

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

***IN THE MATTER OF SECTION 60 OF THE TRUSTEE ACT, R.S.O. 1990, C. T.23, AS
AMENDED, AND RULE 10 OF THE ONTARIO RULES OF CIVIL PROCEDURE,
R.R.O. 1990, REG. 194, AS AMENDED***

***AND IN THE MATTER OF HI-RISE CAPITAL LTD. AND IN THE MATTER OF
ADELAIDE STREET LOFTS INC.***

**MOTION RECORD
VOLUME 3 OF 3**

April 1, 2020

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I N D E X

TAB	DESCRIPTION	PAGE NO.
1	Notice of motion	1 - 18
2	Affidavit of Noor Al-Awqati sworn April 1, 2020	19 - 45
A	Exhibit "A" – Affidavit of Noor Al-Awqati sworn March 19, 2019	46 - 68
1	Exhibit "A" - Mortgage Administration Agreement and Loan Participation Agreement, March 5, 2015 [redacted]	69 - 76
2	Exhibit "B" - Mortgage Administration Agreement and Loan Participation Agreement, March 7, 2015 [redacted]	77 - 86
3	Exhibit "C" - Trust Administration Agreement and Loan Participation Agreement, June 20, 2011 [redacted]	87 - 94
4	Exhibit "D" - Mortgage Administration Agreement and Loan Participation Agreement, July 11, 2014 [redacted]	95 - 102
5	Exhibit "E" - Mortgage Administration Agreement and Loan Participation Agreement, January 25, 2016 [redacted]	103 - 111

TAB	DESCRIPTION	PAGE NO.
6	Exhibit "F" - Mortgage Administration Agreement and Loan Participation Agreement, March 16, 2017 [redacted]	112 - 123
7	Exhibit "L" - Inactive Parcel Register for 263 Adelaide Street	124 - 128
8	Exhibit "O" - Charge/mortgage registered in 2014 (AT3522463)	129 - 151
9	Exhibit "P" - Notice registered in 2015 (AT3946856)	152 - 158
10	Exhibit "Q" - Transfer of charge registered in 2014 (AT3586925)	159 - 162
11	Exhibit "R" - Transfer of charge registered in 2016 (AT4420428)	163 - 177
12	Exhibit "S" - Transfer of charge registered in 2017 (AT4505545)	178 - 192
13	Exhibit "T" - Transfer of charge registered in 2017 (AT4529978)	193 - 209
14	Exhibit "U" - Transfer of charge registered in 2017 (AT4572550)	210 - 226
15	Exhibit "V" - Transfer of charge registered in 2017 (AT4627861)	227 - 244
16	Exhibit "W" - Transfer of charge registered in 2017 (AT4664798)	245 - 262
B	Exhibit "B" – Minutes of Settlement dated December 20, 2019	263 - 285
C	Exhibit "C" – Appointment Order of Justice Hailey dated March 21, 2019	286 - 303
D	Exhibit "D" – Order of Justice Hailey dated May 7, 2019	304 - 306
E	Exhibit "E" – NDA dated May 8, 2019	307 - 314
F	Exhibit "F" – Web communication to investors dated May 8, 2019	315 - 317

TAB	DESCRIPTION	PAGE NO.
G	Exhibit "G" – Order of Justice Hailey dated September 17, 2019	318 - 330
H	Exhibit "H" – Information Officer's report dated October 7, 2019	331 - 447
I	Exhibit "I" – Endorsement of Justice McEwen dated November 27, 2019	448 - 451
J	Exhibit "J" – Forbearance agreement between Meridian, Adelaide and 263 Holdings dated December 24, 2019	452 - 472
K	Exhibit "K" – Order of Justice Conway dated December 20, 2019	473 - 478
L	Exhibit "L" – Agreement of Purchase and Sale dated December 20, 2019	479 - 498
M	Exhibit "M" – Fourth Report of the Representative Counsel	499 - 692
N	Exhibit "N" – Update sent to investors on January 13, 2020	693 - 701
O	Exhibit "O" – Information Statement and sample ballot	702 - 709
P	Exhibit "P" – Update on Vote Results dated January 31, 2020	710 - 713
3	Draft Order	714 - 772

This is Exhibit "M" referred to in the Affidavit of Noor Al-Awqati sworn April 1, 2020.



Commissioner for Taking Affidavits (or as may be)

JOHN BIRCH

Court File No.: CV-19-616261-00CL

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ADELAIDE STREET LOFTS INC.**

**FOURTH REPORT OF MILLER THOMSON LLP, IN ITS CAPACITY
AS COURT-APPOINTED REPRESENTATIVE COUNSEL**

January 9, 2020

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Court-appointed Representative Counsel

TAB 1

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1. Pursuant to the Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 21, 2019 (the “**Appointment Order**”) Representative Counsel was appointed to represent all individuals and/or entities (“**Investors**”) that hold an interest in a syndicated mortgage administered by Hi-Rise Capital Ltd. (“**Hi-Rise**”) in respect of the proposed development known as the “Adelaide Street Lofts” (the “**Project**”) at the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the “**Property**”) and owned by Adelaide Street Lofts Inc. (“**Adelaide**”), in connection with the negotiation and implementation of a settlement with respect to such investments, except for those Investors who opted out of representation by Representative Counsel in accordance with the terms of the Appointment Order (the “**Opt Out Investors**”). A copy of the Appointment Order and Endorsement of Justice Hainey dated March 22, 2019 is attached as **Appendix “A”**.

2. While registered title to the Property is held by Adelaide, the main holding company and owner of Adelaide is 263 Holdings Inc. (“**Holdings**”, and together with Adelaide, the “**Company**”).

PURPOSE OF REPORT

3. On November 27, 2019, Representative Counsel, members of the Official Committee (as defined below), Hi-Rise, Adelaide, Meridian Credit Union Limited (“**Meridian**”), Lanterra Developments Ltd. (“**Lanterra**”) and certain of the Opt Out Investors attended a Court-ordered mediation before the Honourable Mr. Justice McEwen (the “**Judicial Mediation**”).

4. The Judicial Mediation was successful insofar as the parties agreed upon a settlement (the “**Settlement**”), which Representative Counsel and the Official Committee recommends to the Investors. The Settlement is memorialized in the Minutes of Settlement (the “**Minutes**”) attached as **Appendix “B”** hereto.

5. The Settlement is subject to approval of the Investors and approval of the Court. Accordingly, Hi-Rise will be calling a second vote (the “**Vote**”) in order to allow the Investors to vote on the Minutes and the terms of the Settlement. Details of the Vote are set out below.

6. If approved by Investors and sanctioned by the Court, the Settlement would allow the Company to move forward with a sale of the Property to Lanterra (the “**Lanterra Sale**”) and the other transactions set out in the Minutes. If approved, the Lanterra Sale is expected to close on or before May 14, 2020 (the “**Closing Date**”).

7. Representative Counsel has filed this Fourth Report for the purpose of advising the Court and the Investors that Representative Counsel and the Official Committee recommend that the Investors vote in favour of the Settlement. In addition to the setting out the relevant background facts, this Fourth Report includes the following:

- (a) Details on the Lanterra Sale;
- (b) The terms of the Settlement;
- (c) The implications of the Settlement for Investors; and
- (d) The bases upon which Representative Counsel and the Official Committee have made their recommendation.

TERMS OF REFERENCE

8. In preparing this Fourth Report and making the comments herein Representative Counsel has, where applicable, relied upon information prepared or provided by Hi-Rise and/or Adelaide, and information from other third-party sources (collectively, the “**Information**”). Certain of the information contained in this Fourth Report may refer to, or is based on, the Information. As the Information has been provided by third parties or has been obtained from documents filed with the Court in this matter, Representative Counsel has relied on the Information and, to the extent possible, has reviewed the Information for reasonableness. However, Representative Counsel has neither audited nor otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook and accordingly, the Representative Counsel expresses no opinion or other form of assurance in respect of the Information.

BACKGROUND TO PROCEEDING

9. On March 21, 2019, Hi-Rise brought an application to the Court under section 60 of the *Trustee Act* (Canada) for, *inter alia*, the appointment of Representative Counsel, and a declaration that Hi-Rise has the power under the loan participation agreements (“**LPA**”) and mortgage participation agreements (“**MPA**”) with Investors to grant a discharge of the syndicated mortgage (the “**Syndicated Mortgage**”) held for the benefit of the Investors over the Property in the event the proceeds received from the completion of a contemplated transaction relating to the Property are insufficient to pay the full amounts under the Syndicated Mortgage. A copy of Hi-Rise’s Notice of Application is attached as **Appendix “C”**.

10. As further set out in Hi-Rise’s application, Hi-Rise is a mortgage broker and mortgage administrator licensed by the Superintendent of Financial Services of Ontario. Hi-Rise receives and advances, on behalf of Investors, funds to a variety of companies (each a “**Borrower**” and collectively the “**Borrowers**”), such as Adelaide, that undertake real property developments such as the Property. The terms on which Investors advance their funds and Hi-Rise administrators each Syndicated Mortgage are set out in the LPA and the MPA.

11. There are two mortgages registered on title to the Property. The first mortgage is registered in favour of Meridian Credit Union (“**Meridian**”), and the second mortgage (the “**Second Mortgage**”) is registered in favour of both Hi-Rise and Community Trust Company (“**Community Trust**”).

12. Investors invested in the Syndicated Mortgage through this Second Mortgage in one of two ways:

(a) **Registered Investors** participate in the Second Mortgage through Community Trust and hold their investments through registered plans including registered retirement savings plan; or

(b) **Non-Registered Investors** participate in the Second Mortgage through Hi-Rise.

13. Community Trust’s interest in the Second Mortgage ranks ahead of Hi-Rise’s interest. As such, in a liquidation scenario the Registered Investors are entitled to all of their unpaid principal and interest before Non-Registered Investors receive any payments.

14. The majority (*ie*, approximately 2/3, by both number and aggregate investment amount) of the Investors in the Syndicated Mortgage are Non-Registered Investors.

ESTABLISHMENT OF OFFICIAL COMMITTEE

15. Pursuant to the Appointment Order, Representative Counsel was directed to establish an Official Committee of Investors (the “**Official Committee**”) in accordance with the process and procedure described in Schedule “B” attached to the Appointment Order.

16. Pursuant to the Order of the Honourable Mr. Justice Hainey dated April 15, 2019, the Official Committee was approved and constituted (the “**Official Committee Approval Order**”, a copy of which is attached as **Appendix “D”**). There are currently 4 members of the Official Committee. Representative Counsel regularly consults with and takes instruction from the Official Committee.

APPOINTMENT OF INFORMATION OFFICER

17. Pursuant to the Order of the Honourable Mr. Justice Hailey dated September 17, 2019 (the “**IO Order**”, a copy of which is attached as **Appendix “E”**), Alvarez & Marsal Canada Inc. was appointed as Information Officer (in such capacity, the “**Information Officer**”).

18. Pursuant to the IO Order, the Information Officer was authorized and empowered to, among other things, review and report to the Court and to all stakeholders, including but not limited to Representative Counsel, Hi-Rise, the Company, FSRA and Meridian, in respect of all matters relating to the Property, the Second Mortgage over the Property, and the Company’s proposed sale of the Property, including, but not limited to, the marketing and sales process undertaken in respect of the Property, all aspects of any and all proposed transactions in respect of the Property including a proposed joint venture with Lanterra (the “**Lanterra JV Transaction**”), and the financial implications of such proposed transactions (collectively, the “**Mandate**”).

19. The Information Officer’s findings were set out in a report dated October 7, 2019 (the “**IO Report**”, a copy of which is attached hereto, without appendices, as **Appendix “F”**). Both Representative Counsel and the Official Committee accept the facts and conclusions set out in the IO Report. To date, none of the parties to this proceeding have disputed the contents of the IO Report.

THE 1ST MEETING & VOTE

20. In accordance with the terms of the Appointment Order, Hi-Rise called a meeting of Investors (the “**Meeting**”), in order to, among other things, allow Investors to vote on a proposed settlement that contemplated the Lanterra JV Transaction (the “**Original Settlement Proposal**”).

21. Full details in respect of the Lanterra JV Transaction and the Original Settlement Proposal are set out in the IO Report.

22. In advance of the Meeting, Representative Counsel issued its Third Report, a copy of which is attached as **Appendix “G”** (without appendices), to advise the Court and Investors of the Official Committee’s recommendation that Investors vote against the Original Settlement Proposal, among other things.

23. On October 20, 2019, Representative Counsel hosted a Town Hall Meeting at the offices of Miller Thomson LLP in Toronto, in order to provide Investors with legal advice and its recommendation to vote against the Original Settlement Proposal, as well as to provide Investors with the opportunity to ask questions of Representative Counsel and the Official Committee in person. Those Investors that could not attend the Town Hall Meeting in person were provided with the option to request a video recording of the Town Hall Meeting, which was only made available to Investors that requested same. A copy of the Notice of Town Hall Meeting is attached as **Appendix “H”**.

24. On October 21, 2019, at the request of many Investors, Representative Counsel also published and delivered a Communication to Investors, a copy of which is attached as **Appendix “I”**, which offered a summary of the mortgages on the Property, the Lanterra JV Transaction, the terms of the Original Settlement Proposal and its implications to Investors,

25. Thereafter, the Meeting and the vote on the Original Settlement Proposal took place on October 23, 2019. Approximately 70.6% of voting Investors (*ie*, 285 Investors representing \$24,542,125 in value) voted against the Original Settlement Proposal, and only 29.4% of voting Investors (*ie*, 119 Investors representing \$10,202,272 in value) voted in favour of it.

26. Accordingly, the vote on the Original Settlement Proposal failed.

EVENTS FOLLOWING THE MEETING & VOTE

27. On October 28, 2019, Meridian, the first mortgagee on the Property, served an application to appoint a receiver over the assets, undertakings and properties of Adelaide (the “**Receivership Application**”), returnable November 1, 2019.

28. Pursuant to the Endorsement of Justice McEwen dated November 1, 2019, a copy of which is attached as **Appendix “J”**, the Receivership Application was adjourned to December 12, 2019 and the Judicial Mediation was scheduled for November 27, 2019.

29. On November 6, 2019, *The Globe & Mail* published an article titled, “Small Investors face losses on Toronto developer’s debt woes”, regarding Hi-Rise, the Property and Project, and

another project owned by Mr. Jim Neilas in Oakville, Ontario. A copy of the article is attached as **Appendix “K”**.

30. On November 14, 2019, Lanterra delivered an unsolicited cash offer to acquire 100 percent of the Property for a purchase price of \$66 million dollars payable immediately at closing (the “**Lanterra Cash Offer**”). A copy of the Lanterra Cash Offer is attached as **Appendix “L”**.

31. On November 21, 2019, in response to the Lanterra Cash Offer, the Company proposed a new settlement to Investors (the “**November 21 Offer**”), which was similar to the joint venture transaction under the Lanterra JV Transaction, but offered cash on closing in the amount of approximately \$54,862,500 instead of the vendor-take back mortgage contemplated in the Original Settlement Proposal. The November 21 Offer also includes a debenture in the amount of \$17,137,500 carrying interest at a rate of 6% percent per annum. A copy of the November 21 Offer is attached as **Appendix “M”**.

JUDICIAL MEDIATION

32. The parties attended the Judicial Mediation on November 27, 2019.

33. In the course of the Judicial Mediation, the parties were advised for the first time that Lanterra was no longer prepared to move forward with the Lanterra JV Transaction or any similar arrangement that contemplated the continuing involvement of the Company or its principal, Jim Neilas.

34. Lanterra advised that it was only prepared to move forward with a sale transaction in which it would acquire 100 percent of the Property. The parties reached a settlement agreement at the Judicial Mediation, which agreement is memorialized in the Minutes (previously attached as Appendix “B”) and described in further detail below.

35. As noted above, Registered Investors participate in the Second Mortgage through Community Trust. In order to give effect to the Minutes of Settlement, Representative Counsel obtained an Order from Justice Conway dated December 20, 2019, which authorized Representative Counsel to instruct Community Trust to provide its consent and sign certain documents in connection with the Settlement. A copy of said Order is attached as **Appendix “N”**.

TERMS OF THE SETTLEMENT

36. The full terms and conditions of the Settlement are set out in the Minutes. The Minutes contemplate certain payments being made at the time of execution, and later at the Closing Date. The key terms and conditions are as follows:

- (a) Lanterra will pay the amount of \$69,000,000 (the “**Purchase Price**”) in respect of its purchase of 100 percent of the Property, and expects to close the transaction by the Closing Date (being May 14, 2020).
- (b) BMO has agreed to accept the amount of \$649,000 on account of the real estate commission payable to it (the “**BMO Commission**”), for undertaking the process to market and sell the Property (the “**BMO Sales Process**”) which will be paid as follows:
 - (i) Lanterra will contribute the amount of \$216,500 towards the BMO Commission;
 - (ii) Mr. Neilas will contribute the amount of \$216,000 towards the BMO Commission from the settlement amount payable to him under the Minutes (as further described below); and
 - (iii) Investors will contribute the amount of \$216,500 towards the BMO Commission from the settlement amount payable to them under the Minutes (as further described below).
- (c) Following the execution of the Minutes, the following occurred:
 - (i) Meridian was paid the amount of \$1.55 million owing to it under its first mortgage on the Property. Lanterra advanced these funds in the form of a loan to Meridian, and will be repaid on the Closing Date. This loan (the “**Interest Payment Loan**”) accrues interest at the rate of prime plus 2% per annum;

- (ii) Meridian was paid the amount of \$18,000 on account of a forbearance fee (*ie*, an amount payable in connection with Meridian's agreement to forbear from exercising its rights against the Company and/or the Property). Lanterra also advanced these funds in the form of a loan to Meridian, and will be repaid on the Closing Date. This loan (the "**Forbearance Fee Loan**") accrues interest at the rate of prime plus 2% per annum; and
 - (iii) As security for the Interest Payment Loan, Adelaide granted Lanterra a second-ranking mortgage on the Property (the "**Lanterra Mortgage**"). The Lanterra Mortgage ranks ahead of the Second Mortgage. In order to give effect to the Lanterra Mortgage, Hi-Rise agreed to subordinate the Second Mortgage to the Lanterra Mortgage and, in accordance with the Justice Conway Order, Representative Counsel instructed Community Trust to agree to the subordination.
- (d) On the Closing Date, the following payments will occur:
 - (i) Meridian will be paid on account of its loan (including principal, interest and fees) owing as at that time under its first mortgage, estimated at approximately \$16,921,274.67;
 - (ii) Lanterra will be repaid for the Interest Loan Payment and the Forbearance Fee Payment;
 - (iii) the amount of \$4,000,000 will be paid to Mr. Jim Neilas (personally or through his corporation Neilas Inc.) in full satisfaction of any claims or interests in respect of the Property, less the \$216,000 contribution to the BMO Commission, for a total settlement amount of \$3,784,000;
 - (iv) Payment of professional fees secured by charges on title to the Property will be paid (*ie*, payment to Representative Counsel and the Information Officer). As set out below at paragraph 58, counsel to Hi-Rise will also be paid for its work in connection with the application under the *Trustee Act* and administering the Settlement. The aggregate amount of such

professional fees is estimated at approximately \$976,000 as of the expected Closing Date (which amount includes an estimated reserve for post-closing matters that will require the work of professionals after the Closing Date); and

- (v) The balance of the Purchase Price (*ie*, net of the payments described at subparagraphs (c)(i) to (iv) above and less the \$216,500 contribution to the BMO Commission (the “**Investor Settlement Amount**”) will be distributed to Investors and Opt Out Investors in the manner described in the Minutes, in full satisfaction of their claims. It is estimated that the Investor Settlement Amount available for distribution will be approximately \$45,495,298.33.

IMPACT OF THE SETTLEMENT ON INVESTORS

37. Following closing of the Lanterra Sale, the Investor Settlement Amount shall be distributed among the Investors and Opt Out Investors as follows:

- (a) Registered Investors will be paid the full amount of their principal and interest claims. The aggregate amount of the claims of Registered Investors is estimated at approximately \$22,810,717.84 as of the expected Closing Date, composed of the amounts of \$17,133,872.86 in respect of principal and \$5,676,844.98 in respect of accrued and unpaid interest; and
- (b) Non-Registered Investors will receive the remaining balance of the Investor Settlement Amount on a *pro rata* basis. The aggregate amount of the claims of Non Registered Investors is estimated at approximately \$48,235,032.06 as of the expected Closing Date, composed of the amounts of \$34,973,891.58 in respect of principal and \$13,261,140.48 in respect of accrued and unpaid interest.

38. Based on the foregoing, it is anticipated that Non-Registered Investors will receive an aggregate amount of \$22,684,580.49 in respect of their claims, equal to 64.86 percent of the amount of their principal investments and 47.03 percent of the amount of their principal investments and accrued and unpaid interest.

39. A summary (the “**Distribution Summary**”) of the use of funds and estimated distributions under the Settlement is set out at **Appendix “O”**. The Distribution Summary is based on projected estimations only and has been calculated based on the current prime rate, and therefore, is subject to change. The Distribution Summary was prepared to provide Investors and the Court with an estimate of the expected distribution amounts following the Closing Date. The distribution will be subject to ordinary closing adjustments as at the Closing Date, and accordingly, the estimated numbers contained in the Distribution Summary are not final.

VOTE

40. As noted above, the Settlement is still subject to approval of the Investors and Opt Out Investors and approval of the Court.

41. Accordingly, Hi-Rise will be calling a second Vote. Representative Counsel understands that Hi-Rise will not call an in-person meeting like the first Meeting. Instead, Hi-Rise intends to deliver a voting form, which will permit Investors to submit their votes by mail or by fax only. Representative Counsel agrees with this proposed voting process, which will save significant costs.

42. Representative Counsel understands that the deadline for Investors to submit their votes had been scheduled for January 13, 2020, although this may be extended by Hi-Rise.

CUBE INVESTORS

43. Representative Counsel is advised that certain investors (the “**Cube Investors**”) in another syndicated loan structure administered by Hi-Rise in connection with a development project on College Street in Toronto (the “**Cube Project**”) were granted a beneficial interest in the Second Mortgage. Representative Counsel has been provided with sample documentation pursuant to which such interests were granted.

44. As a condition of the Settlement, Hi-Rise and Adelaide required that the Minutes be clear that the Cube Investors will be entitled to receive their respective entitlements to the Investor Settlement Amount and that the Cube Investors will be included in the release provided for by the Minutes. Representative Counsel does not act for the Cube Investors in respect of their investments in the Cube Project or any guarantees granted to them by Hi-Rise.

45. Hi-Rise has advised Representative Counsel that the Cube Investors who were granted a beneficial interest in the Second Mortgage are owed an amount of \$884,305.12, composed of the amounts of \$533,264.44 in respect of principal and \$351,040.68 in respect of interest.

RECOMMENDATION REGARDING SETTLEMENT

46. The Official Committee recommends that Investors approve the Minutes and the Settlement. In reaching its conclusion, the Official Committee considered factors which included the following:

- (a) The findings and conclusions set out in the IO Report;
- (b) The potential benefits, costs and risks associated with alternative courses of action including the potential outcome of the Receivership Application and a sale of the Property through a Court-appointed receiver;
- (c) The results of the BMO Sales Process. The Lanterra Sale is superior to any of the offers received through the BMO Sale Process;
- (d) The quantum of “priority claims” asserted by Jim Neilas, Neilas Inc., the Company and their affiliates (collectively, the “**Neilas Entities**”) as being payable in priority to the Investors. In this regard, the Neilas Entities claimed an approximate amount of \$10,000,000 in such “priority claims”. While to date, the veracity of the “priority claims” has not been tested, the Settlement settles these claims of the Neilas Entities for \$4 million (*ie*, 40 cents on the dollar) and avoids the considerable costs, uncertainty and delay associated with resolving the “priority claims” through litigation. In addition, the prospect of lengthy litigation could have threatened the viability of the Lanterra Sale, and in any event, would delayed recoveries to Investors;
- (e) Lanterra’s agreement at the Judicial Mediation to increase the proposed Purchase Price of the Property from \$66 million under the Lanterra Cash Offer to \$69 million;

- (f) Lanterra's experience, size, reputation and resources, and the resulting reduction in "closing risk" associated with the Lanterra Sale; and
- (g) The quantum, certainty and speed of recoveries available for Investors under the Settlement. In particular, Investors will receive their distributions within a matter of a few short months, rather than the years contemplated in earlier settlement proposals.

47. It is possible that a sale of the Property through a Court-appointed receiver could generate a higher price than the Lanterra Sale. However, it is also possible that a receivership sale could generate a substantially lower price. A receivership could also bring significant delay, and further erosions to Investor recoveries as a result of receivership costs, ongoing interest accrual, and the "priority claims" of the Neilas Entities.

48. In light of the foregoing, the Official Committee is of the view that the Lanterra Sale, Settlement and the Minutes should be supported by the Investors.

49. Given that the Official Committee and Representative Counsel support the Lanterra Sale and the details of same are set out in this Fourth Report, Representative Counsel will not be calling a second Town Hall meeting. However, Representative Counsel will take inquiries from Investors and provide further communications to Investors as necessary.

PROFESSIONAL FEES

Representative Counsel

50. Pursuant to paragraph 17 of the Appointment Order, Representative Counsel shall be paid by Adelaide its reasonable fees, consisting of fees from and after the date of the Appointment Order incurred in its capacity as Representative Counsel (the "**Post-Appointment Fees**") up to a maximum amount of \$200,000, or as may otherwise be ordered by this Court, which amount shall exclude the disbursements incurred by Representative Counsel (the "**Rep Counsel Charge**").

51. Pursuant to paragraph 18 of the Appointment Order, Representative Counsel was granted the Rep Counsel Charge on the Property as security for its Post-Appointment Fees, to rank in

priority to the Hi-Rise Mortgage, but subordinate to the first mortgage held by Meridian (updated amounts owing in respect of each are set out above).

52. Pursuant to the Order of the Honourable Mr. Justice Hainey dated September 7, 2019, the Rep Counsel Charge in respect of its Post-Appointment Fees was increased to a maximum of \$400,000, or as may otherwise be ordered by the Court.

53. At such time, the Rep Counsel Charge was increased on the basis that Representative Counsel's mandate had continued for much longer and had been much more complex and confrontational with the Company than originally anticipated. The increase was required to fund Representative Counsel through the first Meeting in October 2019 and the first vote.

54. The first Meeting and vote were conducted on October 23, 2019. Since that period, Representative Counsel has continued to act for the benefit of the Investors, and has performed various tasks in connection with its mandate, including but not limited to, a considerable volume of communications with Investors as well as preparing materials for and attending the Judicial Mediation. Following the Judicial Mediation, Representative Counsel worked extensively with the parties toward finalizing the Minutes, negotiating ancillary documents and resolving remaining issues (including obtaining the Justice Conway Order). In addition, Representative Counsel anticipates continuing to communicate with Investors regarding the contents of this Fourth Report and the Settlement pending the Vote.

55. In the event that the Settlement is accepted, Representative Counsel expects to provide services to and on behalf of Investors including with respect to the following:

- (a) Ongoing communications and assistance;
- (b) Implementation of the terms of the Minutes;
- (c) Assistance in the closing of the Lanterra Sale;
- (d) Assistance in determining Investor claim amounts; and
- (e) Distribution of funds to Investors.

56. In light of the foregoing, Representative Counsel respectfully requests that the amount of the Rep Counsel Charge be increased to a maximum of \$600,000, or as may otherwise be ordered by the Court.

Information Officer

57. Pursuant to the IO Order, the Information Officer was granted a charge (the “**IO Charge**”) in the maximum amount of \$100,000. Despite effectively completing its Mandate by delivering the IO Report, the Information Officer has continued to provide information and assistance to Representative Counsel, the Official Committee and the Investors, and has incurred total fees and disbursements (including those of its legal counsel) in the approximate amount of \$125,000. Representative Counsel acknowledges the value of the assistance that the Information Officer has continued to provide in respect of this matter despite exceeding the amount of the IO Charge.

Counsel to Hi-Rise

58. The within application under the *Trustee Act* was commenced by Cassels Brock & Blackwell LLP (“**Cassels**”) on behalf of its client, Hi-Rise. In its Notice of Application, a copy of which is previously attached as Appendix “C”, Hi-Rise sought payment to secure the fees of counsel to Hi-Rise (the “**Company Charge**”) in priority to all other charges except the existing first mortgage in favour of Meridian.

59. As further set out in the Notice of Application, the Company Charge was sought on the basis that “...section 8(ii) of the LPA provides that, in the event of a default under the Syndicate Mortgage, Hi-Rise is entitled to retain the services of various professionals, including lawyers and, pursuant to section 4 of the LPA, such charges are to be paid out of monies recovered from Adelaide prior to the distribution of net proceeds to Investors.”

60. Accordingly, payment to Cassels is included in the Minutes. Such payment is in respect of the work it has performed under the *Trustee Act* application that added value and benefit to Investors. Further, the Minutes contemplate payment on a go-forward in respect of Cassels services in fulfillment of Hi-Rise’s duties as trustee under the Syndicated Mortgage structure through closing of the Lanterra Sale and the ultimate distribution to Investors.

Distribution of Proceeds

61. As contemplated by the Minutes, if the Settlement is approved then Representative Counsel will be heavily involved in the claims verification process and distribution of proceeds to Investors. Representative Counsel seeks authority (with the prior approval of the Official Committee) to obtain the assistance of an accounting firm, consultant or other third-party professional in connection with same, with a view to maximizing effectiveness and cost-efficiency.

CONCLUSION

62. For all of the foregoing reasons, Representative Counsel and the Official Committee recommend that Investors approve the Settlement, and that this Honourable Court grant the remaining relief requested herein.

All of which is respectfully submitted at Toronto, Ontario this 9th day of January, 2020.



**Miller Thomson LLP, solely in its capacity
as Court-appointed Representative Counsel**

APPENDIX A

Court File No.: CV-19-616261-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE

)

THURSDAY, THE 21st

)

MR. JUSTICE HAINEY

)

DAY OF MARCH, 2019

)

IN THE MATTER OF SECTION 60 OF THE TRUSTEE ACT, R.S.O. 1990, C. T.23, AS
AMENDED, AND RULE 10 OF THE ONTARIO RULES OF CIVIL PROCEDURE,
R.R.O. 1990, REG. 194, AS AMENDED

AND IN THE MATTER OF HI-RISE CAPITAL LTD. AND IN THE MATTER OF
ADELAIDE STREET LOFTS INC.

ORDER

THIS APPLICATION, made by the Applicant, Hi-Rise Capital Ltd. ("**Hi-Rise**"), for advice and directions and an Order appointing representative counsel pursuant to section 60 of the *Trustee Act*, R.S.O. 1990, c. T.23, as amended and Rule 10 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, was heard this day at the Court House, 330 University Avenue, Toronto, Ontario.

ON READING the Application Record of the Applicant, including the Affidavit of Noor Al-Awqati sworn March 19, 2019, and on hearing the submissions of the lawyer(s) for each of the Applicant, the Superintendent of Financial Services, prospective Representative Counsel, Adelaide Street Lofts Inc. (the "**Borrower**"), Teresa Simonelli and Tony Simonelli and other investors represented by Guardian Legal Consultants (as set out on the counsel slip), Alexander Simonelli (appearing in person), Nicholas Verni (appearing in person), and Nick Tsakonacos (appearing in person) no one else appearing,

SERVICE

1. **THIS COURT ORDERS** that all parties entitled to notice of this Application have been served with the Notice of Application, and that service of the Notice of Application

is hereby abridged and validated such that this Application is properly returnable today, and further service of the Notice of Application is hereby dispensed with.

APPOINTMENT OF REPRESENTATIVE COUNSEL

2. **THIS COURT ORDERS** that Miller Thomson LLP is hereby appointed as representative counsel to represent the interests of all persons (hereafter, all persons that have not delivered an Opt-Out Notice (defined below) shall be referred to as the “**Investors**”) that have invested funds in syndicated mortgage investments (“**SMI**”) in respect of the proposed development known as the “Adelaide Street Lofts” (the “**Project**”) at the property known municipally as 263 Adelaide Street West, Toronto, Ontario (the “**Property**”).

3. **THIS COURT ORDERS** that any individual holding an SMI who does not wish to be represented by the Representative Counsel and does not wish to be bound by the actions of Representative Counsel shall notify the Representative Counsel in writing by facsimile, email to sdecaria@millerthomson.com (Attention: Stephanie De Caria), courier or delivery, substantially in the form attached as **Schedule “A”** hereto (the “**Opt-Out Notice**”), and shall thereafter not be so represented and shall not be bound by the actions of the Representative Counsel and shall represent himself or herself or be represented by any counsel that he or she may retain exclusively at his or her own expense in respect of his or her SMI (any such Investor who delivers an Opt-Out Notice in compliance with the terms of this paragraph, “**Opt-Out Investor**”) and any Opt-Out Investor who wishes to receive notice of subsequent steps in this proceeding shall deliver a Notice of Appearance.

4. **THIS COURT ORDERS** that the Representative Counsel shall represent all Investors in connection with the negotiation and implementation of a settlement with respect to their investments in the SMI and the Project, and shall subject to the terms of the Official Committee Protocol be entitled to advocate, act, and negotiate on behalf of the Investors in this regard, provided that the Representative Counsel shall not be permitted to (i) bind investors to any settlement agreement or proposed distribution relating to the Property without approval by the investors and the Court; or (ii) commence or continue any proceedings against Hi Rise, its affiliates or principals, on

behalf of any of the Investors or any group of Investors, and for greater certainty, Representative Counsel's mandate shall not include initiating proceedings or providing advice with respect to the commencement of litigation but may include advising Investors with respect to the existence of alternative courses of action.

5. **THIS COURT ORDERS** that Representative Counsel be and it is hereby authorized to retain such actuarial, financial and other advisors and assistants (collectively, the "**Advisors**") as may be reasonably necessary or advisable in connection with its duties as Representative Counsel.

6. **THIS COURT ORDERS** that the Representative Counsel be and it is hereby authorized to take all steps and do all acts necessary or desirable to carry out the terms of this Order and fulfill its mandate hereunder.

TERMINATION OF EXISTING ADVISORY COMMITTEE

7. **THIS COURT ORDERS** that the Engagement Letter dated September 6, 2018, including the Terms of Reference attached as Schedule "A" thereto (the "**Engagement Letter**"), be and it is hereby terminated, provided that nothing contained herein shall terminate the requirement that outstanding fees and disbursements thereunder be paid.

8. **THIS COURT ORDERS** that the respective roles of the Advisory Committee and Communication Designate (as such terms are defined in the Engagement Letter) be and they are hereby terminated.

9. **THIS COURT ORDERS** that the Communication Designate shall forthwith provide to Representative Counsel all security credentials in respect of the Designated Email (as such term is defined in the Engagement Letter).

APPOINTMENT OF OFFICIAL COMMITTEE

10. **THIS COURT ORDERS** that Representative Counsel shall take steps to establish an Official Committee of Investors (the "**Official Committee**") substantially in accordance with the process and procedure described in the attached **Schedule "B"** ("**Official Committee Establishment Process**").

11. **THIS COURT ORDERS** that the Official Committee shall operate substantially in accordance with the protocol described in the attached **Schedule "C"** (the "**Official Committee Protocol**").

12. **THIS COURT ORDERS** that the Representative Counsel shall consult with and rely upon the advice, information, and instructions received from the Official Committee in carrying out the mandate of Representative Counsel without further communications with or instructions from the Investors, except as may be ordered otherwise by this Court.

13. **THIS COURT ORDERS** that in respect of any decision made by the Official Committee (a "**Committee Decision**"), the will of the majority of the members of the Official Committee will govern provided, however, that prior to acting upon any Committee Decision, Representative Counsel may seek advice and direction of the Court pursuant to paragraph 22 hereof.

14. **THIS COURT ORDERS** that, in circumstances where a member of the Official Committee has a conflict of interest with the interests of other investors respect to any issue being considered or decision being made by the Official Committee, such member shall recuse himself or herself from such matter and have no involvement in it.

15. **THIS COURT ORDERS** that the Representative Counsel shall not be obliged to seek or follow the instructions or directions of individual Investors but will take instruction from the Official Committee..

INVESTOR INFORMATION

16. **THIS COURT ORDERS** that Hi-Rise is hereby authorized and directed to provide to Representative Counsel the following information, documents and data (collectively, the "**Information**") in machine-readable format as soon as possible after the granting of this Order, without charge, for the purposes of enabling Representative Counsel to carry out its mandate in accordance with this Order:

- (a) the names, last known addresses and last known telephone numbers and e-mail addresses (if any) of the Investors; and

- 5 -

- (b) upon request of the Representative Counsel, such documents and data as the Representative Counsel deems necessary or desirable in order to carry out its mandate as Representative Counsel

and, in so doing, Hi-Rise is not required to obtain express consent from such Investors authorizing disclosure of the Information to the Representative Counsel and, further, in accordance with section 7(3) of the *Personal Information Protection and Electronic Documents Act*, this Order shall be sufficient to authorize the disclosure of the Information, without the knowledge or consent of the individual Investors.

FEES OF COUNSEL

which amount shall exclude disbursements incurred by Representative Counsel

17. **THIS COURT ORDERS** that the Representative Counsel shall be paid by the Borrower its reasonable fees ~~and disbursements~~ *and disbursements* consisting of fees ~~and disbursements~~ *and disbursements* from and after the date of this order incurred in its capacity as Representative Counsel ("**Post-Appointment Fees**"), up to a maximum amount of \$250,000 or as may otherwise be ordered by this Court. The Borrower shall make payment on account of the Representative Counsel's ~~fees and disbursements~~ *its Post-Appointment Fees* on a monthly basis, forthwith upon rendering its accounts to the Borrower for fulfilling its mandate in accordance with this Order, and subject to such redactions to the invoices as are necessary to maintain solicitor-client privilege between the Representative Counsel and the Official Committee and/or Investors. In the event of any disagreement with respect to such fees and disbursements, such disagreement may be remitted to this Court for determination. Representative Counsel shall also obtain approval of its fees and disbursements from the Court on notice to the Official Committee.

18. **THIS COURT ORDERS** that the Representative Counsel is hereby granted a charge (the "**Rep Counsel Charge**") on the Property, as security for the Post-Appointment Fees and that the Rep Counsel Charge shall form an unregistered charge on the Property in priority to the existing \$60 million mortgage registered in the name of Hi-Rise Capital Ltd. and Community Trust Company as Instrument Numbers AT3522463, AT3586925, AT3946856, AT4420428, AT4505545, AT4529978, AT4572550, AT4527861, and AT4664798 (the "**Hi-Rise Mortgage**"), but subordinate to the \$16,414,000 mortgage in favour of Meridian Credit Union Limited registered as

Instrument Number AT4862974 ("**Meridian Mortgage**"), and that Rep Counsel Charge will be subject to a cap of \$250,000. No person shall register or cause to be registered the Rep Counsel Charge on title to the Property.

19. **THIS COURT ORDERS** that the motion by Representative Counsel for a charge for its fees prior to the date its appointment and by counsel for Hi-Rise seeking a charge for its fees incurred in respect of this Application both shall be heard before me on April 4, 2019.

20. **THIS COURT ORDERS** that the reasonable cost of Advisors engaged by Representative Counsel shall be paid by the Borrower. Any dispute over Advisor costs will be submitted to the Court for resolution.

21. **THIS COURT ORDERS** that the payments made by the Borrower pursuant to this Order do not and will not constitute preferences, fraudulent conveyances, transfers of undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable laws.

GENERAL

22. **THIS COURT ORDERS** that the Representative Counsel shall be at liberty, and it is hereby authorized, at any time, to apply to this Court for advice and directions in respect of its appointment or the fulfillment of its duties in carrying out the provisions of this Order or any variation of the powers and duties of the Representative Counsel, which shall be brought on notice to Hi-Rise and the Official Committee, the Financial Services Commission of Ontario ("**FSCO**") and any person who has filed a Notice of Appearance (including the Opt-Out Investors) unless this Court orders otherwise.

23. **THIS COURT ORDERS** that the Representative Counsel and the Official Committee shall have no personal liability or obligations as a result of the performance of their duties in carrying out the provisions of this Order or any subsequent Orders, save and except for liability arising out of gross negligence or wilful misconduct.

24. **THIS COURT ORDERS** that any document, notice or other communication required to be delivered to Representative Counsel under this Order shall be in writing, and will be sufficiently delivered only if delivered to

**Miller Thomson LLP, in its capacity as
Representative Counsel**

Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, Ontario M5H 3S1

Facsimile: 416-595-8695

Email: sdecaria@millerthomson.com and
gazeff@millerthomson.com

Attention: Gregory Azeff & Stephanie De Caria

25. **THIS COURT ORDERS** that the Representative Counsel shall as soon as possible establish a website and/or online portal (the “**Website**”) for the dissemination of information and documents to the Investors, and shall provide notice to Investors of material developments in this Application via email where an email address is available and via regular mail where appropriate and advisable.

POWERS OF HI-RISE CAPITAL LTD.

