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.

### **MOTION RECORD**

(Re: Release of Settlement Funds Held in Trust) (Returnable May 13, 2021)

February 12, 2021

McCarthy Tétrault LLP Suite 5300, Toronto Dominion Bank Tower Toronto ON M5K 1E6

Anu Koshal LS#: 66338F akoshal@mccarthy.ca Tel: 416 601-7991

Lawyers for 263 Holdings Inc.

TO: Miller Thomson LLP Suite 5800, 40 King Street West Toronto, ON, M5H 3S1

> Stephanie de Caria LS# 68055L sdecaria@millerthomson.com Tel: 416 595-2652

Representative counsel

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.

#### **MOTION RECORD**

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# Tab 1

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.

#### **NOTICE OF MOTION** (Re: Release of Settlement Funds Held in Trust)

263 Holdings Inc. ("263") will make a motion to the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) on May 13, 2021 at 10:00 am.

#### **PROPOSED METHOD OF HEARING:**

The motion is to be heard orally, by videoconference, given the current COVID-19 health crisis.

#### THE MOTION IS FOR:

- 1. An Order:
  - (a) declaring that, pursuant to Minutes of Settlement dated December 20, 2020
    (the "Agreement"), neither 263 or Adelaide Street Lofts Inc. ("Adelaide")

is liable for \$914,743.40 in municipal tax arrears owing on the property located at 263 Adelaide Street West in Toronto (the "**Property**");

- (b) directing that the \$914,743.40 in proceeds from the sale of the Property that is currently held in trust be forthwith released to 263;
- (c) Costs of this motion; and
- (d) Such further and other relief as this Court may deem just.

#### THE GROUNDS FOR THE MOTION ARE:

#### **Background**

Adelaide was the registered owner of the Property from June 2011 to November
 16, 2020. Prior to 2017, Adelaide was seeking to develop the Property into a mixed-use
 condominium building (the "Adelaide Project").

2. In 2014, Adelaide obtained financing to develop the Property from a syndicated mortgage administered by Hi-Rise Capital Ltd. ("**Hi-Rise**")

3. In early 2017, construction lenders stopped lending money to building projects financed through syndicated mortgages. This put the development of the Adelaide Project in jeopardy. Adelaide retained the Bank of Montreal ("**BMO**") to market and sell the Property as-is to mitigate any further losses.

4. A comprehensive background of the circumstances leading to the sale of the Property and the Agreement is contained in the affidavit of Dimitrios (Jim) Neilas sworn February 12, 2021 and included in this motion record at Tab 2.

5. In March 2019, Hi-Rise commenced an application to have representative counsel appointed to protect the interests of investors in the syndicated mortgage during the sales process.

6. On March 21, 2019, Justice Hainey issued an Order appointing Miller Thomson

LLP ("Miller Thomson") as representative counsel for the investors.

7. Over the ensuing eighteen months, Miller Thomson was repeatedly informed that

Adelaide was not paying municipal property taxes on the Property:

- (a) On May 16, 2019, Miller Thomson was provided with a demand letter from Meridian Credit Union ("**Meridian**") to Adelaide which stated that "property taxes are currently... in arrears";
- (b) On June 14, 2019, Miller Thomson was provided with another demand letter from Meridian which referenced Adelaide's "failure to keep the Property's taxes current";
- (c) On July 4, 2019, Miller Thomson sent a letter to investors regarding an offer on the Property. Miller Thomson advised investors that pursuant to that offer, a new mortgage would be obtained on the Property, \$16.7 million would be used to retire the Meridian mortgage, and the balance of the sale proceeds would be distributed to Investors "net of... taxes";
- (d) In August 2019, Miller Thomson was given a report on the Property prepared by Grant Thornton LLP which stated that there were "outstanding taxes" owing in the amount of \$280,437.
- (e) In September 2019, the court-appointed Information Officer overseeing the proposed sale prepared a report confirming that there were \$343,000 in property taxes outstanding on the Property; and
- (f) On October 28, 2029, Meridian commenced an application, on notice to all parties to the Agreement, including Miller Thomson, to have a receiver appointed over the Property. Meridian's Notice of Application stated that Adelaide had "failed to pay property taxes arising in respect of the Real Property."

### Adelaide is Not Responsible for Expenses it was not Paying at the Time of the Agreement

8. In November and December 2020 Miller Thomson (on behalf of the investors),

263, Adelaide, Meridian, and various other entities with an interest in the Property entered

into the Agreement.

