



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF THE *SECURITIES ACT*
R.S.O. 1990, C. S.5, AS AMENDED**

- AND -

**IN THE MATTER OF SKYLINE APARTMENT REAL ESTATE
INVESTMENT TRUST, SKYLINE INCORPORATED AND
SKYLINE ASSET MANAGEMENT INC.**

**SETTLEMENT AGREEMENT BETWEEN STAFF AND SKYLINE APARTMENT
REAL ESTATE INVESTMENT TRUST, SKYLINE INCORPORATED
AND SKYLINE ASSET MANAGEMENT INC.**

PART I – INTRODUCTION

1. The Ontario Securities Commission (the “**Commission**”) will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. s.5, as amended (the “**Act**”), it is in the public interest for the Commission to make certain orders in respect of the Skyline Apartment Real Estate Investment Trust, Skyline Incorporated and Skyline Asset Management Inc. (the “**Respondents**”).

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission (“**Staff**”) agree to recommend settlement of the proceeding commenced by the Notice of Hearing dated March 16, 2011 (the “**Proceeding**”) against the Respondents according to the terms and conditions set out in Part VI of this Settlement Agreement. The Respondents agree to the making of an order in the form attached as Schedule “A”, based on the facts set out below.

PART III – AGREED FACTS

3. For this proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, the Respondents agree with the facts as set out in Part III of this Settlement Agreement.

Background

4. The Skyline Apartment Real Estate Investment Trust (“**Skyline Apartment REIT**”) is a limited purpose unincorporated open-end investment trust created by declaration of trust made as of June 1, 2006 (the “**Declaration of Trust**”). On October 17, 2006, the name was changed from the Skyline Real Estate Investment Trust to the Skyline Apartment Real Estate Investment Trust. The Skyline Apartment REIT is governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein. The Skyline Apartment REIT’s principal office is located in Guelph, Ontario.
5. The Skyline Apartment REIT's activities are primarily focussed on the acquisition, financing, holding, maintaining, improving, leasing and managing of multi-unit residential revenue producing properties.
6. The audited combined financial statements of the Skyline Apartment REIT and related entities for the year ended December 31, 2009 (the “**Financial Statements**”) indicate that, at that time, the Skyline Apartment REIT indirectly owned 58 revenue producing multi-residential real properties and 10 revenue producing commercial real properties and that the net book value of these income producing properties was approximately \$453 million.
7. The Declaration of Trust creating the Skyline Apartment REIT indicates that control and authority over the assets and affairs of the Skyline Apartment REIT resides with a Board of Trustees. There are currently eight Trustees.
8. The Skyline Apartment REIT has never been registered in accordance with Ontario securities law.
9. The Skyline Apartment REIT has never been a reporting issuer in Ontario.
10. The Skyline Apartment REIT has never filed a preliminary or final prospectus with the Commission and receipts have not been issued for them by the Director.
11. Skyline Incorporated (“**SI**”) is an Ontario corporation which was incorporated on January 27, 1999 as Skyline Inc. The name was changed to Skyline Incorporated on July 5, 2005. SI was the asset manager for the Skyline Apartment REIT from June 1, 2006 - January 16, 2008.
12. SI has never been registered in accordance with Ontario securities law.
13. Skyline Asset Management Inc. (“**SAMI**”) is an Ontario corporation which was incorporated on March 6, 2006 as 2095931 Ontario Inc. The name was changed to Skyline Asset Management Inc. on January 16, 2008. SAMI has been the asset manager of the Skyline Apartment REIT since January 16, 2008.
14. SAMI has never been registered in accordance with Ontario securities law. SAMI applied for registration as an Exempt Market Dealer (“**EMD**”) on September 10, 2010.