26. **THIS COURT ORDERS** that the issue of whether Hi-Rise has the power under loan participation agreements (each, an “**LPA**”) and mortgage administration agreements (each, a “**MAA**”) that it entered into with investors in the Project and at law grant to a discharge of the Hi-Rise Mortgage despite the fact that the proceeds received from the disposition of a transaction relating to the Property (the “**Transaction**”) may be insufficient to pay in full amounts owing under the Hi-Rise Mortgage will be determined by motion before me on April 4, 2019.

INVESTOR AND COURT APPROVAL

27. **THIS COURT ORDERS** that Hi-Rise is permitted to call, hold and conduct a meeting (the “**Meeting**”) of all investors in the Project, including Opt-Out Investors, to be held at a location, date and time to be determined by Hi-Rise, in order for the investors

to consider and, if determined advisable, pass a resolution approving the Transaction and the distribution of proceeds therefrom (the "**Distribution**").

28. **THIS COURT ORDERS** that, in order to effect notice of the Meeting, Hi-Rise shall send notice of the location, date and time of the Meeting to investors at least ten days prior to the date of the Meeting, excluding the date of sending and the date of the Meeting, by the method authorized by paragraph 32 of this order.

29. **THIS COURT ORDERS** that accidental failure by Hi-Rise to give notice of the Meeting to one or more of the investors, or any failure to give such notice as a result of events beyond the reasonable control of Hi-Rise, or the non-receipt of such notice shall, subject to further order of this Court, not constitute a breach of this Order nor shall it invalidate any resolution passed or proceedings taken at the Meeting. If any such failure is brought to the attention of Hi-Rise, it shall use its best efforts to rectify it by the method and in the time most reasonably practicable in the circumstances.

30. **THIS COURT ORDERS** that Hi-Rise shall permit voting at the Meeting either in person or by proxy.

31. **THIS COURT ORDERS** that if at the Meeting a majority in number of the investors representing two-thirds in value present and voting either in person or by proxy cast votes in favour of the proposed Transaction and Distribution, Hi-Rise may proceed to bring a motion to this court, on a date to be fixed, for

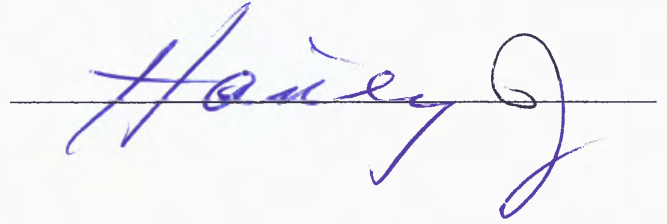
- (a) final approval of the Transaction and Distribution;
- (b) further directions to pursuant to section 60 of the *Trustee Act* as are appropriate to permit it to carry out its role in a manner consistent with the LPA and MAA and its duties at law; and
- (c) approval of the conduct and fees of Representative Counsel.

NOTICE TO INVESTORS

32. Hi-Rise or Representative Counsel shall mail a copy of this Order to the last known address of each investor within 10 days of the date of this Order or where an

- 9 -

Investor's email address is known, the Order may instead be sent by email. Representative Counsel shall also post a copy of this Order on the Website.

A handwritten signature in blue ink, appearing to read "Honey", is written over a horizontal line. The signature is fluid and cursive, with a large loop at the end.

- 10 -

Schedule "A"

OPT-OUT NOTICE

**Miller Thomson LLP, in its capacity as
Representative Counsel**

Scotia Plaza
 40 King Street West, Suite 5800
 P.O. Box 1011
 Toronto, Ontario M5H 3S1

Facsimile: 416-595-8695
 Email: sdecaria@millerthomson.com

Attention: Stephanie De Caria

I/we, _____, are Investor(s) in a Hi-Rise Capital Ltd. mortgage registered against titled to the property municipally known as 263 Adelaide Street West. [***Please ensure to insert the name, names or corporate entity that appear on your investment documents***].

Under paragraph 3 of the Order of the Honourable Justice Hailey dated March 21, 2019 (the "**Order**"), Investors who do not wish Miller Thomson LLP to act as their representative counsel may opt out.

I/we hereby notify Miller Thomson LLP that I/we do not wish to be represented by the Representative Counsel and do not wish to be bound by the actions of Representative Counsel and will instead either represent myself or retain my own, individual counsel at my own expense, with respect to the SMI in relation to Adelaide Street Lofts Inc. and the property known municipally as 263 Adelaide St. W., Toronto, Ontario.

I also understand that if I wish to receive notice of subsequent steps in the court proceedings relating to this property, I or my counsel must serve and file a Notice of Appearance.

If the Investor(s) is an individual, please execute below:

 Date

 Signature

 Date

 Signature

If the Investor is a corporation, please execute below:

)
) _____
) [insert corporation name above]
) Per: _____
) Name: Name
) Title: Title
) I/We have the authority to bind
) the corporation

Schedule "B"

Official Committee Establishment Process

Pursuant to the Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated March 21, 2019 (the "**Order**") Miller Thomson LLP was appointed to represent all individuals and/or entities ("**Investors**") that hold an interest in a syndicated mortgage ("**SMI**"), administered by Hi-Rise Capital Ltd. ("**Hi-Rise**"), in respect of the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the "**Project**") and the proposed development known as the "Adelaide Street Lofts". Pursuant to the Order, Representative Counsel was directed to appoint the Official Committee of Investors (the "**Official Committee**") in accordance with this Official Committee Establishment Process. The Official Committee is expected to consist of five Investors.


All capitalized terms not otherwise defined herein shall have the same meaning ascribed to them in the Order. All references to a singular word herein shall include the plural, and all references to a plural word herein shall include the singular.

Pursuant to the Order, the Representative Counsel shall, among other things, consult with and take instructions from the Official Committee in respect of the SMI and the Project.

This protocol sets out the procedure and process for the establishment of the Official Committee.

Establishment of the Official Committee

1. As soon as reasonably practicable, Representative Counsel will deliver a communication calling for applications ("**Call for Official Committee Applications**") to Investors by mail and by email where an email address is available. Representative Counsel shall also post on the Website (as defined in the Order) a copy of the Call for Official Committee Applications.

 2. The deadline to submit an application pursuant to the Call for Official Committee Applications will be 5:00 p.m. EST on ~~March 29~~ ^{April 1}, 2019 (the "**Applications Deadline**"), or such later date as Representative Counsel may deem reasonably practicable. Investors wishing to act as a member of the Official Committee (each, an "**Official Committee Applicant**") shall submit their application by the Applications Deadline. Applications submitted past the Applications Deadline will not be reviewed by Representative Counsel.

3. In order to serve as a member of the Official Committee, the Official Committee Applicant must be an Investor that holds an SMI. If the SMI is held through a corporate entity, the Official Committee Applicant must be a director of the corporation in order to be a member of the Official Committee.

4. An Official Committee Applicant must not have a conflict of interest with the interests of other investors.

5. Representative Counsel will review applications submitted by the Applications Deadline and will create a short list (the “**Short List**”) of no more than 20 candidates who should be extended invitations for an interview. As soon as reasonably practicable, the interviews will be conducted by teleconference by Representative Counsel (the “**Interviews**”). For consistency in evaluating each Official Committee Applicant,

- (a) all of the interviews will follow the same structure and will be approximately the same length (about half an hour); and
- (b) substantially similar questions will be posed to each interviewee.

6. Following the Interviews, Representative Counsel will select seven Official Committee Applicants (the “**Short List Candidates**”) who, in Representative Counsel’s judgment, are the best candidates to serve as either (i) a member of the Official Committee (a “**Member**”) or (ii) an alternate Member should any of the Members resign or be removed from the Official Committee (an “**Alternate**”). From the Short List Candidates, Representative Counsel will select five Members and two Alternates. In determining the Short List Candidates, Representative Counsel reserves the right to consider, among other factors: (i) experience with governance or the mortgage industry; (ii) education; (iii) answers to interview questions; (iv) the amount of the Official Committee Applicant’s SMI.

7. As soon as reasonably practicable, Representative Counsel will submit the Short List Candidates to the Court for approval, along with each of their applications. A summary of each Member and Alternate and their respective qualifications will also be submitted to the Court.

Schedule “C”

Official Committee Protocol

Pursuant to the Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 21, 2019 (the “**Order**”) Miller Thomson LLP was appointed to represent all individuals and/or entities (“**Investors**”) that hold an interest in a syndicated mortgage (“**SMI**”), administered by Hi-Rise Capital Ltd. (“**Hi-Rise**”), in respect of the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the “**Project**”) and the proposed development known as the “Adelaide Street Lofts”.

All capitalized terms not otherwise defined herein shall have the same meaning ascribed to them in the Order. All references to a singular word herein shall include the plural, and all references to a plural word herein shall include the singular.

This protocol sets out the terms governing the Official Committee established by Representative Counsel pursuant to the Official Committee Establishment Process, as approved by the Order. All Investors that have been accepted by Representative Counsel to serve as a member of the Official Committee (each, a “**Member**”) shall be bound by the terms of this protocol.

This protocol is effective as at the date of the Order.

The Official Committee and Representative Counsel shall be governed by the following Official Committee Protocol:

1. **Definitions:** Capitalized terms not otherwise defined herein shall have the same meaning ascribed to them in the Order.
2. **Resignations:** A Member may resign from the Official Committee at any time by notifying Representative Counsel and the other Members, by email. If a Member is incapacitated or deceased, such Member shall be deemed to have resigned from the Official Committee effective immediately.
3. **Expulsions:** Any Member may be expelled from the Official Committee for cause by Representative Counsel or by order of the Court. For greater certainty, “for cause” includes but is not limited to: (a) if a Member is unreasonably disruptive to or interferes with the ability of the Official Committee or Representative Counsel to conduct its affairs or fulfill their duties; (b) if a Member is abusive (verbal or otherwise) towards Representative Counsel or any Member; (c) if a Member fails to attend either (i) two (2) consecutive meetings without a valid reason (as determined by Representative Counsel in its sole discretion) or (ii) three (3) meetings whether or not a valid reason is provided; (d) if a Member commits any act or engages in any conduct that, in Representative Counsel’s opinion, may bring the reputation or credibility of the Official Committee into dispute; (e) if in Representative Counsel’s opinion, an irreconcilable conflict of interest arises between a Member and the Official Committee; or, (f) if, for any reason, a Member is unable to reasonably fulfil his/her duties as a Committee Member.

4. **Role of the Official Committee:** The role of the Official Committee is to consult with and provide instructions to Representative Counsel, in accordance with the terms of this protocol, with respect to matters related to the SMI and the Project.
5. **Multiple Views:** It is recognized and understood that Members may have divided opinions and differing recommendations, and accordingly, consensus on feedback regarding any potential resolution of matters related to the SMI and Project may not be achievable. In such circumstances, the will of the majority of the Members will govern. In making decisions and taking steps, Representative Counsel may also seek the advice and direction of the Court if necessary.
6. **Good Faith:** For the purposes of participation in the Official Committee, each Member agrees that he or she will participate in good faith, and will have appropriate regard for the legitimate interests of all Investors.
7. **No liability:** No Member shall incur any liability to any party arising solely from such Members' participation in the Official Committee or as a result of any suggestion or feedback or instructions such Member may provide to Representative Counsel.
8. **Compensation:** No Member shall receive compensation for serving as a Member of the Consecutive Committee.
9. **Chair:** Representative Counsel shall be the chair of the meetings of the Official Committee.
10. **Calling Meetings:** Representative Counsel, at the request of a Member or at its own instance, may call meetings of the Official Committee on reasonable advance written notice to the Members, which notice shall be made by e-mail. Meetings may be convened in person, at the offices of Miller Thomson LLP, or by telephone conference call.
11. **Quorum:** While it is encouraged that all Members participate in meetings, a meeting may be held without all of the Members present provided that at least three (3) Members are present in person or by telephone.
12. **Minutes:** Representative Counsel shall act as secretary of the meetings of the Official Committee and shall keep minutes of the meetings. Where issues of disagreement among Members arise, the minutes will reflect such disagreements. Such minutes shall be confidential and shared with Members only. Minutes are for administrative record keeping purposes only and are not intended to be binding or conclusive in any way. The minutes will record attendance, significant issues discussed and the results of votes taken by the Official Committee.
13. **Additional Rules and Guidelines:** Representative Counsel may adopt in its sole discretion, such reasonable procedural rules and guidelines regarding the governing of Official Committee meetings. Notwithstanding any provision in this Protocol and subject to the terms of the Order, Representative Counsel may, in its sole discretion, apply to

the Court for advice and direction on any matter, including, without limitation, with respect to instruction received from the Official Committee.

HI-RISE CAPITAL LTD.
Applicant

SUPERINTENDENT OF FINANCIAL SERVICES *et. al.*
Respondents

Court File No. CV-19-616261-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**PROCEEDING COMMENCED AT
TORONTO**

ORDER

Cassels Brock & Blackwell LLP
2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

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Lawyers for the Applicant, Hi-Rise Capital Ltd.

APPENDIX B

Court File No.: CV-19-616261-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF SECTION 60 OF THE TRUSTEE ACT, R.S.O. 1990, C. T.23, AS
AMENDED, AND RULE 10 OF THE ONTARIO RULES OF CIVIL PROCEDURE,
R.R.O. 1990, REG. 194, AS AMENDED**

**AND IN THE MATTER OF HI-RISE CAPITAL LTD. AND IN THE MATTER OF
ADELAIDE STREET LOFTS INC.**

MINUTES OF SETTLEMENT

WHEREAS on March 21, 2019, Hi-Rise Capital Ltd. (“**Hi-Rise**”) brought an application to the Court in Court File No. CV-19-616261-00CL under section 60 of the *Trustee Act* (Canada) for, *inter alia*, the appointment of Representative Counsel (as hereinafter defined), and a declaration that Hi-Rise has the power under the loan participation agreements and mortgage participation agreements with the Investors (as hereinafter defined) to grant a discharge of the syndicated mortgage (the “**Syndicated Mortgage**”) held for the benefit of the Investors over the Property (as hereinafter defined) in the event the net proceeds received from the completion of a contemplated sale transaction relating to the Property (the “**Transaction**”) are insufficient to pay the full indebtedness under the Syndicated Mortgage (the “**Trustee Application**”);

AND WHEREAS pursuant to the Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 21, 2019 (the “**Appointment Order**”), Miller Thomson LLP was appointed as Representative Counsel (in such capacity, “**Representative Counsel**”) to represent all individuals and/or entities (collectively, the “**Investors**”) holding an interest in the Syndicated Mortgage (each, a “**SMI**”), administered by Hi-Rise in respect of the proposed development known as the “Adelaide Street Lofts” (the “**Project**”) at the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the “**Property**”) and owned by Adelaide Street Lofts Inc. (“**Adelaide**”), in connection with the negotiation and implementation of a settlement with respect to such investments, except for those Investors who opted out of representation by Representative Counsel in accordance with the terms of the Appointment Order (collectively, the “**Opt-Out Investors**”);

AND WHEREAS Adelaide is wholly owned by 263 Holdings Inc. ("**263 Holdings**");

AND WHEREAS BMO Capital Markets Real Estate Inc. ("**BMO**") was retained by 263 Holdings to market and sell the Property (the "**Sale Engagement**");

AND WHEREAS BMO has agreed to a reduced payment in the amount of \$649,000, inclusive of harmonized sales tax, on account of the commission payable to it in respect of the Sale Engagement (the "**BMO Commission**");

AND WHEREAS pursuant to paragraph 27 of the Appointment Order, Hi-Rise is permitted to call, hold and conduct a meeting of all Investors in the Project, including the Opt-Out Investors, in order for such parties to consider and, if determined advisable, pass a resolution approving the Transaction and the net sale proceeds arising therefrom (the "**Vote**"). Paragraphs 28 to 31 of the Appointment Order set out a mechanism and rules for the Vote;

AND WHEREAS pursuant to the Appointment Order, Representative Counsel was directed to establish an Official Committee in accordance with the process and procedure described in Schedule "B" to the Appointment Order (the "**Official Committee**");

AND WHEREAS pursuant to the Order of Justice Hainey dated April 15, 2019, the Official Committee was approved and constituted. There are currently four members of the Official Committee;

AND WHEREAS Meridian Credit Union Limited ("**Meridian**") commenced an application against Adelaide in Court File No. CV-19-00628145-00CL for the appointment of a receiver, without security, in respect of all of the assets, undertakings and properties of Adelaide (the "**Receivership Application**");

AND WHEREAS pursuant to the Endorsement of Justice McEwen dated November 1, 2019, the Receivership Application was adjourned to December 12, 2019 and a Judicial Mediation was scheduled for November 27, 2019 before Justice McEwen (the "**Judicial Mediation**");

AND WHEREAS the Parties (as defined below), together with Lanterra Developments Ltd. ("**Lanterra**"), being the proposed purchaser of the Property pursuant to the Transaction, and Meridian (though not a party to these Minutes of Settlement) attended at the Judicial Mediation;

AND WHEREAS the Receivership Application has now been adjourned sine die;

AND WHEREAS pursuant to the Order of Madam Justice Conway dated December 20, 2019, Representative Counsel is authorized on behalf of only the Investors as defined in the Appointment Order to instruct Community Trust Company to consent to the subordination of its mortgage registered on title to the Property, only in connection with this settlement, and is authorized to instruct Community Trust Company to execute any and all documents as may be necessary or required to give effect to same.

IN CONSIDERATION of the promises and the mutual covenants, agreements, representations and warranties expressed herein and other good and valuable consideration, the receipt and sufficiency of which are hereby irrevocably acknowledged by Lanterra and each of Jim Neilas, 263 Holdings, Hi-Rise, Adelaide and Representative Counsel and the Official Committee (collectively, the "**Parties**"), the Parties hereby agree to settle all matters raised in the Trustee Application on the following terms:

1. The Parties agree that the above-noted recitals are true and accurate.
2. Lanterra, or a designee, agrees to pay on the closing of the Transaction the amount of \$69,000,000 (the "**Purchase Price**") in respect of its purchase of a 100% legal and beneficial interest in the Property. A portion of the Purchase Price shall be satisfied by way of the Deposit (as hereinafter defined) to be paid, in trust, to the lawyers for Adelaide, namely, McCarthy Tétrault LLP, with the balance to be distributed on the terms hereinafter set forth.
3. Upon the execution of these Minutes of Settlement by the Parties and Lanterra, the following shall occur forthwith:
 - (a) Lanterra and Adelaide shall enter into an agreement of purchase and sale in respect of the Transaction (the "**APS**") which shall provide for, *inter alia*, (i) the Purchase Price, (ii) a deposit paid to McCarthy Tétrault LLP, in trust, in the

amount of \$10,000 (the “**Deposit**”), (iii) a closing date of no later than May 14, 2020 (the “**Closing Date**”), (iv) limited representations and warranties customary in receivership sales, (v) closing conditions customary in receivership sales, and (vi) the issuance by the Court of an Approval and Vesting Order vesting the Property in Lanterra or its designee on closing free and clear of all encumbrances, in form satisfactory to Lanterra, acting reasonably;

- (b) Lanterra will lend \$18,000 to Adelaide, which loan shall accrue interest at the rate of prime plus 2% (the “**Forbearance Fee Loan**”), and Adelaide shall direct Lanterra to pay the \$18,000 to Meridian on account of the forbearance fee owing by Adelaide to Meridian;
- (c) Lanterra will lend \$1,550,000 to Adelaide, which loan shall accrue interest at the rate of prime plus 2% (the “**Interest Payment Loan**”), and Adelaide shall direct Lanterra to pay the amount of \$1,550,000 to Meridian on account of outstanding interest due and owing by Adelaide to Meridian;
- (d) As security for the Interest Payment Loan, Adelaide shall grant in favour of Lanterra a second-ranking mortgage (the “**Lanterra Mortgage**”) secured against title to the Property, which mortgage shall be on the same terms as and shall rank subordinate to the mortgage held by Meridian, but in priority to the mortgage held by Hi-Rise (the “**Hi-Rise Mortgage**”) (and in such regard Hi-Rise agrees to subordinate the existing mortgage held by it). The costs associated with registering the Lanterra Mortgage on title to the Property shall be added to the amount of, and shall be secured by, the Lanterra Mortgage;
- (e) Each of Lanterra and the Parties, or any of one of them, shall execute any and all documents as may be necessary to give effect to paragraphs 3(a) to 3(d), above.

4. Until the Closing Date, Adelaide shall (a) continue to operate the Property on the same basis as at the date of execution of these Minutes of Settlement; (b) continue to pay the operating expenses in respect of the Property that it is paying as at the date of execution of these Minutes

of Settlement, and will not be liable or responsible for any other expenses in respect of the Property; and (c) pay all remittances on account of harmonized sales tax or HST.

5. These Minutes of Settlement, including the Transaction and the terms noted in paragraph 9 below, shall be subject to approval of the Investors and the Court. Upon execution of these Minutes of Settlement by Lanterra and the Parties, Hi-Rise shall hold the Vote as soon as reasonably practicable in accordance with paragraphs 27 to 30 of the Appointment Order. Thereafter, and provided that the Vote passes by the margin provided for in paragraph 31 of the Appointment Order, Hi-Rise shall forthwith bring a motion to the Court in the Trustee Application in accordance with paragraph 31 of the Appointment Order:

- (a) For approval of the Transaction and the Investor Settlement Amount;
- (b) To permit and direct Hi-Rise to grant a discharge of the Hi-Rise Mortgage; and
- (c) To issue an Approval and Vesting Order in form satisfactory to Lanterra and Representative Counsel, acting reasonably.

6. Upon execution of these Minutes of Settlement by Lanterra and the Parties, Representative Counsel shall be entitled to bring a motion within the Trustee Application for an order, substantially in the form attached as Appendix "A" to these Minutes of Settlement, and Lanterra and the Parties shall provide their written consent to same.

7. On the closing of the Transaction, each of Lanterra, 263 Holdings and the Investors (from the proceeds of the Investor Settlement Amount, as hereinafter defined) agrees to contribute one-third of the BMO Commission; provided, however, that the liability of 263 Holdings in respect of same shall be limited to the sum of \$216,000.

8. On the closing of the Transaction, 263 Holdings agrees to pay to Lanterra the amount of \$50,000 in respect of the breakage fee payable under a joint venture transaction contemplated between Adelaide and Lanterra pursuant to a term sheet made as of April 10, 2019, as amended from time to time.

9. On closing of the Transaction, Lanterra shall pay:

- (a) To Aird & Berlis LLP in trust (on behalf of Meridian), the amounts owing as of the date of repayment (the “**Meridian Repayment Amount**”) under the loan agreement between Meridian and Adelaide dated April 2, 2018 (as may be or have been subsequently amended, replaced, restated or supplemented from time to time, the “**Credit Agreement**”) and/or the forbearance agreement between Meridian and Adelaide dated December 20, 2019, which amounts shall include principal, interest and amounts which may be or become owing for Meridian’s fees, agent costs, reasonable professional fees and accrued interest at the rates set out in the Credit Agreement, which amounts shall be reviewed by Representative Counsel prior to such payment;
- (b) To Stikeman Elliott LLP in trust (on behalf of Lanterra):
 - (i) the amounts owing to Lanterra as of the date of repayment under the Forbearance Fee Loan, which amounts shall be reviewed by Representative Counsel prior to payment;
 - (ii) the amounts owing to Lanterra as of the date of repayment under the Interest Payment Loan, which amounts shall be reviewed by Representative Counsel prior to payment, less \$216,500 on account of Lanterra’s contribution to the BMO Commission;
 - (iii) the sum of \$50,000 on behalf of 263 Holdings in respect of the breakage fee payable under a joint venture transaction contemplated between Adelaide and Lanterra pursuant to a term sheet made as of April 10, 2019, as amended from time to time;
- (c) To McCarthy Tétrault LLP in trust (on behalf of 263 Holdings), the sum of \$3,734,000, representing the amount payable to 263 Holdings (\$4,000,000 less 263 Holdings’ contribution to the BMO Commission and the \$50,000 breakage fee); and
- (d) To Miller Thomson LLP in trust (to be distributed in accordance with paragraph 10), the balance of the Purchase Price remaining after payment of the amounts

required to be made to Aird & Berlis LLP in trust, Stikeman Elliott LLP in trust, and McCarthy Tétrault LLP in trust pursuant to paragraphs 9(a) to 9(c).

10. The amount paid to Miller Thomson LLP in trust pursuant to paragraph 9(d) shall be distributed by Miller Thomson LLP in the following order of priority:

- (a) First, to professionals with charges on the Property in full satisfaction of the amounts secured by such charges registered on title to the Property as of the date of repayment, and to Representative Counsel (Miller Thomson LLP, in trust) a reasonable reserve amount to be held back in order to pay fees and disbursements of professionals with charges on the Property in respect of the implementation and completion of these Minutes of Settlement;
- (b) Second, to BMO in full satisfaction of the BMO Commission;
- (c) Third, to Cassels Brock & Blackwell LLP ("**Cassels**"),
 - (i) the sum of \$146,223.00 (a discounted sum) to pay Cassels's legal fees, disbursements, and taxes for work done for Hi-Rise in regard to the Trustee Application, these Minutes of Settlement, and the Transaction (collectively, the "**Cassels Services**") over the period up to and including December 8, 2019, plus
 - (ii) the actual legal fees, disbursements, and taxes incurred by Hi-Rise for the period from and after December 9, 2019 to the date of closing of the Transaction in connection with Cassels Services, as evidenced by redacted invoices provided to Representative Counsel that set out details of numbers of hours billed by timekeepers on each date but with narrative details of activities redacted;
- (d) Fourth, to set aside and pay over to Cassels a reasonable reserve for legal fees, disbursements, and taxes of Cassels in connection with Cassels Services required after the closing of the Transaction, such as services associated with the distribution of proceeds to Investors and any motion required to terminate the

Trustee Application (the “**Cassels Reserve**”), with the amount of the Cassels Reserve to be agreed upon by Cassels and Representative Counsel, acting reasonably, or, failing agreement, to be determined by the Court; and

- (e) Fifth, to the Investors (the “**Distribution**”) in full satisfaction of all claims each Investor may have in relation to the Property and the Project (in aggregate, the “**Investor Settlement Amount**”), and, for greater certainty, the amounts payable to Investors holding their investment through a registered plan shall be paid to Community Trust Company as trustee of the registered plans.

11. Upon payment of funds in accordance with paragraph 9, and for greater certainty, prior to any of the distributions in accordance with paragraph 10, Aird & Berlis LLP, Stikeman Elliott LLP, McCarthy Tétrault LLP and Miller Thomson LLP shall each execute a certificate in the form attached to the Approval and Vesting Order (the “**Certificate**”) confirming receipt of the funds paid pursuant to paragraph 9 and deliver same to Lanterra. Upon delivery of the Certificate, the Property shall vest in Lanterra in accordance with the terms set out in the Approval and Vesting Order.

12. In the event there is a dispute in respect of the distributions set out in paragraph 10, Representative Counsel shall seek directions from the Court prior to such distributions being made.

13. Hi-Rise shall be responsible for preparing a list of the Investors, corresponding distribution entitlements and priorities of each of the Investors (together with appropriate documentation establishing same) from the Investor Settlement Amount (the “**Investor Distribution List**”). Solely for the purposes of ensuring that the Investor Settlement Amount is distributed in accordance with the respective entitlements of Investors, Representative Counsel shall be entitled to review the Investor Distribution List prior to any distribution of the Investor Settlement Amount. If there are disputes over Investors’ entitlements or any part of the Investor Distribution List, Representative Counsel shall seek directions from the Court prior to its Distribution of the Investor Settlement Amount set out in paragraph 10(e). For greater certainty, Representative Counsel shall be entitled, in consultation with Hi-Rise, to delegate the task of Distribution of the Investor Settlement Amount as set out in paragraph 10(e).

14. Prior to effecting any Distribution of the Investor Settlement Amount, Representative Counsel shall obtain Court approval of the Investor Distribution List and the proposed mechanism for Distribution.

15. For greater certainty, the Investors as defined in these Minutes of Settlement shall include all Investors in the Project, including but not limited to those Investors whose investments were originally in the Cube Lofts Project at the property municipally known as 799 College Street, Toronto, but the Distribution shall be made in accordance with the relative priority that each of the Investors has (i.e., registered, non-registered, and subordinated), which priority information shall be provided by Hi-Rise and included in the Investor Distribution List in accordance with paragraph 13, above.

16. Notwithstanding that 263 Holdings is an Investor, 263 Holdings shall be excluded from the distribution to Investors from the Investor Settlement Amount. For greater certainty, 263 Holdings shall not receive a distribution or return on its SMI from the Investor Settlement Amount.

17. Hi-Rise shall have no liability for any failure by Representative Counsel or its agents or delegates to effect the Distribution in accordance with the Investor Distribution List.

18. Upon distribution of the amounts set out in paragraph 10 above, Representative Counsel and the Official Committee shall obtain a discharge order in the Trustee Application, and the Parties shall provide their written consent to same.

19. If on or prior to the Closing Date Adelaide, without lawful justification, refuses to perform its obligations under the APS or takes any action to frustrate the closing:

- (a) Lanterra may make the payments otherwise required to be made by Lanterra under paragraph 9;
- (b) If Lanterra makes the payments pursuant to paragraph 9, Representative Counsel shall execute a certificate substantially in the form attached to the Approval and Vesting Order upon receipt of written confirmation by Stikeman Elliott LLP that

the distribution amounts set out in paragraph 9, above, have been delivered (the **“Representative Counsel Certificate”**) and deliver same to Lanterra; and

- (c) Upon delivery of the Representative Counsel Certificate by Representative Counsel to Lanterra, the Property shall vest in Lanterra in accordance with the terms set out in the Approval and Vesting Order.

20. Each of Lanterra and the Parties shall each execute full and final mutual releases (the **“Releases”**), including full and final releases of all directors, officers and affiliates of Lanterra and the Parties (including their legal counsel), where applicable, in a form to be mutually agreed upon between counsel, which Releases shall include a carve out in respect of the activities and conduct of Representative Counsel and Hi-Rise solely in respect of the Distribution of the Investor Settlement Amount. Upon completion of the Distribution, each of Lanterra and the Parties shall execute a further full and final release in a form substantially similar to the Releases.

21. These Minutes of Settlement shall be construed in accordance with the laws of the Province of Ontario. Any dispute arising from these Minutes of Settlement shall be adjudicated by the Ontario Superior Court of Justice, Commercial List, and the Parties hereby attorn to the exclusive jurisdiction of this Court for this purpose.

22. These Minutes of Settlement and every covenant, provision and term herein contained shall enure to the benefit of and be binding upon each of Lanterra and the Parties and their respective heirs, executors, administrators, assigns, agents, advisors, consultants and other representatives.

23. Lanterra and each of the Parties agree to do and execute such further acts and documents as may be reasonably necessary or desirable to give effect to the covenants, provisions and terms of these Minutes of Settlement.

24. Any amendments to these Minutes of Settlement must be agreed to as between Lanterra and the Parties and must be in writing.

25. Each of Lanterra and the Parties acknowledges and agrees that:

- (a) It has obtained independent legal advice or the opportunity to obtain legal advice;
- (b) It has read these Minutes of Settlement in its entirety and has knowledge of the contents;
- (c) It understands its respective rights and obligations under these Minutes of Settlement, the nature of these Minutes of Settlement, and the consequences of these Minutes of Settlement;
- (d) It acknowledges that the terms of these Minutes of Settlement are fair and reasonable;
- (e) It is entering into these Minutes of Settlement without any undue influence or coercion whatsoever; and
- (f) It is signing these Minutes of Settlement voluntarily.

26. These Minutes of Settlement may be executed in counterparts, and by facsimile or electronic mail, each of which shall be deemed to be an original, all such separate counterparts shall together constitute one and the same instrument.

27. These Minutes of Settlement and the documents attached hereto, together with the executed Full and Final Mutual Release, represent the entire agreement among each of Lanterra and the Parties.

***[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
– SIGNATURE PAGE TO FOLLOW]***

DATED AT this _____ day of _____, 2019.

LANTERRA DEVELOPMENTS LTD.

Per: 

Name: Christopher S. Wern
Title: Chief Operating Officer
(I have authority to bind the corporation)

DATED AT this _____ day of _____, 2019.

Witness: _____

JIM NEILAS

:

DATED AT this _____ day of _____, 2019.

263 HOLDINGS INC.

Per: _____

Name: _____
Title: _____
(I have authority to bind the corporation)

DATED AT this _____ day of _____, 2019.

ADELAIDE STREET LOFTS INC.

Per: _____

Name: _____
Title: _____
(I have authority to bind the corporation)

DATED AT _____ this _____ day of _____, 2019.

LANTERRA DEVELOPMENTS LTD.

Per: _____

Name: _____

Title: _____

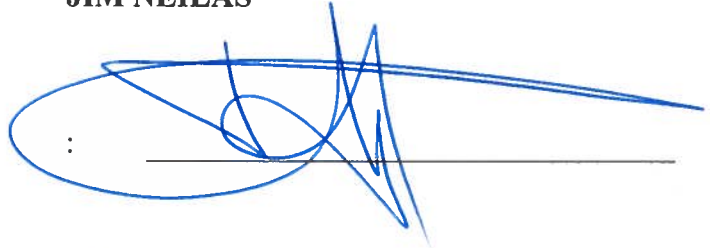
(I have authority to bind the corporation)

DATED AT Toronto this 20th day of December, 2019.

Witness: _____

Goeff L. Hall

JIM NEILAS



DATED AT Toronto this 20th day of December, 2019.

263 HOLDINGS INC.

Per: _____

Name: _____

Title: _____

(I have authority to bind the corporation)

DATED AT Toronto this 20th day of December, 2019.

ADELAIDE STREET LOFTS INC.

Per: _____

Name: _____

Title: _____

(I have authority to bind the corporation)

DATED AT this _____ day of _____, 2019.

HI-RISE CAPITAL LTD.

Per: _____

Name: MOOR AL-RWQATI

Title: COO

(I have authority to bind the corporation)

DATED AT this _____ day of _____, 2019.

MILLER THOMSON LLP, solely in its capacity as court-appointed Representative Counsel

Per: _____

Name: _____

Title: _____

(I have authority to bind the limited liability partnership)

DATED AT this _____ day of _____, 2019.

Witness: _____

VIPIN BERRY, in his capacity as court-appointed member of the Official Committee

DATED AT this _____ day of _____, 2019.

HI-RISE CAPITAL LTD.

Per: _____

Name:

Title:

(I have authority to bind the corporation)

DATED AT the City of Toronto this 23rd day of December, 2019.

MILLER THOMSON LLP, solely in its capacity as court-appointed Representative Counsel



Per: _____

Name: Gregory R. Azeff

Title: Partner

(I have authority to bind the limited liability partnership)

DATED AT this _____ day of _____, 2019.

Witness: _____

VIPIN BERRY, in his capacity as court-appointed member of the Official Committee

Per: _____
Name: _____
Title: _____
(I have authority to bind the
corporation)

DATED AT this _____ day of _____, 2019.

HI-RISE CAPITAL LTD.

Per: _____
Name: _____
Title: _____
(I have authority to bind the
corporation)

DATED AT this _____ day of _____, 2019.

**MILLER THOMSON LLP, solely in its
capacity as court-appointed Representative
Counsel**

Per: _____
Name: _____
Title: _____
(I have authority to bind the limited
liability partnership)

DATED AT

this 23rd day of December, 2019.

Witness:

[Signature]

**VIPIN BERRY, in his capacity as
court-appointed member of the Official
Committee**

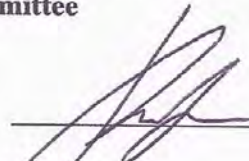
[Signature: Vipin Berry]

DATED AT Toronto, ON this 20th day of Dec, 2019.

Witness: Nima Dgharian



MICHAEL SINGH, in his capacity as
court-appointed member of the Official
Committee



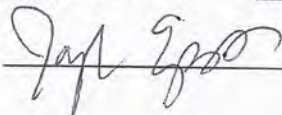
DATED AT _____ this _____ day of _____, 2019.

Witness: _____

NICK TSAKONACOS, in his capacity as
court-appointed member of the Official
Committee

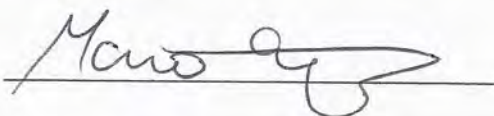
DATED AT Ottawa, ON this 23 day of Dec, 2019.

Witness: Jay Goo



MARCO ARQUILLA, solely in his
capacity as court-appointed member of the
Official Committee

Per:



DATED AT _____ this _____ day of _____, 2019.

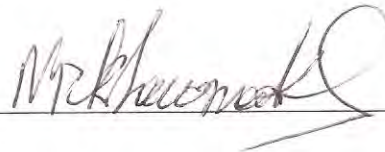
Witness: _____

**MICHAEL SINGH, in his capacity as
court-appointed member of the Official
Committee**

DATED AT TORONTO this 20th day of December 2019.

Witness: 

**NICK TSAKONACOS, in his capacity as
court-appointed member of the Official
Committee**



DATED AT _____ this _____ day of _____, 2019.

Witness: _____

**MARCO ARQUILLA, solely in his
capacity as court-appointed member of the
Official Committee**

Per: _____

APPENDIX "A"

Court File No.: CV-19-616261-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) THE
)
)
JUSTICE) DAY OF , 2019

**IN THE MATTER OF SECTION 60 OF THE TRUSTEE ACT, R.S.O. 1990, C. T.23, AS
AMENDED, AND RULE 10 OF THE ONTARIO RULES OF CIVIL PROCEDURE,
R.R.O. 1990, REG. 194, AS AMENDED**

**AND IN THE MATTER OF HI-RISE CAPITAL LTD. AND IN THE MATTER OF
ADELAIDE STREET LOFTS INC.**

ORDER

THIS MOTION, made by Miller Thomson LLP, in its capacity as Court-appointed Representative Counsel in this proceeding (in such capacity, "**Representative Counsel**"), appointed pursuant to the Order of the Honourable Mr. Justice Hailey dated March 21, 2019 (the "**Appointment Order**") to represent the interests of all individuals and/or entities ("**Investors**", which term does not include persons who have opted out of such representation in accordance with the Appointment Order) that have invested funds in a syndicated mortgage investment administered by Hi-Rise Capital Ltd. ("**Hi-Rise**"), in respect of the proposed development known as the "Adelaide Street Lofts" (the "**Project**") at the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the "**Property**") and owned by Adelaide Street Lofts Inc. (the "**Adelaide**"), a corporation wholly owned by 263 Holdings Inc. ("**263 Holdings**") was heard this day at the Court House, 330 University Avenue, Toronto, Ontario,

UPON READING the Minutes of Settlement dated December 20, 2019 entered into in connection with this proceeding (the "**Minutes of Settlement**") and the consent of the parties, Hi-Rise, Adelaide, 263 Holdings, Representative Counsel, Meridian Credit Union Limited

(“**Meridian**”), and Lanterra Developments Ltd., and upon hearing the submissions of Representative Counsel,

1. **THIS COURT ORDERS** that, subject to the encumbrances permitted by the Minutes of Settlement, title to the Property shall not be further encumbered by any person or entity pending further order of the Court, and any registration made on title to the Property shall be of no force or effect.

2. **THIS COURT ORDERS** that Adelaide shall not execute any lease or lease amendment in respect of the Property which specifies an expiration date later than May 14, 2020.

3. **THIS COURT ORDERS** that nothing in paragraph 1 of this Order shall prejudice the exercise of Meridian’s rights against the Property, including with respect to its application bearing Court File No. CV-19-00628145-00CL, on seven (7) days’ notice to each of the parties to the Minutes of Settlement.

HI-RISE CAPITAL LTD. and SUPERINTENDENT OF FINANCIAL
Applicant SERVICES Respondents et. al.