9. Pursuant to the Agreement, Lanterra Developments Limited ("Lanterra") agreed

to purchase the Property for \$69,000,000. All parties agreed that the proceeds from the

sale would be paid out in the following order:

- (a) First, to Aird & Berlis LLP in trust (on behalf of Meridian), the amounts owing on the first mortgage (approximately \$16.7 million);
- (b) Second, to Stikeman Elliott LLP in trust (on behalf of Lanterra), the amounts owing under a forbearance fee loan, an interest payment loan, and \$50,000 from 263 in respect of a break fee (less \$216,500, which represented Lanterra's contribution to BMO's commission for the sale).
- (c) Third, to McCarthy Tétrault LLP in trust (on behalf of 263), "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 then, after each of these payments,
- (d) "To Miller Thomson LLP in trust... the balance of the Purchase Prise 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."
- 10. With full knowledge that Adelaide was not paying property taxes on the Property,

the parties also agreed that Adelaide would not be responsible for any expenses that it was

not paying as of the date of the Agreement:

... until the closing date, Adelaide shall "(a) continue to operate the property on the same basis as at the execution of these Minutes of Settlement; (b) continue paying the operating expenses in respect of the Property <u>that it is</u> <u>paying as at the date of execution of these Minutes of Settlement, and will</u> <u>not be liable or responsible for any other expenses in respect of the</u> <u>Property</u>" (emphasis added). Δ

11. The Agreement was subject to approval from investors and the court. Following the Agreement, in January 2021, Miller Thomson advised investors and the court that under the terms of the Agreement, Mr. Neilas would received \$4,000,000 less \$216,000 (which represented his contribution to the BMO commission) and \$50,000 (to fund a break fee owing to Lanterra) for a "total settlement of \$3,784,000."

12. Ten months later, on November 16, 2021, the closing date for the sale, Miller Thomson wrote to counsel for 263 and Adelaide to advise that "[i]it has come to [their] attention" that there are \$914,793.40 in property taxes owing on the Property, and alleging that Adelaide and/or 263 is responsible for this amount under the Agreement.

13. That amount is currently being held in trust pending the outcome of this motion.

- 14. Section 10 of the *Trustee Act*, RSO 1990, c. T.23,;
- 15. Section 97 of the *Courts of Justice Act*, RSO 1990, c. C-43;
- 16. Rules 1.04, 1.05, 10, and 37 of the *Rules of Civil Procedure*, RRO 1990, Reg 194; and
- 17. Such further and other grounds as counsel may advise or this court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- 1. The affidavit of Jim Neilas sworn February 12, 2021; and
- 2. Such further and other evidence as counsel may advise or this court may permit.

February 12, 2021

**McCarthy Tétrault LLP** 

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Lawyers for 263 Holdings Inc.

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Representative counsel

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

#### ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST

Proceeding commenced at TORONTO

#### NOTICE OF MOTION (Re. Release of Settlement Funds) (Returnable May 13)

McCarthy Tétrault LLP Suite 5300, Toronto Dominion Bank Tower Toronto ON M5K 1E6

Anu Koshal LS#: 66338F akoshal@mccarthy.ca Tel: 416 601-7991

Lawyers for 263 Holdings Inc.

MT DOCS 21232260

## Tab 2

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

#### ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST

#### IN THE MATTER OF SECTION 60 OF THE TRUSTEE ACT, RSO, 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 MATTEROF ADELAIDE STREET LOFTS INC.

#### AFFIDAVIT OF DIMITRIOS (JIM) NEILAS (Sworn February 12, 2021)

I, Jim Neilas, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the principal and an authorized signing officer of Adelaide Street Lofts Inc. ("Adelaide") and 263 Holdings Inc. ("263"). As such, I have knowledge of the matters to which I depose in this affidavit.

#### Introduction

2. This motion deals with the distribution of the sale proceeds of the property located at 263 Adelaide Street West in Toronto, Ontario (the "**Property**"). The manner in which the sale proceeds are to be distributed is set out in a settlement agreement dated December 20, 2019 (the "**Agreement**"), which is attached to this affidavit as Exhibit "**A**".

