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Gordon HLHS Epping Pty Ltd
(Receiver and Manager Appointed) (In Liquidation)
ACN 609 101 635 (the Company)

Statutory Report to Creditors by the Liquidators

8 February 2019

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Introduction

We refer to our initial correspondence to creditors dated 23 November 2018 in which we advised you of our appointment as liquidators and your rights as a creditor in the liquidation.

The purpose of this report is to:

- Provide you with an update on the progress of the liquidation.
- Advise you of the likelihood of a dividend being paid in the liquidation.

The Joint and Several Liquidators have relied on information provided from numerous sources to prepare the report, including:

- Discussions with the Company's former directors.
- Discussions with the Company's shareholders. Discussions with the Receiver and Manager and his legal advisors.
- Discussions with the Company's former external accountant.
- Discussions with the Company's former legal advisor.
- Discussion with the Company's internal accountant.
- Information available from public sources, such as, Australian Securities and Investments Commission (ASIC) and the Personal Property Securities Register (PPSR).
- A review of the Company's books and records provided to date.

Whilst we have no reason to doubt the accuracy of any information, we have not performed an audit and reserve the right to alter our conclusions, should the underlying data prove to be inaccurate or change materially from the date of appointment.

Update on the progress of the liquidation

Assets and liabilities

The Directors of the Company are required to complete and provide to the Liquidators a statement about the Company's business, property, affairs and financial circumstances, also known as the Report as to Affairs (RATA). The RATA is a snapshot in time as at the date of our appointment of the assets and liabilities of the Company, disclosing book values and the Directors' opinion on the estimated realisable value (ERV) for assets.

On 12 November 2018 a written request was issued to the Directors to complete the RATA for the Company.

On the following page is an analysis of the assets and liabilities of the company, and comparison to the RATA as provided by the Directors.

Description	Note	RATA Book Value (\$)	Liquidators ERV (\$)
Available Assets			
Cash	1	800	(10)
Sundry Debtors	2	905,105	TBA
Stock	3	52,260,000	TBA
Sub total		53,165,905	
Less			
Preferential creditors	4	33,891,847	TBA
Unsecured creditors	5	23,043,706	38,067,183
Sub total		56,935,553	
Deficiency		(3,769,648)	TBA

Notes:

1. Cash

The Directors' RATA disclosed that the Company had \$800 of cash on hand at the date of our appointment. We note that immediately following our appointment, we wrote to all major banks and financial institutions and identified that the Company held accounts with the National Australia Bank and Commonwealth Bank of Australia with a zero balance and a debit balance of \$10, respectively. We do not anticipate to recover any cash at bank from pre-appointment bank accounts.

2. Sundry Debtors

The Directors' RATA records "other debtors" for \$905,105 that remained unpaid as at the date of liquidation. The Company's external accountant advised this amount relates to discrepancies between the funds received in the bank accounts and the property settlement statements which are recorded as "other debtors" due to lack of clarification from the Directors and insufficient supporting documents provided. We have requested further information from the former accountant and will shortly write to the Directors requesting explanations of this debtor account in order to determine its recoverability.

3. Stock

The Directors' RATA disclosed that the Company had \$52,260,000 worth of stock as at the date of our appointment. This relates to the 74 residual apartments within Gondon Elysee in Epping, Sydney that the Company owns that remained unsold as at the date of our appointment. As mentioned in our previous correspondence, the Receiver and Manager was appointed prior to our appointment as liquidators. We note that the Receiver and Manager is in the process of realising the residual stock and are not in a position to advise on the estimated realisable value due to commercial sensitivity.



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4. Preferential Creditors

The Directors' RATA records two (2) preferential creditors for \$33,891,847. This includes Global Enhanced Opportunity II Limited and Global Enhanced Opportunity VIII Limited ("collectively referred as to "GEO"), the secured creditors who appointed the Receiver and Manager over the Company. We note that the NAB debt included in the Directors' RATA has been repaid and confirmed via correspondence with NAB.

