

## **HEADNOTE**

Mutual Reliance Review System for Exemptive Relief Applications – real estate investment trust exempt from prospectus and registration requirements in connection with issuance of units to existing unit holders pursuant to distribution reinvestment plan whereby distributions are reinvested in additional units of the trust, subject to certain conditions – First trade in additional units deemed a distribution unless made in compliance with MI 45-102.

## **Applicable Ontario Statutory Provisions**

Securities Act, R.S.O. 1990, c.S.5, as am., ss. 25, 53 and 74(1).

## **ONTARIO RULES**

Multilateral Instrument 45-102 – Resale of Securities.

**March 23, 2005**

**IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO,  
QUÉBEC, NOVA SCOTIA, NEW BRUNSWICK, PRINCE EDWARD ISLAND,  
NEWFOUNDLAND AND LABRADOR, YUKON,  
NORTHWEST TERRITORIES AND NUNAVUT (the Jurisdictions)**

**AND**

**IN THE MATTER OF  
THE MUTUAL RELIANCE REVIEW  
SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS**

**AND**

**IN THE MATTER OF  
SUNRISE SENIOR LIVING REAL ESTATE INVESTMENT TRUST (the Filer)**

## **MRRS DECISION DOCUMENT**

### **Background**

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption from the dealer registration requirements and the prospectus requirements of the Legislation (the Requested Relief) for certain trades of units of the Filer pursuant to a distribution reinvestment plan of the Filer (the DRIP).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

(a) the Ontario Securities Commission is the principal regulator for this application, and

(b) the MRRS decision document evidences the decision of each Decision Maker.

## **Interpretation**

Defined terms contained in National Instrument 14-101 Definitions have the same meaning in this decision unless they are defined in this decision.

## **Representations**

The decision is based on the following facts represented by the Filer:

1. The Filer is an unincorporated, open-ended investment trust established under the laws of the Province of Ontario pursuant to a declaration of trust dated August 13, 2004, as amended and restated by a declaration of trust made as of November 11, 2004.
2. The beneficial interests in the Filer are divided into a single class of Units and the Filer is authorized to issue an unlimited number of Units. As of the date hereof, 27,086,719 Units are issued and outstanding.
3. Each Unit represents an equal undivided beneficial interest in the Filer and entitles holders of Units (Unitholders) to one vote at any meeting of Unitholders and to participate pro rata in any distributions by the Filer and, in the event of termination of the Filer, in the net assets of the Filer remaining after satisfaction of all liabilities.
4. The Filer is not a "mutual fund" as defined in the Legislation because the Unitholders are not entitled to receive on demand an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the Filer as contemplated in the definition of "mutual fund" in the Legislation.
5. On December 13, 2004, the Filer filed a final prospectus in each of the provinces and territories of Canada in connection with its initial public offering of Units (the Offering), qualifying 24,624,290 Units for a total gross proceeds of \$246,242,900. On December 15, 2004, a MRRS decision document in respect of the final prospectus was issued and the Filer became a reporting issuer, or the equivalent, in each of the Jurisdictions and, to the best of its knowledge, is currently not in default of any applicable requirements under the securities legislation thereunder.
6. On December 23, 2004, the Filer closed the Offering.
7. On January 10, 2005, the Filer closed the underwriters' over-allotment option and issued an additional 2,462,429 Units for additional gross proceeds of \$24,624,290 (for total gross proceeds from the Offering of \$270,867,190).