3. The Agreement calls for the \$69,000,000 in sale proceeds to be distributed to various parties in specific amounts and in a specific order. The issue on this motion is whether, under the Agreement, property taxes owing on the Property (in the amount of \$914,793.40) are to be deducted from the amount that 263 is to receive (\$3.734 million), or from the amount that is to be distributed to individual investors after 263 is paid (approximately \$46,000,000).

4. Section 4 of the Agreement provides that until the closing date, Adelaide shall "(a) continue to operate the property on the same basis as at the execution of these Minutes of Settlement; (b) continue paying the operating expenses in respect of the Property <u>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" (emphasis added).</u>

5. As set out below, Adelaide was not paying property taxes as of the date of the execution of the Agreement. All of the parties to the Agreement knew this at the time.

#### **The Adelaide Project**

6. Adelaide purchased the Property in June 2011 for the purpose of developing a high-rise condominium building (the "Adelaide Project"). To fund pre-development and construction costs, in February 2014 Hi-Rise Capital Inc. ("Hi-Rise"), a mortgage brokerage which I own, arranged for a syndicated mortgage in the amount of \$40 million. The syndicated mortgage was increased to \$60 million in July 2015.

7. The syndicated mortgage was funded by contributions from individual investors. These investors agreed to participate in the mortgage in exchange for the prospect of earning above-market interest on their investments. Hi-Rise acted as the mortgage administrator and as trustee for these investments.

8. In early 2017, a number of other brokers involved in syndicated mortgages became insolvent, and investors in those mortgages suffered significant losses. As a result, construction lenders stopped lending money to projects financed through syndicated mortgages and the market effectively froze.

9. This put the Adelaide Project in jeopardy. Without the ability to obtain construction financing, the Adelaide Project could not be completed and investors – including thousands of individual investors – stood to lose their investments. Accordingly, in the Spring of 2017 Adelaide stopped seeking contributions for the syndicated mortgage and retained the Bank of Montreal ("**BMO**") to market and sell the property, as-is, to mitigate any further losses.

#### Miller Thomson Has Known Since May 2019 that Property Taxes Were in Arrears

10. As BMO sought to market and sell the Property, Hi-Rise commenced an application to appoint representative counsel to ensure that the interests of investors in the syndicated mortgage were protected during the sales process. On March 21, 2019, the Honourable Justice Hainey issued an Order appointing Miller Thomson LLP ("**Miller Thomson**") as representative counsel for the investors. A copy of that Order is attached as Exhibit "**B**".

11. In the Spring and Summer of 2019, Adelaide entered into an agreement to sell the Property to Lanterra Developments Limited ("Lanterra"), subject to investor approval (the "First Offer"). Miller Thomson then undertook to review the financial circumstances surrounding the Property so that it could advise investors whether to accept the First Offer or not.

12. During this period, Miller Thomson was repeatedly told that Adelaide was not paying property taxes, and that as a result the property taxes were in arrears.

13. For instance, on May 16, 2019, Adelaide received a letter from Meridian Credit Union Limited ("**Meridian**"), which held the first mortgage on the Property. At the time, the mortgage was in default and Adelaide was in negotiations with Meridian to forbear the loan. The letter states:

Property taxes are currently \$65,086 in arrears and are not purported to be brought current until a sale of 263 Adelaide Street West, Toronto transpires.

14. I forwarded this letter to Gregory Azeff at Miller Thomson. I thought it was important that counsel for the investors understood Adelaide's financial circumstances. As I stated in my email: "Greg, can we have a call on this? It's somewhat urgent." A copy of this email is attached as Exhibit "C".

15. Two weeks later, on June 14, 2019, I received another letter from Meridian. In that letter, Meridian re-iterated that property taxes were not being paid:

 the Member's failure to keep the Property's taxes current with the result that arrears have accrued in the amount of \$65,086.00;

16. I forwarded this letter to Mr. Azeff too. A copy of my email sending him this letter is attached as Exhibit "**D**".

17. On July 4, 2019, Miller Thomson sent a letter to investors to update them regarding the First Offer. Mr. Azeff sent me a copy of the letter in advance for my comments. In the letter, Miller Thomson advised that under the proposed terms, there would be a waterfall-type distribution whereby a new mortgage would be obtained, \$16.7 million would be used to retire the Meridian mortgage, and "[t]he balance (net of professional fees, commissions, taxes, and certain other disbursements) will be distributed to Investors" (emphasis added). A copy of this letter from Miller Thomson is attached as Exhibit "E".