Court File No.: CV-19-616261-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

MILLER THOMSON LLP

Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, ON Canada M5H 3S1

Greg Azeff LSO#: 45324C

gazeff@millerthomson.com
Tel: 416.595.2660/Fax: 416.595.8695

Stephanie De Caria LSO#: 68055L

sdecaria@millerthomson.com
Tel: 416.595.2652/Fax: 416.595.8695

Court-appointed Representative Counsel

HI-RISE CAPITAL LTD.

and

SUPERINTENDENT OF FINANCIAL
SERVICES et. al.
Respondents

Court File No.: CV-19-616261-00CL

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

MINUTES OF SETTLEMENT**MILLER THOMSON LLP**

Scotia Plaza

40 King Street West, Suite 5800

P.O. Box 1011

Toronto, ON Canada M5H 3S1

Greg Azeff LSO#: 45324C

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Court-appointed Representative Counsel

APPENDIX C

CV-19-616261-00CL

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF SECTION 60 OF THE TRUSTEE ACT, R.S.O. 1990, C. T.23, AS
AMENDED, AND RULE 10 OF THE ONTARIO RULES OF CIVIL PROCEDURE,
R.R.O. 1990, REG. 194, AS AMENDED**

**AND IN THE MATTER OF HI-RISE CAPITAL LTD. AND IN THE MATTER OF
ADELAIDE STREET LOFTS INC.**



**NOTICE OF APPLICATION
(returnable March 21, 2019)**

TO THE RESPONDENT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing on Thursday, March 21, 2019, at 10:00am, before Mr. Justice Hainey presiding over the Commercial List at 330 University Avenue, 8th Floor, Toronto ON, M5G 1R7.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

- 2 -

Date March 14, 2019

Issued by

C. Irwin
Local Registrar
Registrar

Address of Superior Court of Justice
court office: 330 University Avenue, 7th Floor
Toronto ON
M5G 1R7

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Lawyers for the Respondent, Superintendent of Financial Services

AND TO: **MILLER THOMSON LLP**
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Lawyers for the Advisory Committee (defined below) and Prospective Representative Counsel

AND TO: **TERESA SIMONELLI**
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Member of the Advisory Committee (defined below)

AND TO: **ANTONIO SIMONELLI**
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AND TO: **JANSALL INVESTMENTS LTD. c/o Morty Horowitz**
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Member of the Advisory Committee (defined below)

AND TO: **NICOLAS VERNI**
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Member of the Advisory Committee (defined below)

AND TO: **EDWARD RINTOUL**
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Member of the Advisory Committee (defined below)

AND TO: **SHAWN THOMAS**
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Toronto, ON
M5H 3S1

Member of the Advisory Committee (defined below)

- 5 -

AND TO: **JACQUELINE THOMAS**
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M5H 3S1

Member of the Advisory Committee (defined below)

AND TO: **MCCARTHY TÉTRAULT LLP**
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Lawyers for Adelaide Street Lofts Inc.

APPLICATION

1. The applicant, Hi-Rise Capital Ltd. ("**Hi-Rise**"), makes application for the following relief:
 - (a) upon the initial return of this application before the court on March 21, 2019,
 - a. if necessary, an Order abridging the time for service and filing of this notice of application and the application record and dispensing with further service thereof;
 - b. an Order substantially in the form contained in the application record (the "**Representative Counsel Order**") that
 - i. appoints Miller Thomson LLP as representative counsel ("**Rep Counsel**") to represent the interests of all persons (collectively, the "**Investors**") that have invested funds in the syndicated mortgage advanced as a loan to Adelaide Street Lofts Inc. ("**Adelaide**") which is administered by Hi-Rise;
 - ii. terminates the Engagement Letter between Miller Thomson LLP and certain individuals dated September 6, 2018, as amended thereafter to add additional individuals;
 - iii. authorizes the establishment of the Consultative Committee substantially in accordance with the process and procedure

described in the Consultative Committee Establishment Process (as such terms are defined in the Representative Counsel Order); and

- iv. authorizes and approves the Consultative Committee Protocol (as such term is defined in the Representative Counsel Order);
- v. creates an Administration Charge securing the fees of Rep Counsel ("**Rep Counsel Charge**") and counsel for Hi-Rise Capital Ltd. ("**Company Charge**") in priority to all other charges except the existing first mortgage in favour of Meridian Credit Union Limited;
- vi. grants a declaration that Hi-Rise has the power under loan participation agreements (each, an "**LPA**") and mortgage administration agreements (each, a "**MAA**") that it entered into with Investors and at law to grant a discharge of the syndicated mortgage (the "**Syndicated Mortgage**") held by Investors over the property owned by Adelaide (the "**Property**") if the proceeds received from the completion of a contemplated transaction relating to the Property (the "**Transaction**") are insufficient to pay in full amounts owing under the Syndicated Mortgage, and if the court determines that Hi-Rise does have such power, a discharge shall only

be granted if the Transaction is approved by Investors in accordance with the voting procedure (described below) and by the court upon a subsequent return of this application (described below);

- vii. permits Hi-Rise to call, hold and conduct a meeting (the “**Meeting**”) of the Investors to be held at a location, date and time to be determined by Hi-Rise, in order for the Investors to consider and, if determined advisable, pass a resolution approving the Transaction and the distribution of proceeds therefrom (the “**Distribution**”), and authorizes the conduct of such Meeting;
 - viii. schedules a further hearing of this Application to approve the Distribution if, at the Meeting a majority in number of the Investors representing two-thirds in value present and voting either in person or by proxy cast votes in favour of the proposed Transaction and Distribution;
- (b) upon the subsequent return of this application at a later date, such orders as are necessary to
- a. provide final approval of the Transaction and the Distribution if the court determines that the Transaction is fair and reasonable;

- 9 -

- b. provide further directions to Hi-Rise pursuant to section 60 of the *Trustee Act* as are appropriate to permit it to carry out its role in a manner consistent with the LPA and MAA and its duties at law; and
- c. approve the conduct and fees of Rep Counsel.

2. The grounds for the application are as follows:

- (a) The Applicant, Hi-Rise, is a corporation incorporated pursuant to the laws of the Province of Ontario;
- (b) Hi-Rise is a mortgage broker and mortgage administrator licensed by the Superintendent of Financial Services of Ontario (the "**Superintendent**");
- (c) Hi-Rise receives and advances, on behalf of Investors, funds to a variety of companies (each a "**Borrower**" and collectively the "**Borrowers**"), such as Adelaide, that undertake real property developments;
- (d) Prior to seeking money from Investors, the Borrower typically purchases the land with proceeds from a first mortgage obtained from a commercial lender;
- (e) Investors obtain the Syndicated Mortgage as security for their loans, which is registered on title to the relevant property in the name of Hi-Rise as trustee on behalf of investors;
- (f) The proceeds of the Syndicated Mortgage are typically used to fund pre-development costs such as zoning, architect fees, consultants, and

interest (both on the Syndicated Mortgage and the first mortgage), and some initial construction costs;

- (g) The terms on which Investors advance their funds and Hi-Rise administers each Syndicated Mortgage are set out in the LPA and MAA (collectively, the "**Agreements**") with respect to a given investment;
- (h) In addition, each Investor is provided with, and signs an acknowledgement of, a prescribed disclosure statement about the Syndicated Mortgage, which disclosure is prescribed by the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29 (the "**Act**") and the Regulations thereunder;
- (i) The Agreements give Hi-Rise certain powers to administer the Syndicated Mortgage, including the power to subordinate that mortgage to other indebtedness, such as the construction financing that is obtained to fund the majority of construction costs;
- (j) In the case of default by the Borrower, Hi-Rise is empowered to make such decisions, to take such action, and exercise such rights and remedies as it may deem advisable in its absolute discretion;
- (k) Since it began operations, Hi-Rise has been involved in approximately 20 investments involving a syndicated mortgage and, in each case, the investors in each of these projects received full payment of their principal and interest;

- 11 -

- (l) Starting in early 2017, the market for syndicated mortgages in Ontario effectively “froze” because a number of other mortgage brokers and administrators became insolvent and were the subject of regulatory action by the Superintendent;
- (m) At that time, a number of Borrowers (including Adelaide) in respect of which Hi-Rise administered mortgages were unable to obtain construction financing because commercial lenders were scared off by the problems that other mortgage brokers and administrators had experienced and lenders have been very reluctant to finance construction of any project involving a syndicated mortgage;
- (n) Accordingly, lenders refused to provide construction financing to the few projects with syndicated mortgages administered by Hi-Rise (including the Adelaide Project) where construction had not started;
- (o) As a result, Hi-Rise worked with the relevant borrowers to wind-down development efforts and realize the maximum value for investors;
- (p) Hi-Rise is only administering two remaining material syndicated mortgages, one of which is given by Adelaide;
- (q) Adelaide has been attempting to undertake a transaction (“Transaction”, as defined above) to realize value for the Property for the benefit of Investors;

- (r) The Agreements do not contain an explicit process that would permit Hi-Rise to sell the Property and compromise and/or settle amounts owing to Investors under the Syndicated Mortgages and discharge the Syndicated Mortgage in a deficiency situation;
- (s) Hi-Rise supports the Transaction but requires the approval of the Investors and the Court in order to complete the Transaction and grant a discharge of the Syndicated Mortgage, especially in circumstances where the proceeds of the Transaction may be less than the total amount owing under the Syndicated Mortgage;
- (t) Hi-Rise brings this Application to initiate a transparent court process that will do several things:
 - (i) first, Hi-Rise seeks the court appointment of Rep Counsel for the Investors in Adelaide, which counsel will negotiate with Adelaide regarding the Transaction, report to Investors, and represent their interests, and report to the court, with the goal of assisting Investors with maximizing their recoveries;
 - (ii) second, Hi-Rise seeks various declarations that it has the power to take steps regarding the Transaction, including holding a vote of Investors, and, if the requisite "double majority" of Investors approves the Transaction, to complete the Transaction and give a discharge of the Syndicated Mortgage; and

- (iii) third, upon a subsequent return date of this application, and assuming that an appropriate proportion of Investors has approved the Transaction, if there is likely to be a deficiency Hi-Rise will seek an order approving and sanctioning the Transaction and allowing it to be completed, if the court determines that the Transaction is fair and reasonable;
- (u) The court appointment of Rep Counsel is necessary to ensure that Rep Counsel has a proper mandate and to correct the problems that exist concerning the current role of Miller Thomson LLP ("**MT**") as counsel to some Investors in respect of Adelaide;
- (v) In particular, pursuant to an Engagement Letter dated September 6, 2018 (the "**Engagement Letter**"), Miller Thomson LLP ("**MT**") was engaged (the "**Existing Engagement**") by a small group of Investors (collectively, the "**Advisory Committee**") to act on their behalf in seeking a resolution to matters related to Adelaide, including recovery of funds advanced under the Syndicated Mortgage;
- (w) As part of the Existing Engagement, MT's fees and disbursements are being paid by Hi-Rise;
- (x) Pursuant to the Terms of Reference attached as a Schedule to the Engagement Letter, Alexander Simonelli was designated as Communication Designate (in such capacity, the "**Communication Designate**") for the purpose of disseminating communications to the general body of Investors;

- 14 -

- (y) The Advisory Committee and Communication Designate structures were created in order to enable MT to comply with its professional obligations including managing potential conflicts of interest and CASL requirements;
- (z) Unfortunately, the Advisory Committee and Communications Designate structures have proved ineffective, for reasons which include the following:
 - (i) MT continues to receive direct communications from individual Investors who have bypassed the established procedures, necessitating countless conflict checks;
 - (ii) MT is unable to provide direct advice to individual Investors other than members of the Advisory Committee due to concerns regarding potential conflicts of interest;
 - (iii) MT does not have a mandate to act on behalf of Investors other than members of the Advisory Committee; and
 - (iv) the Communications Designate has recently resigned from such role;
- (aa) The Representative Counsel Order contemplates the establishment of a Consultative Committee in accordance with a Consultative Committee Establishment Process;

- 15 -

- (bb) The Consultative Committee Establishment Process represents a fair and robust procedure for appointing Investors to act as members of the Consultative Committee;
- (cc) The Representative Counsel Order also contemplates a Consultative Committee Protocol, which sets out the terms governing the role and mandate of the Consultative Committee, among other things;
- (dd) MT cannot effectively fulfill its mandate and duties in the current structure;
- (ee) The appointment of MT as representative counsel will be of substantial assistance to efforts to resolve the matters relating to Adelaide, and is in the best interests of the Investors;
- (ff) The balance of convenience favours the appointment of MT as representative counsel of the Investors and the granting of the Representative Counsel Order;
- (gg) Since the work to be done by Rep Counsel and by counsel for Hi-Rise will benefit Investors, it is appropriate that the Rep Counsel Charge and Company Charge be established to secure payment of these counsel's fees which charge shall rank subordinate to the first mortgage but in priority to the Syndicated Mortgage;
- (hh) Further, section 8(ii) of the LPA provides that, in the event of a default under the Syndicated Mortgage, Hi-Rise is entitled to retain the services of various professionals, including lawyers and, pursuant to section 4 of the

LPA, such charges are to be paid out of monies recovered from Adelaide prior to the distribution of net proceeds to Investors;

- (ii) Sections 10, 60, 64 of the *Trustee Act*, R.S.O. 1990, c. T.23, as amended;
 - (jj) Section 96, 97, and 100 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended;
 - (kk) Rules 1.04, 1.05, 2.01, 2.03, 3.02, 10, 16, 37, and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
 - (ll) Such further other grounds as counsel may advise and this Court may permit.
3. The following documentary evidence will be used at the hearing of the motion:
- (a) The Affidavit of Noor Al-Awqati, to be sworn and the exhibits attached thereto; and
 - (b) Such further and other material as counsel may advise and as this Honourable Court may permit.

- 17 -

March 14, 2019

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Lawyers for the Applicant, Hi-Rise Capital Ltd.

HI-RISE CAPITAL LTD.
Applicant

SUPERINTENDENT OF FINANCIAL SERVICES et. al.
Respondents

CV-19-616261-0004
Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF APPLICATION

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Lawyers for the Applicant, Hi-Rise Capital Ltd.

APPENDIX D

Court File No.: CV-19-616261-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

)

MONDAY THE 15th

)

)

JUSTICE HAINEY

)

DAY OF APRIL, 2019

**IN THE MATTER OF SECTION 60 OF THE TRUSTEE ACT, R.S.O. 1990, C. T.23, AS
AMENDED, AND RULE 10 OF THE ONTARIO RULES OF CIVIL PROCEDURE,
R.R.O. 1990, REG. 194, AS AMENDED**



**AND IN THE MATTER OF HI-RISE CAPITAL LTD. AND IN THE MATTER OF
ADELAIDE STREET LOFTS INC.**

ORDER

THIS MOTION, made by Miller Thomson LLP, in its capacity Court-appointed Representative Counsel in this proceeding (in such capacity, "**Representative Counsel**"), was heard this day at the Court House, 330 University Avenue, Toronto, Ontario,

ON READING the Notice of Motion and the First Report of Representative Counsel dated April 9, 2019 (the "**First Report**"), and on hearing the submissions of Representative Counsel and such other counsel as were present as indicated on the Counsel Slip, no one appearing for any other person on the Service List, although properly served as it appears from the Affidavit of Shallon Garrafa sworn April 10, 2019, filed,

1. **THIS COURT ORDERS** that the time and method for service of the Notice of Motion and Motion Record is hereby abridged and validated, such that this Motion is properly returnable today, and further service of the Notice of Motion and the Motion Record is hereby dispensed with.
2. **THIS COURT ORDERS** that the activities and conduct of Representative Counsel, as disclosed in the First Report, be and are hereby approved.

3. **THIS COURT ORDERS** that the Official Committee (as defined in the First Report) be and is hereby constituted.
4. **THIS COURT ORDERS** that the Short List Candidates (as defined in the First Report) in respect of the Official Committee, be and are hereby approved.
5. **THIS COURT ORDERS** that the Official Committee members shall not disclose any information or communication that Representative Counsel advises is confidential or privileged.
6. **THIS COURT ORDERS** that the Official Committee members shall be required to advise Representative Counsel forthwith of any communication he or she receives from Investors (as defined in the First Report) or any other persons.
7. **THIS COURT ORDERS** that Confidential Appendix "1" to the First Report, be and is hereby sealed, pending further Order of the Court.



A handwritten signature in blue ink, appearing to read "Halsey J.", is written over a horizontal line.

ENTERED AT REGISTRY OF TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

APR 15 2019

PER / PAR:



A small handwritten signature or mark in blue ink, possibly initials, is written next to the "PER / PAR:" label.

HI-RISE CAPITAL LTD.

Applicant

and

SUPERINTENDENT OF FINANCIAL
SERVICES et. al.
Respondents

Court File No.: CV-19-616261-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

**ORDER
(April 15, 2019)****MILLER THOMSON LLP**Scotia Plaza
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P.O. Box 1011
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Court-appointed Representative Counsel

APPENDIX E

Court File No.: CV-19-616261-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

TUESDAY, THE 17TH

JUSTICE HAINEY

DAY OF SEPTEMBER, 2019

**IN THE MATTER OF SECTION 60 OF THE TRUSTEE ACT, R.S.O. 1990, C. T.23, AS
AMENDED, AND RULE 10 OF THE ONTARIO RULES OF CIVIL PROCEDURE,
R.R.O. 1990, REG. 194, AS AMENDED**



**AND IN THE MATTER OF HI-RISE CAPITAL LTD. AND IN THE MATTER OF
ADELAIDE STREET LOFTS INC.**

ORDER

THIS MOTION, made by Miller Thomson LLP, in its capacity as Court-appointed Representative Counsel in this proceeding (in such capacity, **“Representative Counsel”**), appointed pursuant to the Order of the Honourable Mr. Justice Hainey dated March 21, 2019 (the **“Appointment Order”**) to represent the interests of all individuals and/or entities (**“Investors”**, which term does not include persons who have opted out of such representation in accordance with the Appointment Order) that have invested funds in a syndicated mortgage investment administered by Hi-Rise Capital Ltd. (**“Hi-Rise”**), in respect of the proposed development known as the “Adelaide Street Lofts” (the **“Project”**) at the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the **“Property”**) and owned by Adelaide Street Lofts Inc. (the **“Company”**), was heard this day at the Court House, 330 University Avenue, Toronto, Ontario,

ON HEARING the submissions of Representative Counsel, Hi-Rise, the Company, the Financial Services Regulatory Authority of Ontario (**“FSRA”**), Meridian Credit Union Limited

(“**Meridian**”) and such other counsel as appeared, and on being advised of the consent of the parties,

APPOINTMENT

1. **THIS COURT ORDERS** that Alvarez & Marsal Canada Inc. is hereby appointed as a Court officer to act as an information officer in respect of Hi-Rise and the Property (in such capacity, the “**Information Officer**”).

2. **THIS COURT ORDERS** that the Information Officer shall not take possession of or exercise control over, and shall not be deemed to have taken possession of or exercise control over the business or assets of Hi-Rise or the Company, including, without limitation, the Property.

NO EFFECT ON RIGHTS AND REMEDIES OF MERIDIAN

3. **THIS COURT ORDERS** that nothing in this Order in any way affects Meridian’s ability to exercise any or all of its rights or remedies under any one or more of any credit agreement, security agreement or other document between Meridian and the Company or any other party named in such documents, including the right to the appointment of a receiver under the *Bankruptcy and Insolvency Act*, the *Courts of Justice Act* or otherwise, and the right to apply to the Court for any other remedies.

INFORMATION OFFICER’S POWERS

4. **THIS COURT ORDERS** that the Information Officer is hereby empowered and authorized to do any of the following where the Information Officer considers it necessary or desirable:

- (a) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis to assist with the exercise of the Information Officer's powers and duties conferred by this Order;
- (b) to review and report to the Court and to all stakeholders, including but not limited to the Representative Counsel, Hi-Rise, the Company, FSRA and Meridian, in

respect of all matters relating to the Property, Hi-Rise's mortgage over the Property, and the Company's proposed sale of the Property, including, but not limited to, the marketing and sales process undertaken in respect of the Property, all aspects of any and all proposed transactions in respect of the Property (and in this regard, the Information Officer may engage in discussions with Tricon Lifestyle Rentals Investment LP to ascertain its interest in the Property), and the financial implications of such proposed transactions (the "**Mandate**");

- (c) to meet with and discuss with such affected Persons (as defined below) as the Information Officer deems appropriate on all matters relating to the Mandate, subject to such confidentiality terms as the Information Officer deems advisable; and
- (d) to take any steps reasonably incidental to the exercise of these powers or the fulfilment of the Mandate.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE INFORMATION OFFICER

5. **THIS COURT ORDERS** that (i) the Company and Hi-Rise, (ii) all of their current and former directors, officers, employees, agents, advisors, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms or corporations (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Information Officer of the existence of any information the Information Officer considers that it requires in order to fulfil the Mandate that is within such Person's possession or control, shall grant immediate and continued access to such information to the Information Officer, and shall deliver all such information to the Information Officer upon the Information Officer's request, provided that nothing contained in this paragraph 5 shall oblige any Person to disclose information that is subject to any privilege (including but not limited to solicitor-client privilege, litigation privilege, settlement privilege, or any common law or statutory privilege prohibiting such disclosure).

6. **THIS COURT ORDERS** that all Persons shall forthwith advise the Information Officer of the existence of any books, documents, securities, contracts, orders, corporate and accounting

records, and any other papers, records and information of any kind that the Information Officer considers that it requires in order to fulfil the Mandate, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the “**Records**”), including but not limited to Records in respect of any and all proposed transactions in respect of the Property, in that Person's possession or control, and shall provide to the Information Officer or permit the Information Officer to make, retain and take away copies thereof and grant to the Information Officer unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 6 or in paragraph 7 of this Order shall require the delivery of Records, or the granting of access to Records, that are subject to any privilege (including but not limited to solicitor-client privilege, litigation privilege, settlement privilege, or any common law or statutory privilege prohibiting such disclosure).

7. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Information Officer for the purpose of allowing the Information Officer to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Information Officer in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Information Officer. Further, for the purposes of this paragraph, all Persons shall provide the Information Officer with all such assistance in gaining immediate access to the information in the Records as the Information Officer may in its discretion require including providing the Information Officer with instructions on the use of any computer or other system and providing the Information Officer with any and all access codes, account names and account numbers that may be required to gain access to the information.

DUTY TO FACILITATE INFORMATION DISCLOSURE

8. **THIS COURT ORDERS** that upon request by the Information Officer, the Company and/or Hi-Rise shall immediately provide consent or authorization for any Person to release and disclose Records to the Information Officer, which Records may be requested by the Information

Officer in connection with the Mandate, provided that nothing contained herein shall oblige any Person to disclose information that are subject to any privilege (including but not limited to solicitor-client privilege, litigation privilege, settlement privilege, or any common law or statutory privilege prohibiting such disclosure).

INFORMATION OFFICER'S REPORT

9. **THIS COURT ORDERS** that on or before October 7, 2019, the Information Officer shall file a report with the Court in respect of the Mandate, including in particular whether sufficient effort has been made to obtain the best price in respect of the Company's proposed sale of the Property, that the proposed sale is not improvident, and in respect of the efficacy and integrity of the process by which offers had been obtained, ~~and whether there has been unfairness in the working out of the process.~~



NO PROCEEDINGS AGAINST THE INFORMATION OFFICER

10. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Information Officer except with the written consent of the Information Officer or with leave of this Court.

LIMITATION ON THE INFORMATION OFFICER'S LIABILITY

11. **THIS COURT ORDERS** that the Information Officer shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

RESETTING OF THE DATE OF THE INVESTORS' MEETING AND COMMUNICATION RESTRICTION

12. **THIS COURT ORDERS** that:

- (a) The meeting of Investors called by Hi-Rise for September 25, 2019 is adjourned to October 23, 2019 (the "**Adjournment**"), which date may be altered by further Order of this Court;
- (b) Hi-Rise and the Company, all of their directors, officers, employees, agents, advisors, accountants, legal counsel and shareholders, and all other

persons acting on its instructions or behalf, are hereby restricted from communicating with Investors, either directly or indirectly, without the consent of the Representative Counsel or Order of the Court, which restriction shall remain in effect until September 30, 2019 or such later date as may be imposed by further Order of the Court (the “**Restriction Expiry Date**”). Provided, however, that communication may be made to the Investors about the Adjournment, and such communication shall be subject to review and approval by Representative Counsel prior to being delivered to Investors, in accordance with paragraph 12(c), below;

- (c) All communications delivered by Hi-Rise or the Company to Investors, whether before the Restriction Expiry Date with the consent of Representative Counsel, or after the Restriction Expiry Date, shall be subject to review and approval of Representative Counsel prior to being delivered to Investors. Representative Counsel shall conduct its review and advise Hi-Rise or the Company of its position within 24 hours upon receipt of same, provided, however, that Representative Counsel shall only be entitled to object to the content of a proposed communication that is factually incorrect, and further, Representative Counsel acknowledges that Hi-Rise shall be permitted to express its opinion regarding the sales process and any proposed transaction and to recommend to Investors that they vote in favour or against any transaction or settlement;
- (d) In the event Representative Counsel asserts that part of any communication is factually incorrect, Hi-Rise or the Company shall not deliver said communication to Investors and, Hi-Rise, the Company or Representative Counsel shall be permitted to seek directions from the Court regarding the communication;
- (e) Hi-Rise and the Company are at liberty to communicate with syndicated mortgage investors in the OptArt Loft project at 54-60 Shepherd Road, Oakville (the “**Oakville Investors**”). Notwithstanding paragraph 12(c) of

this Order, communications to the Oakville Investors may refer to the Project and the Property even though some of the Oakville Investors are also Investors, provided that the Representative Counsel is provided with 24 hours to review the portion of any communication to Oakville Investors that references the Project or the Property. The Representative Counsel does not have the right to approve such communications, but is at liberty to seek directions from the Court if the Representative Counsel has any concerns about the proposed communication; and

- (f) Hi-Rise and the Company are restricted from negotiating any settlement or compromise with Investors on a private basis during the course of these proceedings.

PAYMENT OF FEES TO MERIDIAN

13. **THIS COURT ORDERS** that the Company shall pay an extension fee to Meridian in the amount of \$85,220.00.

ENCUMBRANCES IN RESPECT OF THE PROPERTY

14. **THIS COURT ORDERS** that subject to this Order, the Property shall not be further encumbered by any Person other than Meridian, pending further Order of this Court.

PIPEDA

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act* and any other applicable privacy legislation, the Information Officer may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable to fulfill its mandate pursuant to this Order.

INFORMATION OFFICER'S ACCOUNTS

16. **THIS COURT ORDERS** that the Information Officer and counsel to the Information Officer shall be paid by the Company their reasonable fees and disbursements, both before and after the making of this Order on a ~~bi-weekly~~ ^{monthly} basis forthwith after delivery of the Information



Officer's accounts to the Company. Any disputes regarding the Information Officer's accounts shall be determined by the Court. For greater certainty, Representative Counsel shall not be liable for the fees and disbursements of the Information Officer or its counsel.

17. **THIS COURT ORDERS** that the Information Officer and counsel to the Information Officer shall be entitled to and are hereby granted a charge (the "**Information Officer Charge**") on the Property, as security for their fees and disbursements, both before and after the making of this Order, up to the maximum amount of \$100,000 or as may otherwise be ordered by this Court. The Information Officer Charge shall form a charge on the Property, subordinate in priority only to: (i) the Rep Counsel Charge (as defined in the Appointment Order and as may be increased by further Orders of this Court); and (ii) any encumbrances ranking in priority to the Rep Counsel Charge (including, without limitation, the mortgage in favour of Meridian), and, for greater certainty, the Information Officer Charge shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, including, without limitation, the Hi-Rise Mortgage (as defined in the Appointment Order), and shall not rank in priority to any security interests, trusts, liens, charges, statutory or otherwise, in favour of Meridian.

18. **THIS COURT ORDERS** that in the event that the Information Officer and its counsel rely on the Information Officer Charge to seek payment of their fees and disbursements, the Information Officer and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Information Officer and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

SERVICE AND NOTICE

19. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (the "**Rules**"), this Order shall constitute an order for substituted service pursuant to

Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission.

20. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Information Officer is at liberty to serve or distribute this Order, any materials and other orders in this proceeding, and any notices or other correspondence in this proceeding, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Company's creditors or other interested parties at their respective addresses as last shown on the records of the Company and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

21. **THIS COURT ORDERS** that the Information Officer may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

22. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Information Officer and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Information Officer, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Information Officer and its agents in carrying out the terms of this Order.

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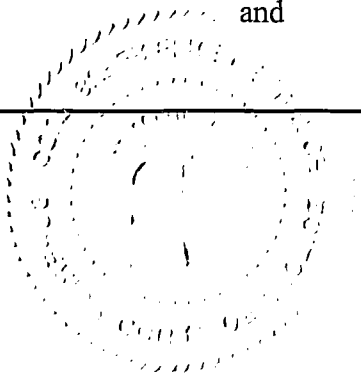
HI-RISE CAPITAL LTD.

Applicant

and

SUPERINTENDENT OF
FINANCIAL SERVICES et. al.
Respondents

Court File No.: CV-19-616261-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER**MILLER THOMSON LLP**Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, ON Canada M5H 3S1**Greg Azeff LSO#: 45324C**gazeff@millerthomson.com
Tel: 416.595.2660/Fax: 416.595.8695**Stephanie De Caria LSO#: 68055L**sdecaria@millerthomson.com
Tel: 416.595.2652/Fax: 416.595.8695

Court-appointed Representative Counsel

APPENDIX F

Court File No. CV-19-616261-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

**IN THE MATTER OF SECTION 60 OF THE TRUSTEE ACT, R.S.O. 1990, C. T.23, AS
AMENDED, AND RULE 10 OF THE ONTARIO RULES OF CIVIL PROCEDURE,
R.R.O. 1990, REG. 194, AS AMENDED**

**AND IN THE MATTER OF HI-RISE CAPITAL LTD. AND IN THE MATTER OF
ADELAIDE STREET LOFTS INC.**

REPORT OF THE INFORMATION OFFICER
ALVAREZ & MARSAL CANADA INC.

October 7, 2019

TABLE OF CONTENTS

INTRODUCTION	1
TERMS OF REFERENCE AND DISCLAIMER	3
PURPOSE OF REPORT	4
THE INFORMATION OFFICER’S REVIEW	6
ASSESSMENT OF THE SALE PROCESS.....	17
LANTERRA TRANSACTION	19
PROPOSAL TO INVESTORS	23
OTHER INDICATIONS OF POTENTIAL VALUE.....	30
CONCLUSIONS & OTHER FINDINGS	39

APPENDICES

Appendix A	Information Officer Appointment Order
Appendix B	Lanterra Project Proforma
Appendix C	Hi-Rise Notice of Meeting and Information Statement (September 6, 2019)
Appendix D	Projected Investor Recoveries from the Proposed Settlement
Appendix E	Information Officer’s Truncated Receivership Scenario

INTRODUCTION

1. On March 19, 2019, Hi-Rise Capital Ltd. (“**Hi-Rise**”) made an application (the “**Initial Application**”) under section 60 of the *Trustee Act*, R.S.O. 1990, c. T.23, as amended and Rule 10 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, and on March 21, 2019, an initial order (the “**Initial Order**”), was granted by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) which, among other things:
 - (a) appointed Miller Thomson LLP as representative counsel (“**Representative Counsel**”) to represent the interests of all individuals and/or entities (the “**Investors**”)¹ that have invested funds in a syndicated mortgage investment (the “**SMI**”) administered by Hi-Rise in respect of the proposed development located at 263 Adelaide Street West, Toronto, Ontario (the “**Property**”), whose registered title is held by Adelaide Street Lofts Inc. (“**Adelaide**”) as nominee on behalf of the beneficial owner 263 Holdings Inc. (“**Holdings**”, and together with Adelaide, the “**Company**”), in connection with the negotiation and implementation of a settlement with respect to such investments;
 - (b) permits Hi-Rise to conduct a meeting of all Investors, including opt-out investors, in order for the investors to consider and, if determined advisable, pass a resolution approving a settlement transaction that would discharge the SMI and result in the distribution of certain proceeds; and
 - (c) directed Representative Counsel to establish an Official Committee of Investors (the “**Official Committee**”).

¹ The Initial Order allows for certain investors in the SMI to opt out of representation by Representative Counsel. Throughout this Report, the term “Investors” refers to all individuals and/or entities that have invested funds in the SMI, whether or not they have opted-out of such representation.

2. On April 15, 2019, the Court granted an Order constituting the Official Committee.
3. Since its appointment, Representative Counsel has issued two reports dated April 9, 2019 (the “**First Report of Counsel**”) and September 13, 2019 (the “**Second Report of Counsel**”, and together, “**Representative Counsel’s Reports**”). Representative Counsel’s Reports and other Court-filed documents, orders and notices in these proceedings are available on Representative Counsel’s case website at: <https://www.millerthomson.com/en/hirise/>.
4. On September 17, 2019, this Court made an order (the “**Information Officer Appointment Order**”) which, among other things, appointed Alvarez & Marsal Canada Inc. as a Court officer to act as an information officer (the “**Information Officer**”) in respect of Hi-Rise and the Property. A copy of the Information Officer Appointment Order is attached as **Appendix “A”**.
5. The Information Officer Appointment Order, among other things, outlines the Information Officer’s role, including:
 - (a) Pursuant to paragraph 4(b), the Information Officer is empowered and authorized *“to review and report to the Court and to all stakeholders... in respect of matters relating to the Property, Hi-Rise’s mortgage over the Property, and the Company’s proposed sale of the Property, including but not limited to, the marketing and sales process undertaken in respect of the Property, all aspects of any and all proposed transactions in respect of the Property (and in this regard, the Information Officer may engage in discussions with Tricon Lifestyle Rentals Investment LP to ascertain its interest in the Property), and the financial implications of such proposed transaction (the “**Mandate**”)”; and*

- (b) Pursuant to paragraph 9, *“on or before October 7, 2019, the Information Officer shall file a report with the Court in respect of the Mandate, including in particular whether sufficient effort has been made to obtain the best price in respect of the Company’s proposed sale of the Property, that the proposed sale is not improvident, and in respect of the efficacy and integrity of the process by which offers had been obtained.”*

TERMS OF REFERENCE AND DISCLAIMER

6. In preparing this report (the **“Report”**), the Information Officer has relied solely on the information and documents provided by Representative Counsel, Hi-Rise, its counsel Cassels Brock & Blackwell LLP (**“Cassels”**), and its financial advisor, Grant Thornton Limited (**“GT”**), the Company and its counsel McCarthy Tétrault LLP (**“McCarthy”**), the Company’s real estate broker, Bank of Montreal Capital Markets Real Estate Inc. (**“BMO”**), and discussions held with parties who participated in the marketing and sale process (collectively, the **“Information”**).
7. The Information Officer has reviewed the Information for reasonableness, consistency and use in the context in which it was provided. However, the Information Officer has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (**“CASs”**) pursuant to the Chartered Professional Accountants Canada Handbook (the **“Handbook”**), and accordingly, the Information Officer expresses no opinion or other form of assurance contemplated under CASs in respect of the Information.

8. Some of the information referred to in this Report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the Handbook, has not been performed.
9. Future-oriented financial information referred to in this Report was prepared based on estimates and assumptions made by Hi-Rise, the Company or as otherwise indicated herein. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, and the variations could be significant.
10. This Report should be read in conjunction with the Initial Application, the Information Officer Appointment Order and Representative Counsel's Reports.
11. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

PURPOSE OF REPORT

12. The Information Officer understands that on October 23, 2019, pursuant to the Initial Order, Hi-Rise intends to hold a meeting of Investors (the "**Meeting**") in order to, among other things, allow the Investors to vote on a proposed settlement (the "**Proposed Settlement**"), which, if approved, would ultimately discharge the SMI in place, allow the Company to move forward with closing the Lanterra Transaction (as defined and described below) and result in the distributions contemplated in the Proposed Settlement.
13. As described later in this Report, the distributions contemplated in the Proposed Settlement will not be sufficient to fully repay the amounts owing to all Investors.
14. The Information Officer understands that if the Investors vote to approve the Proposed Settlement, Hi-Rise will bring a motion before this Court seeking approval of the Proposed

Settlement, however if Investors do not vote to approve the Proposed Settlement an alternate path forward will need to be pursued.

15. In performing its duties under the Mandate, the Information Officer has undertaken an extensive review of the following:
 - (a) the events prior to and following the date of the Initial Application that resulted in the Lanterra Transaction and the Proposed Settlement;
 - (b) the design, implementation and results of the Sale Process (as defined below) and whether sufficient effort was made to obtain the best price under the circumstances;
 - (c) the Lanterra Transaction and the Proposed Settlement, including financial and other implications to Investors; and
 - (d) potential alternatives that may be available to Investors, including, as requested by the Court, an evaluation of Tricon Lifestyle Rentals Investment LP's ("**Tricon**") interest in the Property.
16. Pursuant to the Mandate, the Information Officer held a number of diligence meetings with and reviewed extensive Information received from:
 - (a) Representative Counsel and the Official Committee;
 - (b) the Company, its principal Mr. Jim Neilas and McCarthy;
 - (c) BMO (the Company's real estate broker);
 - (d) Hi-Rise and Cassels; and
 - (e) Lanterra Developments Inc., Tricon and certain other parties that expressed an interest in or were otherwise involved in the Sale Process (the "**Interested Parties**").

17. The Information Officer’s conclusions and other findings are outlined in the last section of this Report.

THE INFORMATION OFFICER’S REVIEW

Case Background

18. The affidavit of Noor Al-Awqati (sworn March 19, 2019 and found at Tab 2 of the Initial Application Record) (the “**Al-Awqati Affidavit**”) sets out the history of the Company and the Property, including Hi-Rise’s involvement as administrator and trustee of the SMI, which is summarized below:
- (a) the Company purchased the Property in June of 2011 for the purpose of developing a high-rise condominium;
 - (b) Jim Neilas is the President and majority shareholder of Holdings, the parent company of Adelaide;
 - (c) Meridian Credit Union Limited (“**Meridian**”) holds a first mortgage in respect of the Property and has registered a charge in that regard (the “**Meridian Mortgage**”). As of the date of this Report, Meridian is owed approximately \$17.0 million, including principal and accrued interest; and
 - (d) the SMI is a second mortgage in respect of the Property and Hi-Rise has registered charges in that regard. As of the date of this Report, the debt owing under the SMI is approximately \$67.9 million, including principal and accrued interest. As such, there is approximately \$84.9 million in outstanding secured debt on the Property².

² Materials provided to the Information Officer indicate that Meridian has a first mortgage on the Property and the SMI ranks subordinate to Meridian. Neither the Information Officer nor its counsel have conducted a security review.

19. Following its acquisition of the Property, the Company took steps to advance the development prospects of the Property, including engaging various professionals and submitting zoning, development and building applications. During this time, and prior to the commencement of the formal marketing and sale process described below, the Information Officer understands that the Company explored and pursued various strategic alternatives in an attempt to test the market and potentially divest all or part of the Property. During this period however, a formal marketing process was never initiated and no executable sale transaction materialized.
20. As described in the Al-Awqati Affidavit, following the events in 2017 referred to as the syndicated mortgage “freeze”, Hi-Rise began working with its borrowers in order to commence a voluntary wind-up of its syndicated mortgages portfolio and instructed a number of its borrowers to commence marketing and sale processes to divest the properties to which it was lending. In this regard, the Company commenced a marketing and sale process for the Property.
21. Due to the impact of the syndicated mortgage freeze, Hi-Rise stopped making cash interest payments to Investors in relation to the Property in April of 2017 and stopped raising new funds from Investors in October of 2017.

BMO's Engagement by the Company

22. The Information Officer understands that the Company considered a small group of reputable parties to act as its broker and conduct a marketing and sale process on its behalf. This group was narrowed down and the Company requested proposals from two brokers, BMO and CBRE Limited. The Company interviewed the two parties and ultimately selected BMO to act as its broker in June of 2017.

23. Pursuant to its engagement letter, BMO's compensation for undertaking the marketing and sales process would be a contingency fee based on gross sales price, including increased compensation for a sale price exceeding certain thresholds.
24. BMO's mandate was to assist in the design and implementation of a marketing and sale process for the Property, including:
 - (a) assisting in the development of an investment summary, confidential information memorandum ("**CIM**"), an electronic data room and other diligence materials;
 - (b) compiling a list of potentially interested parties, communicating with such parties in respect of the opportunity and making itself available to answer questions and address diligence requests; and
 - (c) negotiating with interested parties during the process in order to maximize the purchase price of potential offers. The Information Officer notes that the maximum purchase price is not necessarily the same as the maximum cash consideration available on closing³.
25. Based on discussions with BMO and a review of the information provided, the Information Officer understands the marketing and sale process followed BMO's standard two phased process:
 - (a) during the first phase ("**Phase 1**"), potentially interested parties are contacted to solicit interest, an investment summary is provided and parties that sign a non-disclosure agreement ("**NDA**") are invited to undertake due diligence and submit a letter of interest ("**LOI**"). These Phase 1 LOIs are evaluated to determine which

³ The Information Officer understands that as a result of increased land values and construction costs, it is now more common for real estate transactions especially in downtown Toronto to include joint venture and/or vendor takeback structures which allow for higher purchase prices but lower cash consideration on closing.

parties, if any, would be invited to participate in a second phase (the “**Qualified Parties**”); and

- (b) during the second phase (“**Phase 2**”), Qualified Parties are given additional time to perform due diligence and are encouraged to enhance their purchase price and limit conditions. Qualified Parties are provided a standard form of agreement of purchase and sale (“**APS**”) and are requested to submit final bids by marking-up and submitting an APS by the bid deadline.
26. The Information Officer is of the view that: (a) BMO is an experienced and qualified broker and advisor capable of running a robust and competitive marketing and sale process; (b) BMO’s engagement letter is consistent with industry standards and provided appropriate incentive to achieve the maximum sale price possible in the circumstances; and (c) the marketing and sale process was of a typical structure and consistent with similar real estate processes designed to achieve the maximum sale price possible in the circumstances.