5. Unsecured Creditors

The Directors' RATA disclosed that the Company had seven (7) unsecured creditors totalling \$23,043,706 at the date of liquidation. To date we have received five (5) proof of debt forms totalling \$38,067,183. We note that we have not adjudicated on these proof of debts for dividend purposes and that the value of unsecured creditor claims is subject to change throughout the course of the liquidation.

Receipts and Payments to date

Attached at **Appendix A** are details of all receipts and payments in the liquidation to date.

Investigations and possible recovery actions

Investigations undertaken

We have commenced our initial investigations into the affairs of the Company and any potential recovery actions that may be available to the Liquidators to pursue.

To date, we have undertaken the following investigations:

- Review of the Company's bank accounts;
- Review of the Company's income tax returns (FY2016 and FY2017);
- Review of drafted financial statements as at 31 August 2018 prepared by the Company's external accountant;
- Reviewed statements and electronic files from various conveyancing firms;
- Review of the Company's correspondence with the Australian Taxation Office ("ATO");
- Review of the Company's loan agreements entered into with various parties;
- Conducted investigations into the affairs of the Company, to identify any voidable transactions and insolvent trading claims; and
- Conducted searches of the Company's and Directors' assets.

Given the limited time that has passed in the liquidation and the insufficient books and records obtained from the Company and its Directors, the Liquidators still need to undertake further investigations into the affairs of the Company, the below findings are preliminary and may be subject to change.

What happened to the business of the Company

The Company was incorporated on 3 November 2015 and operated from 18 Allengrove Crescent, North Ryde NSW 2113. The Company is a real estate developer which sold residential apartments in Epping Sydney NSW.

On 20 September 2018, the Receiver and Manager was appointed by GEO, the major secured creditor of the Company. The Company's assets are under the control of the Receiver and Manager. The Receiver and Manager has engaged Colliers International to conduct a "one line"



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market campaign for the sale of the residual 61 apartments. Creditors may contact the Receiver and Manager's office for further information in respect of this sale. Initially upon appointment, we understand that the Receiver was selling apartments individually into the market.

The Directors, despite requests, have not provided any reasons for the Company's financial difficulties.

Our investigations into the affairs of the Company have found that the Company failed for the following reasons:

- The Company had over-leveraged the development;
- Poor strategic management of its sale process;
- A slow-down in the sales rate in late 2017 and early 2018 due to a cooling market;
- Overseas property investors defaulted on settlements due to their difficulties in getting finance in Australia;
- Inadequate cash flow to maintain ongoing financial obligations to its creditors;
- Overdue Commonwealth and State taxes;
- Statement of Claims filed by creditors for overdue payments;
- Inadequate statutory reporting of financial information to Government departments; and
- Default on repayments of multiple loan agreements resulted in the appointment of the Receiver and Manager;

Insolvent trading

From our preliminary investigations, we have determined that the Company likely became insolvent from as early as 1 March 2018 and remained insolvent up until the date of liquidation. The quantum of a potential insolvent trading action against the Directors could be in the vicinity of \$2.6 million, which is calculated by the debts incurred after 1 March 2018. The insolvent trading date and the quantum of any insolvent trading claim could be subject to change from our ongoing investigations. Further investigations will be undertaken as we receive additional books and records recovered from the Company and third parties.

The case of ASIC v Plymin (2003) provides a list of the indicators of corporate insolvency. We note that no single indicator is determinative of insolvency and an assessment must be undertaken on a collective scale. The indicators of insolvency according to ASIC v Plymin that are relevant to the Company are:

- Liquidity ratios below 1;
- Overdue Commonwealth and State taxes;
- Creditors unpaid outside trading terms;
- No access to alternative finance;
- Inability to raise further equity capital; and
- Solicitors' letters, summonses, judgements or warrants issued against the company.