Sale of the Skyline Apartment REIT Units

15. The Skyline Apartment REIT retained a national law firm in or about 2005 (“**the Respondents’ former legal counsel**”) which organized the Skyline Apartment REIT, drafted the first Confidential Offering Memorandum and Subscription Agreement including Schedule “B” Certificate of Accredited Investor. The Skyline Apartment REIT has indicated to Staff that the Respondents’ former legal counsel reviewed and approved subsequent offering documents which were not substantially different from the originals.
16. The Skyline Apartment REIT offered units of the Skyline Apartment REIT (the “**Unit**” or “**Units**”) for sale by Confidential Offering Memorandum as follows:
 - (a) October 17, 2006: 2,000,000 Units at \$10.00 per Unit;
 - (b) July 20, 2007: 3,000,000 Units at \$10.20 per Unit;
 - (c) May 5, 2008: 3,000,000 Units at \$10.40 per Unit, and,
 - (d) November 1, 2008 addendum to the May 5, 2008 Confidential Offering Memorandum, a continuous offering of Units at \$11.00 per Unit.
17. Each Confidential Offering Memorandum stated that the Skyline Apartment REIT’s primary business activities consist of managing and acquiring multi-unit residential properties and that its objectives are to:
 - (i) provide registered holders of REIT Units (the “Unitholders”) with stable and growing cash distributions, payable monthly and, to the extent reasonably possible, tax deferral, from investments in a diversified portfolio of income-producing, multi-unit residential properties located in Canada; and
 - (ii) maximize REIT value through the ongoing management of Skyline Apartment REIT’s assets and through the future acquisition of additional multi-unit residential properties.
18. Each Confidential Offering Memorandum stated that investing in the Units involves significant risks, and that the recovery of the initial investment is at risk. Further, the Skyline Apartment REIT indicated to investors that distributions may be reduced or suspended, and that the market value of the REIT Units may decline if the Skyline Apartment REIT is unable to meet its cash distribution targets in the future.
19. Each Confidential Offering Memorandum also set out the Distribution Policy:

The Declaration of Trust provides that Skyline Apartment REIT may distribute to REIT unitholders such percentage of the Distributable Income for the calendar month then ended as the Trustees determine in their discretion. It is Skyline Apartment REIT’s current intention to distribute 85% of the Distributable Income for the preceding calendar month.

20. Between February 2007 and March 27, 2010 (the “**Material Time**”), the Respondents sold Units of the Skyline Apartment REIT valued at approximately \$187.3 million to approximately 1092 investors across Canada, including 723 Ontario investors (who account for more than \$129 million of the Units). The Respondents received a further \$9.1 million from investors across the country through the distribution reinvestment plan (“**DRIP**”).
21. The Skyline Apartment REIT paid approximately \$2.6 million or 1.4% of the total capital raised to third party referral sources.
22. The Financial Statements indicate that the Skyline Apartment REIT:
 - (a) Issued Units worth approximately \$57.9 million in 2009 and approximately \$52.3 million in 2008;
 - (b) Acquired, for the Skyline Apartment REIT business, additional income producing properties in the amount of approximately \$157.6 million in 2009 and approximately \$156.4 million in 2008;
 - (c) Distributed to unit holders approximately \$12.5 million in 2009 and approximately \$7.6 million in 2008; and
 - (d) Purchased and cancelled Units worth approximately \$3.8 million in 2009 and approximately \$1.4 million in 2008.
23. During the Material Time, the Respondents carried out the following acts in furtherance of a trade of Units to the public:
 - (a) In 2007 and 2008, the Respondents held investor seminars approximately every two months at their offices or at the Cutten Club in Guelph or the Cambridge Hotel in Cambridge.
 - (b) The Respondents’ former legal counsel participated in the first investment seminar held on January 18, 2007 at the Cutten Club in Guelph. The format of the first investor seminar and the presentation made by the Respondents was similar to those that were made at all other future investor seminars. The Respondents made a presentation about the real estate business, the benefits of investing in the Skyline Apartment REIT, who was qualified to invest and the actual performance of the Skyline Apartment REIT. The Respondents provided information packages, Confidential Offering Memoranda and Subscription Agreements to potential investors.
 - (c) The Respondents met with individual investors as requested, and provided them with information packages, Confidential Offering Memoranda and Subscription Agreements at these meetings.
 - (d) Commencing in 2007, the Respondents entered into a number of third party referral arrangements including an agreement with one primary referral agent (**the “Primary Referral Agent”**). The Respondents made information packages available to the referral agents that promoted the Skyline Apartment REIT, and

paid referral fees, including approximately \$1.46 million to its Primary Referral Agent.