18. Around that same time, Mr. Azeff complained to me that Miller Thomson did not have enough financial information about Hi-Rise and Adelaide to evaluate the First Offer. In response, Hi-Rise sent Miller Thomson a report prepared by Grant Thornton LLP, a leading accounting firm, on the merits of the proposed sale. A copy of this report is attached as Exhibit "**F**".

19. Page 19 of the Grant Thornton report includes a table entitled "Estimated Transaction Recovery to Investors." The table shows that there are \$280,437 in "outstanding taxes" owing to the City of Toronto, and deducts that amount from the amount of the sale proceeds that will go to investors. A copy of this table (with my highlighting) is here:

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

#### (CDN\$)

(0014)	Notes	Cost Detail	Proceeds after Closing	Proceeds from VTB Maturity	Holdings Guarantee
Senior Mortgage	1)		36,575,000		
Meridian Balance Owing Meridian Accrued Interest Total Bank Loan	2)	16,619,828 332,000	(16,951,828)		
BMO Commission City of Toronto (outstanding taxes) Total Paid via Direction from Legal Co	3) 4) junsel	1,614,588 280,437	(1,895,025)		
Cassels Brock & Blackwell LLP Legal Cost Reimbursement of Hi-Rise	5)	160,000	(160,000)		
Stikeman Elliott LLP McCarthy Tetrault LLP Miller Thomson LLP Due to Consultants Holdings own costs	6) 7) 8) 9) 10)	250,000 300,000 350,000 4,158 1,000,000			
Cost Reimbursement paid to Holdings	/	1,000,000	(1,904,158)		
VTB Face Value VTB Upfront Interest Payment VTB Interest for year 3	11) 12) 13)		1,850,000	18,270,000	
Holdings Guarantee					8,000,000
Total Proceeds for Investors			17,513,989	18,270,000	8,000,000
Proceeds for Registered Investors Proceeds for Non-Registered Investor Total Proceeds for Investors	14) s		22,171,120 21,612,869 43,783,989		
Recovery Percentage		Principal	+ Interest	Principa	al Only
Recovery for Registered Investors Recovery for Non-Registered Investors	5	100% 47%		127% 62%	

0

#### The Information Officer Confirmed that Taxes Were Not Being Paid

20. Despite being provided with the Grant Thornton report, in September 2019 Mr. Azeff told me that he wanted an independent third party to assess the financial circumstances of the Property to ensure the investors had all of the information they needed to consider a sale. As Miller Thomson stated in its second report to the Court: "Representative Counsel… require[s] a third party to review and assess the circumstances surrounding all proposed transactions relating to the Property." A copy of this Miller Thomson report is attached as Exhibit "G".<sup>1</sup>

21. Miller Thomson subsequently brought a motion to have Alvazrez & Marsal Canada Inc. ("**Alvarez**"), a financial consulting firm, appointed as a "Court officer to act as an information officer in respect of Hi-Rise and the Property". Justice Hainey granted the motion on September 17, 2019. A copy of this Order is attached as Exhibit "**H**".

22. As set out in Justice Hainey's Order, the Information Officer was empowered 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 [*i.e.*, Adelaide's] proposed sale of the Property." The Information Officer's mandate was not limited to evaluating the First Offer. As per Justice Hainey's Order, it extended to "all aspects of any and all proposed transactions in respect of the Property."

23. On October 7, 2019, the Information Officer submitted a detailed report to the Court regarding the financial circumstances of the Property. A copy of the Information Officer's report is attached as Exhibit "**I**".

24. On page 26 of its report, the Information Officer included a table summarizing the "projected return to investors" from the First Offer. This table shows that investors would receive the proceeds from the sale after various deductions are made, including a deduction for "property taxes" owing in the amount of \$343,000. This table is copied here (with my highlighting) for ease of reference:

<sup>&</sup>lt;sup>1</sup> I have not included all of the appendices to the report so as to reduce the volume.

			_
	Notes	Undiscounted	Present Value as at Dec. 2019 <sup>[10</sup>
		<u>enalocouniou</u>	
Proceeds from Lanterra Transaction			
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
Proposed Distributions to Registered Investors			
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
Return to Investors Excluding Interest Paid to Date	9	100%	96%
Proposed Distributions to Non-Registered Investors			
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
Return to Investors Excluding Interest	9	60%	41%
Total Proposed Distribution to Investors		50,306	40,602

25. The notes underneath the table state:

 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.

