order concerning the arrangement of Northview Apartment Real Estate Investment Trust
Exhibit P-25	Cominar's interim consolidated financial statements for the quarter ended September 30, 2021
Exhibit P-26	Cominar's annual consolidated financial statements for the year ended December 31, 2020
Exhibit P-27	Financial statement for 152523 Canada Inc. and the properties at Galerie de Shawinigan and Plaza de la Mauricie for which it owns the legal title

Exhibit P-28	Financial statement for 6412432 Canada Inc. and the property at 400 Cooper Street, Ottawa for which it owns the legal title
Exhibit P-29	Financial statement for 13217396 Canada Inc.
Exhibit P-30	Notice of Meeting and Record Date dated November 3, 2021
Exhibit P-31	Draft Form of Proxy for registered Unitholders only
Exhibit P-32	Draft Voting Instruction Form for non-registered Unitholders only
Exhibit P-33	Draft Letter of Transmittal for registered Unitholders only
Exhibit P-34	Draft Notice of Presentation of the Application for Final Order

Montréal, November 17, 2021

Davies Ward Phillips & Vineberg LLP

DAVIES WARD PHILLIPS & VINEBERG LLP
Counsel for the Applicants: Cominar Real Estate Income Trust, 13217396 Canada Inc., 152523 Canada Inc. and 6412432 Canada Inc

No. 500-11-

S U P E R I O R C O U R T

(Commercial Division)

District of Montreal

**IN THE MATTER OF A PROPOSED
ARRANGEMENT CONCERNING COMINAR REAL
ESTATE INVESTMENT TRUST ET AL.
PURSUANT TO SECTION 192 OF THE CANADA
BUSINESS CORPORATIONS ACT, RSC 1985, c
C-44 (the "CBCA"):**

**COMINAR REAL ESTATE INVESTMENT TRUST
et als.**

Applicants

-AND-

IRIS ACQUISITION II LP et als

Impleaded Parties

**APPLICATION FOR INTERIM AND FINAL ORDERS IN
CONNECTION WITH A PROPOSED ARRANGEMENT,
SWORN STATEMENT OF ANTOINE TRONQUOY,
NOTICE OF PRESENTATION AND LIST OF EXHIBITS
(Sections 192 and 248 of the CBCA)**

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