- (e) From time to time, the Respondents attended seminars of its Primary Referral Agent and seminars of other referral agents to make a presentation about the real estate business, the benefits of investing in the Skyline Apartment REIT, who was qualified to invest and the actual performance of the Skyline Apartment REIT.
 - (f) In 2009, the Respondents increased their marketing efforts as follows:
 - (i) they increased the number of investor seminars to approximately 12 - 15 per year;
 - (ii) they increased advertising in local magazines and newspapers and on the radio;
 - (iii) they began advertising and holding investor seminars in Toronto; and
 - (iv) they revised their website which until that time had been used by the property management business to list rental units to now include a significant investor section. Information about the benefits of the Skyline Apartment REIT investment and past performance charts were made available to the public. A webinar of the investor presentation was available to those who requested it via the website. The webinar had previously been delivered live on a regular basis.
 - (g) Throughout, the Respondents encouraged word of mouth referrals and further investment by existing investors through meetings, newsletters, emails and other means.
 - (h) The Respondents accepted funds from investors for the purchase of Units.
24. The Respondents filed Notices of Exempt Distributions on Forms 45-106FI with the Commission and purported to rely on the accredited investor exemption, or one of the other exemptions from prospectus and registration requirements found in National Instrument 45-106, in circumstances where the exemptions were not available. The Respondents failed to ensure that the requirements for the exemptions were met.
25. During the Material Time, the Respondents sold at least \$7.4 million worth of Units to approximately 113 investors who had been directly solicited by the Respondents, in circumstances where the accredited investor exemption was improperly relied upon. In addition, during that time, the Respondents sold at least \$6 million worth of Units to approximately 86 investors who had been referred by third-party non-registrants, including their Primary Referral Agent, in circumstances where the accredited investor exemption was improperly relied upon. Further, the Respondents sold, either directly or indirectly, approximately \$1.6 million worth of Units to approximately 17 investors where there was insufficient information for the Respondents to determine if the investors qualified as accredited investors, or where the requirements for other exemptions from prospectus and registration requirements found in National Instrument 45-106 were not met.

PART IV – CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND THE PUBLIC INTEREST

26. By engaging in the conduct described above, the Respondents admit and acknowledge that they contravened Ontario securities law and acted contrary to the public interest in that:
- (a) The Respondents traded in securities of the Skyline Apartment REIT without being registered to trade in securities and where no exemptions were available contrary to subsection 25(1)(a) of the Act; and
 - (b) The Respondents traded in securities of the Skyline Apartment REIT in circumstances where the trading constituted a distribution and where no preliminary prospectus and prospectus had been filed and receipts issued by the Director, and no exemptions were available contrary to subsection 53(1) of the Act.

PART V – RESPONDENTS’ POSITION

27. The Respondents request that the settlement hearing panel consider the following:
- (a) The Respondents have cooperated with Staff during the investigation, and have expressed remorse for their conduct. The Respondents voluntarily agreed to cease all trading in Units and cease solicitations of existing and prospective investors. The Respondents agreed to confirm the status of all investors in the Skyline Apartment REIT who relied on the accredited investor exemption, and reported its findings, in particular, the number of non-accredited investors, to Staff.
 - (b) The Respondents took steps to bring themselves into compliance, and in particular, SAMI has since applied for registration as an EMD. This application for registration is currently pending before the Compliance and Registrant Regulation Branch of the Commission.
 - (c) For all investors in the Skyline Apartment REIT, SAMI undertook to, and did collect “know your client” information within the meaning of National Instrument 31-103 *Registration Requirements and Exemptions*, and assessed the suitability of the investment for all qualifying investors.
 - (d) SAMI retained a third party consultant to develop policies and procedures.
 - (e) SAMI also retained the third party consultant to provide education to all senior management and employees who have contact with investors.