8. The Filer's Units are listed and posted for trading on the Toronto Stock Exchange (the TSX).
9. The Filer has been formed to indirectly acquire and own income-producing senior living communities located in major metropolitan markets and their surrounding suburban areas in the United States and Canada.
10. The objectives of the Filer are: (i) to provide Unitholders with stable and growing monthly cash distributions derived from revenues generated by income-producing senior living communities owned by the Filer in major metropolitan markets and their surrounding suburban areas in the United States and Canada, and (ii) to enhance the long-term value of the Filer's assets and maximize Unit value.
11. The Filer initially intends to make monthly cash distributions to Unitholders that are expected to equal, on an annual basis, approximately 90% of its distributable income. The Filer's management believes that a 90% payout ratio should allow the Filer to meet its internal funding needs, while being able maintain stable cash distributions. The actual payout ratio will be determined by the trustees of the Filer in their discretion.
12. The Filer intends to establish the DRIP pursuant to which resident Canadian Unitholders may, at their option, invest cash distributions paid on their Units in additional Units (Additional Units). The DRIP will not be available to Unitholders who are not Canadian residents.
13. A Unitholder needs to hold at least 1,000 Units in order to participate in the DRIP. A Unitholder also needs to maintain, at all times, at least 1,000 Units in the DRIP in order to continue to qualify as a participant in the DRIP.
14. Distributions due to participants in the DRIP (DRIP Participants) will be paid to Computershare Investor Services Inc. in its capacity as agent under the DRIP (in such capacity, the DRIP Agent) and applied to purchase Additional Units. All Additional Units purchased under the DRIP will be purchased by the DRIP Agent directly from the Filer.
15. The price of Additional Units purchased with such cash distributions is expected to be the average closing price of Units on the TSX for the five trading days immediately preceding the relevant distribution payment date.
16. DRIP Participants will receive a further distribution, payable in Units, equal in value to 3% of each cash distribution that is reinvested under the DRIP.
17. No commissions, service charges or brokerage fees will be payable by DRIP Participants in connection with the DRIP and all administrative costs will be borne by the Filer.
18. DRIP Participants may terminate their participation in the DRIP at any time by providing prior written notice to the DRIP Agent through their brokers, investment dealers or other financial intermediaries. Such notice, if actually received at least five business days prior to a distribution record date (or such other time prescribed by such brokers, investment dealers or other financial intermediaries) will have effect in respect of the next distribution payment date. If

a DRIP Participant elects to terminate his or her participation in the DRIP, he or she will receive all further distributions in cash.

19. The Filer may amend, suspend or terminate the DRIP at any time, provided that such action shall not have a retroactive effect which would prejudice the interests of the DRIP Participants. All DRIP Participants will be sent at least 10 business days prior written notice of any such amendment, suspension or termination.

20. In Alberta, New Brunswick and Saskatchewan, the distribution of Additional Units by the Filer pursuant to the DRIP can be made in reliance on dealer registration and prospectus exemptions contained in the Legislation.

21. In British Columbia, Manitoba, Ontario, Québec, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon Territory and Nunavut (the Applicable Jurisdictions), the distribution of Additional Units by the Filer pursuant to the DRIP cannot be made in reliance on dealer registration and prospectus exemptions contained in the Legislation as the DRIP involves the reinvestment of distributable income distributed by the Filer and not the reinvestment of distributions of dividends, interest, capital gains or earnings or surplus of the Filer.

## **Decision**

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met. The Decision of the Decision Makers under the Legislation is that:

(A) in the Applicable Jurisdictions, the Requested Relief is granted provided that:

(a) at the time of the trade or distribution the Filer is a reporting issuer or the equivalent under the Legislation and is not in default of any requirements of the Legislation;

(b) no sales charge is payable in respect of the trade or distribution;

(c) the Filer has caused to be sent to the person or company to whom the Additional Units are traded or distributed, not more than 12 months before the trade or distribution, a statement describing:

(i) their right to withdraw from the DRIP and to make an election to receive cash instead of Units on the making of a distribution of income by the Filer; and

(ii) instructions on how to exercise the right referred to in (i);

(d) in each of the Applicable Jurisdictions the first trade (alienation) of the Additional Units acquired under this Decision shall be deemed to be a distribution or a primary distribution to the public;

(B) in each of the Jurisdictions the prospectus requirement contained in the Legislation shall not apply to the first trade (alienation) of Additional Units acquired by DRIP Participants pursuant to the DRIP, provided that:

(a) except in Québec, the conditions in paragraphs 2 through 5 of subsections 2.6(3) of Multilateral Instrument 45-102 Resale of Securities are satisfied; and

(b) in Québec:

(i) at the time of the alienation, the Filer is a reporting issuer in Québec and is not in default of any requirement of the Legislation of Québec;

(ii) no unusual effort is made to prepare the market or to create a demand for the Additional Units;

(iii) no extraordinary commission or consideration is paid to a person or company in respect of the alienation; and

(iv) the vendor of Additional Units, if an insider of the Filer, has no reasonable grounds to believe that the Filer is in default of any requirement of the Legislation.

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