26. The Information Officer provided a further break-down of projected investor recoveries from the proposed sale in Appendix "D" of its report. Appendix "D" again shows that there are "outstanding taxes" in the amount of \$343,000.

27. Appendix "E" to the Information Officer's report contains another table which considers what investors would recover in the event of a different transaction (a "truncated receivership"). This table also shows that property taxes are owing and will be deducted from the proceeds going to investors:

-	8	-	

	Notes	Low	High
Months	_	4	4
Estimated Sale Price	1	71,170	76,071
Less:			
Zoning	2	-	-
Sale Fee	3	(1,276)	(1,472)
Property Taxes	4	(351)	(351)
Meridian Mortgage as at June 14, 2019	5	(16,620)	(16,620)
Meridian Mortgage Carrying Costs	6	(623)	(623)
Operating Costs net of Rent Received	7	(441)	(441)
Legal Fees of Appointing Creditor	8	(100)	(100)
Receiver's Fees	8	(435)	(435)
Receiver's Legal Fees	8	(230)	(230)
Miller Thomson LLP	9	(400)	(400)
Information Officer	10	(100)	(100)
Investory Recovery (without Potential Priority	Costs)	50,595	55,300
Priorities Asserted by Hi-Rise			
Professional Fees & Consultants	11	(2,954)	(2,954)
Wages, Benefits & Office Expenses	8	(1,750)	(1,750)
Investory Recovery (with Potential Priority Cos	sts)	45,891	50,595

28. The notes underneath this table again confirm that there is an "outstanding balance... in property taxes for the Property":

 Per Hi-Rise, there is an outstanding balance of approximately \$334,240 in property taxes for the Property as at October 1, 2019. This amount includes the outstanding balance as at October 1, 2019 plus four months of accrued interest.

29. On October 18, 2019, eleven days after the Information Officer filed its report, Miller Thomson submitted its third report to the Court. This report states: "Representative Counsel and the Official Committee accept the facts and conclusions set out in the IO [Information Officer] Report, and are of the view that the Information Officer fulfilled its mandate." A copy of Miller Thomson's third report is attached as Exhibit "**J**".

#### Meridian Advises All Parties to the Agreement that Taxes are not Being Paid

30. On October 22, 2019, investors voted not to accept the First Offer. Six days later, Meridian, the first mortgagor, served an application record to have a receiver appointment over the Property. A copy of Meridian's Notice of Application is attached as Exhibit "**K**".

31. In its Notice of Application, Meridian made clear that it was seeking a receiver because the mortgage was in default and because Adelaide was not paying property taxes:

g) one or more defaults has also occurred under the Credit Agreement, including, without limitation, the Debtor having failed to pay property taxes arising in respect of the Real Property and having failed to pay interest installments due thereunder which default has continued into the present;

32. All of the parties to the Agreement were served with Meridian's Notice of Application, including Miller Thomson as counsel to the investors.

33. Meridian ultimately agreed to adjourn the application so that the various parties with an interest in the Property could participate in a mediation to come up with an agreement regarding the sale of the property.

34. The mediation took place on November 27, 2019 before the Honourable Justice McEwen. I attended on behalf of Adelaide and 263. Mr. Azeff and Stephanie de Caria from Miller Thomson attended on behalf of the investors. At the conclusion of the mediation, the parties entered into the Agreement.

35. As recorded in the Agreement, Lanterra agreed to purchase the Property for \$69,000,000 and all parties agreed that the proceeds from the sale would be paid out in the following order:

- (a) First, to Aird & Berlis LLP in trust (on behalf of Meridian), the amounts owing on the first mortgage (approximately \$16.7 million);
- (b) Second, to Stikeman Elliott LLP in trust (on behalf of Lanterra), the amounts owing under a forbearance fee loan, an interest payment loan, and \$50,000 from 263 in respect of a break fee (less \$216,500, which represented Lanterra's contribution to BMO's commission for the sale).

- 10

- (c) Third, to McCarthy Tétrault LLP in trust (on behalf of 263), "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 then, after each of these payments,
- (d) "To Miller Thomson LLP in trust... the balance of the Purchase Prise 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."