The 2017 Sale Process

27. BMO commenced its first marketing and sale process in June of 2017 (the “**2017 Sale Process**”). The 2017 Sale Process was a combined process for the Property (i.e. 263 Adelaide Street West) and a second parcel of real estate located at 40 Widmer Street in Toronto (“**Widmer**”)⁴. Interested Parties were advised that they could bid on both properties together or each individually.
28. The Information Officer understands that BMO contacted over 2,500 parties to solicit interest in the 2017 Sale Process. BMO received 47 executed NDAs of which ten parties

⁴ Widmer is located in close proximity to the Property and was previously owned by an entity ultimately controlled by Jim Neilas.

submitted LOIs on or before the Phase 1 bid deadline of September 7, 2017. Of this group, seven bidders submitted an LOI for both the Property and Widmer (the “**Joint Offer LOIs**”) and three bidders submitted an LOI for Widmer only. No bidder submitted an LOI for the Property only.

29. The consideration outlined in the seven Joint Offer LOIs received for the Property ranged in value from \$43.7 million to \$80.0 million. The Information Officer understands that 2017 Phase 1 bids were presented to the Company on a “no-names” basis in order to preserve the integrity and competitive nature of the 2017 Sale Process.
30. BMO invited five of the ten bidders to participate in Phase 2 as Qualified Parties. The Information Officer understands the five Qualified Parties were selected based on the quantum of their purchase price and the quality of the diligence they had performed. Of the five Qualified Parties, two parties had interest in Widmer only, leaving three Qualified Parties with interest in the Property. The range in values offered by such parties in respect of the Property was \$59.4 million to \$80.0 million.
31. The five remaining Qualified Parties (including the three with interest in the Property) were requested to submit final bids by the Phase 2 bid deadline of September 19, 2017 in the form of a marked-up APS.
32. Of the three Qualified Parties which submitted Joint Offer LOIs: (a) one party, Concord Adex Buildings Limited (“**Concord**”), submitted a formal bid in the form of a marked-up APS; (b) a second party expressed its bid verbally to BMO; and (c) the third party declined to submit a bid.

33. Concord was the leading Qualified Party in respect of both the Property and Widmer and was granted a period of exclusivity to complete its diligence and execute an APS on each of the properties.
34. The Information Officer understands that during its due diligence period, Concord communicated to BMO that primarily due to a number of construction challenges relating to the Property it would not proceed with its contemplated transaction⁵.
35. Concord completed its diligence and the closing of its purchase transaction in respect of Widmer occurred in December of 2017.
36. The construction challenges identified by Concord, as well as the other Interested Parties participating in the 2017 Sale Process, included, but were not limited to, the following:
 - (a) *Heritage Wall*: The north-façade of the Property (the “**Heritage Wall**”) has been designated by the City of Toronto (the “**City**”) as a “heritage site” and may not be removed, demolished, or altered without approval from the City;
 - (b) *Site Issues*: The Property is situated on a site that is currently land-locked by surrounding properties, including sites currently under construction, with the only access available on Adelaide Street. Adelaide Street is a one-way street that is heavily trafficked by pedestrians, cyclists and vehicles. Access to the Property is also located directly across from a fire station;
 - (c) *Rental Replacement*: Prior to developing the Property, the City imposes certain conditions that must be satisfied in connection with any residential tenants currently on the site; and

⁵ As of the date of this report, the Information Officer has not been able to schedule a meeting with Concord to discuss its participation in the 2017 Sale Process.

- (d) *Easements*: The Property and surrounding area are subject to a number of easements. It is unclear whether or not such existing easements would be sufficient for construction purposes.

(collectively referred to as the “**Construction Challenges**”).

37. Based on discussions with the Interested Parties, the Information Officer understands that the Construction Challenges created a high level of uncertainty in relation to the costs and the time required to demolish and develop on the site of the Property, hindering their ability to participate in the 2017 Sale Process and/or submit a firm and executable bid for the Property.

The 2018 Sale Process

38. In an effort to address the Construction Challenges and other issues raised during the 2017 Sale Process, the Company took steps and incurred expenditures to mitigate certain issues and assist Interested Parties with diligence. These steps included:
- (a) commissioning two construction methodology reports⁶;
 - (b) executing a Heritage Easement Agreement (October 16, 2017) with the City in order to allow the Heritage Wall to be altered for future development under certain conditions; and
 - (c) obtaining certain additional approvals from the City related to rental replacement, community contribution (Section 37), and storm water management agreements.

⁶ The two reports include: (i) 263 Adelaide St. West Methodology Report (dated February 12, 2018) prepared by Ledcor Group (the “**Ledcor Report**”); and (ii) 263 Adelaide St Preconstruction Report No. 1 (dated June 19, 2018) prepared by EllisDon Corporation (the “**EllisDon Report**”).

39. The Company has indicated that it incurred in excess of \$2.7 million in third party costs to continue to improve the marketability of the Property, and that such costs were funded directly by Holdings. This amount excludes any costs that may be owing by Adelaide to Holdings for ongoing management fees, which are estimated by Holdings to be an additional \$2.5 million.
40. Following the steps taken above, the Company re-engaged with BMO and a second sale process was commenced in August of 2018 (the “**2018 Sale Process**” and together with the 2017 Sale Process, the “**Sale Process**”).
41. The Information Officer understands that BMO contacted over 2,500 parties to solicit interest in the 2018 Sale Process. BMO received 37 executed NDAs of which, four bidders submitted LOIs on or before the 2018 Phase 1 bid deadline of September 18, 2018.
42. The 2018 Phase 1 LOIs ranged in value from \$59.1 million to \$75.0 million. The Information Officer understands that the 2018 Phase 1 bids were presented to the Company on a “no-names” basis in order to preserve the integrity and competitive nature of the Sale Process.
43. The Information Officer reviewed each of the LOIs and noted that each were subject to various diligence and other closing conditions, including further construction and development related investigations, satisfaction with the viability, feasibility and costs associated with development, satisfaction that the Property meets investment and development criteria, receiving certain approval from the City including amendments to the existing Heritage Easement Agreement, receiving a court order to extinguish/amend easements, executing construction agreements with adjacent property owners and obtaining approval from boards of directors or investment committees.

44. Two bidders were advanced by BMO to participate in Phase 2, including: (a) Lanterra Developments Limited (“**Lanterra**”) which submitted an LOI valued at \$75.0 million; and (b) a second bidder (the “**Second Bidder**”) which submitted an LOI valued at \$70.0 million. The Information Officer understands that Lanterra and the Second Bidder were selected based on the quantum of their purchase price and the quality of diligence performed⁷.
45. Lanterra and the Second Bidder (the “**2018 Qualified Bidders**”) were each sent a process letter requesting they submit final bids by October 5, 2018 (the “**2018 Phase 2 Bid Deadline**”) in the form of a marked-up APS. The Information Officer understands that neither party submitted a final offer prior to the 2018 Phase 2 Bid Deadline. Following discussions with Lanterra and the Second Bidder, BMO determined the parties were not prepared to submit definitive offers at the purchase prices offered in their LOIs due to continued concern and uncertainty with the Construction Challenges.
46. Following the 2018 Phase 2 Bid Deadline, BMO began exploring alternate transaction structures with the two bidders executable at the purchase prices offered in their LOIs. Based on these discussions, BMO determined that in order to effect a transaction while maximizing the purchase price, the 2018 Phase 2 Bid Deadline should be extended and the 2018 Qualified Bidders should be invited to submit joint venture proposals.
47. The Information Officer understands that joint venture structures typically allow for higher purchase prices for various reasons, including, without limitation, the sharing of risk and

⁷ The Information Officer notes that a third party submitted a 2018 Phase 1 bid comparable in value to that of the Second Bidder. The Information Officer understands from BMO that in its view, this party had not performed a significant amount of diligence, was not prepared to increase its purchase price and would not remove significant conditions included in its bid and accordingly was not invited to participate in Phase 2. Based on discussions with this party, the Information Officer is of the view that BMO’s rationale to not advance this party to Phase 2 was reasonable in the circumstances.

the lower initial cash outlay required by the prospective purchaser, thereby increasing their rate of return.

Joint Venture Proposals

48. During October of 2018, the 2018 Qualified Bidders were invited to meetings with BMO and the Company to discuss and explore their intentions for the Property, including how they intended to deal with the Construction Challenges.
49. Following these meetings, the 2018 Qualified Bidders were requested to submit a joint venture proposal (“**JV Proposal**”) that would provide for their final and best offer.
50. Lanterra submitted a JV Proposal on November 13, 2018 (the “**Lanterra JV Proposal**”). The Second Bidder submitted formal correspondence to BMO regarding continued interest in the Property but did not submit a formal JV Proposal by the requested date.
51. The Information Officer understands from BMO that after numerous meetings with the Second Bidder, it settled on a joint venture structure in a form that could be presented to the Company.
52. The Information Officer understands that two additional parties expressed interest to BMO in participating in a joint venture and submitted a JV Proposal. One of these JV Proposals was in an acceptable form, while the other was not and accordingly was not considered to be qualified.
53. In December of 2018, the three JV Proposals were presented to the Company on a “no-names” basis. Following additional meetings and review, the Information Officer understands that the Company selected the Lanterra JV Proposal based primarily on the following factors:

- (a) the Lanterra JV Proposal provided for the highest purchase price and greatest potential profit at completion of development. As noted earlier in this Report, it has become more common for downtown Toronto land transactions to include certain structures that increase purchase price but decrease cash consideration on closing. The Information Officer understands from discussions with Lanterra that its purchase price was premised on a joint venture structure as it allows for the sharing of risks and a lower initial cash investment that is needed to achieve its required rate of return;
 - (b) Lanterra had performed extensive diligence and investigation on the Property and spent considerable time and effort developing approaches to address the Construction Challenges; and
 - (c) Lanterra is a reputable developer with extensive experience building in downtown Toronto on sites that contained construction challenges similar to those at the Property.
54. Throughout January and February 2019, the Company and Lanterra worked towards settlement of the Lanterra JV Proposal. The parties reached an agreement on a letter of intent with Lanterra on February 13, 2019.
55. In March and April 2019, the Company and Lanterra continued to negotiate a term sheet which was ultimately executed on April 10, 2019 (the “**Term Sheet**”).

ASSESSMENT OF THE SALE PROCESS

56. The Information Officer reviewed the design and implementation of the Sale Process, a short list of the parties contacted⁸ and each of the bids submitted during all phases of the Sale Process. A summary of the Information Officer's conclusions is as follows:

- (a) the design of the Sale Process was typical of such marketing and sale processes in the real estate industry;
- (b) the materials utilized, including the investment summary, CIM and documents uploaded to the electronic data room were robust;
- (c) the list of potentially interested parties compiled by BMO was extensive, thorough, and provided for wide market coverage;
- (d) the Sale Process allowed interested parties adequate opportunity to conduct due diligence and the timelines provided for were reasonable;
- (e) the activities undertaken by BMO were thorough and professional, and consistent with the activities that a competent advisor or broker would be expected to undertake;
- (f) BMO was appropriately incentivized to achieve the highest value available for the Property;
- (g) the steps taken by BMO, including the selection of bidders to advance into further rounds, were consistent with the activities that other brokers or sale advisors would be expected to perform; and

⁸ The Information Officer understands BMO contacted over 2,500 parties in connection with each of the marketing and sale processes. The Information Officer determined it was not feasible to review all of the parties and instead reviewed a short list of Interested Parties.

- (h) BMO sought to maximize transaction value by adjusting the Sale Process to include joint venture proposals when no cash offers materialized.
57. To gain a better understanding of the Sale Process and results thereof, the Information Officer held a number of discussions with Interested Parties to discuss matters including, but not limited to, the following:
- (a) was there any concern or issue with respect to the Sale Process and how it was run?
 - (b) was BMO attentive and responsive in conducting the Sale Process?
 - (c) what were the primary reasons why Interested Parties did not further pursue a transaction?
58. The Information Officer's findings from discussions with the Interested Parties are summarized as follows:
- (a) no concerns were identified with respect to the Sale Process or how it was conducted;
 - (b) the Interested Parties were complimentary of the work undertaken by BMO, noted BMO was helpful and responsive in all instances and no concerns were identified with respect to their conduct;
 - (c) despite the steps taken by the Company to address the Construction Challenges, the Interested Parties raised significant concern regarding the uncertainty of the costs and timing of construction, in particular that changes may be required to the design and zoning of the Property and the uncertainty in connection with the Heritage Wall and other constructability issues with the site. Interested Parties commented that given the high level of uncertainty, initial purchase prices submitted in LOIs would need to be materially discounted or an alternate structure would be required (i.e. a

joint venture or vendor takeback structure) in order to transact at such purchase prices; and

- (d) certain Interested Parties informed the Information Officer that based on market trends at the time and comparable transactions, including Widmer, they did not participate in the Sale Process or submit formal offers because they did not wish to transact at such values.

- 59. Based on its review, the Information Officer is of the view that the Sale Process was a thorough market test, that sufficient effort had been made to obtain the best price in respect of the Property and that the process was executed with proper efficacy and integrity.
- 60. In particular, the Information Officer concludes that the design and implementation of the Sale Process was consistent with industry standards and was carried out by BMO in a thorough and professional manner.
- 61. The Information Officer notes that the Sale Process was not specifically designed with the goal to maximize the cash proceeds on closing but to maximize the consideration and ultimate proceeds thereof, even if portions of proceeds may be deferred until a later date. In that regard, the Sale Process was consistent with BMO's mandate to maximize transaction value.

LANTERRA TRANSACTION

Lanterra Offer

- 62. As previously discussed, on April 10, 2019, Lanterra and the Company entered into the Term Sheet setting out the key terms of the joint venture agreement. On June 28, 2019, following further negotiations and refinement of deal points, Lanterra and the Company

entered into a Waiver and Amending Agreement dated June 28, 2019 (the “**JV Agreement**”) and together with the Term Sheet, the “**Lanterra Transaction**”).

63. The Information Officer was provided with copies of the Term Sheet, the JV Agreement and all related schedules. The Information Officer understands that the Company and Lanterra consider these documents to be confidential and has not appended them hereto but has instead included a summary of key terms:

Lanterra Transaction	
JV Transaction	<ul style="list-style-type: none"> ▪ Lanterra and the Company to form a single purpose limited partnership (“LP”) in which Lanterra would acquire an interest in 75% of the Property and the assets, books and records related to the redevelopment of the Property (the “Lanterra Project”). The Company would retain a 25% interest in the Lanterra Project; ▪ BRE Fund LP, being part of the Bank of Montreal’s private equity group, will have the option to purchase 15% of Lanterra’s interest (the “Investor Option”) in the Lanterra Project.
Transaction Value and Initial Capitalization	<ul style="list-style-type: none"> ▪ Transaction value of \$73.15 million, capitalized as follows: <ul style="list-style-type: none"> i. LP will grant a first mortgage on the Property in the amount of \$36.58 million (the “First Mortgage”); ii. The Company will be granted a vendor takeback mortgage of approximately \$18.29 million (the “VTB”); and iii. The Company will contribute equity-in-kind of approximately \$18.29 million in exchange for its 25% share of the Lanterra Project.
First Mortgage Terms	<ul style="list-style-type: none"> ▪ The LP will immediately distribute the mortgage proceeds as follows: <ul style="list-style-type: none"> i. to discharge the Meridian Mortgage; and ii. to be used as a return of capital to allow it to retire the Syndicated Mortgage.
VTB Mortgage Terms	<ul style="list-style-type: none"> ▪ Secured against title to the Property, ranking behind the First Mortgage and any surety financing. Will not be subordinate to construction financing; ▪ Expires on the earlier of (a) receipt of certain construction permits; and (b) three years from the closing date of the Lanterra Transaction; ▪ Bears interest at 5% per annum during the first two years and 8% per annum for the final year; ▪ Entirety of the VTB to be guaranteed by Lanterra; and ▪ Lanterra to repay principal and interest then due on the VTB out of Lanterra’s own resources.

Interest Reserve	<ul style="list-style-type: none"> ▪ Lanterra will fund approximately \$1.85 million to an interest reserve account to prefund the first two years of interest obligations under the VTB.
Company's Fees	<ul style="list-style-type: none"> ▪ The Company is entitled to the following fees: <ul style="list-style-type: none"> i. Development Fee: 0.25% of revenues from the Lanterra Project⁹; and ii. Property Management Fee: \$5,000 per month during the term of the Lanterra Project (5-6 years).
The Company Guarantee	<ul style="list-style-type: none"> ▪ The Company is required to jointly and severally guarantee 25% of all obligations of the LP in respect of any project debt.

64. The Information Officer understands that Lanterra has completed all diligence and provided the deposits contemplated in the Term Sheet. Closing of the Lanterra Transaction is subject to: (a) approval of the Investors (as described further below); and (b) execution of certain documents including definitive agreements governing the LP, the Investor Option, and agreements for development, construction and property management (the “**Transaction Agreements**”). The Information Officer has been provided with current drafts of the Transaction Agreements and understands they have been substantially negotiated.
65. The Information Officer notes that definitive documents related to the VTB have not yet been drafted.

The Company's Projected Returns

66. The Information Officer has been provided with a copy of a financial forecast in respect of the Lanterra Project (the “**Proforma**”), which is attached as **Appendix “B”**. The Proforma estimates the development will take up to six years and projects a total profit of

⁹ Should BRE Fund LP exercise its option, and achieve a baseline internal rate of return, the Company could be eligible for an additional Deferred Development Fee of 0.5% of Project Revenues.

approximately \$66.0 million to the LP, based on Lanterra's estimate of revenues and expenses.

67. Based on the Information Officer's review of the Proforma and the Lanterra Transaction, the Company's projected return at the completion of the Lanterra Project is estimated to be approximately \$34.8 million, comprised of:

- (a) a return of capital of approximately \$18.3 million (i.e. the Company's initial contribution for 25% interest in the LP); and
- (b) the Company's share of the potential profit of approximately \$16.5 million (i.e. 25% of \$66.0 million).

68. In addition to the above proceeds, the Company is projected to earn approximately \$3.0 million over the term of the Project (up to 6 years) in connection with development and property management fees.

69. As described in the following section, the Information Officer understands that the Company is proposing to provide a \$15 million debenture to Investors as additional compensation in connection with the Proposed Settlement. Should the Proforma be representative of actual Lanterra Project economics, the Company's potential profit and fees, net of the obligations owing under the debenture, would equal approximately \$22.8 million, excluding any tax considerations (i.e. \$34.8 million plus \$3.0 million less \$15.0 million). The Company has indicated that the remaining share of potential profit is to compensate Holdings: (a) for time and effort to assist Lanterra in completion of the Lanterra Project; and (b) to recoup funds advanced by Holdings to Hi-Rise and Adelaide to fund both operations and additional costs incurred to improve the Property subsequent to the syndicated mortgage freeze. Should the Lanterra Project fail in its entirety, Holdings

could be liable for up to 25% of the outstanding Lanterra Project debt pursuant to certain loan guarantees.

70. Future success and profit of the Lanterra Project is dependent upon many factors, including market conditions, timing of completion and ultimate construction costs. While the development and property management fees would be earned over the life of the Lanterra Project, the return of capital and profit share would not be earned by the Company until project completion which is currently estimated at approximately five to six years. Actual results may differ significantly from that of the Proforma.
71. The Information Officer notes that the Bank of Montreal may continue to participate in the joint venture after closing through advancement of the First Mortgage and potential participation in the Investor Option. It is the understanding of the Information Officer that the First Mortgage is being arranged directly by Lanterra (with no Company involvement) and the Investor Option was negotiated at the direction of the Company after Lanterra was selected as the preferred party.
72. Based on its review of the Information and discussions with the parties noted in paragraph 16 of this Report, nothing has led the Information Officer to conclude that the Lanterra Transaction would be considered to be an improvident transaction.

PROPOSAL TO INVESTORS

73. A fundamental condition in the Lanterra Transaction is for the Company to discharge the SMI registered against title to the Property. On September 6, 2019, Hi-Rise provided an Information Statement (the “**Information Statement**”) to Investors which, among other things, calls for a meeting of Investors in order for the Investors to conduct a vote on the Proposed Settlement. The Information Officer understands the Meeting is currently

contemplated to be held on October 23, 2019. The Information Statement was attached to the Second Report of Counsel as Appendix “AA”, and has been attached to this report as **Appendix “C”**. A summary of the key financial terms is as follows:

Information Statement	
Classes of Investors	<ul style="list-style-type: none"> Two types of Investors, those who hold their beneficial interest in the Syndicated Mortgage via a registered investment plan (the “Registered Investors”) and those who hold their beneficial interest in the Syndicate Mortgage directly with Hi-Rise (the “Non-Registered Investors”). Registered Investors are provided a priority in the waterfall; and Approval will require Investors representing two thirds in value and majority in number to vote in favour of the Proposed Settlement.
Offer to Settle	<ul style="list-style-type: none"> Repayment to Investors of approximately \$17,036,000 on closing (the “Initial Settlement”); Investors to have the benefit of the VTB of \$18,270,000. The terms of the VTB are described in the overview of the Lanterra Transaction. Purchaser has agreed to provide a full corporate guarantee on the VTB¹⁰; and A debenture from Holdings in the amount of \$15,000,000 (the “Debenture”)¹¹, unsecured and non-interest bearing, payable six years from the date of closing.
Guarantees in Respect of Debenture	<ul style="list-style-type: none"> Corporate guarantee of Holdings; and Personal guarantee by Jim Neilas limited to 25% of the total debenture.
Implementation	<ul style="list-style-type: none"> October 23, 2019 – Meeting to vote on the Proposed Settlement November 2019 – Final Court Order December 2019 – Closing & Initial Repayment to Investors December 2021 or December 2022 – Repayment of VTB December 2025 (estimate) – Debenture paid

¹⁰ The Information Officer understands that specific documentation related to the structure of the VTB and the Debenture has not yet been prepared.

¹¹ The Information Statement includes an \$8,000,000 Debenture, however, the information Officer is advised by the Company that the current Proposed Settlement now contemplates a \$15,000,000 Debenture.

74. The Information Officer understands from Hi-Rise that the Registered Investors rank in priority to the Non-Registered Investors for principal, interest accrued to date and interest continuing to accrue. The Information Officer has not performed a legal review of these priorities but understands that Representative Counsel will be setting out its analysis of priorities in a report, to be filed with the Court.
75. The Information Officer understands that upon approval of the Proposed Settlement, no further interest will accrue to Investors and rights to any further interest payments, if any, are waived.
76. Based on the information contained in the Information Statement, together with additional information provided by the Company, Hi-Rise and GT, the Information Officer projected potential Investor recoveries from the Proposed Settlement, including timing of receipt of funds, which can be found in detail in **Appendix “D”** and is provided in summary form below.

Projected Return to Investors (in '000s)			
	Notes	Undiscounted	Present Value as at Dec. 2019 ^[10]
<u>Proceeds from Lanterra Transaction</u>			
First Mortgage (December 2019)	1	36,575	36,575
VTB Mortgage Interest Reserve (December 2019)	2	1,850	1,850
VTB Mortgage (December 2021)	3	18,270	15,099
Proceeds from Lanterra Transaction		56,695	53,524
Less: Retirement of Meridian Mortgage	4	(17,218)	(17,218)
Less: BMO Sale Fee	5	(1,615)	(1,615)
Less: Hi-Rise Cost Recovery	6	(2,214)	(2,214)
Less: Property Taxes	7	(343)	(343)
Proceeds from Lanterra Transaction available to Investors		35,306	32,135
Add: Debenture (December 2025)	8	15,000	8,467
Total Proceeds available to Investors		50,306	40,602
<u>Proposed Distributions to Registered Investors</u>			
On Closing (December 2019)		17,036	17,036
On Repayment of VTB Mortgage (December 2021)		5,280	4,364
Total Distribution to Registered Investors		22,316	21,399
<i>Return to Investors Excluding Interest Paid to Date</i>	9	100%	96%
<u>Proposed Distributions to Non-Registered Investors</u>			
On Closing (December 2019)		-	-
On Repayment of VTB Mortgage (December 2021)		12,990	10,736
On Completion Date (December 2025)		15,000	8,467
Total Distribution to Non-Registered Investors		27,990	19,203
<i>Return to Investors Excluding Interest</i>	9	60%	41%
Total Proposed Distribution to Investors		50,306	40,602

Summary of Notes & Key Assumptions

1. The Information Officer understands that proceeds from the First Mortgage and VTB Interest Reserve will be distributed to Investors on, or shortly after, closing of the Lanterra Transaction.
2. Notwithstanding the provisions of the Term Sheet, it is anticipated that the full amount of the VTB Interest Reserve will be paid to Investors at close (December 2019).
3. Repayment of the VTB is anticipated to be after two or three years. The Information Officer understands that the VTB may be extended for a third year with Investors receiving additional cash interest at 8% of the principal amount.
4. Amounts owing in respect of the First Mortgage will be paid to Meridian on closing of the Lanterra Transaction. Hi-Rise has estimated the balance above based on accrued interest to December 11, 2019 and including a provision for legal fees.
5. The BMO Sale Fee is estimated by Hi-Rise based on the terms of the BMO engagement letter and a transaction value of \$75.0 million (transaction value of \$73.15 million plus prefunding of VTB interest of \$1.85 million). The Information Officer reviewed the calculation of this fee and notes that the balance presented above includes HST, which, if recoverable by the Company may slightly increase amounts distributed to Investors.
6. As further discussed below, the Information Officer understands that Hi-Rise asserts that pursuant to agreements with Investors, Hi-Rise has the ability to recover certain costs. The costs included above by Hi-Rise include the legal and professional fees related to this process, including Hi-Rise's counsel, the Company's counsel, Representative Counsel, the Information Officer and a provision for other consultants and costs incurred by Holdings.

7. Property taxes were estimated by Hi-Rise based on amounts outstanding as at October 1, 2019 plus two months' accrued interest on the property taxes.
 8. The Information Officer understands from the Company that the Proposed Settlement now contemplates a \$15 million Debenture that would be paid to Investors upon the completion of the Lanterra Project (i.e. approximately 6 years).
 9. Total projected return to investors are calculated as follows: (total return / (principal plus accrued interest to December 2019)). This excludes return from interest previously paid to Investors.
 10. For presentation purposes only, the Information Officer has included the present value of distributions based on the current anticipated timing of certain payments and a 10% discount factor.
77. Included in the table above, the Information Officer has estimated the present value of contemplated payments to illustrate the impact of the deferred distributions to Investors (i.e. the VTB and Debenture). The present value of deferred distributions was calculated using a discount rate of 10% which the Information Officer understands from Hi-Rise is the indicative interest rate they pay to Investors (interest rates vary depending on the time of the investment). The distributions from the repayment of the VTB are assumed to be collected two years from closing (December 2021) and the proceeds from the Debenture are assumed to be collected six years from closing (December 2025).
78. The Information Officer understands that in development of the Proposed Settlement, Hi-Rise and/or the Company is seeking reimbursement of certain costs related to the Lanterra Transaction and the Proposed Settlement (legal and other fees totaling \$1.2 million) and Holdings' own costs of \$1.0 million, for a total of \$2.2 million. While Hi-Rise/the Company have asserted that actual costs are higher than \$2.2 million, the Information Officer understands that the Company is proposing a \$2.2 million cap.
79. As further detailed in the GT Report dated August 30, 2019 (the "**GT Report**"), and confirmed through communication with Cassels, the Information Officer understands that Hi-Rise and/or the Company are taking the position that they are actually entitled to a priority of up to \$9.0 million pursuant to the participation/administration agreements with

Investors for costs incurred to enhance the value of the Property and would be seeking same in the event that the Property becomes subject to receivership proceedings (the “**Potential Priority Costs**”). The Information Officer understands that \$5.1 million of the Potential Priority Costs were incurred by Hi-Rise (the “**Hi-Rise Potential Priority Costs**”) and \$4.2 million of costs were incurred by Adelaide. Neither the Information Officer or GT have undertaken a legal review of the Potential Priority Costs. The Information Officer notes that of the \$5.1 million in Hi-Rise Potential Priority Costs, approximately \$0.4 million relate to Representative Counsel’s legal fees which form a priority charge on the Property. The Information Officer understands that litigation risk in relation to the Potential Priority Costs should be considered by the Investors in their evaluation of the Proposed Settlement.

80. The following table further summarizes the projected distributions and overall recoveries to Investors. Recoveries have been estimated based on total amounts owing to Investors, including interest and principal¹² per the books and records of Hi-Rise, including interest accrued to December 11, 2019 and are presented below on an undiscounted basis:

¹² The Information Officer understands that the recovery calculations included in the Information Statement provided to Investors are based only on principal outstanding.

Recovery Analysis (Undiscounted)		('000s)	
	Registered	Non-Registered	Total
Principal Invested	17,305	34,802	52,108
Estimated Accrued Interest as at December 2019	5,010	11,766	16,776
Total Principal and Interest Owed	22,316	46,568	68,884
On Closing (December 2019)	17,036	-	17,036
On Repayment of VTB (December 2021)	5,280	12,990	18,270
On Completion Date (December 2025)	-	15,000	15,000
Total Projected Recoveries	22,316	27,990	50,306
Total Projected Recoveries (%)	100%	60%	73%
Add: Cash Interest Received to Date	3,095	7,431	10,526
Total Projected Recoveries and Interest	25,410	35,421	60,832
Total Projected Recoveries and Interest (%)	114%	76%	88%

81. Based on the Proposed Settlement, Registered Investors are projected to receive a 100% recovery:
- (a) approximately \$17.0 million at close (December 2019) from the proceeds of the new First Mortgage and the payment of the VTB Interest Reserve; and
 - (b) approximately \$5.3 million two years from close (December 2021) from the repayment of the VTB.
82. Non-Registered Investors are projected to receive a 60% recovery:
- (a) approximately \$13.0 million two years from close (December 2021) from the repayment of the VTB; and
 - (b) approximately \$15.0 million six years from close (December 2025) from the payment of the Debenture.
83. The Information Officer notes that these recoveries have not been discounted and certain of the distributions (i.e. the Debenture) could be contingent on the success of the Lanterra Project, however the Information Officer also notes that the Debenture is to be wholly guaranteed by Holdings and 25% is guaranteed by Jim Neilas personally.

OTHER INDICATIONS OF POTENTIAL VALUE

84. The Information Officer has considered other indications of value and whether there may be viable alternatives to the Proposed Settlement, in particular the following:

- (a) the Tricon offer;
- (b) Third Party Appraisals; and
- (c) re-opening the marketing and sale process / Receivership.

Tricon Offer

85. The Information Officer understands that Tricon¹³ first expressed interest in the Property in or around August of 2016. The Information Officer has been provided with and reviewed email correspondence between Tricon and the Company and understands that Tricon performed diligence on the Property and several meetings between Tricon and the Company were held. Ultimately, Tricon and the Company were unable to come to any type of arrangement prior to commencement of the 2017 Sale Process.

86. The Information Officer understands that Tricon participated in the 2017 Sale Process. Tricon submitted a Phase 1 bid but due to its relative value, was not invited to participate in Phase 2. Tricon was invited by BMO to participate in the 2018 Sale Process but declined to participate.

87. As described in the Second Report of Counsel, Representative Counsel received an unsolicited expression of interest in respect of a cash purchase of the Property from Tricon. The offer was initially in the form of a non-binding letter of interest dated July 9, 2019.

¹³ Tricon is a subsidiary of the Tricon Capital Group Inc. a residential real estate company primarily focused on rental housing in North America, with approximately \$7.2 billion (C\$9.7 billion) of assets under management. Tricon invests in a portfolio of single-family rental homes, multi-family rental apartments and for-sale housing assets, and manages third-party capital in connection with its investments. More information about Tricon is available at: www.triconcapital.com.

On July 19, 2019, Tricon submitted a refined offer in the form of a marked-up APS (the “**Tricon Offer**”).

88. The Information Officer understands the Tricon Offer was provided to both Representative Counsel and to BMO. Key terms and components of the Tricon Offer include the following:

Tricon Offer	
Purchaser	<ul style="list-style-type: none"> Tricon Lifestyle Rentals Investment LP
Purchase Price	<ul style="list-style-type: none"> \$72.0 million; Payment of the Purchase Price: <ol style="list-style-type: none"> \$2.0 million deposit on the third business day following execution of the APS (“First Deposit”); \$3.0 million deposit on the third business day following the Due Diligence Date (“Second Deposit”); and Balance of the of the Purchase Price on the Closing Date (“Final Payment”). The First Deposit and Second Deposit shall be returned to the Purchaser if the transaction is not completed for any reason except as a result of a default of the Purchaser under the APS; The Final Payment is subject to customary real estate transaction closing adjustments.
Due Diligence Conditions	<ul style="list-style-type: none"> The Purchaser has requested a number of additional diligence materials (the “Deliveries”) from the Vendor; Following the receipt of all of the Deliveries, the Purchaser shall have 45 days to review the Deliveries and perform any additional due diligence that may be required; The APS includes the following due diligence condition for the benefit of the Purchaser: <p><i>“by the Due Diligence Date (i.e. 45 days), the Purchaser shall have examined and been satisfied, in the Purchaser’s sole, absolute and unfettered discretion, <u>which may be exercised arbitrarily for any reason or for no reason at all</u>, with the results of the its due diligence enquiries, tests and investigations in respect of the Purchase Assets, including the Purchaser’s review of the Deliveries”</i>; [emphasis added]</p>
Closing Date	<ul style="list-style-type: none"> 45 days after the Due Diligence Date. The Due Diligence Date (45 days) and the Closing Date (45 days) provide the Purchaser with 90 days to close the transaction following receipt of all of the Deliveries; Purchaser to be granted exclusivity.

89. Based on its review of the Tricon Offer, the Information Officer notes the following:
- (a) the Tricon Offer of \$72.0 million is materially higher than the \$55.9 million offer Tricon submitted during Phase 1 of the 2017 Sale Process;
 - (b) compared to the Lanterra Transaction, the Tricon Offer provides for slightly lower consideration, however would provide a better return to Investors, assuming a similar distribution waterfall as the Proposed Settlement, because greater cash distributions would take place on closing, or shortly thereafter;
 - (c) in its current form the Tricon Offer remains subject to the due diligence condition described above, as well as approval from Tricon's Board of Directors and Investment Committee;
 - (d) if the due diligence condition is not waived by Tricon, Tricon could walk from the proposed transaction and receive a full refund of the First Deposit and Second Deposit, without penalty;
 - (e) the Tricon Offer was not submitted in accordance with the Sale Process guidelines and bid deadlines; and
 - (f) if the Company was to pursue the Tricon Offer, the exclusivity requirement would require the Company to terminate the Lanterra Transaction.
90. Based on discussions with Tricon, the Information Officer understands:
- (a) Tricon has performed diligence on the Property, including prior to and during the 2017 Sale Process, and has recently updated its diligence by working with one of its trusted construction partners;

- (b) Tricon did not participate in the 2018 Sale Process primarily because it believed its proposal would not be sufficient to meet the pricing expectations set by BMO at that time¹⁴;
 - (c) by not participating in the 2018 Sale Process, Tricon did not have access to certain of the additional materials made available to Interested Parties in the electronic data room during such process;
 - (d) Tricon appears to be familiar with each of the Construction Challenges and the Construction Challenges have been considered in the Tricon Offer however Tricon noted that it would need to engage third party experts and incur additional costs during diligence; and
 - (e) Tricon explained that the increase in consideration offered compared to its offer in the 2017 Sale Process is reflective of a change in market dynamics, including increased market rents and a reduction in their cost of capital.
91. Based on discussions with BMO in connection with the Tricon Offer, the Information Officer understands:
- (a) notwithstanding BMO's efforts to solicit its participation, Tricon declined to participate in the 2018 Sale Process. However, if the Tricon Offer had been submitted in accordance with the 2018 Sale Process guidelines, it would have been explored and advanced through the process;
 - (b) BMO held discussions with Tricon to better understand the Tricon Offer. Following these discussions, BMO concluded the Tricon Offer was not executable in its current form as Tricon would not waive its conditions; and

¹⁴ BMO has indicated to the Information Officer that no prior guidance was given.

- (c) BMO acknowledged that Tricon performed extensive due diligence in the 2017 Sale Process, however indicated that, in its view Tricon did not provide a satisfactory explanation as to why their purchase price increased substantially from their original offer during Phase 1 of the 2017 Sale Process.

Third Party Appraisals

- 92. In connection with the Sale Process, the Company engaged for two real estate appraisals:
 - (a) Cushman & Wakefield ULC prepared an appraisal dated February 27, 2018 (the “**Cushman Appraisal**”). The Cushman Appraisal values the Property at \$81.8 million (approximately \$235 per buildable square foot); and
 - (b) Colliers International prepared an appraisal dated July 16, 2018 (the “**Colliers Appraisal**”). The Colliers Appraisal values the Property at \$82.1 million (also approximately \$235 per buildable square foot).
- 93. As noted in the Cushman Appraisal, one of the factors considered in its appraisal included comparable land sales in the subject market area, including five comparable sites that transacted during the period December 2017 to January 2018, ranging in value from \$49.5 million to \$300 million, or approximately \$182 to \$284 per buildable square foot (average of \$251 per buildable square foot).
- 94. The Information Officer notes that these are comparable data points, however site-specific details would cause variations in valuation and ultimately the best judge of value would be a comprehensive market test through a robust marketing and sale process.

Re-opening the Sale Process / Receivership

95. The Information Officer has considered whether reopening the sale process might reasonably be expected to generate a result that would provide greater recovery for the Investors compared to the Lanterra Offer and the Proposed Settlement.
96. As previously noted, the Information Officer is of the view that BMO's Sale Process was a thorough canvassing of the market and fairly demonstrated the market value of the Property.
97. Furthermore, the accrual of interest and other potential costs in respect of the Meridian Mortgage and the SMI will continue to deteriorate potential recoveries for the Non-Registered Investors. There is no certainty that Meridian will continue to provide a standstill and not proceed to take further actions¹⁵.
98. There is no certainty whether a new marketing and sale process may generate a purchase price in excess of the Lanterra Transaction. The Information Officer notes however that re-opening the sale process would take additional time and costs would continue to accrue during this period.
99. The Information Officer reviewed the "Receivership Scenarios" presented in the GT Report which is attached as Appendix V to the Second Report of Counsel. The Information Officer is of the view the scenarios are appropriately presented for the purpose of which they were created and has included GT's analysis in its comparison of values below. In addition to the GT Report scenarios, the Information Officer has presented an alternate receivership scenario (the "**Truncated Receivership**").

¹⁵ Should Meridian seek Court appointment of a receiver, the receiver would have a duty to all stakeholders, not just Meridian.

100. The Truncated Receivership is based on an accelerated timeline of four months, compared to nine to 15 months in the GT Report, to reflect the possibility of an expedited receivership process by relying on the Sale Process already performed by BMO. Accordingly, the costs and disbursements associated with the receivership proceedings have been adjusted downward.
101. The table below includes a summary of recoveries to Investors in the Truncated Receivership scenario in comparison to the Proposed Settlement and two scenarios as presented in the GT Report. A detailed summary of the Truncated Receivership scenario is included as **Appendix “E”**. Based on the assumptions included, the Information Officer notes the following:
- (a) if Hi-Rise is unsuccessful in asserting its claim to the Hi-Rise Potential Priority Costs in the amount of \$4.7 million¹⁶, the Property would need to be sold for approximately \$71.2 million for Investors to receive the same (or similar) nominal recovery as they would in the Proposed Settlement. Accounting for the time value of delayed payments included in the Proposed Settlement at a 10% discount rate (i.e. the VTB and the Debenture), on a present value basis, the Property would need to be sold for approximately \$62.0 million¹⁷;
 - (b) if Hi-Rise is successful in asserting its claim to the Hi-Rise Potential Priority Costs, the Property would need to be sold for approximately \$76.1 million for Non-Registered Investors to receive the same (or similar) nominal recovery as they

¹⁶ The Hi-Rise Potential Priority Costs were estimated to be \$5.1 million less Representative Counsel’s legal fee priority charge of \$0.4 million. The \$5.1 million of Hi-Rise Potential Priority Costs was used to be consistent with the GT Report. However, the Information Officer understands that Hi-Rise will assert its full Potential Priority Costs.

¹⁷ Actual calculation of present value equivalents would be depended upon timing of closing of any sale transaction.

would in the Proposed Settlement. Accounting for the time value of delayed payments included in the Proposed Settlement at a 10% discount rate (i.e. the VTB and the Debenture), on a present value basis, the Property would need to be sold for approximately \$66.9 million;

- (c) proceeds realized through a receivership proceeding are likely to be distributed to Investors faster compared to the Proposed Settlement. The balances noted herein are in nominal dollars and the time value of money has not been considered; and
- (d) the Information Officer understands from Hi-Rise that in a receivership scenario, Hi-Rise and/or the Company may seek to recover all the Potential Priority Costs which, if successful, would have a material impact on distributions to Investors and further increase the selling price required to achieve the same result as the Proposed Settlement.

Comparison of Values

102. For information purposes only, the Information Officer has prepared the following table to summarize the potential values that may be available to the Investors under various alternatives.