PART VI – TERMS OF SETTLEMENT

28. The Respondents agree to the following terms of settlement:
- (a) The Respondents will be reprimanded;
 - (b) The Respondents shall pay an administrative penalty of \$300,000 on a joint and several basis as a result of their non-compliance with Ontario securities law;

- (c) The Respondents shall pay \$150,000 on a joint and several basis, representing a portion of Staff's costs in this matter;
 - (d) Until SAMI is registered with the Commission, the Respondents agree to continue their voluntary agreement to cease all trading activity, as reflected in correspondence to Staff dated April 13, 2010 and as amended thereafter in writing;
 - (e) When SAMI is registered with the Commission, the Respondents will conduct any trading through SAMI, or through another entity registered with the Commission, and in compliance with securities laws;
 - (f) The Respondents will, within 90 days of the approval of this Settlement Agreement, divest the approximately 216 investors in the Skyline Apartment REIT as may be agreed with Staff who did not qualify for any of the registration/prospectus exemptions by having the Skyline Apartment REIT purchase for cancellation or otherwise redeem these investors, and by providing to them:
 - (i) the amounts originally invested, capital growth and any amounts arising from the DRIP (approximately \$15 million); and
 - (ii) any amounts owing with respect to the stated distribution of 9% of the price of the Unit for the period from the last distribution on March 15, 2011 to the time of payment;
 - (g) The Respondents will certify in writing to Staff of the Commission once the divestiture of the approximately 216 investors referred to above at paragraph (f) has been completed, such written certification to be provided within 90 days of the approval of this Settlement Agreement;
 - (h) The Respondents acknowledge and agree that the divestiture of the approximately 216 investors referred to above at paragraph (f) would be a term and condition to the proposed registration of SAMI;
 - (i) The Respondents further acknowledge that SAMI will be subject to a compliance review by the Compliance and Registrant Regulation Branch within the first 9 months of registration under the Act, or within such other period as may be determined by Staff; and
 - (j) The Respondents undertake to cooperate with the Commission and its Staff with any additional investigation conducted by Staff in relation to matters concerning other persons and companies, including in relation to any investigation or proceedings undertaken by the Commission against any referral agents used by the Skyline Apartment REIT, including testifying in those proceedings.
29. The Commission will make an order, pursuant to subsection 127(1) and section 127.1 of the Act, that:
- (a) This Settlement Agreement is approved;

- (b) The Respondents are reprimanded;
 - (c) The Respondents shall pay an administrative penalty of \$300,000 on a joint and several basis as a result of their non-compliance with Ontario securities law; and
 - (d) The Respondents shall pay \$150,000 on a joint and several basis, representing a portion of Staff's costs in this matter.
30. The Respondents agree to make the payments ordered above in sub-paragraphs (c) and (d), by certified cheque when the Commission approves this Settlement Agreement. The Respondents will not be reimbursed for, or receive a contribution toward, this payment from any other person or company.
31. The Respondents undertake to consent to a regulatory Order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the prohibitions set out in paragraphs 28 (d) and 29 (a) and (b) above. These prohibitions may be modified to reflect the provisions of the relevant provincial or territorial securities law.

PART VII – STAFF COMMITMENT

32. If the Commission approves this Settlement Agreement, Staff will not commence any proceeding under Ontario securities law in relation to the facts set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 33 below.
33. If the Commission approves this Settlement Agreement and the Respondents fail to comply with any of the terms of this Settlement Agreement, Staff may bring proceedings under Ontario securities laws against the Respondents. These proceedings may be based on, but are not limited to, the facts set out in Part III of this Settlement Agreement as well as the breach of this Settlement Agreement.