36. In short, the Agreement provides that 263 will receive \$4,000,000 from the sale and then makes specific deductions for the BMO Commission and the break fee, for a total payment to 263 of \$3,734,000. The Agreement does not contemplate any further deductions for property taxes.

37. In fact, paragraph 4 of the Agreement provides that Adelaide is not be responsible for expenses in respect of the Property other than what it was paying at the time:

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.

38. As set out above, all of the parties knew that Adelaide had not been paying property taxes. This was repeatedly communicated to Miller Thomson, including by the court-appointed Information Officer.

39. It is not correct for Miller Thomson to now suggest that, in fact, the Agreement provided that 263 would receive \$3.734 million less nearly \$1 million in property taxes. That is a different bargain than the one that I signed. It would mean that 263 recovers nearly 25% less than the \$3.734 million specified in the Agreement. I would not have entered into the Agreement on those terms.

40. After the parties reached the Agreement in December 2019, it remained subject to approval from investors and the Court.

41. On January 9, 2020, in advance of the investor vote to approve the Agreement, Miller Thomson submitted its fourth report to investors and the Court. In that report, Miller Thomson described the terms of the Agreement to investors and recommended that investors approve it. A copy of Miller Thomson's fourth report is attached as Exhibit "L".<sup>2</sup>

42. At paragraphs 18 and 19 of that report, Miller Thomson again affirmed the facts and conclusions of the Information Officer Report. At paragraph 36, Miller Thomson advised investors and the Court that I would receive "a total settlement amount of \$3,784,000":

 (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;

43. Miller Thomson did not advise investors or the court that there would be a further deduction for hundreds of thousands of dollars in property taxes, which all parties knew were outstanding at the time.

44. Miller Thomson further advised that after the payment of \$3.734 million to me and the other payments to Meridian and Lanterra, "[t]he balance of the Purchase Price... will be distributed to Investors and Opt Out Investors in the manner described in the Minutes, in full satisfaction of their claims."

<sup>&</sup>lt;sup>2</sup> I have not included all of the appendices to the report so as to reduce the volume.

45. On January 31, 2020, investors voted to approve the Agreement. Three months later, on April 27, 2020, Justice Hainey also approved the Agreement. A copy of Justice Hainey's Order approving the Agreement is attached as Exhibit "M".

#### On Closing, Miller Thomson Claims Not to Have Known that Taxes Were Owing

46. The closing of the sale was initially scheduled for May 2020 but was delayed as a result of the COVID-19 pandemic. On November 16, 2020, the new closing date, Mr. Azeff sent a letter to Geoff Hall, counsel to 263 and Adelaide, stating:

It has come to Representative Counsel's attention that Adelaide Street Lofts Inc. ("Adelaide") has not paid the 2019 and 2020 municipal taxes owing to the City of Toronto in respect of the Property. The total amount of arrears owing in this regard as at November 9, 2020 is \$914,793.40 (the "Municipal Tax Arrears"). Enclosed please find a copy of the Statement of Adjustments and Tax Statement dated November 9, 2020.

A copy of this letter is attached as Exhibit "N".

47. In his letter, Mr. Azeff also wrote: "Pursuant to section 4 of the Minutes, Adelaide had an obligation to pay the operating expenses in respect of the Property. In our view, this included the obligation to pay municipal property taxes." Mr. Azeff did not mention that, under section 4, Adelaide was only responsible for paying those expenses which it was already paying at the time of the Agreement (and which did not include property taxes).

48. Mr. Azeff also did not mention that, since May 2019, Miller Thomson had been repeatedly told – by Meridian, by Grant Thornton, by the Information Officer, and by me - that taxes were not being paid on the Property.

#### **SWORN AFFIRMED BEFORE ME**: in person

at the City of Toronto, before me on February 12, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A Commissioner for taking Affidavits (or as may be)



Х

Nicholas Jay Sciuk, a Commissioner, etc., Province of Ontario, while Student-at-Law Expires May 3, 2022

#### IN THE MATTER OF HI-RISE CAPTIAL LTD. and IN THE MATTER OF ADELAIDE STREET LOFTS INC.

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

Proceeding commenced at TORONTO

#### AFFIDAVIT OF DEMETRIOS (JIM) NEILAS (Sworn February 12, 2021)

**McCarthy Tétrault LLP** Suite 5300, Toronto Dominion Bank Tower Toronto ON M5K 1E6

Anu Koshal LS#: 66338F akoshal@mccarthy.ca Tel: 416 601-7991

Lawyers for 263 Holdings Inc.