Summary of Investor Recoveries (nominal dollars)				('000s)	
	Proposed Settlement ¹	Truncated Receivership Low ²	Truncated Receivership High ²	GT Receivership Low ³	GT Receivership High ³
Estimated Sale Price	73,150	71,170	76,071	44,000	72,000
Without Hi-Rise Potential Priority Costs					
<i>Registered Investors</i>					
Investor Recovery (\$)	22,316	22,605	22,605	22,171	22,171
Investor Recovery (%)	100%	100%	100%	100%	100%
<i>Non-Registered Investors</i>					
Investor Recovery (\$)	27,990	27,990	32,694	424	28,194
Investor Recovery (%)	60%	59%	69%	1%	61%
Total Recovery	50,306	50,595	55,300	22,595	50,366
With Hi-Rise Potential Priority Costs					
<i>Registered Investors</i>					
Investor Recovery (\$)	n/a	22,605	22,605	17,541	22,171
Investor Recovery (%)	n/a	100%	100%	79%	100%
<i>Non-Registered Investors</i>					
Investor Recovery (\$)	n/a	23,286	27,990	-	23,140
Investor Recovery (%)	n/a	49%	59%	0%	50%
Total Recovery	n/a	45,891	50,595	17,541	45,311

Summary of Notes & Key Assumptions

1. Hi-Rise is only asserting certain Potential Priority Costs under the Proposed Settlement.
2. See full summary of Truncated Receivership scenario in **Appendix "E"**.
3. Per GT Report.

103. Based on its review of the Proposed Settlement and the alternatives presented above, the Information Officer notes the following:

- (a) as detailed in this Report, the Proposed Settlement is premised on the Lanterra Transaction. While the Lanterra Transaction provides a high level of certainty in terms of purchase price, significant parts of the distributions associated with the Proposed Settlement are deferred into the future and may be subject to the ultimate success of the Lanterra Project (i.e. the Debenture);
- (b) compared to the Proposed Settlement, the alternatives each have a materially higher level of conditionality and uncertainty, all of which could significantly impact the

- quantum and timing of proceeds and there is no guarantee that an all cash offer can be obtained for the values indicated in the Truncated Receivership scenario; and
- (c) in developing the Truncated Receivership scenario, to maintain consistency with the GT Report, the Information Officer only sensitized for the Hi-Rise Potential Priority Costs. If Hi-Rise is successful in asserting the full Potential Priority Costs in priority to Investors, distributions to Investors could be materially altered. Further, if the Potential Priority Costs are litigated between Hi-Rise and the Investors, additional time and cost may be incurred impacting ultimate recovery.

CONCLUSIONS & OTHER FINDINGS

Sale Process

104. It is clear that Schedule I and institutional construction lenders are hesitant to provide construction financing in situations where syndicated mortgages are registered on title. To realize maximum value for the Property (as a development site), a sale transaction and related discharge of the SMI is required. Absent additional financing, the Property would remain an undeveloped low-rise rental property.
105. Based on the Information reviewed to date and results of the Sale Process, the Information Officer does not believe that there is any reasonable prospect of a sale process generating sufficient funds to repay both the Meridian Mortgage and the SMI.
106. After the 2017 Sale Process failed to generate any transaction in respect of the Property, the Company and BMO took positive steps and incurred considerable cost to address certain Construction Challenges.
107. The Information Officer is of the view that the Sale Process conducted was a thorough market test, that sufficient effort was made to obtain the best price in respect of the Property and that the process was executed with proper efficacy and integrity.

108. While no specific asking price was provided for the Property, the Information Officer found that certain Interested Parties were guided by recent comparable transactions, including Widmer, and considering the Construction Challenges, these market trends discouraged certain Interested Parties from participating in the Sale Process.
109. As discussed herein, no Interested Party was willing to submit an all cash offer by the applicable Sale Process bid deadlines. The Sale Process was designed and executed to maximize the ultimate proceeds from the transaction, not necessarily cash consideration on closing. In that regard, the Information Officer is of the view that the Lanterra Transaction provides for the best price in respect of the Property.

Consultations Held

110. The Information Officer held a number of meetings and requested significant information from the parties mentioned in this Report. During its review, the Information Officer found the conduct of all parties to be cooperative and supportive, was granted unfettered access to the individuals and groups it requested meetings with and was provided with requested information on a timely basis.
111. Nothing in its review of the Information provided to it and in discussions with the parties noted herein has led the Information Officer to conclude that the Lanterra Transaction would be considered to be an improvident transaction.
112. Each of the Interested Parties agreed that the Property's value is impacted by the Construction Challenges and other constructability issues which create significant uncertainty around the cost and time it may take to complete development on the site. Considering these issues, together with recent trends in the market, the Interested Parties confirmed that the best way to maximize purchase price would be through a transaction

including a joint venture and/or vendor takeback structure. The Information Officer found no indication that management of the Company influenced the creation of the joint venture structure proposed in the Lanterra Transaction.

Lanterra Transaction & Proposed Settlement

113. Based on the Information reviewed by the Information Officer, at the completion of the project, the Company's undiscounted potential proceeds, net of the \$15.0 million Debenture, are projected to equal approximately \$22.8 million. In the Information Officer's view, it is appropriate for the members of the Official Committee, and the Investors, to express concern over the Company's continued interest (i.e. its 25% share of the JV) in the Property.
114. If Investors vote to approve the Proposed Settlement, Registered Investors are projected to receive \$22.3 million (100% return) and Non-Registered Investors are projected to receive \$28.0 million (60% return), however as described previously, certain of these proceeds will only be distributed years in the future.

Alternatives

115. The Information Officer is of the view the Sale Process was a robust and thorough market test and the results thereof should be given more weight than: (a) alternate transactions that could be pursued that include a higher level of conditionality and would require time to execute; and (b) other indications of value, including the third party appraisals, which are subject to a number of conditions and restrictions.
116. The Information Officer noted that several key items in the Information Statement (and therefore the Proposed Settlement) may need to be refreshed and/or further developed. For example, the ultimate structure of the VTB and the structure and amount of the Debenture

are not accurately reflected in the Information Statement. The Information Officer recommends that, prior to any vote, an updated Information Statement be provided to the Investors.

117. If the Investors do wish to pursue an alternate transaction, based on communications reviewed by the Information Officer, it is likely that Meridian would commence enforcement proceedings resulting in a receivership. Within receivership proceedings, the Information Officer estimates that to generate a nominal return to Investors that would be the same or similar to the Proposed Transaction, the Property would need to be sold for an amount in excess of \$71.2 million, or \$76.1 million if Hi-Rise successfully asserts the \$4.7 million Hi-Rise Potential Priority Costs or approximately \$62.0 million to \$66.9 million when considering the estimated present value of distributions contained in the Proposed Settlement.
118. As requested by this Court, the Information Officer reviewed and explored the Tricon Offer. Although Tricon appears to be very familiar with the Property and its cash offer of \$72.0 million would provide a better and immediate return to Investors, the Tricon offer remains subject to an open-ended diligence condition that requires a minimum of 45 days to satisfy and has not yet been approved by its investment committee or board of directors. The Information Officer also notes that Tricon had an opportunity to participate in the 2018 Sale Process and declined to do so. The Information Officer supports BMO's assertion that maintaining the integrity of the marketing and sale process, including its timelines and bid deadlines, is of high importance, and especially so when presented with a conditional offer.

All of which is respectfully submitted this 7th day of October, 2019.

**ALVAREZ & MARSAL CANADA INC.,
in its capacity as Information Officer**

Per:



Name: Stephen Ferguson
Title: Senior Vice-President

Court File No: CV-19-616261-00CL

HI-RISE CAPITAL LTD.

- and -

SUPERINTENDENT OF FINANCIAL SERVICES *et al.*

Applicant

Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

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 capacity as Information Officer*

APPENDIX G

Court File No.: CV-19-616261-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF SECTION 60 OF THE TRUSTEE ACT, R.S.O. 1990, C. T.23, AS
AMENDED, AND RULE 10 OF THE ONTARIO RULES OF CIVIL PROCEDURE,
R.R.O. 1990, REG. 194, AS AMENDED**

**AND IN THE MATTER OF HI-RISE CAPITAL LTD. AND IN THE MATTER OF
ADELAIDE STREET LOFTS INC.**

**THIRD REPORT OF MILLER THOMSON LLP, IN ITS CAPACITY
AS COURT-APPOINTED REPRESENTATIVE COUNSEL**

October 18, 2019

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Court File No.: CV-19-616261-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF SECTION 60 OF THE TRUSTEE ACT, R.S.O. 1990, C. T.23, AS
AMENDED, AND RULE 10 OF THE ONTARIO RULES OF CIVIL PROCEDURE,
R.R.O. 1990, REG. 194, AS AMENDED**

**AND IN THE MATTER OF HI-RISE CAPITAL LTD. AND IN THE MATTER OF
ADELAIDE STREET LOFTS INC.**

**THIRD REPORT OF MILLER THOMSON LLP, IN ITS CAPACITY
AS COURT-APPOINTED REPRESENTATIVE COUNSEL**

1. Pursuant to the Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 21, 2019 (the “**Appointment Order**”), Miller Thomson LLP was appointed as Representative Counsel (in such capacity, “**Representative Counsel**”) appointed pursuant to the Order of the Honourable Mr. Justice Hainey dated March 21, 2019 (the “**Appointment Order**”) to represent the interests of all individuals and/or entities (the “**Investors**”, which term does not include persons who have opted out of such representation in accordance with the Appointment Order) that have invested funds in a syndicated mortgage (the “**Syndicated Mortgage**”) administered by Hi-Rise Capital Ltd. (“**Hi-Rise**”) in respect of the proposed development known as the “Adelaide Street Lofts” (the “**Project**”) at the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the “**Property**”). A copy of the Appointment Order is attached as **Appendix “A”**.
2. Registered title to the Property is held by Adelaide Street Lofts Inc. (“**Adelaide**”) as nominee on behalf of the beneficial owner 263 Holdings Inc. (“**Holdings**”, and together with Adelaide, the “**Company**”), in connection with the negotiation and implementation of a settlement with respect to such investments.

PURPOSE OF REPORT

3. On October 23, 2019, Hi-Rise intends to hold a meeting of Investors (the “**Meeting**”) in order to, among other things, allow the Investors to vote on a proposed settlement (the “**Proposed Settlement**”). If approved by Investors and sanctioned by the Court, the Proposed Settlement would allow the Company to move forward with a joint venture transaction (the “**Lanterra Transaction**”)¹ set out in a term sheet executed April 10, 2019 (the “**JV Agreement**”) with Lanterra Developments Limited (“**Lanterra**”) and result in the distributions contemplated in the Proposed Settlement.

4. Representative Counsel has filed this Third Report for the purpose of advising the Court and the Investors as to:

- (a) the recommendation of the Official Committee of Investors (the “**Official Committee**”) regarding the Proposed Settlement; and
- (b) Representative Counsel’s concerns with Hi-Rise’s proposal that Investors vote in a single class.

ESTABLISHMENT OF OFFICIAL COMMITTEE

5. Pursuant to the Appointment Order, Representative Counsel was directed to establish an Official Committee in accordance with the process and procedure described in Schedule “B” attached to the Appointment Order. Pursuant to the Order of the Honourable Mr. Justice Hainey dated April 15, 2019, the Official Committee was approved and constituted (the “**Official Committee Approval Order**”, a copy of which is attached as **Appendix “B”**).

APPOINTMENT OF INFORMATION OFFICER

6. Pursuant to the Order of the Honourable Mr. Justice Hainey dated September 17, 2019 (the “**IO Order**”), Alvarez & Marsal Canada Inc. was appointed as Information Officer (in such capacity, the “**Information Officer**”).

7. Pursuant to the IO Order, the Information Officer was authorized and empowered to, among other things, review and report to the Court and to all stakeholders, including but not limited to the Representative Counsel, Hi-Rise, the Company, the Financial Services Regulatory Authority of Ontario and Meridian Credit Union Limited, in respect of all matters relating to the Property, Hi-Rise's mortgage over the Property, and the Company's proposed sale of the Property, including, but not limited to, the marketing and sales process undertaken in respect of the Property, all aspects of any and all proposed transactions in respect of the Property (and in this regard, the Information Officer may engage in discussions with Tricon Lifestyle Rentals Investment LP to ascertain its interest in the Property), and the financial implications of such proposed transactions (the "**Mandate**").

8. In accordance with the IO Order, on October 7, 2019, the Information Officer delivered a report in respect of its Mandate (the "**IO Report**"). For ease of reference, a copy of the IO Report is attached hereto as **Appendix "C"** (without appendices).

9. Both Representative Counsel and the Official Committee accept the facts and conclusions set out in the IO Report, and are of the view that the Information Officer fulfilled its mandate.

RECOMMENDATION OF THE OFFICIAL COMMITTEE

10. The Official Committee does not support the Proposed Settlement and is unable to recommend that Investors approve it.

11. In reaching its conclusion, the Official Committee has relied upon the IO Report as well as certain clarifications made by the Information Officer directly to the Official Committee.² In particular, the Official Committee relies upon the following statements made by the Information Officer:

- (a) Although the design and implementation of the Sale Process was consistent with industry standards and was carried out by BMO in a thorough and professional

¹ While Adelaide has refused to provide Investors with a copy of the JV Agreement, a copy was provided to the Information Officer for review and the IO Report contains a description of the relevant provisions. See IO Report at para 63.

² Paragraph 11 of this Third Report was reviewed by the Information Officer to confirm its accuracy.

manner, BMO's mandate was to maximize transaction value, not to maximize Investor recoveries. The Sale Process was not specifically designed with the goal to maximize the cash proceeds on closing but to maximize the consideration and ultimate proceeds thereof, even if portions of proceeds may be deferred until a later date.³

- (b) Significant components of the distributions to Non-Registered Investors (as defined below) contemplated under the Proposed Settlement are contingent insofar as they are dependent upon the ultimate success of the Lanterra Project.⁴ Taking this into account, the Official Committee notes that there is a high degree of risk to Investors with respect to full payment of the unsecured debenture in the amount of \$15,000,000 should the project not be successful. Only \$2,000,000 of the debenture is personally guaranteed by Jim Neilas.⁵
- (c) The Non-Registered Investors will not receive any payment on closing of the Lanterra Transaction. Non-Registered Investors will not receive any payments until December 2021 or December 2022, depending upon when the vendor takeback mortgage is repaid. The balance of payments to Non-Registered Investors is not expected to occur until December 2025.⁶
- (d) If the Project is successfully completed, the Company's undiscounted potential net proceeds are projected to equal approximately \$22.8 million arising from the Company's continued interest (*ie*, its 25% share in the joint venture) in the Property (after accounting for the \$15 million debenture). The Official Committee believes this continued interest and amount of profit to the Company are unfair to Investors who will sustain a significant shortfall.⁷ This also appears inconsistent

³ IO Report at paras 59-61, 109.

⁴ IO Report at para 103(a).

⁵ IO Report at para 73.

⁶ IO Report at para 73. Note that Schedule "A" to the Updated Information Statement dated October 9, 2019 confirms the amount to be guaranteed by Mr. Neilas.

⁷ IO Report at para 113.

with certain fundamental principles of insolvency law, including the *Bankruptcy and Insolvency Act* (Canada) (the “BIA”), which prohibits payments to equity holders in priority to payment in full of creditor claims.⁸

12. The Official Committee recognizes the considerable uncertainty with respect to the outcome of any alternative to implementation of the Proposed Settlement, including a receivership proceeding. As noted in the IO Report, the Information Officer does not believe that there is any reasonable prospect of a sale process generating sufficient funds to repay the Investors in full.⁹ While there are indications that a superior result may be achievable through a new sale process (*eg*, the agreement of purchase and sale submitted by Tricon Lifestyle Rentals Investment LP),¹⁰ it is also possible that a sale process would result in an inferior result than the Lanterra Transaction and Proposed Settlement.¹¹

13. As such, there does appear to be some merit to the Proposed Settlement. Nevertheless, in light of the concerns referenced herein including at paragraph 11, the Official Committee is unable to support or recommend approval of the Proposed Settlement.

CONCERNS WITH SINGLE INVESTOR CLASS

14. Representative Counsel understands that all Investors will be included in a single class for the purpose of voting on the Proposed Settlement, and that approval will require Investors representing two-thirds in value and a majority in number to vote in favour of the Proposed Settlement.¹² These approval thresholds are consistent with those prescribed in the BIA.

15. As noted below, the structure of the Proposed Settlement is premised on Hi-Rise’s position that Investors who hold their beneficial interest in the Syndicated Mortgage through a

⁸ While Representative Counsel recognizes that this proceeding is not being conducted under the BIA, the adoption of certain provisions of the BIA by analogy (*ie*, the voting thresholds) makes the comparison appropriate.

⁹ At para 105.

¹⁰ IO Report at paras 87-88.

¹¹ IO Report at para 99-102. Note that the Official Committee does not accept the validity of the Potential Priority Costs set out in Note 1 of the chart at para 102.

¹² IO Report at para 73.

registered investment plan (the “**Registered Investors**”) rank in priority to Investors who hold their beneficial interest in the Syndicate Mortgage directly through Hi-Rise (the “**Non-Registered Investors**”) for principal, interest accrued to date and interest continuing to accrue. If Registered Investors do have priority over Non-Registered Investors then the Proposed Settlement will have vastly different outcomes for the two groups.

16. Consequently, Representative Counsel is of the view that it is inappropriate and unfair to Non-Registered Investors to be included in the same class as Registered Investors for the purpose of voting on the Proposed Settlement.

17. Representative Counsel recommends that Investors vote in two separate classes (*ie*, Registered Investors and Non-Registered Investors) for the purpose of voting on the Proposed Settlement, and that approval require that Investors representing two-thirds in value and a majority in number of each such class vote in favour of the Proposed Settlement.

CONCLUSION

18. As noted above, the Official Committee does not recommend that Investors vote in favour of the Proposed Settlement.

19. Both Representative Counsel and the Official Committee acknowledge that Registered Investors will likely support it as it provides for a substantial portion of their claims to be paid on closing, based on the feedback received from Non-Registered Investors it appears there is little prospect of support among members of this group. Given the proportionate weight of the group of Non-Registered Investors, a lack of support among them will likely be fatal to the prospect of the Lanterra Transaction and the Proposed Settlement.

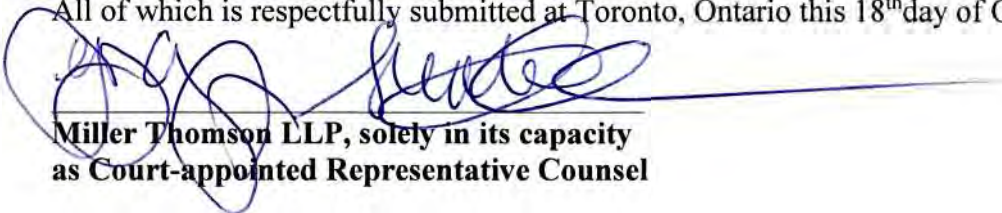
20. If Hi-Rise seeks to secure the support of Non-Registered Investors without abandoning the Lanterra Transaction, Representative Counsel recommends the following amendments to the Proposed Settlement:

- (a) Non-Registered Investors should receive a substantial portion (*eg*, 50%) of the \$15 million contemplated under the debenture at closing;

- (b) the amount of the \$15 million debenture guaranteed by Jim Neilas should be increased from \$2 million to \$5 million, and should be secured; and
- (c) a meaningful amount of the forecasted \$22.8 million net profit to the Company should be diverted to the Investors, possibly through a share of ownership in the joint venture or through a royalty arrangement.

21. While these amendments will not guarantee the support of the Official Committee or individual Non-Registered Investors, in the opinion of Representative Counsel and the Official Committee they would collectively constitute a display of goodwill toward the Investors and would address certain of the most common objections to the Proposed Settlement in its current incarnation.

All of which is respectfully submitted at Toronto, Ontario this 18th day of October, 2019.



**Miller Thomson LLP, solely in its capacity
as Court-appointed Representative Counsel**

HI-RISE CAPITAL LTD.

and

SUPERINTENDENT OF FINANCIAL
SERVICES et. al.
Respondents

Court File No.: CV-19-616261-00CL

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

**THIRD REPORT OF MILLER THOMSON LLP,
IN ITS CAPACITY AS COURT-APPOINTED
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APPENDIX H



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NOTICE OF MEETING OF INVESTORS HOSTED BY REPRESENTATIVE COUNSEL

TO: Investors in Hi-Rise Capital Ltd.

FROM: Miller Thomson LLP, in its capacity as court-appointed Representative Counsel

MEETING DATE: Sunday October 20, 2019

MEETING TIME: 2:00 p.m. EST (Please arrive at 1:30 p.m. EST in order to sign-in).

LOCATION: Offices of Miller Thomson LLP
Scotia Plaza
40 King Street West, Suite 5800
Toronto, Ontario

Introduction

You are receiving this Notice of Meeting of Investors from Miller Thomson LLP ("**Representative Counsel**") because you are an individual and/or entity (an "**Investor**") that holds an interest in a syndicated mortgage, administered by Hi-Rise Capital Ltd. ("**Hi-Rise**"), in respect of the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the "**Property**") owned by Adelaide Street Lofts Inc. ("**Adelaide**").

As you know, Representative Counsel represents the interest of all Investors, except Investors who do not wish to be represented by Representative Counsel and have completed and delivered an Opt-Out Notice.

Representative Counsel established an Official Committee of Investors (the "**Official Committee**"), with which Representative Counsel consults regularly and from which it takes instruction in respect of this matter.

Purpose of the Meeting with Representative Counsel

As you may know, Hi-Rise is hosting a meeting of Investors on Wednesday October 23, 2019, at which Investors will vote on a proposed settlement put to Investors by Hi-Rise regarding their investments in the mortgage on the Property (the "**Vote**").

In advance of the Vote, Representative Counsel and the Official Committee invite you to a Meeting of Investors at the Offices of Miller Thomson LLP on Sunday October 20, 2019 at 2:00 p.m. (the "**Town Hall Meeting**").

The purpose of the Town Hall Meeting is to discuss the upcoming Vote and the proposed settlement of your investment and what it means for you. At the Town Hall Meeting:

- The Official Committee will provide its position on Hi-Rise's proposed settlement and its recommendation on the Vote;
- Representative Counsel will provide legal advice on the implications of the proposed settlement and the Vote, including the risks and the outcome for Investors if the Vote passes or if the Vote fails; and
- All Investors present will have the opportunity to ask questions of Representative Counsel and the Official Committee.

In-Person Attendance Only

In order to protect confidentiality and privileged legal advice, Representative Counsel is only hosting the Town Hall Meeting in person and only Investors are invited to attend. This means that the only way to participate in the Town Hall Meeting is to attend in person. There will not be a conference call line available for Investors to dial-in.

The Town Hall Meeting is very important. It is the only time that Investors will be able to meet with the Official Committee and Representative Counsel before the Vote. Representative Counsel strongly encourages ALL Investors to attend.

Who Will be at the Town Hall Meeting?

Representative Counsel and the Official Committee will be present at the meeting.

External counsel to the Financial Services Regulatory Authority of Ontario ("**FSRA**") may be present at the Town Hall Meeting as an observer. In order to protect privilege, FSRA's external counsel will be asked to step out of the Town Hall Meeting when Representative Counsel is providing legal advice.

Hi-Rise and/or Adelaide are not invited to the Town Hall Meeting.

Only Investors are invited to attend at the Town Hall Meeting. This means that you must be an Investor in Hi-Rise in order to enter the Town Hall Meeting. All Investors will be asked to sign in with Representative Counsel before they are permitted to enter the Town Hall Meeting room.

Friends, family members or financial advisors of Investors are **NOT permitted to attend** the Town Hall Meeting and will be asked to leave.



What to Bring With You

In order to be permitted to attend at the Town Hall Meeting, you **MUST** be an Investor. In order to protect confidentiality and privileged legal advice, Representative Counsel will verify your identity and confirm that you are an Investor in Hi-Rise.

All Investors will sign be asked to sign-in. Please arrive at 1:30 p.m. in order to sign-in.

You MUST bring the following documentation with you in order to sign in and attend the Town Hall Meeting:

1. One piece of government issued photo identification (*i.e.* a passport or a driver's license);
2. A copy of your investment documents; and
3. If your investment is held through a corporation (*i.e.* the name on your investment document is a company as opposed to your individual name), copies of the articles of incorporation and supporting documentation indicating that you are the director of the company.

The name on your investment documents (or corporate documents) must match your photo identification. If you do not bring the required documents, Representative Counsel may choose to deny your access to the Town Hall Meeting.

A copy of this Notice of Meeting will be posted on Representative Counsel's website at the following URL: <https://www.millerthomson.com/en/hirise/>

Thank you for your attention to this matter. We look forward to meeting all Investors at the Town Hall Meeting.

Miller Thomson LLP,
in its capacity as court-appointed Representative Counsel

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APPENDIX I



October 21, 2019

Important Update on the Court Report of the Information Officer

Representative Counsel provides this summary at the request of Investors that attended in person at the Meeting of Investors at the offices of Miller Thomson LLP on Sunday October 20, 2019.

This summary sets out certain clarification points regarding the proposed settlement offered to Investors by Hi-Rise Capital Ltd. (the “**Proposed Settlement**”) in respect of the 263 Adelaide Street West (the “**Property**”). This summary also sets out the Official Committee’s recommendation on should vote on October 23, 2019 on the Proposed Settlement.

For the reasons set out below, the Official Committee recommends voting against the Proposed Settlement on October 23, 2019.

This summary provides a simple overview and summary only, and is not intended to be read in isolation. For full information and details, this summary should be read in conjunction with the following documents:

1. Third Report of Representative Counsel dated October 18, 2019 (the “**Third Report**”), which is posted under the ‘Documents’ section of Representative Counsel’s website; and
2. The Report of the Information Officer dated October 7, 2019, which is posted under the ‘Documents’ section of Representative Counsel’s website.

Mortgages on the Property and Priority:

1. There is a first mortgage registered on title to the Property in favour of Meridian Credit Union (the “**First Mortgage**”).
2. There is a second mortgage registered on title to the Property in favour of both Hi-Rise Capital Ltd. and Community Trust Company (originally Canadian Western Trust) (the “**Second Mortgage**”).
3. Community Trust Company’s interest in the Second Mortgage ranks ahead of Hi-Rise Capital Ltd.’s interest.
4. Investors participate through this Second Mortgage in two different ways:
 - a. Registered Investors – these are Investors that participate in the Second Mortgage through Community Trust Company and hold their investments through a registered retirement savings plan; or
 - b. Non-Registered Investors – these are Investors that participate in the in the Second Mortgage through Hi-Rise Capital Ltd.
5. The priorities in terms of any repayment are as follows:
 - a. First, Meridian Credit Union under the First Mortgage;

- b. Second, Registered Investors under Community Trust Company's interest in the Second Mortgage; and
 - c. Third, Non-Registered Investors under Hi-Rise Capital Ltd.'s interest in the Second Mortgage.
6. Please check the first page of your Loan Participation Agreement with Hi-Rise Capital Ltd. to determine whether you are a Registered Investor or Non-Registered Investor

Summary of the Lanterra Transaction

- 7. The Company and Lanterra Developments Limited (in Trust) or its designee ("**Lanterra**") are looking to move forward with a joint venture transaction (the "**Lanterra Transaction**") in accordance with a term sheet executed April 10, 2019 (the "**JV Agreement**").
- 8. The purpose of the Lanterra Transaction is to complete the development of the Property (the "**Lanterra Project**")
- 9. The Company and Lanterra will form a limited partnership ("**LP**") to hold their interest in the Property and the Lanterra Project, as follows:
 - a. Lanterra will acquire a 75% indirect interest in the Property and Lanterra Project; and
 - b. The Company will retain a 25% equity interest in the Property and Lanterra Project.
- 10. The transaction value of the Lanterra Project is \$73.15 million, as follows:
 - a. The LP will grant a first mortgage on the Property in the amount of \$36.8 million;
 - b. The Company will be granted a vendor take back mortgage of approximately \$18.29 million; and
 - c. The Company will contribute equity-in-kind of approximately \$18.29 million in exchange for its 25% interest
- 11. The development of the Property is estimated to take up to 6 years and projects a total profit of \$66 million upon completion.
- 12. The Company's projected return at the completion of the Lanterra Project is \$34.8 million, comprised of the following:
 - a. A return of capital of approximately \$18.3 million; and
 - b. The Company's share of the potential profit of the Lanterra Project of approximately \$16.5 million (being 25% of \$66 million).
- 13. In addition, the Company is projected to earn approximately \$3 million over the term of the Project (up to 6 years) in connection with the development and property management fees.

Terms of the Proposed Settlement

You are being asked to vote on a Proposed Settlement regarding your investment on October 23, 2019. The Proposed Settlement arises from the above-noted Lanterra Transaction.

Non-Registered Investors and Registered Investors are to vote in the same voting class. Approval of the Proposed Settlement will require Investors representing two-third in value (i.e. value of your investment) and a majority in number to vote in favour.

If approved by the Investors and then by the Court, the Proposed Settlement will allow the Company to move forward with the Lanterra Transaction and will result in the distributions to Investors.

The terms of the Proposed Settlement and distributions are as follows:

1. Repayment to Investors of approximately \$17,036,000 on closing;
2. Investors to have the benefit of the vendor take back mortgage in the amount of \$18,270,000;
3. The Company is proposing to provide a \$15 million debenture to Investors, unsecured and non-interest bearing payable 6 years from the closing date; and
4. Jim Neilas will personally guarantee \$2 million of the \$15 million debenture.

What does this mean for Investors and the Company:

1. What does this mean if you are a Registered Investor?
 - You **will** receive payment of your principal and interest in full;
 - You will receive a majority of the repayment on closing of the Lanterra Transaction; and
 - You will receive the balance in December 2021 or 2022, depending on when the vendor take back mortgage is repaid.
2. What does this mean if you are a Non-Registered Investor?
 - You **will not** receive repayment of your principal and interest in full. The return to Investors, excluding interest, is expected to be 60% of your investment;
 - You will not receive any payment on closing of the Lanterra Transaction;
 - You will not receive any payments until December 2021 or 2022, depending on when the vendor take back mortgage is repaid; and
 - You will receive the remaining repayment if and when the Lanterra Project is complete, which is expected to be in 6 years from now.
3. What does this mean for the Company?

- The Company has a continuing interest in the Lanterra Project and the Property; and
- If the Lanterra Project is successful (after 6 years), the Company's potential profit and fees are projected to be \$22.8 million (after accounting for repayment of the \$15 million debenture).

Official Committee & Representative Counsel's Recommendation:

The Official Committee does not recommend voting in favour of the Proposed Settlement for the following reasons:

1. The sale and solicitation process for interest in the Property was designed to maximize transaction value for the Property, and **not** to maximize Investor recoveries;
2. Significant components of repayment to the Non-Registered Investors are contingent as they depend on the success of the Lanterra Project. Non-Registered Investors are not repaid in full and they do not receive any money on closing. They may start receiving payments in December 2021 or 2022, and will not receive the balance until completion of the Lanterra Project (expected to be December 2025);
3. There is a high degree of risk to Investors with respect to full repayment of \$15 million debenture should the Lanterra Project not be successful. Only 25% of it is personally guaranteed by Jim Neilas;
4. If the Lanterra Project is successful, the Company receives a potential net profit of \$22.8 million. This continued interest and amount of profit is unfair to Investors who receive a significant shortfall; and
5. As noted above, Non-Registered Investors and Registered Investors are to vote in the same voting class. Given that their investment returns and timing of those returns are different due to certain priorities (noted above), the Proposed Settlement has vastly different outcomes for each group. Accordingly, it is inappropriate and unfair to Non-Registered Investors to be included in the same voting class as Registered Investors for the purposes of voting on the Proposed Settlement.

Yours Truly,

Miller Thomson LLP,
solely in its capacity as
Representative Counsel

APPENDIX J

COUNSEL SLIP

COURT FILE NO.: CV-19-00628145-00CL

DATE: November 1st, 2019

TITLE OF
PROCEEDING

NO. ON LIST 7

MERIDIAN CREDIT UNION LIMITED v. ADELAIDE STREET LOFTS INC.

COUNSEL FOR:

- ☐ PLAINTIFF(S)
- ☐ APPLICANT(S)
- ☐ PETITIONER(S)

☒ Proposed Court-Appointed Receiver - B. SARSH
msi spersel inc.

COUNSEL FOR:

- ☐ DEFENDANT(S)
- ☐ RESPONDENT(S)

PHONE _____

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EMAIL _____

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416-304-1313

tmarkovic@tcf.ca

1 Nov 19

I granted the contested adj. Mr. Hall is currently on trial and the Applicant's materials (or some of them at least) were later served / filed.

I will conduct a judicial mediation on Nov 27/19 @ 2:15 p.m. If it is necessary the Application will proceed on Dec 12/19 - 2 hours confirmed, any judge but myself.

Timetable will go as per schedule A attached.

Melet

~Schedule A TM. judicial med. - briefs ~~passed~~ filed Nov 25 1pm

- judicial
mediation on November 27,
2:15pm

- responding materials by December
2nd, 5pm

- crosses the week of the 2nd
- Investors vote, if any, by Dec 6th
- applicants' factum & other
factums in support of the
application by December 9th 5pm

- responding factums, 10th 5pm
by December

- reply factum by December 11th 5:00 pm
- application returnable on the
12th

TM.

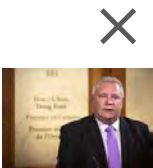
APPENDIX K



TOP STORIES

Ontario working toward goal of open market for cannabis, Ford says

NOVEMBER 21



THE LISTING

Small investors face losses on Toronto developer's debt woes

SHANE DINGMAN > REAL ESTATE REPORTER
TORONTO
PUBLISHED NOVEMBER 6, 2019

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Project renderings of Hi-Rise Capital's proposed lofts at 263 Adelaide St. in downtown Toronto.

HI-RISE CAPITAL LTD.

A real estate developer who raised tens of millions of dollars from dozens of individual investors bundled into syndicated mortgages to fund Toronto-area condominium buildings is facing an investor revolt on one project and insolvency on another.

Dimitrios (Jim) Neilas, chief executive officer of Storey Living Inc., is facing legal fights on two fronts as projects he has pushed – known as the Adelaide Lofts in downtown Toronto and the OpArt condos in Oakville – are now subject to court actions from creditors seeking to sell land parcels that he had hoped to make into condominium or rental properties. At stake are millions of dollars for small investors whose loans are not registered and not protected in an insolvency process, or in the settlement deals proposed by the debtors.

A review of court documents related to the projects shows that while Mr. Neilas and the syndicated mortgage lender controlled by him – Hi-Rise Capital Ltd. – for years purchased land and bundled small investors into syndicated loans, starting in 2017 his lending business underwent a “freeze” and the funds for his stalled projects dried up.

The cause of the freeze is not outlined, but in 2017 the syndicated mortgage business was attracting more and more scrutiny from regulators as project failures and financial losses related to Fortress Investment Group transixed markets. In April, 2017, regulatory control of syndicated mortgages was transferred to the Ontario Securities Commission. In 2011, Mr. Neilas received a lifetime ban for dealing securities from the OSC related to real estate investment activities.

Amid the court documents is a scathing report filed by Ontario's Superintendent of Financial Services: “The Neilas entities have apparently received in excess of \$13-million in fees from the funds entrusted to them on a failed project on which construction has not even started,” reads a factum document written by John Finnigan, the lawyer for the Superintendent. “The Adelaide Project and a number of other similar projects were devised, promoted, developed, and administered by a vertically integrated series of companies owned and controlled by Jim Neilas and his family.”

Noor Al-Awqati, the chief operating officer of Hi-Rise Capital Ltd. and principal mortgage broker for the company, denied some of those claims in an April 3, 2019 affidavit, saying Hi-Rise has received no fees from the Adelaide project since at least September, 2017. He admits to the 14 per cent commission paid on the initial investments, but said Hi-Rise transferred 10

or 12 per cent of each commission to third-parties who referred the investors. He also said that after 2017 Hi-Rise was no longer taking in new syndicated investor money.



Rendering of the proposed OpArt Condos project in Oakville, which is caught in a legal battle between the builder and creditors.

HI-RISE CAPITAL LTD.

The Adelaide project began in in 2012, when Mr. Neilas submitted a rezoning application for 263 Adelaide St. W., Toronto, to put a condo tower on top of a heritage warehouse built in 1915.

On Feb. 18, 2014, a holding company controlled by Mr. Neilas registered a \$40-million syndicated mortgage against the property. The syndicated mortgage was amended on July 10, 2015, to increase the authorized principal amount to \$60-million. In 2017, the Adelaide Street Lofts proposal was revised to feature a 47-storey tower.

Following the “freeze,” Mr. Neilas engaged the Bank of Montreal in 2017 to find a way out of its various loans, and while he was able to sell a nearby property, Adelaide languished and was removed from the market.

In February, 2018, the trust agreement (or syndicated mortgage) on Adelaide matured, but the 642 individual lenders – who had contributed between \$25,000 to \$893,000 each – did not receive their principal back, and since that time interest payments have ceased, according to affidavits from the lenders.

Late in 2018, Mr. Neilas and Hi-Rise engaged in a deal to finish the condos in joint-venture agreement with prominent Toronto builder Lanterra Developments that would offer about \$73-million for the transaction.

Because the terms of the deal would require substantial losses to the syndicate investors that Hi-Rise's loan documents do not appear to have foreseen, it needed to obtain permission from the lenders.

In March, Hi-Rise Capital made an application to the Ontario Superior Court of Justice under the Trustee Act, to appoint legal counsel from Miller Thomson LLP for the syndicated lenders in hopes of finding a restructuring deal investors could live with. According to [filings](#), Hi-Rise has loan participation agreements (LPA) and mortgage administration agreements (MAA) with the syndicated investors that are hazy on the subject of how to write-off a chunk of that debt. "The terms of the LPA do not appear to contemplate situations like this where Hi-Rise wishes to discharge the syndicated mortgage even though the proceeds being realized may not be sufficient to repay Investors in full," the filing from the court-appointed lawyers says.

By early 2019, Hi-Rise claimed the principal on the mortgage stood at \$52-million and the unpaid interest owed to investors was \$12.9-million. It had also taken out a second mortgage from Meridian Credit Union for \$16.4-million. The joint venture deal would fully pay off Meridian, but the non-registered syndicated investors would get only about 60 per cent of their principal back – and none of the interest owed – and even then, not right away (a \$15-million no-interest debenture was offered to investors, payable in six years).

The deal preserves a 25-per-cent interest in the site for Mr. Neilas's company (giving 75 per cent to Lanterra) and could see it receive \$22.8-million if the project is finished. Lanterra's projected profit on a finished building was \$66-million.





Excavation on the site for proposed OpArt condos in Oakville has begun, but it has not been placed on the market for sale.

HI-RISE CAPITAL LTD.

Miller Thomson recommended the lenders vote against this deal: “The sale and solicitation process for interest in the property was designed to maximize transaction value for the property, and not to maximize Investor recoveries.”

On Oct. 23, 404 of the investors (61 per cent of the lending pool) were able to cast a vote to accept or decline the deal. Only 29 per cent (representing \$10,202,272 in value) voted in favour; 70 per cent (representing \$24,542,125 in value) voted against.

Neither Mr. Neilas nor any of the parties in the court documents who The Globe and Mail attempted to contact responded by press time.

In the case of the Oakville project, the failure to make interest payments on a small \$2.5-million loan from credit union FirstOntario has resulted in the appointment of MSI Spergel as a receiver on the property.

Insolvency papers filed by Spergel show that in February, 2013, Mr. Neilas's companies 54 Shepherd Road Inc. and 60 Shepherd Road Inc. borrowed \$15-million from Hi-Rise Capital Ltd., and then on May 16 of the same year added a second mortgage of \$8-million.

Court records show that the \$15-million loan ballooned to \$35-million, and the \$8-million loan now has a balance of \$3.5-million.

The FirstOntario loan came later, but was registered as the primary lender, which means the far larger syndicated mortgage – and the individual investors – are second-in-line for any repayment. That could mean that a sales process may not fully protect the investments of those individual lenders.

So far, excavation on only the Oakville site has begun. That pit is all Mr. Neilas has to show for the millions in loans from small investors, and his hopes of building about 200 condo apartments. Thus far, the Oakville site has not been placed on the market for sale.