In order to assess the merit of commencing recovery action against the Directors for insolvent trading pursuant to section 588G of *the Corporations Act 2001 (Cth)* (the "Act"), we requested a statutory declaration of the Directors' assets and liabilities to make an assessment of their ability to pay any judgement awarded in our favour. To date, the Directors have not responded to our request.

We have conducted our own investigations which included a search of the NSW Land Title Office and Roads and Maritime Service to identify any assets owned by the Directors in their own names. Based on our own independent searches, it appears that the Directors have no registered interests in any real properties, hence we are unable to determine their ability to pay any judgement obtained against them for insolvent trading.



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We are awaiting search results from Roads and Maritime Service and will provide an update to creditors in due course if the Directors own any motor vehicles. This alone is obviously not a sufficient enough asset base to warrant a pursuit of such a claim.

Accordingly, we invite creditors to provide details in writing of any assets owned by the Directors personally, together with evidence of same.

In order for us to properly formulate an opinion on the merits of the potential insolvent trading claim and further investigate the Directors' financial position and ability to pay any judgement awarded against them, we will require funding if insufficient assets will be realised in this liquidation though we do expect a surplus to be available after the realisation of the residual apartment stock by the Receiver and Manager. We will advise creditors of the commercial prospects for recovery proceedings at a later date.

We are unaware at this point of any directors and officers liability policy that the Company may have held and if it exists as to whether it responds to insolvent trading. Our investigations are ongoing in this regard.

Voidable transactions

Due to insufficient books and records obtained from the Company and its Directors, we have conducted preliminary investigations into potential voidable transactions which are set out below:

Unfair preference against the ATO

We have requested the Company's records from the ATO under the *Freedom of Information Act*. The response indicates that the ATO was remitted \$185,861 during the relation back period. These payments did not appear in the Company's bank statements. We note that the ATO issued multiple garnishee notices to various parties in an attempt to recover outstanding tax debts owed by the Company. A review of the ATO case notes has identified that \$150,000 was recovered via garnishee notices. According to *DFC of T v Donnelly & Ors 89 ATC5071*, payment received under effective "garnishee" notices are not characterised as voidable transactions or an unfair preference payment.

We will undertake further investigations into the payment of \$150,000 and the \$35,861 remitted to the ATO to confirm whether the ATO received an unfair preference payment. The Liquidators will commence recovery action of same if the payment satisfies the definition of an unfair preference payment under section 588FA of the Act.

Other voidable transactions

Due to insufficient books and records received to date, we are not in a position to form an opinion of whether there are any voidable transactions from the third parties and related entities.

We have identified several material payments made to related entities and third parties since the Company's incorporation. The nature of these payments are uncertain and are subject to a review of the Company's books and records. Accordingly, we have requested the Directors to provide books and records of the Company but are yet to receive a response. Should the Directors fail to comply with our request, we will have no choice but to report their non-compliance to ASIC and seek ASIC's assistance to obtain further records of the Company.



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We are undertaking further investigations into voidable transactions and will provide an update to creditors in due course if any are identified.

Further inquiries to be undertaken

We plan to undertake the following further investigations:

- Seek ASIC assistance in the recovery of the Company's books and records (if required);
- Review of the Company's management accounts once we are provided access;
- Further review into the Company's loan accounts;
- Conduct further investigation and assess the merit of pursuing insolvent trading against the Directors; and
- Conduct further investigations into voidable transactions.

Meetings held

As at the date of this report, there have not been any meetings of creditors.

If we receive a request for a meeting that complies with the guidelines set out in the initial correspondence provided to you, we will hold a meeting of creditors.

Likelihood of a dividend

As discussed above, the Receiver and Manager is in the progress of realising the Company's assets and that the marketing campaign is ongoing at this stage. We will update creditors in due course upon the completion of the sale.

The likelihood of a dividend is subject to any surplus from the realisation of the Company's assets and recovery actions (i.e. insolvent trading and voidable transactions). The Liquidators are in the midst of carrying out further investigations. In light of this, we are unable to provide a dividend estimate of any certainty at this stage of the liquidation but expect to be able to pay a dividend to unsecured creditors. When we are ready to declare a dividend, any creditor whose claim has not yet been admitted will be contacted and asked to submit a proof of debt. This formalises your claim in the liquidation and is used to determine all claims against the Company.