This is **Exhibit "A"** referred to in the Affidavit of Jim Neilas, sworn remotely in accordance with O.Reg 431/20, this 12<sup>th</sup> day of February, 2021.

A Commissioner, etc.

Nicholas Jay Sciuk, a Commissioner, etc., Province of Ontario, while Student-at-Law Expires May 3, 2022

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;

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- (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):
  - 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"),
  - 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.

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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;

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- (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: Title: (I have authority to bind the corporation)
DATED AT	Toronton	this 20 <sup>44</sup>	day of	December, 2019.
Witness:				JIM NEILAS
	Gouff L. Hall		$\langle$	
DATED AT	Toronto	this 20th	day of _	December, 2019.
			(	263 HOLDINGS INC. Per: Name Title: (I have authority to bind the corporation)
DATED AT	Tovonto	this <u>204</u>	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: 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	_day of	, 2019.
Witness:			VIPIN BERRY, in his capacity as court- appointed member of the Official Committee

DATED AT	this	day of	, 2019.
Witness:		-	MICHAEL SINGH, in his capacity as court-appointed member of the Official Committee
DATED AT	41.1-	1	
DATED AT	tnis	_ day of _	, 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 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 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 Applicant	CAPITAL	LTD.	and	SUPERINTENDENT SERVICES Respondents	OF et.	FINANCIAL 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 <b>Stephanie De Caria LSO#: 68055L</b> 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

This is **Exhibit "B"** referred to in the Affidavit of Jim Neilas, sworn remotely in accordance with O.Reg 431/20, this 12<sup>th</sup> day of February, 2021.

A Commissioner, etc.

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Nicholas Jay Sciuk, a Commissioner, etc., Province of Ontario, while Student-at-Law Expires May 3, 2022

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

THE HONOURABLE

MR. JUSTICE HAINEY

INE AL

THURSDAY, THE 21st

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

# DEN 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

- 2 -

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**").

- 3 -

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

 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**

much amount shall exclude disbursements incorred by Reprotentative cause

17. **THIS COURT ORDERS** that the Representative Counsel shall be paid by the Borrower its reasonable fees and disbursements consisting of fees 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 faces and disbursements 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

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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.

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## 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 Hainey 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, 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 will select five Members and two Alternates. In 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.

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SUPERINTENDENT OF FINANCIAL SERVICES <i>et. al.</i> Respondents Court File No. CV-19-616261-00CL	ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST	PROCEEDING COMMENCED AT TORONTO	ORDER	<b>Cassels Brock &amp; Blackwell LLP</b> 2100 Scotia Plaza 40 King Street West Toronto, ON M5H 3C2	John N. Birch LSO #: 38968U Tel: 416.860.5225 Fax: 416.640.3057 jbirch@casselsbrock.com	Stephanie Voudouris LSO #: 65752M Tel: 416.860.6617 Fax: 416.642.7145 svoudouris@casselsbrock.com	Lawyers for the Applicant, Hi-Rise Capital Ltd.
SUPE Respo							
HI-RISE CAPITAL LTD. Applicant							

This is **Exhibit "C"** referred to in the Affidavit of Jim Neilas, sworn remotely in accordance with O.Reg 431/20, this 12<sup>th</sup> day of February, 2021.

A Commissioner, etc.

Nicholas Jay Sciuk, a Commissioner, etc., Province of Ontario, while Student-at-Law Expires May 3, 2022

From:	Jim Neilas
Sent:	Wednesday, May 29, 2019 3:58 PM
То:	'Azeff, Gregory'
Cc:	'Geoff R. Hall (ghall@mccarthy.ca)'
Subject:	Adelaide
Attachments:	20190523093701454.pdf
Follow Up Flag:	Follow up
Flag Status:	Flagged

Greg

Can we have a call on this? It's somewhat urgent. Thanks

Meridian Credit Union St. Catharines Business Banking Centre

75 Corporate Park Drive St. Catharines, Ontario L2S 3W3 tel: 905-937-4222 fax: 905-937-6129 contact centre: 1-866-592-2226 meridiancu.ca

# Meridian

May 16, 2019

Adelaide Street Lofts Inc. 263 Adelaide Street W Suite 503 Toronto, Ontario M5H 1Y2

Attention Mr. Dimitrios Neilas and Mr. Ioannis Neilas:

#### **Re: Forbearance Letter**

We refer to the letter from Meridian Credit Union Limited ("Meridian") to Adelaide Street Lofts Inc. (the "Member") dated April 2, 2018 and accepted by the Member on April 12, 2018 (the "Credit Agreement").