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More From The Globe and Mail

Firing of Alberta elections watchdog borders on an abuse of power by the Kenney government

EDITORIAL



Rachel Notley asks Lieutenant-Governor to block removal of election commissioner

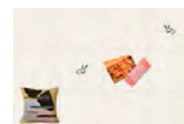


In Bolivia, democracy has been thrown to the lions

EDITORIAL



Sustainable gift guide: 100 stylish gifts you'll feel good about giving – or receiving



OPINION

The Liberals make strides, but there's a long road ahead to bridging the Western divide 🔑

KELLY CRYDERMAN



Picking apples is a fall tradition, but what happens when you end up with 20 pounds of them? 🔑



APPENDIX L

November 14, 2019

Miller Thomson LLP
40 King Street West, Suite 5800
Scotia Plaza
Toronto, ON M5H 3S1

Attention: Mr. Gregory R. Azeff

McCarthy Tétrault LLP
66 Wellington Street West
Suite 5300, TD Bank Tower Box 48
Toronto ON M5K 1E6

**Attention: Mr. Jonathan D. See
Ms. Charlene Schafer**

Aird & Berlis LLP
Brookfield Place
Suite 1800, Box 754
181 Bay Street
Toronto ON M5J 2T9

**Attention: Mr. Steven L. Graff
Ms. Kathryn Esaw**

Cassels Brock & Blackwell LLP
40 King Street West, Suite 2100
Scotia Plaza
Toronto, ON M5H 3C2

Attention: Mr. David Ward

Re: 263 Adelaide Street West, Toronto

As you may know, our client is presently party to a binding term sheet (as amended from time to time, the "**Prior Term Sheet**") made between Lanterra Developments Ltd. (in trust) and 263 Holdings Inc. ("**Holdings**") in respect of the proposed acquisition of the lands and premises municipally known as 263 Adelaide Street West, Toronto, Ontario (the "**Property**"). As you may also know, our client was the successful proponent in a formal and transparent auction process conducted by BMO Capital Markets Real Estate Inc. in respect of the Property. Unfortunately, our client's position is presently being compromised by negative publicity, unsolicited offers from other developers and, most importantly, a delay relative to the achievement of a binding transaction. The offer herein set forth is a without prejudice attempt on the part of our client to stabilize the situation and present a clear and commercial avenue by which the Property may be acquired by it to the collective benefit of each of your respective clients. Until accepted, this offer does not in any way relieve Holdings of its obligations pursuant to the Prior Term Sheet nor prejudice the rights of Lanterra Developments Ltd. therein.

Stikeman Elliott

This offer sets forth the terms and conditions under which Lanterra Developments Ltd. or a designee (the **"Purchaser"**) would be prepared to acquire a 100% freehold interest in the Property together with all entitlements associated therewith, as well as all leases, development plans, permits, approvals, studies, reports and other documentation material to the zoning and the proposed redevelopment of the Property (together with the Property, the **"Purchased Assets"**). Subject to the terms and conditions set forth below, the Purchaser is prepared to acquire the Purchased Assets from your respective clients, as applicable, as their interests may exist as at the Closing Date (defined below). For the purposes of this offer (and insofar as it is presently unknown), the ultimate transferor of the Purchased Assets (and for greater clarity, the transferor on the transfer/deed of land) is herein referred to as the **"Vendor"**.

1. Purchase Price:

The purchase price for the Purchased Assets shall be the sum of \$66,000,000 (the **"Purchase Price"**). The Purchase Price shall be payable in immediately available funds at Closing (defined below), subject to customary adjustments and payment of applicable taxes. The Purchase Price shall be paid to such parties or parties as are set forth on a written direction to be provided by the Vendor to the Purchaser on or before Closing, and the Purchaser shall be entitled to rely thereon without inquiry.

2. Deposit:

The Purchase Price shall be satisfied in part by application of the sum of \$3,000,000 (the **"Deposit"**) presently held by McCarthy Tétrault LLP, in trust, pursuant to the terms of the Prior Term Sheet. The Deposit shall be released to the party having carriage of the subject sale transaction upon receipt by the Purchaser of satisfactory responses to its title requisitions (the **"Title Requisitions"**) which shall be submitted on or before December 31, 2019; provided, however, that in the event the subject transaction is not completed through no fault of the Purchaser, the Deposit and all accrued interest thereon shall be returned forthwith to the Purchaser.

In the event of a default by the Purchaser, the Vendor shall be entitled to retain the Deposit (together with any accrued interest thereon) as liquidated damages, and the Vendor hereby acknowledges and agrees that (i) receipt of such funds shall be in full satisfaction of any damages, claims or losses the Vendor may have suffered as a result of the Purchaser's default, and (ii) neither party shall thereafter have any rights or recourse against the other.

3. Title Requisitions:

The Purchaser shall have until December 31, 2019 to submit the Title Requisitions with a view to satisfying itself in respect of access, development and other title matters which may have arisen from and after the date of the Prior Term Sheet. The Purchaser acknowledges that it has satisfied itself with respect to all other due diligence matters and that there are no conditions to Closing save as set forth herein.

4. Closing:

Subject to the fulfillment of typical conditions to closing, the closing of the subject transaction shall take place on May 29, 2020 or as otherwise mutually agreed to by Vendor and Purchaser (the **"Closing Date"**).

Stikeman Elliott

5. Title/Representations and Warranties:

On Closing, the Purchaser shall have good and marketable title to the Purchased Assets, free and clear of all encumbrances save for permitted encumbrances to be negotiated as part of the Title Requisitions process. The Purchaser shall be entitled to receive customary representations and warranties on Closing, having regard to nature of the Vendor, which shall survive Closing for a period of one (1) year.

6. Assignment or Direction:

The Purchaser may assign its interest (all or part) in this offer without the consent of any party hereto, provided that the Purchaser shall not be released from its obligations hereunder until after Closing.

7. Releases:

It shall be a condition of Closing that the Purchaser receives releases and indemnities from each of your respective clients, satisfactory to it in its sole discretion, with respect to the subject transaction and the transaction contemplated by the Prior Term Sheet.

8. Public Announcements and Confidentiality:

Subject to the requirements of any applicable laws, no party other than the Purchaser shall make any public announcement or statement with respect to this offer or the transaction contemplated herein without the consent of the Purchaser.

9. Notice:

Any notice under this offer shall be in writing and shall be delivered either personally or by e-mail transmission to the party to whom it is addressed at the address set forth above and shall be deemed received upon personal delivery or e-mail.

10. Exclusivity and Break Fee:

Each of the parties hereby acknowledges that the Purchaser currently enjoys certain exclusivity rights under the Prior Terms Sheet which are in effect until December 4, 2019. In addition, the Purchaser remains entitled to a break fee from Holdings if approval is not obtained by such date as further set out in section 15 of the Prior Term Sheet.

11. Governing Law:

This offer and any transaction resulting herefrom shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein.

12. Counterparts:

This offer may be executed in counterparts, each of which shall be deemed an original and which, taken together, shall constitute one and the same instrument. This offer may be delivered by facsimile or other electronic transmission and the parties adopt any signature received by a receiving fax machine or other electronic means as original signatures of the parties. In the case of facsimile or other electronic transmission, the transmitting party shall forthwith deliver an originally executed copy of this offer to the other parties.

Stikeman Elliott

13. Acceptance:

This offer shall be open for acceptance until 5:00 p.m. on December 4, 2019 after which time this offer shall become null and void.

Upon the receipt of an affirmative response and the appropriate instructions from each of your respective clients, we would ask that you please sign and return the enclosed copy of this offer letter to evidence your client's confirmation of its terms whereupon we will expeditiously proceed to further document the above agreements (to the extent necessary) as between our respective clients.

Yours very truly,

STIKEMAN ELLIOTT LLP,
for and on behalf of Lanterra Developments Ltd.



Eric M. Carmona

ACKNOWLEDGED AND AGREED this _____ day of _____, 2019.

MILLER THOMSON LLP,
in its capacity as court-appointed representative
counsel of the Investors

Gregory R. Azeff

MCCARTHY TÉTRAULT LLP,
for and on behalf of 263 Holdings Inc.
and Adelaide Street Lofts Inc.

Charlene Schafer

AIRD & BERLIS LLP,
for and on behalf of Meridian Credit Union Limited

Steven L. Graff

CASSELS BROCK & BLACKWELL LLP,
for and on behalf of Hi-Rise Capital Ltd.

David Ward

APPENDIX M

McCarthy Tétrault LLP
PO Box 48, Suite 5300
Toronto-Dominion Bank Tower
Toronto ON M5K 1E6
Canada
Tel: 416-362-1812
Fax: 416-868-0673

Geoff R. Hall
Partner
Direct Line: (416) 601-7856
Email: ghall@mccarthy.ca

*Assistant: Galluzzo, Michelle
Direct Line: (416) 601-8200 x542605
Email: mgalluzzo@mccarthy.ca*



November 21, 2019

Via Email

Without Prejudice

Mr. Gregory R. Azeff
Miller Thomson LLP
40 King Street West, Suite 5800
Toronto ON M5H 3S1

Dear Mr. Azeff:

Re: 263 Adelaide Street West, Toronto, Ontario

We are enclosing a proposal for your committee to consider.

As you are aware, Lanterra submitted a new offer of \$66 million in cash with a closing of May 2020. We were not aware that this was forthcoming and based on our discussion with you, you were not aware either. We are not sure what your position is regarding this revised offer, but our position is that it is not acceptable.

We believe that a cash offer of \$66 million will result in severe losses to the non-registered investors if expenses incurred to recover the loan for investors are claimed by Hi-Rise.

We believe there is still an opportunity to have a value added transaction where non-registered investors recover 100% of their investment (albeit some of it over time).

The following proposal makes it clear that if agreed to, non-registered investors will recover close to the same amount on closing of a newly structured JV as they would on a \$66 million cash sale, with added benefit of future value that would recover the balance of principal owed.

We look forward to hearing from you on this revised proposal. We would like to work through as much as possible prior to mediation so hopefully we only have some minor issues to work through.

Yours truly,

A handwritten signature in blue ink, appearing to read 'G. Hall'.

Geoff R. Hall
GRH/mg
Encl.

cc: James D. Gage
Mira Novek
Charlene Schafer

Proposal

New JV Proposal vs. Lanterra Cash Offer

New JV Agreement

The new proposal involves a JV structure between Lanterra and Holdings similar to the prior JV proposal, but with more cash upfront instead of a second mortgage.

1. Revised Purchase Price:	The purchase price will be \$72 million through the new JV proposal
2. Lanterra and Holdings Equity:	Holdings new equity stake to remain at 25% and will be valued at \$17,137,500 and Lanterra equity stake (75%) will be valued at \$54,862,500, based on the revised purchase price above and the requirement to inject additional equity and cover cost overruns
3. No VTB:	Lanterra to provide or arrange \$54,862,500 in cash (a combination of debt and equity); no second mortgage
4. Closing Cash Distributions:	Meridian to be paid in full on closing Registered investors to be paid in full on closing Non Registered investors to receive estimated distribution of \$11,600,000 (subject to adjustments on closing)
5. Holdings Debenture to Investor Group:	Holdings will provide a debenture to investor group in the amount of \$17,137,500, for the benefit of non-registered holders
6. Interest Rate:	Interest will accrue on the principal amount of the debenture at 6% per annum for 6 years (estimated maximum completion time), resulting in a minimum pay out on completion of \$6.7 million of interest in addition to the principal amount of the debenture, to ensure complete recovery for non-registered investors on the principal amount of their original investment
7. Minimum Coupon Rate:	The above debenture with the interest rate will be a 100% recovery for non-registered investors
8. Risk Position:	This proposal leaves investors in a better position than they are now and compared to the \$66m cash offer. At present they are, in effect, in an equity position (albeit in the form of debt) with a potential cash purchase price that will result in a loss on the

	<p>principal amount of their investment. With the new proposal, they will have crystalized an exit price of no less than \$72 million, and with potential returns (which they required in the original debt agreement) they will be made whole. They will receive an estimated \$11,600,000 cash on closing and a debenture for \$17,137,500 with interest at 6%. As well, Holdings' equity from the new JV would be first funds to come out, ahead of Lanterra. So Lanterra is motivated to ensure this recovery because their equity ranks behind Holdings.</p>

ESTIMATED TRANSACTION RECOVERY TO INVESTORS
Hi-Rise Capital Ltd.
August 30, 2019

(CDN\$)

	<u>Cost Detail</u>	<u>Proceeds after Closing</u>	<u>Holdings Debenture</u>		
Senior Mortgage		54,862,500		Land Value	72,000,000
Meridian Balance Owing	16,919,828			Debt	54,862,500
Meridian Accrued Interest	<u>332,000</u>			Equity	17,137,500
Total Bank Loan		(17,251,828)			
BMO Commission	1,614,588			Closing	
City of Toronto (outstanding taxes)	<u>280,437</u>			Total	33,255,647
Total Paid via Direction from Legal Counsel		(1,895,025)		Registered	21,663,052
Cassels Brock & Blackwell LLP	160,000			Non-Reg	11,592,595
Legal Cost Reimbursement of Hi-Rise		(160,000)			
Transaction Costs	1,700,000				
Miller Thomson LLP	<u>600,000</u>				
Total transaction costs		(2,300,000)			
Holdings Debenture			17,137,500		
Int on Debenture			<u>6,169,500</u>		
Total Proceeds for Investors		33,255,647	23,307,000		
Proceeds for Registered Investors		21,663,052			
Proceeds for Non-Registered Investors		<u>34,899,595</u>			
Total Proceeds for Investors		56,562,647			
Recovery Percentage	<u>Principal + Interest</u>	<u>Principal Only</u>		Princ & Int Owing	Princ Only Owing
Recovery for Registered Investors	100%	124%		21,663,052	17,419,500
Recovery for Non-Registered Investors	78%	100%		45,024,972	34,823,000

ESTIMATED RECEIVERSHIP RECOVERY TO INVESTORS

Hi-Rise Capital Ltd.

August 30, 2019

(CDN\$)

	Notes	Lanterra Cash Offer of \$66 million
Sale Price		66,000,000
Months		6
Less Receivership Transaction Costs:	1)	
Sale Commission/Selling Costs		1,614,588
Property Taxes		404,491
First Mortgage		16,919,828
Mortgage Carrying Costs		498,000
Gross Sale Proceeds		46,563,092
Hi-Rise/Consultants		460,786
Legal Fees of Appointing Creditor		250,000
Receiver's Fees		676,083
Receiver's Legal Fees		358,575
Total Costs		1,745,444
Hi-Rise Recoverable Expenses as per LPA		
Professional Fees & Consultants		5,454,442
Hi-Rise Mortg Admin		1,749,651
Miller Thomson LLP		500,000
Total		7,704,093
Investor Recovery		37,113,556

Investor Recovery	
Proceeds for Registered Investors	21,663,052
% for Registered Investors	100%
Proceeds for Non-Registered Investors	15,450,504
% for Non Registered Investors	34%

1) Figures taken from GT Report

APPENDIX N

Court File No.: CV-19-616261-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE

JUSTICE

Conway

)
)
)
)

Friday THE
December
20th DAY OF , 2019

**IN THE MATTER OF SECTION 60 OF THE TRUSTEE ACT, R.S.O. 1990, C. T.23, AS
AMENDED, AND RULE 10 OF THE ONTARIO RULES OF CIVIL PROCEDURE,
R.R.O. 1990, REG. 194, AS AMENDED**

**AND IN THE MATTER OF HI-RISE CAPITAL LTD. AND IN THE MATTER OF
ADELAIDE STREET LOFTS INC.**

ORDER

THIS MOTION, made by Miller Thomson LLP, in its capacity as Court-appointed Representative Counsel in this proceeding (in such capacity, "**Representative Counsel**"), appointed pursuant to the Order of the Honourable Mr. Justice Hainey dated March 21, 2019 (the "**Appointment Order**") to represent the interests of all individuals and/or entities ("**Investors**", which term does not include persons who have opted out of such representation in accordance with the Appointment Order) that have invested funds in a syndicated mortgage investment administered by Hi-Rise Capital Ltd. ("**Hi-Rise**"), in respect of the proposed development known as the "Adelaide Street Lofts" (the "**Project**") at the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the "**Property**") and owned by Adelaide Street Lofts Inc. (the "**Adelaide**"), a corporation wholly owned by 263 Holdings Inc. ("**263 Holdings**") was heard this day at the Court House, 330 University Avenue, Toronto, Ontario,

UPON READING the Affidavit of Gregory R. Azeff sworn December 19, 2019, and upon hearing the submissions of Representative Counsel,

1. **THIS COURT ORDERS** that, Representative Counsel on behalf of only the Investors as defined in the Appointment Order, is hereby authorized to instruct Community Trust Company to consent to the subordination of its mortgage registered on title to the Property as instrument number AT3522463, as amended by instrument number AT4420428, as amended, only in connection with the settlement to be entered into in these proceedings.
2. **THIS COURT ORDERS** that Representative Counsel is hereby authorized to instruct Community Trust Company to execute any and all documents as may be necessary or required to give effect paragraph 1 of this Order.
3. **THIS COURT ORDERS** that Community Trust Company, in its capacity as a registered account trustee for Investors (as such term is defined in the Appointment Order), is hereby authorized to rely on instructions given to it by the Representative Counsel in accordance with paragraphs 1 and 2 of this Order.



HI-RISE CAPITAL LTD.

and

SUPERINTENDENT OF FINANCIAL
SERVICES et. al.
Respondents

Court File No.: CV-19-616261-00CL

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER**MILLER THOMSON LLP**Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, ON Canada M5H 3S1**Greg Azeff LSO#: 45324C**gazeff@millerthomson.com
Tel: 416.595.2660/Fax: 416.595.8695**Stephanie De Caria LSO#: 68055L**sdecaria@millerthomson.com
Tel: 416.595.2652/Fax: 416.595.8695

Court-appointed Representative Counsel

APPENDIX O

Distribution Summary

Purchase Price	<u>\$69,000,000.00</u>	
Total Lanterra Contribution		\$69,000,000.00
Less:		
Meridian Mortgage	\$16,921,274.67	
Lanterra Interest Loan Payment	\$1,588,427.00	
Lanterra Forbearance Fee Payment	\$18,500.00	
263 Holdings Settlement Amount*	\$3,784,000.00	
Contribution to BMO Commission	\$216,500.00	
Estimated Professional Fees	<u>\$976,000.00</u>	
Total Deductions		<u>\$23,504,701.67</u>
Funds Available for Distribution to Investors		\$45,495,298.33

* \$4 million less \$216,000 contribution to BMO Commission

Investor Recoveries

Registered Investors		
Principal	17,133,872.86	
Interest	<u>5,676,844.98</u>	
Total Owed to Registered Investors		22,810,717.84
Non-Registered Investors		
Principal	34,973,891.58	
Interest	<u>13,261,140.48</u>	
Total Owed to Non-Registered Investors		<u>48,235,032.06</u>
Total Investor Claims		71,045,749.90
Net Proceeds Available for Distribution	45,495,298.33	
Less: Distribution to Registered Investors	<u>22,810,717.84</u>	
Amount Available for Non-Registered Investors		22,684,580.49
Percentage Recovery for Registered Investors		100.00%
Percentage Recovery for Non-Registered Investors (Principal Only)		64.86%
Percentage Recovery for Non-Registered Investors (Principal & Interest)		47.03%

IN THE MATTER OF HI-RISE CAPITAL LTD. AND IN THE MATTER OF ADELAIDE
STREET LOFTS INC.

Court File No.: CV-19-616261-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST

Proceeding commenced at Toronto

FOURTH REPORT OF REPRESENTATIVE
COUNSEL
(January 9, 2020)

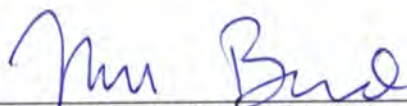
MILLER THOMSON LLP
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Greg Azeff LSO#: 45324C
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Stephanie De Caria LSO#: 68055L
sdecaria@millerthomson.com
Tel: 416.595.2652/Fax: 416.595.8695

Court-appointed Representative Counsel

This is Exhibit "N" referred to in the Affidavit of Noor Al-Awqati sworn April 1, 2020.



Commissioner for Taking Affidavits (or as may be)

JOHN BIRCH



MILLER THOMSON
AVOCATS | LAWYERS

MILLER THOMSON LLP
SCOTIA PLAZA
40 KING STREET WEST, SUITE 5800
P.O. BOX 1011
TORONTO, ON M5H 3S1
CANADA

T 416.595.8500
F 416.595.8695

MILLERTHOMSON.COM

January 13, 2020

Important Update on Recommendation Regarding Settlement

Pursuant to the Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated March 21, 2019 (the "**Order**") Miller Thomson LLP ("**Representative Counsel**") was appointed to represent all individuals and/or entities ("**Investors**") that hold an interest in a syndicated mortgage, administered by Hi-Rise Capital Ltd. ("**Hi-Rise**"), in respect of the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the "**Property**") owned by Adelaide Street Lofts Inc. ("**Adelaide**") and the proposed development known as the "Adelaide Street Lofts", in connection with the negotiation and implementation of a settlement with respect to such investments. A copy of the Order can be found on the 'Documents' section of Representative Counsel's website (the "**Website**"), available at <https://www.millerthomson.com/en/hirise/>.

In accordance with the Order, Representative Counsel established an Official Committee of Investors (the "**Official Committee**"), with which Representative Counsel consults regularly and from which it takes instruction in respect of this matter.

Representative Counsel writes this update further to our communication dated December 2, 2019 entitled "Important Update on Judicial Mediation and Settlement" (the "**Last Update**"), a copy of which is posted on the 'Communications' section of the Website, and to provide Investors with the following status update on this proceeding.

Delivery of Representative Counsel's Fourth Report

1. As you may know, Representative Counsel delivered its Fourth Report dated January 9, 2019 (the "**Fourth Report**") to all Investors.
2. A copy of the Fourth Report is posted under the 'Documents' section of the Website.
3. A hard copy of the Fourth Report will also be delivered to all Investors by regular mail. You can expect to receive a hard copy of the Fourth Report in the week of January 13, 2020.
4. Please read the Fourth Report for full details regarding the Settlement, Lanterra Transaction and the Minutes (as such terms are defined in the Fourth Report).

Hi-Rise Vote on the Settlement

1. Since delivering the Fourth Report, we have received numerous inquiries from Investors regarding the next vote to be conducted by Hi-Rise in respect of the Settlement described in the Fourth Report.

2. Please be advised as follows:

- (a) Hi-Rise expects to circulate an information package and details regarding the vote (the "**Voting Package**") to all Investors in the week of January 20, 2020. This means that you can expect to receive the Voting Package from Hi-Rise during the week of January 20, 2020.
- (b) The Voting Package will provide you with details of the Settlement and details/instructions on how to submit your vote.
- (c) At this time, Hi-Rise expects to set the voting deadline for January 31, 2020. Details regarding the deadline will also be set out in the Voting Package delivered to Investors by Hi-Rise.
- (d) Once Representative Counsel receives a copy of the Voting Package, we will post a copy of same on our Website. We will also address any questions you may have regarding the voting procedure.

Registered vs. Non-Registered Investors

Since delivering the Fourth Report, we have received numerous inquiries from Investors regarding the difference between Registered vs. Non-Registered Investors, and inquiries as to why Registered Investors will be paid in full where as Non-Registered Investors will not be receiving full repayment on closing of the Lanterra Transaction. The reasons for this are as follows.

- 1. There is a second mortgage registered on title to the Property in favour of both Hi-Rise and Community Trust Company (originally Canadian Western Trust) (the "**Second Mortgage**").
- 2. Community Trust Company's interest in the Second Mortgage ranks ahead of Hi-Rise Capital Ltd.'s interest.
- 3. At the time that you entered into this investment, there were two ways in which you could have invested. In other words, Investors participate through this Second Mortgage in two different ways, as follows:

Registered Investors

- (a) Registered Investors – these are Investors that participate in the Second Mortgage through Community Trust Company and hold their investments through a registered plan such as an RRSP. If you are a Registered Investor, your Loan Participation Agreement with Hi-Rise will indicate as follows, among other things:

"As a registered investor, you participate in this second mortgage through Canadian Western Trust. As between the second mortgagees, Hi-Rise Capital Ltd. is subordinated to Canadian Western Trust. In the event of an insolvency

or liquidation of the borrower, the claims of Canadian Western Trust will rank senior to the claims of Hi-Rise Capital Ltd.”

- (b) An example of a Loan Participation Agreement in respect of a Registered Investor is attached as **Appendix “A”** to this Communication, with the relevant excerpts highlighted.
- (c) This means that at the time of entering into the Loan Participation Agreement and investing in Hi-Rise, you agreed that your claim in Hi-Rise, and specifically, the return of your investment in a liquidation/insolvency scenario would receive priority treatment over Non-Registered Investors (described below).
- (d) In light of these proceedings and the current liquidation scenario, Registered Investors will be paid first from the Settlement proceeds. Given that there are sufficient Settlement proceeds to pay all of the Registered Investors’ claims, Registered Investors will be repaid in full on account of their investments.

Non-Registered Investors

- (e) Non-Registered Investors – these are Investors that participate in the Second Mortgage through Hi-Rise Capital Ltd. If you are a Non-Registered Investor, your Loan Participation Agreement with Hi-Rise will indicate that you are a “Subordinated Investor”, and specifically states, among other things:

“As a non-registered investor, you participate in this second mortgage through Hi-Rise Capital Ltd. As between the second mortgagees, Hi-Rise Capital Ltd. is subordinated to Canadian Western Trust. In the event of an insolvency or liquidation of the borrower, the claims of Hi-Rise Capital Ltd. will rank junior to the claims of Canadian Western Trust.”

- (f) An example of a Loan Participation Agreement in respect of a Non-Registered Investor is attached as **Appendix “B”** to this Communication, with the relevant excerpts highlighted.
- (g) This means that at the time of entering into the Loan Participation Agreement and investing in Hi-Rise, you did not invest in Hi-Rise through a registered plan such as a RRSP. As a Non-registered Investor, you agreed to subordinate your claim in Hi-Rise, and specifically, the return of your investment in a liquidation/insolvency scenario, to the claims of Registered Investors. In other words, you agreed to rank behind (or receive payment after) Registered Investors in a liquidation scenario.
- (h) In light of these proceedings and the current liquidation scenario, Non-Registered Investors will be paid after Registered Investors from the Settlement proceeds. After Registered Investors are paid, there are not enough Settlement proceeds left to pay all of the Non-Registered Investors in full. Accordingly, Non-Registered

Investors will share from the balance of the Settlement proceeds equally on closing, but, will not receive full payment.

Recommendation of Representative Counsel

Notwithstanding that Non-Registered Investors will not be paid in full, Representative Counsel still recommends that all Investors (both Registered and Non-Registered) vote in favour of the Settlement for the reasons set out in the Fourth Report.

All Investors will receive payment after closing of the transaction. This means that there will not be a long waiting period for Investors to receive payment.

Communications to Representative Counsel

We understand that since receiving the Fourth Report, many Investors will have questions regarding the Settlement and the Vote. Representative Counsel has been receiving many emails and telephone calls from Investors directly, and many Investors have the same questions.

In order to manage the volume of inquiries and to effectively respond to all Investors, we ask that all Investors submit inquiries to Representative Counsel through email at HiRiseCapital@millerthomson.com.

Representative Counsel reviews all emails received through this email address, and will respond to inquiries through further communications to Investors (which will be emailed to all Investors and posted on the Website). Thank you.

Yours Truly,

Miller Thomson LLP,
solely in its capacity as
Representative Counsel

APPENDIX "A"

LOAN PARTICIPATION AGREEMENT

Participation Agreement #10-1010

THIS PARTICIPATION AGREEMENT MADE

BETWEEN

HI-RISE CAPITAL LTD.
(hereinafter called "HRC")

OF THE FIRST PART

-AND-

PERSON(S) AND/OR ENTITY AS PER THE MORTGAGE ADMINISTRATION AGREEMENT
TO WHICH THIS AGREEMENT IS ATTACHED
(hereinafter called the "Participant")

OF THE SECOND PART

WHEREAS HRC has given to the Participant the opportunity to participate in a certain loan which is a participating loan, (hereinafter called the "Loan") made or to be made to the borrower hereinafter set out (hereinafter called the "Borrower") upon the terms set out in the Participant's Participation documentation between the Borrower and HRC;

AND WHEREAS HRC and the Participant agree that the relationship between HRC and the Participant shall be governed by the following terms and conditions:

Name of Borrower: Adelaide Street Lofts Inc.

Participant's Participation: Amount set out in the Mortgage Administration Agreement

Participating Lender: Hi-Rise Capital Ltd.

Priority in Mortgage Loan: *There is a second mortgage registered against the subject property in the name of both Hi-Rise Capital Ltd. and Canadian Western Trust. Canadian Western Trust will hold an interest of \$9,500,000.00 ahead of Hi-Rise Capital Ltd. As a registered investor, you participate in this second mortgage through Canadian Western Trust. As between the second mortgagees, Hi-Rise Capital Ltd. is subordinated to Canadian Western Trust. In the event of an insolvency or liquidation of the borrower, the claims of Canadian Western Trust, will rank senior to the claims of Hi-Rise Capital Ltd..*

Project Name: Adelaide Street Lofts (the "Project")

Security: *2nd Mortgage*
I understand that during the course of this investment, the Borrower anticipates obtaining additional construction financing for the Property which is expected to take priority. I hereby understand, consent, and agree that other charges/ mortgages and/or development agreement may be registered in priority to the charge of the Property.

Prior Mortgages: 1st Mortgage (Refer to Disclosure Documents)

Amount of Loan: \$40,000,000
(I understand that the mortgage shall be initially registered indicating a face value of \$40,000,000 and from time to time, the loan amount will increase upon the completion of certain development and construction milestones on the Property by the Borrower, eventually replaced by construction/project financing).

Term of the Mortgage/Investment: 4 Years
Maturity Date: (February 1, 2018) - At the Borrower's option (to be exercised in writing not less than one (1) month prior to Maturity Date); the Borrower may extend the Maturity Date for twenty-four (24) additional months.

Initial



APPENDIX “B”

LOAN PARTICIPATION AGREEMENT

Participation Agreement #10-1010

THIS PARTICIPATION AGREEMENT MADE

BETWEEN

HI-RISE CAPITAL LTD.
(hereinafter called "HRC")

OF THE FIRST PART

-AND-

**PERSON(S) AND/OR ENTITY AS PER THE MORTGAGE ADMINISTRATION AGREEMENT
TO WHICH THIS AGREEMENT IS ATTACHED**
(hereinafter called the "Participant")

OF THE SECOND PART

WHEREAS HRC has given to the Participant the opportunity to participate in a certain loan which is a participating loan, (hereinafter called the "Loan") made or to be made to the borrower hereinafter set out (hereinafter called the "Borrower") upon the terms set out in the Participant's Participation documentation between the Borrower and HRC;

AND WHEREAS HRC and the Participant agree that the relationship between HRC and the Participant shall be governed by the following terms and conditions:

Name of Borrower:	Adelaide Street Lofts Inc.
Participant's Participation:	Amount set out in the Mortgage Administration Agreement
Participating Lender:	Hi-Rise Capital Ltd.
Priority in Mortgage Loan:	<p>Subordinated Investor</p> <p><i>There is a second mortgage registered against the subject property in the name of both Hi-Rise Capital Ltd. and Canadian Western Trust. Canadian Western Trust will hold an interest of \$9,500,000.00 ahead of Hi-Rise Capital Ltd.</i></p> <p><i><u>As a non-registered investor, you participate in this second mortgage through Hi-Rise Capital Ltd. As between the second mortgagees, Hi-Rise Capital Ltd. is subordinated to Canadian Western Trust. In the event of an insolvency or liquidation of the borrower, the claims of Hi-Rise Capital Ltd. will rank junior to the claims of Canadian Western Trust.</u></i></p>
Project Name:	Adelaide Street Lofts (the "Project")
Security:	<p>2nd Mortgage</p> <p><i>I understand that during the course of this investment, the Borrower anticipates obtaining additional construction financing for the Property which is expected to take priority. I hereby understand, consent, and agree that other charges/ mortgages and/or development agreement may be registered in priority to the charge of the Property.</i></p>
Prior Mortgages:	1 st Mortgage (Refer to Disclosure Documents)
Amount of Loan:	<p>\$40,000,000</p> <p><i>(I understand that the mortgage shall be initially registered indicating a face value of \$40,000,000 and from time to time, the loan amount will increase upon the completion of certain development and construction milestones on the Property by the Borrower, eventually replaced by construction/project financing).</i></p>
Term of the Mortgage/Investment:	<p>4 Years</p> <p><i>Maturity Date: (February 1, 2018) - At the Borrower's option (to be exercised in writing not less than one (1) month prior to Maturity Date); the Borrower may extend the Maturity Date for twenty-four (24) additional months.</i></p>

Initial



This is Exhibit "O" referred to in the Affidavit of Noor Al-Awqati sworn April 1, 2020.



Commissioner for Taking Affidavits (or as may be)

JOHN BIRCH

INFORMATION STATEMENT OF HI-RISE CAPITAL LTD.

January 13, 2020

Syndicated Mortgage Advanced to Adelaide Street Lofts Inc.

You are receiving this disclosure statement because you are an Investor (“Investor”) in a subordinated syndicated mortgage (the “Mortgage”) advanced to Adelaide Street Lofts Inc. (the “Borrower”), which is administered by Hi-Rise Capital Ltd. (“Hi-Rise”). Please read this disclosure statement carefully. The proposed transaction described in this statement (the “Transaction”) may affect your legal rights because any Investor that invested in the Mortgage directly (each a “Non-Registered Investor”), and not through a registered plan, will have his or her rights compromised and will receive proceeds that are less than the full amount of principal and accrued interest owing to such Non-Registered Investor. You may wish to consult your financial or legal advisors (including Miller Thomson LLP in its capacity as court-appointed representative counsel (“Representative Counsel”) to answer any questions that you may have. Representative Counsel has already prepared and sent its Fourth Report dated January 9, 2020 (the “Fourth Report”) to Investors, which provides substantial additional information about the Transaction in addition to the summary found below. We urge you to review the Fourth Report in detail. If you have not received a copy of the Fourth Report, it is available on the Representative Counsel’s website, details of which are set out at the end of this statement.

Introduction

You are receiving this Information Statement because you are an Investor in the Mortgage. You may be a Non-Registered Investor in the Mortgage or you may have invested through a registered plan (a “Registered Investor”) such as a registered retirement savings plan. Some Investors are both Registered Investors and Non-Registered Investors because they made both types of investments.

You have likely already received the Fourth Report, which Representative Counsel sent on January 9, 2020. The Fourth Report summarizes the Transaction whereby the property at 263 Adelaide Street West, Toronto, ON (the “Property”) will be sold to Lanterra Development Ltd. or its designee (“Lanterra”).

The purpose of this Information statement is to provide a summary of the Transaction and to outline why Hi-Rise recommends that Investors vote in favour of the Transaction.

Representative Counsel also recommends that Investors vote in favour of the Transaction.

This information Statement is intended to provide you with details of the Transaction and details on how you can vote on the Transaction. Hi-Rise will not be calling an in-person meeting or in-person vote. Instead, you can submit your vote by mail, online or by fax. The voting window will commence on Wednesday, January 22, 2020 and will close on Tuesday, January 28, 2020 at 5 p.m. Eastern Time. Full details and instructions with respect to how to cast your vote is further set out below.

Details of the Transaction

Investors were previously provided with details of an earlier joint venture proposal by Lanterra Developments Ltd. (“Lanterra”) to acquire the Property through a joint venture structure that also involved the Borrower (the “Lanterra JV Transaction”). Subsequently, Investors voted on the Lanterra JV Transaction, but the required majority approval was not received. As such, Hi-Rise did not continue to pursue the Lanterra JV Transaction.

On November 27, 2019, Hi-Rise participated in a mediation presided over by an Ontario Superior Court judge. Lanterra, the Borrower, Hi-Rise, Meridian Credit Union ("**Meridian**"), the first mortgagee over the Property, and Hi-Rise (collectively, the "**Parties**") were present at the mediation. The mediation was successful, and the Parties were able to agree to business terms of the Transaction.

The terms of the Transaction are set out in the Minutes of Settlement, which are Appendix "B" to the Fourth Report. However, a summary of the terms is as follows:

- a) Lanterra will purchase a 100% interest in the Property from the Borrower for \$69,000,000 with a closing date on or before May 14, 2020;
- b) Neither Jim Neilas nor his corporations will enter into any joint venture to develop the Property and they will not retain any interest in the Property;
- c) Out of the purchase price, 263 Holdings Inc. ("**263 Holdings**"), the parent company of the Borrower, shall receive a gross payment of \$4,000,000 (the "**Settlement Amount**") to settle claims or interests it may have in relation to the Property, including a claim for expenses;
- d) Bank of Montreal has agreed to accept a reduced marketing fee of \$649,000 in relation to its work to run a sales process for the Property and this amount will be paid for equally by Lanterra, 263 Holdings, and Investors;
- e) Meridian has agreed to forbear from enforcing its rights under the first mortgage on certain terms, including payment of outstanding interest on such mortgage (which amount has now been paid by Lanterra and which is secured by a new mortgage on the Property (the "**Lanterra Mortgage**"));
- f) On the date that the Transaction closes (the "**Closing Date**"), the proceeds of sale provided by Lanterra will be paid as follows:
 - i) first to Meridian to fully repay the first mortgage;
 - ii) second to counsel for Lanterra to repay the Lanterra Mortgage and other fees owing to Lanterra;
 - iii) third, to counsel for the 263 Holdings in respect of the Settlement Amount;
 - iv) fourth, to pay the fees of Representative Counsel and the other professional advisors that have obtained court-ordered charges over the Property;
 - v) fifth, to pay the legal fees of Hi-Rise incurred in connection with these proceedings and the additional work that Hi-Rise's counsel will need to perform to complete the Transaction and assist with the distribution of funds; and
 - vi) sixth, to distribute the remainder of the funds to Investors in accordance with their priorities.

Upon completion of the Transaction and the distribution of proceeds, the Parties (including Hi-Rise and Representative Counsel) will be released from liability.

Recovery by Investors

Please find enclosed a copy of Appendix "O" of the Fourth Report for the use of funds and estimated

distributions under the Transaction.

As this estimate of distributions indicates, Registered Investors are anticipated to receive full payment of all principal and interest owing to them. Non-Registered Investors will receive a portion—but not all—of the amount owing to them.

Recommendation of Hi-Rise:

Hi-Rise Capital Ltd. supports Representative Counsel's and the Official Committee's recommendation that investors approve the Transaction.

Next Steps after the Investor Vote

The Transaction contemplates that Hi-Rise will execute a full discharge and release of the Mortgage, even though the net proceeds that will be paid to Investors will be less than the total principal and interest owing under the Mortgage. (However, as noted above, it is expected that Registered Investors will receive payment in full.) Hi-Rise does not wish to grant a discharge of the Mortgage without specific authorization from the court.

Court approval will be obtained in the following manner: Hi-Rise will hold a vote of Investors. After the votes are tabulated, if a majority of Investors by number and two-thirds of Investors by value vote in favour of the Transaction, Hi-Rise will bring a motion before the court to obtain an order authorizing Hi-Rise to complete the Transaction. At that same time, Hi-Rise will seek additional court orders relating to the Transaction, including a "vesting order" that transfers ownership of the Property to Lanterra on the Closing Date free of all mortgages and other encumbrances (after Lanterra pays the purchase price).

We expect that court approval will be sought sometime in February or March 2020.

Voting Procedure

Hi-Rise will not call an in-person meeting prior to the vote. Voting can be completed by any of the following methods:

By Mail: Enter voting instructions, sign the form ("**Voting Ballot**") and send your completed Voting Ballot to:

TSX Trust Company
301-100 Adelaide Street West Toronto, Ontario, M5H 4H1

Online: Go to www.voteproxyonline.com. Enter the 12-digit control number printed on the form and follow the instructions.

By Fax: Enter voting instructions, sign the Voting Ballot and fax a completed copy of the enclosed proxy form to 416-595-9593.

Conclusion

These materials require your immediate attention. You should consult your legal, financial, tax and other professional advisors in connection with the contents of these documents. If you have any questions regarding voting procedures or other matters or if you wish to obtain additional copies of these materials, you may contact the investors representative counsel, Miller Thomson LLP, by telephone to Stephanie De Caria at (416) 595-2652 (Toronto local) or by email at HighRiseCapital@millerthomson.com. Copies of these materials and other materials in the within proceedings are also posted on the following website: <https://www.millerthomson.com/en/hirise/>.

Distribution Summary

Purchase Price	<u>\$69,000,000.00</u>	
Total Lanterra Contribution		\$69,000,000.00
Less:		
Meridian Mortgage	\$16,921,274.67	
Lanterra Interest Loan Payment	\$1,588,427.00	
Lanterra Forbearance Fee Payment	\$18,500.00	
263 Holdings Settlement Amount*	\$3,784,000.00	
Contribution to BMO Commission	\$216,500.00	
Estimated Professional Fees	<u>\$976,000.00</u>	
Total Deductions		<u>\$23,504,701.67</u>
Funds Available for Distribution to Investors		\$45,495,298.33

* \$4 million less \$216,000 contribution to BMO Commission

Investor Recoveries

Registered Investors		
Principal	17,133,872.86	
Interest	<u>5,676,844.98</u>	
Total Owed to Registered Investors		22,810,717.84
Non-Registered Investors		
Principal	34,973,891.58	
Interest	13,261,140.48	
Total Owed to Non-Registered Investors		<u>48,235,032.06</u>
Total Investor Claims		71,045,749.90
Net Proceeds Available for Distribution	45,495,298.33	
Less: Distribution to Registered Investors	<u>22,810,717.84</u>	
Amount Available for Non-Registered Investors		22,684,580.49
Percentage Recovery for Registered Investors		100.00%
Percentage Recovery for Non-Registered Investors (Principal Only)		64.86%
Percentage Recovery for Non-Registered Investors (Principal & Interest)		47.03%

Voting Ballot
Investor Vote

The voting window will commence on Wednesday, January 22, 2020 and will close on Tuesday, January 28, 2020 at 5 pm Eastern Time.