Cost of the liquidation

As previously advised in our initial information to creditors, we have estimated that our total remuneration for the liquidation will be in the vicinity of \$120,000 excluding GST and disbursements. This may increase depending on the extent of further investigations and the adjudication process of some creditor claims.



What happens next in the liquidation?

We will proceed with the liquidation, including:

- Awaiting the retirement of the Receiver and Manager after the realisation of the Company's assets and repayment of the Company's secured creditor.
- Receive surplus proceeds from the Receiver's sale.
- Complete our investigations into the Company's affairs.
- Commence recovery actions (if any) arising from the further investigations into insolvent trading and voidable transactions.
- Complete our reporting to the corporate insolvency regulator with ASIC including lodgement of our report pursuant to section 533 of the Act with ASIC.
- Finalise the adjudication of creditor claims.
- Declare a dividend to creditors (if applicable).

We may write to you again with further information on the progress of the liquidation.

We will be in a position to finalise the liquidation upon the completion of the above outstanding tasks. We expect the liquidation will be finalised within the next 9 to 12 months.

Compliance with best practice

We confirm that this report complies with the requirements in the Insolvency Practice Rules (IPR), specifically IPR 70-40, as well as the statements of best practice issued by the Australian Restructuring Insolvency and Turnaround Association (ARITA) with regard to content of the Statutory Report by Liquidator.

Where can you get more information?

You can access information which may assist you on the following websites:

- ARITA at www.arita.com.au/creditors
- ASIC at www.asic.gov.au (search for "insolvency information sheets").

Should you have any queries with respect to the above, you may also contact Kevin Yue of my office on +61 2 8297 2507 or via email on kevin.yue@au.gt.com. There is also information about this liquidation on my firm's website: www.grantthornton.com.au.

Dated: 8 February 2019

Philip Campbell-Wilson

Joint and Several Liquidator

List of attachments

Appendix A - Joint and Several Liquidators' receipts and payments

Appendix B – Proof of Debt



Appendix A

Joint and Several Liquidators' receipts and payments for the period 9 November 2018 to 8 February 2019

	(\$)
Receipts	
Director Contributions	88,000.00
Total receipts	88,000.00
Payments	
Appointee Disbursements	272.17
Appointee Fees	43,068.85
Total payments	43,341.02
Cash at Bank	44,658.98

Appendix B

Proof of Debt

FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

To the Liquidators of Gondon HLHS Epping Pty Ltd (Receiver and Manager Appointed) (In Liquidation) ACN 609 101 635 (the "Company")

1. This is to state that the company was on 9 November 2018 and still is, justly and truly indebted to: _____
 _____ full name, ABN and address of the creditor and, if applicable, the creditor's partners. If prepared by an employee or agent of the creditor, also insert a description of the occupation of the creditor) for _____ dollars and _____ cents

Particulars of the debt are:

Date	Consideration <i>(state how the debt arose)</i>	Amount	Remarks <i>(include details of voucher substantiating payment)</i>
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\$

2. To my knowledge or belief the creditor has not, nor has any person by the creditor's order, had or received any satisfaction or security for the sum or any part of it except for the following: _____

(insert particulars of all securities held. If the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, show them in a schedule in the following form).

Date	Drawer	Acceptor	Amount	Due Date
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\$

3. Signed by (select option):

- I am the creditor personally.
- I am employed by the creditor and authorised in writing by the creditor to make this statement. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.
- I am the creditor's agent authorised in writing to make this statement in writing. I know the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

Signature: _____ Dated: _____

Name: _____ Occupation: _____

Address: _____

RECEIVE REPORTS BY EMAIL	Yes	No
Do you wish to receive all future reports and correspondence from our office via email?	<input type="checkbox"/>	<input type="checkbox"/>
Email:.....		