PART VIII – PROCEDURE FOR APPROVAL OF SETTLEMENT

34. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission scheduled for March 18, 2011, or on another date agreed to by Staff and the Respondents, according to the procedures set out in this Settlement Agreement and the Commission's Rules of Practice.
35. Staff and the Respondents agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing on the Respondents' conduct, unless the parties agree that additional facts should be submitted at the settlement hearing.
36. If the Commission approves this Settlement Agreement, the Respondents agree to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.
37. If the Commission approves this Settlement Agreement, neither party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.

38. Whether or not the Commission approves this Settlement Agreement, the Respondents will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any attack on the Commission’s jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

PART IX – DISCLOSURE OF SETTLEMENT AGREEMENT

39. If the Commission does not approve this Settlement Agreement or does not make the order attached as Schedule “A” to this Settlement Agreement:

- (i) this Settlement Agreement and all discussions and negotiations between Staff and the Respondents before the settlement hearing takes place will be without prejudice to Staff and the Respondents; and
- (ii) Staff and the Respondents will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Statement of Allegations. Any proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this Settlement Agreement.

40. The parties will keep the terms of this Settlement Agreement confidential until the Commission approves this Settlement Agreement. At that time, the parties will have no further obligations to maintain confidentiality. If the Commission does not approve this Settlement Agreement, both parties must continue to keep the terms of this Settlement Agreement confidential, unless they agree in writing not to do so or if required by law.

PART X – EXECUTION OF SETTLEMENT AGREEMENT

41. The parties may sign separate copies of this Settlement Agreement. Together, these signed copies will form a binding agreement.

42. A copy of any signature will be treated as an original signature.

DATED this “15th” day of March, 2011.

“Jason Castellan”

“Anna Perschy”

Skyline Apartment Real Estate Investment
Trust

Witness

<i>“Jason Castellan”</i>)	<i>“Anna Perschy”</i>
)	
)	
)	
_____ Skyline Incorporated)	_____ Witness
)	

<i>“Jason Castellan”</i>)	<i>“Anna Perschy”</i>
)	
)	
)	
_____ Skyline Asset Management Inc.)	_____ Witness
)	

<i>“Tom Atkinson”</i>)	<i>“Johanna Superina”</i>
)	
)	
)	
_____ Ontario Securities Commission Director, Enforcement Branch)	_____ Witness
)	



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SCHEDULE "A"

IN THE MATTER OF THE *SECURITIES ACT* R.S.O. 1990, c. S.5, AS AMENDED

- AND -

**IN THE MATTER OF SKYLINE APARTMENT REAL ESTATE INVESTMENT TRUST,
SKYLINE INCORPORATED, and SKYLINE ASSET MANAGEMENT INC.**

ORDER

WHEREAS on March 16, 2011, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in relation to the Skyline Apartment Real Estate Investment Trust, Skyline Incorporated and Skyline Asset Management Inc. (the "Respondents");

AND WHEREAS the Respondents and Staff of the Commission ("Staff") entered into a settlement agreement dated March 15, 2011 (the "Settlement Agreement") in which they agreed to a settlement of the proceeding commenced by the Notice of Hearing dated March 16, 2011, subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement, the Notice of Hearing and Statement of Allegations of Staff of the Commission, and upon hearing submissions from counsel for Staff and the Respondents;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS ORDERED THAT:

- (a) The Settlement Agreement is approved;
- (b) The Respondents are reprimanded;
- (c) The Respondents shall pay an administrative penalty of \$300,000 on a joint and several basis as a result of their non-compliance with Ontario securities law; and

- (d) The Respondents shall pay \$150,000 on a joint and several basis, representing a portion of Staff's costs in this matter.

DATED at Toronto this day of March, 2011.