CONTROL NUMBER: «CONTROL_NUMBER»
SEQUENCE #: «SEQUENCE_NUMBER» - «CUSIP» - «PartAcct_No»
FILING DEADLINE: January 28, 2020 at 5:00 PM (EST)

VOTING METHOD	
INTERNET	Go to www.voteproxyonline.com and enter the 12 digit control number above
FACSIMILE	416-595-9593
MAIL or HAND DELIVERY	TSX Trust Company 301 - 100 Adelaide Street West Toronto, Ontario, M5H 4H1

«MAIL_SEQUENCE»
«Name»
«Add1»
«Add2»
«Add3»
«City», «Province» «Postal_Code»
«Country»

«Shares»
«SEQUENCE_NUMBER»

- SEE VOTING GUIDELINES ON REVERSE -

VOTING INSTRUCTIONS
1. Proposed Transaction

FOR or AGAINST the terms of a transaction to sell the property known as 263 Adelaide Street West, Toronto, Ontario as described in Minutes of Settlement, which are attached as Appendix "B" to the Fourth Report of Miller Thomson LLP, dated January 9, 2020, in its capacity as Court-Appointed Representative Counsel.

FOR
☐

AGAINST
☐

PLEASE PRINT NAME

This proxy revokes and supersedes all earlier dated proxies and **MUST BE SIGNED**

Signature of registered owner(s)

Date (MM/DD/YYYY)

Voting – Guidelines and Conditions

1. **THESE GUIDELINES SHOULD BE READ IN CONJUNCTION WITH THE INFORMATION STATEMENT PRIOR TO VOTING.**
2. **If no instructions are given, the proxy will be considered “spoiled” and will not be voted.**
3. To be valid, this ballot must be signed. Please date the ballot. If the ballot is not dated, it is deemed to bear the date of its mailing to the Investors.
4. To be valid, this proxy must be filed using one of the **Voting Methods** and *must be received by TSX Trust Company* before the **Filing Deadline**, noted on the reverse.
5. If the Investor is a corporation, the ballot must be executed by an officer or attorney thereof duly authorized, and the Investor may be required to provide documentation evidencing the signatory's power to sign the ballot.

This is Exhibit "P" referred to in the Affidavit of Noor Al-Awqati sworn April 1, 2020.



Commissioner for Taking Affidavits (or as may be)

JOHN BIRCH



MILLER THOMSON
AVOCATS | LAWYERS

MILLER THOMSON LLP
SCOTIA PLAZA
40 KING STREET WEST, SUITE 5800
P.O. BOX 1011
TORONTO, ON M5H 3S1
CANADA

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F 416.595.8695

MILLERTHOMSON.COM

January 31, 2020

Important Update on Vote Results

Pursuant to the Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated March 21, 2019 (the "**Order**") Miller Thomson LLP ("**Representative Counsel**") was appointed to represent all individuals and/or entities ("**Investors**") that hold an interest in a syndicated mortgage, administered by Hi-Rise Capital Ltd. ("**Hi-Rise**"), in respect of the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the "**Property**") owned by Adelaide Street Lofts Inc. ("**Adelaide**") and the proposed development known as the "Adelaide Street Lofts", in connection with the negotiation and implementation of a settlement with respect to such investments. A copy of the Order can be found on the 'Documents' section of Representative Counsel's website (the "**Website**"), available at <https://www.millerthomson.com/en/hirise/>.

Representative Counsel writes this update further to our communication dated January 13, 2020 entitled "Important Update on Recommendation Regarding Settlement" (the "**Last Update**"), a copy of which is posted on the 'Communications' section of the Website, and to provide Investors with the following update:

Settlement & Vote

As you know, pursuant to the Minutes of Settlement (attached as Appendix "B" to the Fourth Report of Representative Counsel dated January 9, 2020), the parties entered into a settlement pursuant to which Adelaide would move forward with a sale of 100% of the Property to Lanterra Developments Ltd. (the "**Lanterra Sale**"), among other things (the "**Settlement**").

As you also know, the Settlement was subject to the approval of Investors and approval by the Court. Accordingly, Hi-Rise called a second vote in order to allow Investors to vote on the Minutes of Settlement and the terms of the Settlement (the "**Vote**"). The voting deadline was January 28, 2020 at 5:00 p.m.

Vote Results

The Vote results were delivered today, the details of which are as follows:

1. In total, 417 Investors voted, representing approximately 58.9% of Investors, broken down as follows:
 - (a) 195 Registered Investors voted, representing approximately 62% of Registered Investors; and
 - (b) 222 Non-Registered Investors voted, representing approximately 56% of Non-Registered Investors.

2. 100% of Registered Investors (representing \$11,861,862 in value) voted in favour of the Settlement.
3. Approximately 93% of Non-Registered Investors (representing \$19,960,791 in value) voted in favour of the Settlement.
4. **Accordingly, the Vote passed.**

Late Votes

Certain Investors advised Representative Counsel that they received their voting package late and were unable to cast their vote by the deadline. While these votes are not counted in the above-noted results, TMX tabulated all of the "late votes" submitted and provided same to Representative Counsel.

Only 1.6% of Registered Investors casted their vote after the deadline, and only 3.3% of Non-Registered Investors casted their vote after the deadline. All such "late votes" were in favour of the Settlement.

In light of the overwhelming support in favour of the Settlement, these "late votes" are not material to the outcome of the Vote. In any event, Representative Counsel has calculated the impact of the "late votes" on the results of the Vote. In other words, Representative Counsel has considered what the outcome of the Vote would be if the "late votes" are counted.

If all "late votes" are counted, the percentage of Non-Registered Investors that voted in favour of the Settlement increases to approximately 93.6%.

Next Steps

Now that the Vote is complete, the following is expected to occur:

1. Hi-Rise will bring a motion to the Court to have the Settlement approved by the Court. The Court date has not yet been set, but it is expected to take place in the near future. Representative Counsel will advise Investors of this Court date once it is scheduled, and will post all Court materials on the Website.
2. Representative Counsel will prepare a Fifth Report in respect of the Vote results, and will post a copy of same on the Website once it is available.
3. After the Settlement and the Vote results are approved by the Court, the parties will work towards the expected closing date of the Lanterra Sale, which is scheduled for May 14, 2020 (the "**Closing Date**").
4. After the Settlement and the Vote results are approved by the Court, Representative Counsel will begin working on matters related to the distribution process (i.e., distribution of settlement proceeds to Investors).
5. At this time, Representative Counsel expects that distributions to Investors will be made within 4 to 6 weeks after Closing Date (i.e., by early July 2020).



In the meantime, there is nothing for you to do. Representative Counsel will deliver another update to all Investors as soon as one becomes available.

Communications to Representative Counsel

Representative Counsel continues to receive inquiries from Investors regarding the Settlement and the Vote. Representative Counsel has been receiving many emails and telephone calls from Investors directly, and many Investors have the same questions.

In order to manage the volume of inquiries and to effectively respond to all Investors, we ask that all Investors submit inquiries to Representative Counsel through email at HiRiseCapital@millerthomson.com.

Representative Counsel reviews all emails received through this email address, and will respond to inquiries through further communications to Investors (which will be emailed to all Investors and posted on the Website). Thank you.

Yours Truly,

Miller Thomson LLP,
solely in its capacity as
Representative Counsel



Court File No. CV-19-616261-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.)	●DAY, THE ● TH
)	
JUSTICE HAINEY)	DAY OF APRIL, 2020

**IN THE MATTER OF SECTION 60 OF THE TRUSTEE ACT, R.S.O. 1990, C. T.23, AS
 AMENDED, AND RULE 10 OF THE ONTARIO RULES OF CIVIL PROCEDURE,
 R.R.O. 1990, REG. 194, AS AMENDED**

**AND IN THE MATTER OF HI-RISE CAPITAL LTD. AND IN THE MATTER OF
 ADELAIDE STREET LOFTS INC.**

APPROVAL AND VESTING ORDER

THIS MOTION, made by Hi-Rise Capital Ltd. ("**Hi-Rise**") in its capacity as administrator and trustee in respect of a syndicated mortgage (the "**Syndicated Mortgage**") involving approximately 700 investors (the "**Investors**") that advanced funds to Adelaide Street Lofts Inc. ("**Adelaide**") and obtained security over the property known municipally as 263 Adelaide Street West, Toronto, Ontario and legally described in **Schedule H** attached hereto (the "**Property**"), for an order:

- (a) Approving a sale transaction (the "**Transaction**") contemplated by (i) the Minutes of Settlement dated December 20, 2019 (the "**Minutes of Settlement**"), a copy of which is attached hereto as **Schedule A**, among Hi-Rise, Adelaide, 263 Holdings Inc. ("**263 Holdings**"), Jim Neilas, Miller Thomson LLP in its capacity as the Court-appointed representative counsel on behalf of Investors ("**Representative Counsel**"), and the members of the Official Committee constituted pursuant to the Order of the Honourable Mr. Justice Hainey dated April 15, 2019 (the "**Official Committee**") and Lanterra Developments Ltd.

(**Lanterra**) (Hi-Rise, Adelaide, 263 Holdings, Jim Neilas, Representative Counsel, the Official Committee and Lanterra shall be referred to collectively as the “**Parties**”), and (ii) the Agreement of Purchase and Sale made as of December 20, 2019, between Adelaide and Lanterra (the “**APS**”), a copy of which is attached hereto as **Schedule B**;

(b) Providing certain authorizations and directions to Hi-Rise, Community Trust Company (“**CTC**”) and other parties regarding the completion of the Transaction, including the discharge of the Syndicated Mortgage (as defined in the Minutes of Settlement);

(c) Vesting in Lanterra Adelaide’s right, title and interest in and to the Purchased Assets (as defined in the APS); and

(d) Authorizing and directing the distribution of proceeds of the Transaction as set out in the Minutes of Settlement

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Noor Al-Awqati sworn April 1, 2020, and the Affidavit of Service of ● sworn April ●, 2020, filed, the Fourth Report and Fifth Report of Representative Counsel dated January 9, 2020 and April ●, 2020, respectively, and on hearing the submissions of counsel for each of the Parties, the Superintendent of Financial Services, Meridian Credit Union Limited, CTC, Lanterra, and ●, no one else appearing for any other person on the service list,

1. **THIS COURT ORDERS** that all parties entitled to notice of this Motion have been served with the Motion Record of Hi-Rise, and that service of the Motion Record is hereby abridged and validated such that this Motion is properly returnable today, and further service of the Motion Record is hereby dispensed with.

2. **THIS COURT ORDERS AND DECLARES** that the Minutes of Settlement are hereby approved, and execution of the Minutes of Settlement by Representative Counsel and the Official Committee are hereby authorized and approved, with such minor amendments as the Parties may deem necessary.

3. **THIS COURT ORDERS AND DECLARES** that the sales process undertaken by Bank of Montreal ("**BMO**") in respect of the Property was fair and reasonable.

4. **THIS COURT ORDERS AND DECLARES** that the Transaction is commercially reasonable and in the best interests of the Investors and is hereby approved, and the APS is hereby approved, with such minor amendments as the Parties may deem necessary. The Parties and CTC are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and the conveyance of the Purchased Assets to Lanterra or its designee.

5. **THIS COURT ORDERS AND DECLARES** that upon delivery to Lanterra of (a) the certificate contemplated by paragraph 11 of the Minutes of Settlement substantially in the form attached as **Schedule C** hereto (the "**Certificate**"), or (b) the Representative Counsel's certificate substantially in the form attached as **Schedule D** hereto (the "**Representative Counsel Certificate**"), all of Adelaide's right, title and interest in and to the Purchased Assets (as defined in the APS) (and listed on **Schedule E** hereto) shall vest absolutely in Lanterra or its designee free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, encumbrances, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Orders of the Honourable Mr. Justice Hainey dated March 21, 2019 and September 17, 2019; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule F** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule G) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

6. **THIS COURT ORDERS AND DIRECTS** Lanterra to file a copy of the Certificate or the Representative Counsel Certificate, as applicable, with the Court forthwith after receipt thereof.

7. **THIS COURT ORDERS** that, upon registration in the Land Registry Office No. 66 of an Application for Vesting Order in the form prescribed by the *Land Titles Act*, the Land Registrar is hereby directed to enter Lanterra or its designee as the owner of the Property in fee simple, and is hereby directed to delete and expunge from title to the Property all of the Claims listed in **Schedule F** hereto.

8. **THIS COURT ORDERS AND DECLARES** that Hi-Rise has the power, at law and under loan participation agreements (each, an “**LPA**”) and mortgage administration agreements (each, an “**MAA**”) that it entered into with Investors, to enter into and complete the Transaction despite the fact that the net proceeds of the Transaction, after paying prior-ranking debts and expenses, will be insufficient to pay in full the principal and interest owing under the Syndicated Mortgage.

9. **THIS COURT ORDERS, DECLARES AND DIRECTS** Representative Counsel is hereby authorized to execute and deliver on behalf of and in the name of CTC such documents as are required to permit the Transaction to be completed and proceeds to be distributed to Investors.

10. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Certificate or the Representative Counsel Certificate, as applicable, all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

11. **THIS COURT ORDERS, DECLARES AND DIRECTS** that the distribution of the Purchase Price in accordance with the Minutes of Settlement (the “**Distribution**”) is

hereby authorized and approved, with such minor amendments as the Parties may deem necessary. The Parties and CTC are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable to carry out the Distribution.

12. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of Adelaide and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of Adelaide;

the vesting of the Purchased Assets in Lanterra pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of Adelaide and shall not be void or voidable by creditors of Adelaide, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

Schedule A — Minutes of Settlement

Court File No.: CV-19-616261-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF SECTION 60 OF THE TRUSTEE ACT, R.S.O. 1990, C. T.23, AS
AMENDED, AND RULE 10 OF THE ONTARIO RULES OF CIVIL PROCEDURE,
R.R.O. 1990, REG. 194, AS AMENDED**

**AND IN THE MATTER OF HI-RISE CAPITAL LTD. AND IN THE MATTER OF
ADELAIDE STREET LOFTS INC.**

MINUTES OF SETTLEMENT

WHEREAS on March 21, 2019, Hi-Rise Capital Ltd. ("**Hi-Rise**") brought an application to the Court in Court File No. CV-19-616261-00CL under section 60 of the *Trustee Act* (Canada) for, *inter alia*, the appointment of Representative Counsel (as hereinafter defined), and a declaration that Hi-Rise has the power under the loan participation agreements and mortgage participation agreements with the Investors (as hereinafter defined) to grant a discharge of the syndicated mortgage (the "**Syndicated Mortgage**") held for the benefit of the Investors over the Property (as hereinafter defined) in the event the net proceeds received from the completion of a contemplated sale transaction relating to the Property (the "**Transaction**") are insufficient to pay the full indebtedness under the Syndicated Mortgage (the "**Trustee Application**");

AND WHEREAS pursuant to the Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated March 21, 2019 (the "**Appointment Order**"), Miller Thomson LLP was appointed as Representative Counsel (in such capacity, "**Representative Counsel**") to represent all individuals and/or entities (collectively, the "**Investors**") holding an interest in the Syndicated Mortgage (each, a "**SMI**"), administered by Hi-Rise in respect of the proposed development known as the "Adelaide Street Lofts" (the "**Project**") at the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the "**Property**") and owned by Adelaide Street Lofts Inc. ("**Adelaide**"), in connection with the negotiation and implementation of a settlement with respect to such investments, except for those Investors who opted out of representation by Representative Counsel in accordance with the terms of the Appointment Order (collectively, the "**Opt-Out Investors**");

AND WHEREAS Adelaide is wholly owned by 263 Holdings Inc. ("**263 Holdings**");

AND WHEREAS BMO Capital Markets Real Estate Inc. ("**BMO**") was retained by 263 Holdings to market and sell the Property (the "**Sale Engagement**");

AND WHEREAS BMO has agreed to a reduced payment in the amount of \$649,000, inclusive of harmonized sales tax, on account of the commission payable to it in respect of the Sale Engagement (the "**BMO Commission**");

AND WHEREAS pursuant to paragraph 27 of the Appointment Order, Hi-Rise is permitted to call, hold and conduct a meeting of all Investors in the Project, including the Opt-Out Investors, in order for such parties to consider and, if determined advisable, pass a resolution approving the Transaction and the net sale proceeds arising therefrom (the "**Vote**"). Paragraphs 28 to 31 of the Appointment Order set out a mechanism and rules for the Vote;

AND WHEREAS pursuant to the Appointment Order, Representative Counsel was directed to establish an Official Committee in accordance with the process and procedure described in Schedule "B" to the Appointment Order (the "**Official Committee**");

AND WHEREAS pursuant to the Order of Justice Hainey dated April 15, 2019, the Official Committee was approved and constituted. There are currently four members of the Official Committee;

AND WHEREAS Meridian Credit Union Limited ("**Meridian**") commenced an application against Adelaide in Court File No. CV-19-00628145-00CL for the appointment of a receiver, without security, in respect of all of the assets, undertakings and properties of Adelaide (the "**Receivership Application**");

AND WHEREAS pursuant to the Endorsement of Justice McEwen dated November 1, 2019, the Receivership Application was adjourned to December 12, 2019 and a Judicial Mediation was scheduled for November 27, 2019 before Justice McEwen (the "**Judicial Mediation**");

AND WHEREAS the Parties (as defined below), together with Lanterra Developments Ltd. (“**Lanterra**”), being the proposed purchaser of the Property pursuant to the Transaction, and Meridian (though not a party to these Minutes of Settlement) attended at the Judicial Mediation;

AND WHEREAS the Receivership Application has now been adjourned sine die;

AND WHEREAS pursuant to the Order of Madam Justice Conway dated December 20, 2019, Representative Counsel is authorized on behalf of only the Investors as defined in the Appointment Order to instruct Community Trust Company to consent to the subordination of its mortgage registered on title to the Property, only in connection with this settlement, and is authorized to instruct Community Trust Company to execute any and all documents as may be necessary or required to give effect to same.

IN CONSIDERATION of the promises and the mutual covenants, agreements, representations and warranties expressed herein and other good and valuable consideration, the receipt and sufficiency of which are hereby irrevocably acknowledged by Lanterra and each of Jim Neilas, 263 Holdings, Hi-Rise, Adelaide and Representative Counsel and the Official Committee (collectively, the “**Parties**”), the Parties hereby agree to settle all matters raised in the Trustee Application on the following terms:

1. The Parties agree that the above-noted recitals are true and accurate.
2. Lanterra, or a designee, agrees to pay on the closing of the Transaction the amount of \$69,000,000 (the “**Purchase Price**”) in respect of its purchase of a 100% legal and beneficial interest in the Property. A portion of the Purchase Price shall be satisfied by way of the Deposit (as hereinafter defined) to be paid, in trust, to the lawyers for Adelaide, namely, McCarthy Tétrault LLP, with the balance to be distributed on the terms hereinafter set forth.
3. Upon the execution of these Minutes of Settlement by the Parties and Lanterra, the following shall occur forthwith:
 - (a) Lanterra and Adelaide shall enter into an agreement of purchase and sale in respect of the Transaction (the “**APS**”) which shall provide for, *inter alia*, (i) the Purchase Price, (ii) a deposit paid to McCarthy Tétrault LLP, in trust, in the

amount of \$10,000 (the “**Deposit**”), (iii) a closing date of no later than May 14, 2020 (the “**Closing Date**”), (iv) limited representations and warranties customary in receivership sales, (v) closing conditions customary in receivership sales, and (vi) the issuance by the Court of an Approval and Vesting Order vesting the Property in Lanterra or its designee on closing free and clear of all encumbrances, in form satisfactory to Lanterra, acting reasonably;

- (b) Lanterra will lend \$18,000 to Adelaide, which loan shall accrue interest at the rate of prime plus 2% (the “**Forbearance Fee Loan**”), and Adelaide shall direct Lanterra to pay the \$18,000 to Meridian on account of the forbearance fee owing by Adelaide to Meridian;
- (c) Lanterra will lend \$1,550,000 to Adelaide, which loan shall accrue interest at the rate of prime plus 2% (the “**Interest Payment Loan**”), and Adelaide shall direct Lanterra to pay the amount of \$1,550,000 to Meridian on account of outstanding interest due and owing by Adelaide to Meridian;
- (d) As security for the Interest Payment Loan, Adelaide shall grant in favour of Lanterra a second-ranking mortgage (the “**Lanterra Mortgage**”) secured against title to the Property, which mortgage shall be on the same terms as and shall rank subordinate to the mortgage held by Meridian, but in priority to the mortgage held by Hi-Rise (the “**Hi-Rise Mortgage**”) (and in such regard Hi-Rise agrees to subordinate the existing mortgage held by it). The costs associated with registering the Lanterra Mortgage on title to the Property shall be added to the amount of, and shall be secured by, the Lanterra Mortgage;
- (e) Each of Lanterra and the Parties, or any of one of them, shall execute any and all documents as may be necessary to give effect to paragraphs 3(a) to 3(d), above.

4. Until the Closing Date, Adelaide shall (a) continue to operate the Property on the same basis as at the date of execution of these Minutes of Settlement; (b) continue to pay the operating expenses in respect of the Property that it is paying as at the date of execution of these Minutes

of Settlement, and will not be liable or responsible for any other expenses in respect of the Property; and (c) pay all remittances on account of harmonized sales tax or HST.

5. These Minutes of Settlement, including the Transaction and the terms noted in paragraph 9 below, shall be subject to approval of the Investors and the Court. Upon execution of these Minutes of Settlement by Lanterra and the Parties, Hi-Rise shall hold the Vote as soon as reasonably practicable in accordance with paragraphs 27 to 30 of the Appointment Order. Thereafter, and provided that the Vote passes by the margin provided for in paragraph 31 of the Appointment Order, Hi-Rise shall forthwith bring a motion to the Court in the Trustee Application in accordance with paragraph 31 of the Appointment Order:

- (a) For approval of the Transaction and the Investor Settlement Amount;
- (b) To permit and direct Hi-Rise to grant a discharge of the Hi-Rise Mortgage; and
- (c) To issue an Approval and Vesting Order in form satisfactory to Lanterra and Representative Counsel, acting reasonably.

6. Upon execution of these Minutes of Settlement by Lanterra and the Parties, Representative Counsel shall be entitled to bring a motion within the Trustee Application for an order, substantially in the form attached as Appendix "A" to these Minutes of Settlement, and Lanterra and the Parties shall provide their written consent to same.

7. On the closing of the Transaction, each of Lanterra, 263 Holdings and the Investors (from the proceeds of the Investor Settlement Amount, as hereinafter defined) agrees to contribute one-third of the BMO Commission; provided, however, that the liability of 263 Holdings in respect of same shall be limited to the sum of \$216,000.

8. On the closing of the Transaction, 263 Holdings agrees to pay to Lanterra the amount of \$50,000 in respect of the breakage fee payable under a joint venture transaction contemplated between Adelaide and Lanterra pursuant to a term sheet made as of April 10, 2019, as amended from time to time.

9. On closing of the Transaction, Lanterra shall pay:

- (a) To Aird & Berlis LLP in trust (on behalf of Meridian), the amounts owing as of the date of repayment (the “**Meridian Repayment Amount**”) under the loan agreement between Meridian and Adelaide dated April 2, 2018 (as may be or have been subsequently amended, replaced, restated or supplemented from time to time, the “**Credit Agreement**”) and/or the forbearance agreement between Meridian and Adelaide dated December 20, 2019, which amounts shall include principal, interest and amounts which may be or become owing for Meridian’s fees, agent costs, reasonable professional fees and accrued interest at the rates set out in the Credit Agreement, which amounts shall be reviewed by Representative Counsel prior to such payment;
- (b) To Stikeman Elliott LLP in trust (on behalf of Lanterra):
 - (i) the amounts owing to Lanterra as of the date of repayment under the Forbearance Fee Loan, which amounts shall be reviewed by Representative Counsel prior to payment;
 - (ii) the amounts owing to Lanterra as of the date of repayment under the Interest Payment Loan, which amounts shall be reviewed by Representative Counsel prior to payment, less \$216,500 on account of Lanterra’s contribution to the BMO Commission;
 - (iii) the sum of \$50,000 on behalf of 263 Holdings in respect of the breakage fee payable under a joint venture transaction contemplated between Adelaide and Lanterra pursuant to a term sheet made as of April 10, 2019, as amended from time to time;
- (c) To McCarthy Tétrault LLP in trust (on behalf of 263 Holdings), the sum of \$3,734,000, representing the amount payable to 263 Holdings (\$4,000,000 less 263 Holdings’ contribution to the BMO Commission and the \$50,000 breakage fee); and
- (d) To Miller Thomson LLP in trust (to be distributed in accordance with paragraph 10), the balance of the Purchase Price remaining after payment of the amounts

required to be made to Aird & Berlis LLP in trust, Stikeman Elliott LLP in trust, and McCarthy Tétrault LLP in trust pursuant to paragraphs 9(a) to 9(c).

10. The amount paid to Miller Thomson LLP in trust pursuant to paragraph 9(d) shall be distributed by Miller Thomson LLP in the following order of priority:

- (a) First, to professionals with charges on the Property in full satisfaction of the amounts secured by such charges registered on title to the Property as of the date of repayment, and to Representative Counsel (Miller Thomson LLP, in trust) a reasonable reserve amount to be held back in order to pay fees and disbursements of professionals with charges on the Property in respect of the implementation and completion of these Minutes of Settlement;
- (b) Second, to BMO in full satisfaction of the BMO Commission;
- (c) Third, to Cassels Brock & Blackwell LLP ("**Cassels**"),
 - (i) the sum of \$146,223.00 (a discounted sum) to pay Cassels's legal fees, disbursements, and taxes for work done for Hi-Rise in regard to the Trustee Application, these Minutes of Settlement, and the Transaction (collectively, the "**Cassels Services**") over the period up to and including December 8, 2019, plus
 - (ii) the actual legal fees, disbursements, and taxes incurred by Hi-Rise for the period from and after December 9, 2019 to the date of closing of the Transaction in connection with Cassels Services, as evidenced by redacted invoices provided to Representative Counsel that set out details of numbers of hours billed by timekeepers on each date but with narrative details of activities redacted;
- (d) Fourth, to set aside and pay over to Cassels a reasonable reserve for legal fees, disbursements, and taxes of Cassels in connection with Cassels Services required after the closing of the Transaction, such as services associated with the distribution of proceeds to Investors and any motion required to terminate the

Trustee Application (the “**Cassels Reserve**”), with the amount of the Cassels Reserve to be agreed upon by Cassels and Representative Counsel, acting reasonably, or, failing agreement, to be determined by the Court; and

- (e) Fifth, to the Investors (the “**Distribution**”) in full satisfaction of all claims each Investor may have in relation to the Property and the Project (in aggregate, the “**Investor Settlement Amount**”), and, for greater certainty, the amounts payable to Investors holding their investment through a registered plan shall be paid to Community Trust Company as trustee of the registered plans.

11. Upon payment of funds in accordance with paragraph 9, and for greater certainty, prior to any of the distributions in accordance with paragraph 10, Aird & Berlis LLP, Stikeman Elliott LLP, McCarthy Tétrault LLP and Miller Thomson LLP shall each execute a certificate in the form attached to the Approval and Vesting Order (the “**Certificate**”) confirming receipt of the funds paid pursuant to paragraph 9 and deliver same to Lanterra. Upon delivery of the Certificate, the Property shall vest in Lanterra in accordance with the terms set out in the Approval and Vesting Order.

12. In the event there is a dispute in respect of the distributions set out in paragraph 10, Representative Counsel shall seek directions from the Court prior to such distributions being made.

13. Hi-Rise shall be responsible for preparing a list of the Investors, corresponding distribution entitlements and priorities of each of the Investors (together with appropriate documentation establishing same) from the Investor Settlement Amount (the “**Investor Distribution List**”). Solely for the purposes of ensuring that the Investor Settlement Amount is distributed in accordance with the respective entitlements of Investors, Representative Counsel shall be entitled to review the Investor Distribution List prior to any distribution of the Investor Settlement Amount. If there are disputes over Investors’ entitlements or any part of the Investor Distribution List, Representative Counsel shall seek directions from the Court prior to its Distribution of the Investor Settlement Amount set out in paragraph 10(e). For greater certainty, Representative Counsel shall be entitled, in consultation with Hi-Rise, to delegate the task of Distribution of the Investor Settlement Amount as set out in paragraph 10(e).

14. Prior to effecting any Distribution of the Investor Settlement Amount, Representative Counsel shall obtain Court approval of the Investor Distribution List and the proposed mechanism for Distribution.

15. For greater certainty, the Investors as defined in these Minutes of Settlement shall include all Investors in the Project, including but not limited to those Investors whose investments were originally in the Cube Lofts Project at the property municipally known as 799 College Street, Toronto, but the Distribution shall be made in accordance with the relative priority that each of the Investors has (i.e., registered, non-registered, and subordinated), which priority information shall be provided by Hi-Rise and included in the Investor Distribution List in accordance with paragraph 13, above.

16. Notwithstanding that 263 Holdings is an Investor, 263 Holdings shall be excluded from the distribution to Investors from the Investor Settlement Amount. For greater certainty, 263 Holdings shall not receive a distribution or return on its SMI from the Investor Settlement Amount.

17. Hi-Rise shall have no liability for any failure by Representative Counsel or its agents or delegates to effect the Distribution in accordance with the Investor Distribution List.

18. Upon distribution of the amounts set out in paragraph 10 above, Representative Counsel and the Official Committee shall obtain a discharge order in the Trustee Application, and the Parties shall provide their written consent to same.

19. If on or prior to the Closing Date Adelaide, without lawful justification, refuses to perform its obligations under the APS or takes any action to frustrate the closing:

- (a) Lanterra may make the payments otherwise required to be made by Lanterra under paragraph 9;
- (b) If Lanterra makes the payments pursuant to paragraph 9, Representative Counsel shall execute a certificate substantially in the form attached to the Approval and Vesting Order upon receipt of written confirmation by Stikeman Elliott LLP that

the distribution amounts set out in paragraph 9, above, have been delivered (the **“Representative Counsel Certificate”**) and deliver same to Lanterra; and

- (c) Upon delivery of the Representative Counsel Certificate by Representative Counsel to Lanterra, the Property shall vest in Lanterra in accordance with the terms set out in the Approval and Vesting Order.

20. Each of Lanterra and the Parties shall each execute full and final mutual releases (the **“Releases”**), including full and final releases of all directors, officers and affiliates of Lanterra and the Parties (including their legal counsel), where applicable, in a form to be mutually agreed upon between counsel, which Releases shall include a carve out in respect of the activities and conduct of Representative Counsel and Hi-Rise solely in respect of the Distribution of the Investor Settlement Amount. Upon completion of the Distribution, each of Lanterra and the Parties shall execute a further full and final release in a form substantially similar to the Releases.

21. These Minutes of Settlement shall be construed in accordance with the laws of the Province of Ontario. Any dispute arising from these Minutes of Settlement shall be adjudicated by the Ontario Superior Court of Justice, Commercial List, and the Parties hereby attorn to the exclusive jurisdiction of this Court for this purpose.

22. These Minutes of Settlement and every covenant, provision and term herein contained shall enure to the benefit of and be binding upon each of Lanterra and the Parties and their respective heirs, executors, administrators, assigns, agents, advisors, consultants and other representatives.

23. Lanterra and each of the Parties agree to do and execute such further acts and documents as may be reasonably necessary or desirable to give effect to the covenants, provisions and terms of these Minutes of Settlement.

24. Any amendments to these Minutes of Settlement must be agreed to as between Lanterra and the Parties and must be in writing.

25. Each of Lanterra and the Parties acknowledges and agrees that:

- (a) It has obtained independent legal advice or the opportunity to obtain legal advice;
- (b) It has read these Minutes of Settlement in its entirety and has knowledge of the contents;
- (c) It understands its respective rights and obligations under these Minutes of Settlement, the nature of these Minutes of Settlement, and the consequences of these Minutes of Settlement;
- (d) It acknowledges that the terms of these Minutes of Settlement are fair and reasonable;
- (e) It is entering into these Minutes of Settlement without any undue influence or coercion whatsoever; and
- (f) It is signing these Minutes of Settlement voluntarily.

26. These Minutes of Settlement may be executed in counterparts, and by facsimile or electronic mail, each of which shall be deemed to be an original, all such separate counterparts shall together constitute one and the same instrument.

27. These Minutes of Settlement and the documents attached hereto, together with the executed Full and Final Mutual Release, represent the entire agreement among each of Lanterra and the Parties.

***[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
– SIGNATURE PAGE TO FOLLOW]***

DATED AT this _____ day of _____, 2019.

LANTERRA DEVELOPMENTS LTD.

Per: 

Name: Christopher S. Wern
Title: Chief Operating Officer
(I have authority to bind the corporation)

DATED AT this _____ day of _____, 2019.

Witness: _____

JIM NEILAS

:

DATED AT this _____ day of _____, 2019.

263 HOLDINGS INC.

Per: _____

Name: _____
Title: _____
(I have authority to bind the corporation)

DATED AT this _____ day of _____, 2019.

ADELAIDE STREET LOFTS INC.

Per: _____

Name: _____
Title: _____
(I have authority to bind the corporation)

DATED AT _____ this _____ day of _____, 2019.

LANTERRA DEVELOPMENTS LTD.

Per: _____

Name: _____

Title: _____

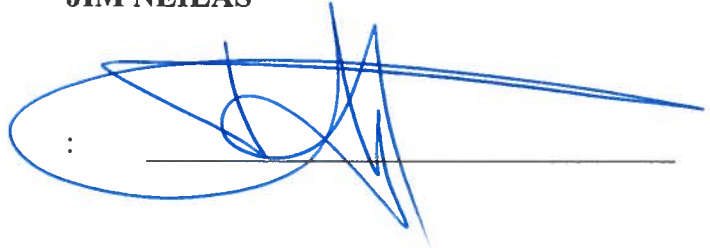
(I have authority to bind the corporation)

DATED AT Toronto this 20th day of December, 2019.

Witness: _____

Goeff L. Hall

JIM NEILAS



DATED AT Toronto this 20th day of December, 2019.

263 HOLDINGS INC.

Per: _____

Name: _____

Title: _____

(I have authority to bind the corporation)

DATED AT Toronto this 20th day of December, 2019.

ADELAIDE STREET LOFTS INC.

Per: _____

Name: _____

Title: _____

(I have authority to bind the corporation)

DATED AT this _____ day of _____, 2019.

HI-RISE CAPITAL LTD.

Per: _____

Name: MOOR AL-RWQATI

Title: COO

(I have authority to bind the corporation)

DATED AT this _____ day of _____, 2019.

MILLER THOMSON LLP, solely in its capacity as court-appointed Representative Counsel

Per: _____

Name: _____

Title: _____

(I have authority to bind the limited liability partnership)

DATED AT this _____ day of _____, 2019.

Witness: _____

VIPIN BERRY, in his capacity as court-appointed member of the Official Committee

DATED AT this _____ day of _____, 2019.

HI-RISE CAPITAL LTD.

Per: _____

Name: _____

Title: _____

(I have authority to bind the corporation)

DATED AT the City of Toronto this 23rd day of December, 2019.

MILLER THOMSON LLP, solely in its capacity as court-appointed Representative Counsel



Per: _____

Name: Gregory R. Azeff

Title: Partner

(I have authority to bind the limited liability partnership)

DATED AT this _____ day of _____, 2019.

Witness: _____

VIPIN BERRY, in his capacity as court-appointed member of the Official Committee

Per: _____
Name: _____
Title: _____
(I have authority to bind the
corporation)

DATED AT this _____ day of _____, 2019.

HI-RISE CAPITAL LTD.

Per: _____
Name: _____
Title: _____
(I have authority to bind the
corporation)

DATED AT this _____ day of _____, 2019.

**MILLER THOMSON LLP, solely in its
capacity as court-appointed Representative
Counsel**

Per: _____
Name: _____
Title: _____
(I have authority to bind the limited
liability partnership)

DATED AT

this 23rd day of December, 2019.

Witness:

[Signature]

**VIPIN BERRY, in his capacity as
court-appointed member of the Official
Committee**

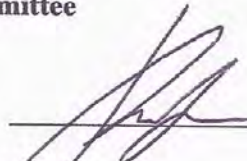
[Signature: Vipin Berry]

DATED AT Toronto, ON this 20th day of Dec, 2019.

Witness: Nima Dghanian



MICHAEL SINGH, in his capacity as
court-appointed member of the Official
Committee



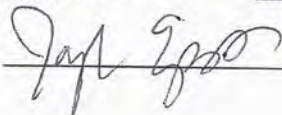
DATED AT _____ this _____ day of _____, 2019.

Witness: _____

NICK TSAKONACOS, in his capacity as
court-appointed member of the Official
Committee

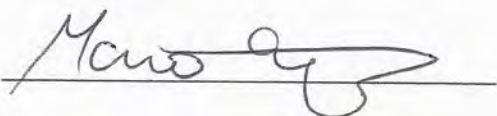
DATED AT Ottawa, ON this 23 day of Dec, 2019.

Witness: Jay Goo



MARCO ARQUILLA, solely in his
capacity as court-appointed member of the
Official Committee

Per:



DATED AT _____ this _____ day of _____, 2019.

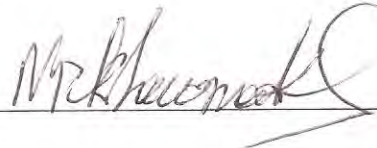
Witness: _____

**MICHAEL SINGH, in his capacity as
court-appointed member of the Official
Committee**

DATED AT TORONTO this 20th day of December 2019.

Witness: 

**NICK TSAKONACOS, in his capacity as
court-appointed member of the Official
Committee**



DATED AT _____ this _____ day of _____, 2019.

Witness: _____

**MARCO ARQUILLA, solely in his
capacity as court-appointed member of the
Official Committee**

Per: _____

APPENDIX "A"

Court File No.: CV-19-616261-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) THE
)
)
JUSTICE) DAY OF , 2019

**IN THE MATTER OF SECTION 60 OF THE TRUSTEE ACT, R.S.O. 1990, C. T.23, AS
AMENDED, AND RULE 10 OF THE ONTARIO RULES OF CIVIL PROCEDURE,
R.R.O. 1990, REG. 194, AS AMENDED**

**AND IN THE MATTER OF HI-RISE CAPITAL LTD. AND IN THE MATTER OF
ADELAIDE STREET LOFTS INC.**

ORDER

THIS MOTION, made by Miller Thomson LLP, in its capacity as Court-appointed Representative Counsel in this proceeding (in such capacity, "**Representative Counsel**"), appointed pursuant to the Order of the Honourable Mr. Justice Hailey dated March 21, 2019 (the "**Appointment Order**") to represent the interests of all individuals and/or entities ("**Investors**", which term does not include persons who have opted out of such representation in accordance with the Appointment Order) that have invested funds in a syndicated mortgage investment administered by Hi-Rise Capital Ltd. ("**Hi-Rise**"), in respect of the proposed development known as the "Adelaide Street Lofts" (the "**Project**") at the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the "**Property**") and owned by Adelaide Street Lofts Inc. (the "**Adelaide**"), a corporation wholly owned by 263 Holdings Inc. ("**263 Holdings**") was heard this day at the Court House, 330 University Avenue, Toronto, Ontario,

UPON READING the Minutes of Settlement dated December 20, 2019 entered into in connection with this proceeding (the "**Minutes of Settlement**") and the consent of the parties, Hi-Rise, Adelaide, 263 Holdings, Representative Counsel, Meridian Credit Union Limited

(“**Meridian**”), and Lanterra Developments Ltd., and upon hearing the submissions of Representative Counsel,

1. **THIS COURT ORDERS** that, subject to the encumbrances permitted by the Minutes of Settlement, title to the Property shall not be further encumbered by any person or entity pending further order of the Court, and any registration made on title to the Property shall be of no force or effect.

2. **THIS COURT ORDERS** that Adelaide shall not execute any lease or lease amendment in respect of the Property which specifies an expiration date later than May 14, 2020.

3. **THIS COURT ORDERS** that nothing in paragraph 1 of this Order shall prejudice the exercise of Meridian’s rights against the Property, including with respect to its application bearing Court File No. CV-19-00628145-00CL, on seven (7) days’ notice to each of the parties to the Minutes of Settlement.

HI-RISE CAPITAL LTD. and SUPERINTENDENT OF FINANCIAL
Applicant SERVICES Respondents et. al.

Court File No.: CV-19-616261-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

MILLER THOMSON LLP

Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, ON Canada M5H 3S1

Greg Azeff LSO#: 45324C

gazeff@millerthomson.com
Tel: 416.595.2660/Fax: 416.595.8695

Stephanie De Caria LSO#: 68055L

sdecaria@millerthomson.com
Tel: 416.595.2652/Fax: 416.595.8695

Court-appointed Representative Counsel

HI-RISE CAPITAL LTD.

and

SUPERINTENDENT OF FINANCIAL
SERVICES et. al.
Respondents

Court File No.: CV-19-616261-00CL

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

MINUTES OF SETTLEMENT**MILLER THOMSON LLP**

Scotia Plaza

40 King Street West, Suite 5800

P.O. Box 1011

Toronto, ON Canada M5H 3S1

Greg Azeff LSO#: 45324C

gazeff@millerthomson.com

Tel: 416.595.2660/Fax: 416.595.8695

Stephanie De Caria LSO#: 68055L

sdecaria@millerthomson.com

Tel: 416.595.2652/Fax: 416.595.8695

Court-appointed Representative Counsel

Schedule B — Agreement of Purchase and Sale

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT is made as of the 20th day of December, 2019

BETWEEN:

ADELAIDE STREET LOFTS INC.
(the "**Vendor**")

- and -

LANTERRA DEVELOPMENTS LTD., IN TRUST
(the "**Purchaser**")

RECITALS

A. **WHEREAS** pursuant to the Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated March 21, 2019 (the "**Appointment Order**") in Court File No. CV-19-616261-00CL, Miller Thomson LLP was appointed as Representative Counsel ("**Representative Counsel**") to represent all individuals and/or entities (collectively, the "**Investors**") holding an interest in the syndicated mortgage administered by Hi-Rise Capital Ltd. ("**Hi-Rise**") in respect of the proposed development known as the "Adelaide Street Lofts", at the property municipally known as 263 Adelaide Street West, Toronto, Ontario and owned by the Vendor, in connection with the negotiation and implementation of a settlement with respect to such investments, except for those Investors who opted out of representation by Representative Counsel in accordance with the terms of the Appointment Order (collectively, the "**Opt-Out Investors**");

B. **AND WHEREAS** pursuant to paragraph 27 of the Appointment Order, Hi-Rise is permitted to call, hold and conduct a meeting of all Investors in the Project, including the Opt-Out Investors, in order for such parties to consider and, if determined advisable, pass a resolution approving the Transaction (as defined below) and the net sale proceeds arising therefrom (the "**Vote**");

C. **AND WHEREAS**, subject to the approval of the Vote and the Court, the Vendor wishes to sell and the Purchaser wishes to purchase on an "as is, where is" basis all of the right, title and interest of the Vendor in and to the Purchased Assets (as defined below) pursuant to the terms and conditions of this Agreement (as defined below);

NOW THEREFORE for value received, the parties agree as follows:

SECTION 1 – INTERPRETATION

1.1 Definitions.

In this Agreement:

- (1) "**Agreement**" means this agreement including any recitals and schedules to this agreement, as amended, supplemented or restated from time to time;
- (2) "**Appointment Order**" has the meaning set forth in Recital A;

- (3) **"Approval and Vesting Order"** means an Order of the Court providing for, among other things, the vesting in the Purchaser of all of the right, title and interest of the Vendor in and to the Purchased Assets, free and clear of all liens, charges and encumbrances, except Permitted Encumbrances;
- (4) **"Business Day"** means any day of the year, other than a Saturday, Sunday or any day on which Canadian chartered banks are closed in Toronto, Ontario, Canada;
- (5) **"Court"** has the meaning set forth in Recital A;
- (6) **"Closing"** means the completion of the Transaction;
- (7) **"Closing Date"** means May 14, 2019;
- (8) **"Closing Time"** means 2:00 p.m. Toronto time on the Closing Date;
- (9) **"Deposit"** has the meaning set forth in Section 3.2(1);
- (10) **"ETA"** means the Excise *Tax Act* (Canada);
- (11) **"Governmental Authority"** means any Canadian federal, provincial, state, municipal or local, or other government, governmental, regulatory or administrative authority, agency or commission or any court, tribunal or judicial or arbitral body having jurisdiction over the Purchased Assets;
- (12) **"HST"** means taxes, interest, penalties and fines imposed under Part IX of the ETA;
- (13) **"Lease"** means, with respect to the Property, any offer or promise to lease, agreement to lease, lease, sublease, renewal of lease and other right or licence granted by or on behalf of the Vendor or any of its predecessors in title which entitle a Person to possess or occupy or lease space in the Property, now or hereafter, together with all security, guarantees and indemnities of the tenant's, subtenant's and licensee's obligations thereunder, in each case as amended, renewed or otherwise varied.
- (14) **"Minutes of Settlement"** means the Minutes of Settlement dated December ●, 2019 among Jim Neilas, 263 Holdings, Adelaide, Hi-Rise, the Representative Counsel, Vipin Berry, in his capacity as court-appointed member of the Official Committee and Michael Singh, in his capacity as court-appointed member of the Official Committee;
- (15) **"Person"** means a natural person, partnership, limited liability partnership, corporation, joint stock company, trust, unincorporated association, joint venture or other entity or Governmental Authority, and pronouns have a similarly extended meaning;
- (16) **"Permitted Encumbrances"** means the liens and encumbrances set forth on Schedule B;
- (17) **"Purchase Price"** has the meaning set forth in Section 3.1;
- (18) **"Purchased Assets"** has the meaning set forth in Section 2.1;
- (19) **"Real Property"** means the real property described in the legal description attached hereto as Schedule A, including any and all improvements, tenements, hereditaments and

appurtenances belonging or in any way pertaining thereto, including but not limited to fixtures (to the extent the Vendor owns or has rights in such fixtures) and easements for ingress and egress, storm water drainage or otherwise over adjoining property, if any;

(20) **"Representative Counsel"** has the meaning set forth Recital A;

(21) **"Certificates"** means, collectively, all of the certificates to be executed by the parties to the Minutes of Settlement confirming, *inter alia*, that the Purchaser has paid the Purchase Price in accordance with the Minutes of Settlement;

(22) **"Transaction"** means the transaction of purchase and sale contemplated by this Agreement; and

(23) **"Transfer Taxes"** has the meaning set forth in Section 3.5(1).

1.2 Headings and References.

The division of this Agreement into sections and subsections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms "this Agreement," "hereof," "hereunder" and similar expressions refer to this Agreement and not to any particular section, subsection or other portion hereof and include any agreement supplemental hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to "Sections" are to sections, subsections and further subdivisions of sections of this Agreement.

1.3 Extended Meanings.

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders. The term "including" means "including without limitation."

1.4 Statutory References.

Each reference to an enactment is deemed to be a reference to that enactment, and to the regulations made under that enactment, as amended or re-enacted from time to time.

1.5 Schedules.

The following are the Schedules to this Agreement:

- (a) Schedule A – Real Property
- (b) Schedule B – Permitted Encumbrances

SECTION 2– PURCHASE AND SALE

2.1 Purchase and Sale of Purchased Assets.

Subject to the terms and conditions of this Agreement, on the Closing Date, the Vendor shall sell, assign and transfer to the Purchaser or its assignee, and the Purchaser or its assignee shall purchase from the Vendor, all of the right, title and interest of the Vendor in and

to the following (collectively, the “**Purchased Assets**”):

- (a) the Real Property; and
- (b) all deposits and prepaid expenses relating to the Real Property.

2.2 Excluded Assets.

With the exception of those assets listed in Section 2.1 all other assets of the Vendor are excluded from the Transaction. For greater certainty, the Purchased Assets shall not include any of the following assets:

- (a) the minute books and corporate records of the Vendor;
- (b) any shares in any other corporate entity held by, or for the benefit of, the Vendor;
- (c) all accounts receivable, trade accounts, book debts and insurance claims of the Vendor; and
- (d) all books and records, in electronic form or otherwise, used in connection with the Vendor's business.

SECTION 3 – PURCHASE PRICE

3.1 Purchase Price and Deposit.

The consideration payable by the Purchaser to the Vendor for the Purchased Assets shall be Sixty-Nine Million Dollars (\$69,000,000) (the “**Purchase Price**”).

3.2 Deposit

(1) Upon delivery of this Agreement to the Vendor, the Purchaser shall pay to the Vendor's solicitors, in trust, by wire transfer, a deposit in the amount of \$10,000 (the “**Deposit**”), which Deposit shall be held in accordance with the provisions of this Agreement.

(2) The Deposit, and any interest accrued thereon, will be:

- (a) applied immediately towards the Purchase Price, if the Closing occurs;
- (b) non-refundable and retained by the Vendor, together with any accrued interest thereon, if the sale and purchase of the Purchased Assets provided for herein is not completed by the Purchaser for any reason whatsoever, save and except for the valid termination of this Agreement by the Purchaser in accordance with Section 5.3; or
- (c) paid to the Purchaser within five (5) Business Days, together with any accrued interest thereon, if this Agreement is terminated by the Purchaser in accordance with Section 5.3.

3.3 Satisfaction of Purchase Price

The Purchase Price shall be satisfied by the Purchaser on Closing as follows:

- (a) the Deposit, together with any interest accrued thereon, shall be applied against the Purchase Price; and
- (b) the remainder of the Purchase Price, being the net amount owing after deducting the Deposit, shall be paid by the Purchaser by wire transfer of immediately available funds in accordance with the Minutes of Settlement.

3.4 Adjustment of Purchase Price

The Purchase Price shall be adjusted as of the Closing Time for any municipal realty taxes, utilities, tenant deposits, tenant inducements, prepaid rent, prepaid expenses and any other items which are usually adjusted in purchase transactions involving assets similar to the Purchased Assets. The Vendor shall prepare a statement of adjustments and deliver same with all supporting documentation to the Purchaser for approval by no later than the fifth Business Day prior to the Closing Date. If the amount of any adjustments cannot be reasonably determined as of the Closing Date, an estimate shall be agreed upon by the parties, each acting reasonably, and such estimate shall serve as a final determination.

3.5 Taxes.

(1) The Purchaser will be liable for and shall pay, directly to the relevant Governmental Authority, as required, all federal and provincial sales taxes, duties or other taxes or charges payable in connection with the conveyance and transfer of the Purchased Assets to the Purchaser, including HST, but excluding any income taxes payable by the Vendor or any other person as a result of the completion of the Transaction (collectively, the "**Transfer Taxes**"). All Transfer Taxes shall be in addition to the Purchase Price and the Vendor hereby directs the Purchaser to make such payments directly to the relevant Governmental Authority.

(2) The Vendor will not collect HST on Closing if the Purchaser provides to the Vendor prior to Closing, (i) a certificate establishing that the Purchaser is a HST registrant, and (ii) a written undertaking to self-assess and remit the HST payable in connection with the Transaction. If this Section 3.5(2) is not complied with, the Purchaser will pay to the Vendor on Closing all HST payable in connection with the sale of the Purchased Assets.

(3) To the extent any Transfer Taxes are required to be paid by or are imposed upon the Vendor, the Purchaser shall reimburse to the Vendor such Transfer Taxes within five (5) Business Days of payment of same by the Vendor. The Purchaser will indemnify and hold the Vendor harmless in respect of any Transfer Taxes, penalties, interest and other amounts that may be assessed against the Vendor as a result of the sale of the Purchased Assets.

(4) The Purchaser's obligations under this Section 3.5 shall survive Closing.

SECTION 4 – REPRESENTATIONS AND WARRANTIES

4.1 Vendor's Representations.

(1) The Vendor represents and warrants to the Purchaser that:

- (a) the Vendor has good and sufficient power, authority and right to enter into and deliver this Agreement and complete the transactions contemplated hereunder,

subject to the Minutes of Settlement;

- (b) this Agreement and all other documents contemplated hereunder to which the Vendor (including the Minutes of Settlement) is or will be a party have been or will be, as at the Closing Time, duly and validly executed and delivered by the Vendor and constitute, or will constitute as at the Closing Time, valid and binding obligations of the Vendor, enforceable in accordance with the terms hereof or thereof;
- (c) the Vendor is not aware of any action or proceeding pending or threatened against it which may affect its right to convey any of the Purchased Assets or in any way restrain or prohibit the completion of the Transaction; and
- (d) the Vendor is not, and at the Closing Time will not be, a non-resident of Canada within the meaning of that term as used in the *Income Tax Act* (Canada).

4.2 Purchaser's Representations.

- (1) The Purchaser represents and warrants to the Vendor that:
 - (a) the Purchaser is a corporation existing under the laws of Ontario and has full corporate power and authority to enter into and carry out this Agreement and the Transaction;
 - (b) the entering into of this Agreement and all other documents contemplated hereunder to which the Purchaser is or will be a party and the consummation of the Transaction have been duly authorized by all requisite corporate action;
 - (c) the execution and delivery by the Purchaser of this Agreement and the performance by the Purchaser of its obligations under this Agreement will not result in the breach or violation of any terms or conditions of (i) the constating documents or by-laws of the Purchaser, or (ii) any applicable law, regulation or order;
 - (d) no approval or consent of and no filing with or application to any Governmental Authority is required for the Purchaser to enter into this Agreement or to complete the Transaction, other than (i) pursuant to the Minutes of Settlement, and (ii) such approvals, consents, filings and applications that have been obtained or made as at the date hereof, copies of which have been provided to the Vendor;
 - (e) this Agreement and all other documents contemplated hereunder to which the Purchaser is or will be a party have been or will be, as at the Closing Time, duly and validly executed and delivered by the Purchaser and constitute, or will constitute as at the Closing Time, valid and binding obligations of the Purchaser, enforceable in accordance with the terms hereof or thereof;
 - (f) the Purchaser has, or prior to the Closing Date will have, sufficient unencumbered funds to pay the Purchase Price and all other amounts payable by the Purchaser in connection with this Agreement and the Transaction contemplated hereby; and

- (g) the Purchaser is or will be registered under Part IX of the ETA and its registration number will be provided to the Vendor prior to the Closing Date.

4.3 “As is, Where is”

(1) The Purchaser acknowledges that the Vendor is selling the Purchased Assets on an “as is, where is” basis as the Purchased Assets shall exist on the Closing Date and no adjustments shall be made for any changes in the condition of the Purchased Assets. The Purchaser further acknowledges that it has entered into this Agreement on the basis that the Purchaser has conducted such inspections of the condition of, and title to, the Purchased Assets, as it deemed appropriate and has satisfied itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to title, encumbrances, description, fitness for any particular use or purpose, merchantability, condition, assignability, value or quality or in respect of any other matter or thing whatsoever concerning the Purchased Assets or the right of the Vendor to sell same. Without limiting the generality of the foregoing, (i) any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act* (Ontario) or similar legislation in any other jurisdiction do not apply hereto and have been waived by the Purchaser, and (ii) no representation or warranty is made with respect to the accuracy or completeness of any information provided by the Vendor and its respective officers, directors, employees and agents to the Purchaser in connection with this Transaction. The description of the Purchased Assets contained herein is for the purpose of identification only. No representation, warranty or condition has or will be given by the Vendor concerning completeness or the accuracy of such descriptions.

(2) The Purchaser shall have reasonable access to the Purchased Assets on reasonable notice to the Vendor for the purposes of conducting inspections prior to the Closing Date.

SECTION 5 – CONDITIONS TO CLOSING

5.1 Conditions for the Benefit of the Purchaser.

(1) The obligation of the Purchaser to complete the Transaction is subject to the following conditions being fulfilled or performed at or prior to the date or time set forth below:

- (a) at or prior to the Closing Time, all representations and warranties of the Vendor contained in this Agreement shall be true as of the Closing Time with the same effect as though made as of that time and the Vendor shall deliver to the Purchaser a certificate signed by a representative of the Vendor to that effect;
- (b) at or prior to the Closing Time, the Vendor shall have performed or complied with, in all material respects, each of its obligations contained in this Agreement and the Minutes of Settlement to the extent required to be performed on or before the Closing Date, and the Vendor shall execute and deliver to the Purchaser a certificate signed by a representative of the Vendor to that effect;
- (c) at or prior to the Closing Time, the Approval and Vesting Order will have been granted by the Court, in form acceptable to the Purchaser, acting reasonably, and, as at the Closing Time, the Approval and Vesting Order shall not have been stayed, dismissed or amended in any manner not approved by the Purchaser acting reasonably;
- (d) at or prior to the Closing Time, no order, proceeding, action or motion shall be

pending, threatened or commenced by any Person to restrain, enjoin or prohibit the purchase and sale of the Purchased Assets; and

- (e) at or prior to the Closing Time, the Vendor shall have delivered or caused to be delivered to the Purchaser each of the items listed in Section 6.2.
- (2) The foregoing conditions are for the exclusive benefit of the Purchaser and may be waived, in whole or in part, by the Purchaser in its sole discretion.

5.2 Conditions for the Benefit of the Vendor.

- (1) The obligation of the Vendor to complete the Transaction is subject to the following conditions being fulfilled or performed at or prior to the Closing Time:
- (a) all representations and warranties of the Purchaser contained in this Agreement shall be true as of the Closing Time with the same effect as though made as of that time and the Purchaser shall deliver to the Vendor a certificate signed by an officer of the Purchaser to that effect;
 - (b) the Purchaser shall have performed or complied with, in all material respects, each of its obligations contained in this Agreement and the Minutes of Settlement to the extent required to be performed on or before the Closing Date, and the Purchaser shall deliver to the Vendor a certificate signed by an officer of the Purchaser to that effect;
 - (c) the Approval and Vesting Order has been granted by the Court, and, as at the Closing Time, the Approval and Vesting Order has not been stayed, dismissed or amended in any manner not approved by the Vendor acting reasonably;
 - (d) no order, proceeding, action or motion shall be pending, threatened or commenced by any Person to restrain, enjoin or prohibit the purchase and sale of the Purchased Assets; and
 - (e) the Purchaser shall have delivered or caused to be delivered to the Vendor each of the items listed in Section 6.3.
- (2) The foregoing conditions are for the exclusive benefit of the Vendor and may be waived, in whole or in part, by the Vendor in its sole discretion.

5.3 Termination Rights

- (1) This Agreement may be terminated by notice in writing given to the other party at or prior to the Closing Date:
- (a) by the Purchaser if any of the conditions in Section 5.1 have not been satisfied on the Closing Date and the Purchaser has not waived that condition at or prior to the Closing Date; or
 - (b) by the Vendor if any of the conditions in Section 5.2 have not been satisfied on the Closing Date and the Vendor has not waived that condition at or prior to the Closing Date.

(2) This Agreement may be terminated by mutual written agreement of the Vendor and the Purchaser upon the terms of that agreement.

5.4 Effect of Exercise of Termination Rights

(1) If the Purchaser validly terminates this Agreement in accordance with Section 5.3(1)(a), then:

- (a) all the obligations of both the Vendor and Purchaser pursuant to this Agreement shall be at an end; and
- (b) the Deposit, together with any interest accrued thereon, will be paid by the Vendor to the Purchaser.

(2) If the Vendor validly terminates this Agreement in accordance with Section 5.3(1)(b) then:

- (a) all the obligations of both the Vendor and Purchaser pursuant to this Agreement shall be at an end; and
- (b) the Deposit, plus any interest accrued thereon, shall be forfeited to the Vendor on account of liquidated damages, not as a penalty, and the Purchased Assets may be resold by the Vendor

(3) Termination of this Agreement shall not relieve any party from any liability for any breach of this Agreement prior to Termination.

SECTION 6 – CLOSING

6.1 Closing.

The completion of the Transaction shall take place at the offices of Stikeman Elliott LLP, solicitors for the Purchaser, in Toronto, Ontario at the Closing Time or at such other location(s) as are agreed upon by the parties.

6.2 Vendor's Deliveries on Closing.

At or before the Closing Time, the Vendor shall deliver the following, each of which shall be in form and substance satisfactory to the Purchaser, acting reasonably:¹

- (a) a copy of the issued and entered Approval and Vesting Order;
- (b) all deeds, conveyances, bills of sale, transfers, assignments and other documents, executed by the Vendor, as may be reasonably requested by the Purchaser to convey to the Purchaser all of the right, title and interest of the Vendor, if any, in and to the Purchased Assets including, if requested by the Purchaser, a general conveyance of all of the Vendor's right, title and interest in and to all leases, offers to lease, licenses or other occupancy agreements,

¹ Parties to consider escrow of all vendor closing documentation.

contracts and permitted encumbrances appertaining to the Property (the "**General Conveyance**");

- (c) the statement of adjustments prepared in accordance with Section 3.4;
- (d) the certificates of the Vendor referenced in Sections 5.1(a) and (b);
- (e) the Certificates;
- (f) agreements satisfactory to the Purchaser wherein the Vendor and/or each related or affiliated party surrenders any and all leasehold interests in and to the Real Property, effective as of the date upon which the Purchaser exercises its rights, as landlord, as against other tenants of the Real Property under any early termination clauses or demolition clauses in any of their respective leases, offers to lease, licenses or other occupancy agreements; and
- (g) such further and other documentation as is referred to in this Agreement or as the Purchaser may reasonably require to give effect to this Agreement and convey the Purchased Assets to the Purchaser.

6.3 Purchaser's Deliveries on Closing

At or before the Closing Time, the Purchaser shall execute and deliver the following, each of which shall be in form and substance satisfactory to the Vendor, acting reasonably:

- (a) payment of the Purchase Price pursuant to the Minutes of Settlement;
- (b) the certificates of the Purchaser referenced in Section 5.2(a) and (b);
- (c) payment or evidence of the payment of the Transfer Taxes, if any;
- (d) if requested by the Purchaser, the General Conveyance;
- (e) the certificate of HST registration and undertaking contemplated by Section 3.5(2); and
- (f) such further and other documentation as is referred to in this Agreement or as the Vendor may reasonably require to give effect to this Agreement.

6.4 Operation Before Closing

(1) After the date hereof, the Vendor shall not, with respect to the Property:

- (a) enter into any new Lease;
- (b) amend, terminate or accept a surrender of any Lease or any guarantee or indemnity with respect to a Lease; or
- (c) encumber the Property other than as contemplated in the Minutes of Settlement,

without, in each case, the prior approval of the Purchaser, which approval may be withheld by the Purchaser in its sole discretion. If the Purchaser fails to respond in

writing pursuant to this Section 6.4 within three (3) Business Days after the date on which the Vendor has given written notice to the Purchaser of any such action together with relevant information with respect thereto, the Purchaser shall be deemed not have approved same.

- (2) The Vendor hereby acknowledges and agrees that the Purchaser shall not be obligated to replace any existing letters of credit or security deposits posted with any governmental authorities in connection with the Property on Closing and that the Vendor shall continue to retain full responsibility for same following Closing.

6.5 Risk.

- (1) Until the Closing Time, the Purchased Assets shall be and remain at the risk of the Vendor.

- (2) In the event that the Purchased Assets shall be damaged prior to Closing, then the Vendor shall promptly notify the Purchaser in writing of such damage and, notwithstanding the same, the Transaction shall be completed and the Vendor shall release its interest in the insurance proceeds payable in respect thereof (if any) to the Purchaser.

6.6 Possession of Purchased Assets.

On Closing the Purchaser shall acquire ownership of the Purchased Assets where situate at the Closing Time provided that in no event shall title to the Purchased Assets pass to the Purchaser until the Approval and Vesting Order is effective.

6.7 Tender.

Any tender of documents or money hereunder may be made upon the Vendor or the Purchaser or their respective solicitors on the Closing Date.

SECTION 7 – GENERAL

7.1 Notices.

Any demand, notice or other communication to be given in connection with this Agreement shall be given in writing and shall be given by personal delivery (in which case it shall be left with a responsible officer of the recipient) or by facsimile or electronic communication addressed to the recipients as follows:

- (a) in the case of the Purchaser:

Lanterra Developments Ltd., in trust
2811 Dufferin Street
Toronto, Ontario M6B 3R9

Attention: Christopher Wein
Email: cwein@lanterradev.com

Attention: Tim Watson
Email: twatson@lanterradev.com

Attention: Christopher Wein
 Email: cwein@lanterradev.com

with a copy to:

Stikeman Elliott LLP
 Commerce Court West
 199 Bay Street, Suite 5300
 Toronto, ON M5L 1B9

Attention: Eric Carmona
 Email: ecarmona@stikeman.com

Attention: Ashley Taylor
 Email: ataylor@stikeman.com

(b) in the case of the Vendor:

Adelaide Street Lofts Inc.
 200 Adelaide Street West, Suite 400
 Toronto, Ontario M5H 1W7

Attention: Jim Neilas
 Email: jim@storeyliving.com

with a copy to:

McCarthy Tetrault LLP
 Suite 5300
 TD Bank Tower
 Box 48, 66 Wellington Street West
 Toronto, Ontario M5K 1E6

Attention: Geoff Hall
 Email: ghall@mccarthy.ca

Attention: Charlene Schafer
 Email: cschafer@mccarthy.ca

or to such other address, individual or electronic communication number as may be designated by notice given by either party to the other. Any demand, notice or other communication shall be conclusively deemed to have been given, if given by personal delivery, on the day of actual delivery thereof if delivered during normal business hours of the recipient on a Business Day and, if given by electronic communication, on the day of transmittal thereof if transmitted during normal business hours of the recipient on a Business Day and on the next Business Day following the delivery or transmittal thereof if not so delivered or transmitted.

7.2 Time of Essence.

Time shall be of the essence for every provision hereof.

7.3 Expenses.

Except as otherwise expressly provided herein, all costs and expenses (including the fees and disbursements of legal counsel, investment advisers and auditors) incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such expenses.

7.4 Third Party Beneficiaries.

Each party hereto intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any person other than the parties hereto and their successors and permitted assigns, and no person, other than the parties hereto and their successors and their permitted assigns shall be entitled to rely on the provisions hereof in any action, suit, proceeding, hearing or other forum.

7.5 Commission.

The parties hereby acknowledge and agree that all agent's or broker's fees or other commissions payable by the Vendor on the Purchase Price shall be paid in accordance with the Minutes of Settlement.

7.6 Further Assurances.

Each party shall from time to time, before or after the Closing Date, execute and deliver, or cause to be executed and delivered, all such documents and instruments and do, or cause to be done, all such acts and things as the other party may, either before or after the Closing, reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

7.7 Entire Agreement.

This Agreement, the Minutes of Settlement and the agreements therein contained constitute the only agreements between the parties with respect to the subject matter hereof and supersedes any and all prior negotiations, provisions, covenants, agreements, understandings and representations on that subject, all of which have become merged and finally integrated into this Agreement.

7.8 Amendments.

This Agreement may only be amended, modified or supplemented by a written agreement signed by the parties.

7.9 Waiver.

No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision (whether or not similar), nor shall such waiver constitute a waiver or continuing waiver unless otherwise expressly provided in writing duly executed by the party to be bound thereby.

7.10 Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the

Province of Ontario and the laws of Canada applicable therein and each of the parties hereby irrevocably attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.

7.11 Benefit of Agreement.

This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.

7.12 Severability.

If any provision of this Agreement or any document delivered in connection with this Agreement is partially or completely invalid or unenforceable, the invalidity or unenforceability of that provision shall not affect the validity or enforceability of any other provision of this Agreement, all of which shall be construed and enforced as if that invalid or unenforceable provision were omitted. The invalidity or unenforceability of any provision in one jurisdiction shall not affect such provision's validity or enforceability in any other jurisdiction.

7.13 Paramountcy.

It is acknowledged and agreed by the parties hereto that in the event of any conflict between the terms of this Agreement and those of the Minutes of Settlement, the terms of the Minutes of Settlement (including the Approval and Vesting Order therein contemplated) shall in every respect govern, including without limitation with respect to Permitted Encumbrances.

7.14 Counterparts and Electronic Delivery.

This Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered will be deemed an original and all of which taken together constitute one and the same instrument. Delivery by electronic transmission of an executed counterpart of this Agreement is as effective as delivery of an originally executed counterpart of this Agreement.

7.15 Assignment and Enurement.

The Purchaser may assign this agreement to an affiliate (as such term is defined in the *Canada Business Corporations Act*) without the consent of but upon notice to the Vendor; provided, however, that the Purchaser shall remain jointly and severally liable for all obligations of the Purchaser pending the completion of the subject transaction. The Vendor may not assign its rights or obligations under this Agreement without the prior written consent of the Purchaser.

[signature page follows]

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first above written.

263 ADELAIDE LOFTS INC.

Per: 

Name:

Title:

LANTERRA DEVELOPMENTS LTD., in trust

Per: _____

Name:

Title:

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first above written.

263 ADELAIDE LOFTS INC.

Per: _____

Name:

Title:

LANTERRA DEVELOPMENTS LTD., in trust

Per: 

Name: Christopher J. Weir
Title: Chief Operating Officer

**Schedule A
Real Property**

All of PIN 21411-0294 (LT), being:

PART BLK B PLAN 216-E PARTS 1 & 2 PLAN 66R29363; SUBJECT TO AN EASEMENT OVER PART 2 PLAN 66R29363 AS IN ES61538; TOGETHER WITH AN EASEMENT OVER PART 3 PLAN 66R29363 AS IN ES61223; CITY OF TORONTO

Schedule B Permitted Encumbrances

General

1. Encumbrances, charges or prior claims for taxes (which term includes charges, rates and assessments) or utilities (including charges, levies or imposts for sewers, electricity, power, gas, water and other services and utilities) not yet due and owing or, if due and owing, that are adjusted for pursuant to Section 3.4.
2. Easements, rights of way, restrictive covenants and servitudes and other similar rights in land granted to, reserved or taken by any Governmental Authority, transit authority or public or private utility supplier; or any subdivision, development, servicing, site plan or other similar agreement with any Governmental Authority, transit authority or public or private utility supplier, provided that at Closing the same are in good standing in all material respects with no material outstanding defaults by the Vendor thereunder.
3. Encroachments by the Property over neighbouring lands which are permitted under existing agreements with neighbouring landowners.
4. Any subsisting reservations, limitations, provisos, conditions or exceptions in any original grants from the Crown of the Property or any part thereof or interest therein.
5. Statutory exceptions, reservations, limitations, provisos, qualifications and conditions to title provided for or implied by the *Land Titles Act* (Ontario) (including without limitation those set forth in subsection 44(1) thereof), but not including the matters listed in paragraph 11 of subsection 44(1) of the *Land Titles Act* (Ontario) and not including any circumstance by which all or any part of the Property may have escheated to the Crown.
6. Any rights of expropriation, access, use or any other right conferred or reserved by or in any statute of Canada or the Province of Ontario.
7. The provisions of Applicable Laws, including without limitation any by-laws, regulations, ordinances and similar instruments relating to development and zoning provided same are complied with in all material respects.
8. Any minor title defects, irregularities, easements, reserves, servitudes, encroachments, rights of way or other discrepancies in title or possession relating to the Property that (i) would be disclosed by an up-to-date survey of the Property, (ii) do not have a material adverse effect on the operation of the Property, or (iii) will not prevent the Purchaser from obtaining satisfactory title insurance policy for the Property.

Specific

9. Instrument No. ES61223 registered on October 18, 1966 being an easement.
10. Instrument No. ES61538 registered on December 19, 1966 being an easement.
11. Instrument No. 63BA1446 registered on February 2, 1979 being a Boundries Act plan.
12. Instrument No. 66R29363 registered on June 9, 2017 being reference plan.

13. Instrument No. AT4593553 registered on June 9, 2017 being an application for absolute Title.
14. Instrument No. AT4773446 registered on January 4, 2018 being a bylaw.

Schedule C

Court File No. CV-19-616261-00CL

ONTARIO**SUPERIOR COURT OF JUSTICE****COMMERCIAL LIST**

**IN THE MATTER OF SECTION 60 OF THE TRUSTEE ACT, R.S.O. 1990, C. T.23, AS
AMENDED, AND RULE 10 OF THE ONTARIO RULES OF CIVIL PROCEDURE,
R.R.O. 1990, REG. 194, AS AMENDED**

**AND IN THE MATTER OF HI-RISE CAPITAL LTD. AND IN THE MATTER OF
ADELAIDE STREET LOFTS INC.**

CERTIFICATE**RECITALS**

A. Pursuant to an Order of the Honourable Justice Hainey of the Ontario Superior Court of Justice (the "**Court**") dated March 21, 2019 (the "**Appointment Order**"), Miller Thomson LLP was appointed as representative counsel ("**Representative Counsel**") to represent the interests of all individuals and/or entities (the "**Investors**") which term does not include persons who have opted out of such representation in accordance with the Appointment Order, that have invested funds in a syndicated mortgage investment administered by Hi-Rise Capital Ltd. ("**Hi-Rise**"), in respect of the proposed development at the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the "**Property**") and owned by Adelaide Street Lofts Inc. ("**Adelaide**").

B. Pursuant to an Order of the Court dated March 19, 2020, the Court approved the Minutes of Settlement made as of December 20, 2019 (the "**Minutes of Settlement**") between the Parties (as defined therein) and Lanterra Developments Ltd. ("**Lanterra**") and the Agreement of Purchase and Sale dated December 20, 2019 between Lanterra or its designee and Adelaide and provided for the vesting in Lanterra or its designee of Adelaide's right, title and interest in and to the Property, which vesting is to be effective with respect to the Property upon delivery to Lanterra of a certificate executed by Aird &

Berlis LLP, Stikeman Elliott LLP, McCarthy Tetrault LLP and Miller Thomson LLP confirming receipt of the funds paid pursuant to paragraph 9 of the Minutes of Settlement.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Minutes of Settlement.

D. This certificate may be executed in counterparts, and by facsimile or electronic mail, each of which shall be deemed to be an original, all such separate counterparts shall together constitute one and the same certificate.

EACH OF THE UNDERSIGNED CONFIRMS receipt of the funds to be paid to it pursuant to paragraph 9 of the Minutes of Settlement.

AIRD & BERLIS LLP

Per: _____
Name:
Title:

STIKEMAN ELLIOTT LLP

Per: _____
Name:
Title:

MCCARTHY TETRAULT LLP

Per: _____

Name:

Title:

MILLER THOMSON LLP

Per: _____

Name:

Title:

Schedule D

Court File No. CV-19-616261-00CL

ONTARIO**SUPERIOR COURT OF JUSTICE****COMMERCIAL LIST**

**IN THE MATTER OF SECTION 60 OF THE TRUSTEE ACT, R.S.O. 1990, C. T.23, AS
AMENDED, AND RULE 10 OF THE ONTARIO RULES OF CIVIL PROCEDURE,
R.R.O. 1990, REG. 194, AS AMENDED**

**AND IN THE MATTER OF HI-RISE CAPITAL LTD. AND IN THE MATTER OF
ADELAIDE STREET LOFTS INC.**

REPRESENTATIVE COUNSEL CERTIFICATE**RECITALS**

A. Pursuant to an Order of the Honourable Justice Hainey of the Ontario Superior Court of Justice (the "**Court**") dated March 21, 2019 (the "**Appointment Order**"), Miller Thomson LLP was appointed as representative counsel ("**Representative Counsel**") to represent the interests of all individuals and/or entities (the "**Investors**") which term does not include persons who have opted out of such representation in accordance with the Appointment Order, that have invested funds in a syndicated mortgage investment administered by Hi-Rise Capital Ltd. ("**Hi-Rise**"), in respect of the proposed development at the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the "**Property**") and owned by Adelaide Street Lofts Inc. ("**Adelaide**").

B. Pursuant to an Order of the Court dated March 19, 2020, the Court approved the Minutes of Settlement made as of December 20, 2019 (the "**Minutes of Settlement**") between the Parties (as defined therein) and Lanterra Developments Ltd. ("**Lanterra**") and the Agreement of Purchase and Sale dated December 20, 2019 between Lanterra or its designee and Adelaide and provided for the vesting in Lanterra or its designee of Adelaide's right, title and interest in and to the Property, which vesting is to be effective with respect to the Property upon the delivery by Representative Counsel to Lanterra of

a certificate confirming (i) the payment by Lanterra of the Purchase Price for the Property; and (ii) the Transaction has been completed to the satisfaction of Representative Counsel.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Minutes of Settlement.

REPRESENTATIVE COUNSEL CERTIFIES the following:

1. Lanterra has paid the Purchase Price for the Property in accordance with the Minutes of Settlement;
3. The Transaction has been completed to the satisfaction of Representative Counsel.
4. This Certificate was delivered by Representative Counsel at _____ [TIME] on _____ [DATE].

**MILLER THOMSON LLP, in its capacity
as Representative Counsel**

Per: _____
Name:
Title:

Schedule E — Purchased Assets

“Purchased Assets” is defined in the APS to mean the following:

- (d) the Real Property (as defined in the APS); and
- (e) all deposits and prepaid expenses relating to the Real Property (as defined in the APS).

Schedule F — Claims to be deleted and expunged from title to Property

Reg. No.	Date	Type	Amount	Parties From	Parties To
AT2730828	2011/06/24	Transfer	\$16,500,000	GUESTVILLE ENTERPRISES LIMITED	ADELAIDE STREET LOFTS INC.
AT3522463	2014/02/18	Charge	\$40,000,000	ADELAIDE STREET LOFTS INC.	HI-RISE CAPITAL LTD.
AT3522464	2014/02/18	Assignment of Rents	N/A	ADELAIDE STREET LOFTS INC.	HI-RISE CAPITAL LTD.
AT3586925	2014/05/22	Transfer of Charge	N/A	HI-RISE CAPITAL LTD.	CANADIAN WESTERN TRUST COMPANY
AT3946856	2015/07/15	Notice	\$2	ADELAIDE STREET LOFTS INC.	HI-RISE CAPITAL LTD. CANADIAN WESTERN TRUST COMPANY
AT4420428	2016/12/01	Transfer of Charge	N/A	HI-RISE CAPITAL LTD. CANADIAN WESTERN TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY
AT4420442	2016/12/01	Assignment of Rents	N/A	HI-RISE CAPITAL LTD. CANADIAN WESTERN TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY
AT4505545	2017/03/08	Transfer of Charge	N/A	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY
AT4505546	2017/03/08	Assignment of Rents	N/A	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY
AT4529978	2017/04/04	Transfer of Charge	N/A	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY
AT4529979	2017/04/04	Assignment of Rents	N/A	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY
AT4572550	2017/05/18	Transfer of Charge	N/A	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY
AT4572551	2017/05/18	Assignment of Rents	N/A	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY
AT4627861	2017/07/14	Transfer of Charge	N/A	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY
AT4627862	2017/07/14	Assignment of Rents	N/A	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY
AT4664798	2017/08/25	Transfer of Charge	N/A	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY
AT4664799	2017/08/25	Assignment of Rents	N/A	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY
AT4862974	2018/05/14	Charge	\$16,414,000	ADELAIDE STREET LOFTS INC.	MERIDIAN CREDIT UNION LIMITED
AT4862975	2018/05/14	Assignment of Rents	N/A	ADELAIDE STREET LOFTS INC.	MERIDIAN CREDIT UNION LIMITED

AT4863246	2018/05/14	Postponement	N/A	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	MERIDIAN CREDIT UNION LIMITED
AT5329784	2019/12/24	Notice	N/A	ADELAIDE STREET LOFTS INC.	MERIDIAN CREDIT UNION LIMITED
AT5329785	2019/12/24	Charge	\$1,550,000	ADELAIDE STREET LOFTS INC.	LANTERRA DEVELOPMENTS LTD.
AT5329786	2019/12/24	Assignment of Rents	N/A	ADELAIDE STREET LOFTS INC.	LANTERRA DEVELOPMENTS LTD.
AT5329787	2019/12/24	Postponement	N/A	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	LANTERRA DEVELOPMENTS LTD.
AT5330113	2019/12/27	Postponement	N/A	COMMUNITY TRUST COMPANY HI-RISE CAPITAL LTD.	MERIDIAN CREDIT UNION LIMITED
AT5357503	2020/02/04	Restrictions Order	N/A	ONTARIO SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST	LANTERRA DEVELOPMENTS LTD.

**Schedule G — Permitted Encumbrances, Easements and Restrictive Covenants
related to the Property**

Reg. No.	Date	Type	Amount	Parties From	Parties To
ES61223	1966/10/18	Easement	N/A	N/A	N/A
ES61538	1966/12/19	Easement	N/A	N/A	N/A
63BA1446	1979/02/02	Plan Boundaries Act	N/A	N/A	N/A
66R29363	2017/06/09	Plan Reference	N/A	N/A	N/A
AT4593553	2017/06/09	Application for Absolute Title	N/A	ADELAIDE STREET LOFTS INC.	N/A
AT4773446	2018/01/04	Bylaw	N/A	CITY OF TORONTO	N/A

Schedule H — Legal Description of the Property**PIN 21411-0294 (LT)**

PART BLK B PLAN 216-E PARTS 1 & 2 PLAN 66R29363; SUBJECT TO AN EASEMENT OVER PART 2 PLAN 66R29363 AS IN ES61538; TOGETHER WITH AN EASEMENT OVER PART 3 PLAN 66R29363 AS IN ES61223; CITY OF TORONTO

HI-RISE CAPITAL LTD.
Applicant

SUPERINTENDENT OF FINANCIAL SERVICES *et. al.*
Respondents

Court File No. CV-19-616261-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

ORDER

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Lawyers for the Applicant, Hi-Rise Capital Ltd.

HI-RISE CAPITAL LTD.
Applicant

and SUPERINTENDENT OF FINANCIAL SERVICES
Respondent

Court File No. CV-19-616261-00CL

**ONTARIO
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IN THE MATTER OF

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