We also refer to the discussions between yourselves and representatives of Meridian with regard to the operation of your accounts, the overall financial performance of the Member's operations and our concern over the same.

Our concerns include, but are not limited to, the following:

Full repayment of the credit facility was due February 28, 2019. Repayment has not transpired and evidence of a purchase and sale agreement satisfactory to Meridian over the property located at 263 Adelaide Street West, Toronto has not been provided.

Property taxes are currently \$65,086 in arrears and are not purported to be brought current until a sale of 263 Adelaide Street West, Toronto transpires.

Should any delay in the proposed pay-out occur, the interest reserve proposal may not be indefinitely sustainable.

We have not been provided with sufficient assurances that the subordinated lenders will be in agreement with the Member's short term proposal.

Accountant prepared financial statements as at December 31, 2018 have not been received.

Interest payments are currently two days in arrears totalling \$80,271.21.

Notwithstanding the foregoing, Meridian is prepared, on a day-to-day basis, to continue to provide credit on the terms and conditions of the Credit Agreement and to forbear on a temporary basis during the Forbearance Period (as defined below) from enforcing the rights which have accrued to it subject to strict compliance with the following terms and conditions:

- 1. Repayment in full is required by no later than July 25, 2019. In the event the Member is unable to repay the debt in full by July 25, 2019, the interest rate is to be increased to Prime + 5% retroactive to May 15, 2019;
- 2. Interest will continue to be payable monthly and fall into arrears if payments are not made;
- 3. Meridian is to be provided with satisfactory confirmation of a sale relative to the 263 Adelaide Street West Toronto property with applicable documentation by no later than end of business day on June 15, 2019;
- 4. December 31, 2018 Accountant prepared financial statements are to be provided by no later than end of business day June 15, 2019;
- 5. Except as amended by this Agreement, the Member shall comply with the terms of its agreements with Meridian and the Security;
- 6. All security now held by Meridian will remain in full force and effect;
- 7. It is agreed and acknowledged by the respective guarantors that their respective guarantee will remain in force regardless of the respective Member's position with Meridian; and
- 8. The Member shall not further encumber its assets or undertakings without the prior written consent of Meridian.

For the purposes of this letter, the "Forbearance Period" means the date commencing on the date on which this letter is accepted as contemplated below and ending upon the earlier of July 25, 2019 or the happening prior thereto of any of the following events:

- i. Failure to adhere to terms and conditions of this letter;
- ii. The occurrence of any additional event of default;
- iii. Failure to deposit any accounts receivable or any other payment received by the Member;
- iv. Failure of the Member to carry on business in the ordinary course; or
- v. The occurrence of any matter or event, which in the opinion of Meridian, acting reasonably, adversely affects the ability of the company or its guarantors to repay the indebtedness to Meridian.

The Member acknowledges that the Meridian has not taken control or taken part in the management, operation or affairs of the Member and will not take part in any management of their affairs including the day-to-day conduct of its business.

The Member shall continue to be responsible for the Meridian's professional costs which shall be debited form the Members current account with Meridian. As invoices are rendered the Member shall be provided with copies of the same.

It is understood that our agreement to forbear at this time does not commit or imply to commit Meridian to continue to finance the operation once the financing proposal has been submitted.

In the event the required documentation as outlined above are not submitted by June 15, 2019 for whatever reason, Meridian reserves the right, in addition to all other rights it may have, to require that you take such steps as are necessary to repay the indebtedness of the Member to Meridian. This includes the right to demand immediate payment and enforce the security that Meridian holds.

The time limits set out in this letter are without prejudice and it is Meridian's right to abridge that period or otherwise act as it sees fit in the event that it learns of a material or adverse change in your financial circumstances, any change in the ownership of the Member, any risk or threat to Meridian's security position.

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An administrative fee of \$82,070 is payable upon receipt of this letter and will be debited from the account of the Member with Meridian. Meridian is prepared to consider deference of the administration fee to the earlier of July 25, 2019 or repayment of the facility.

No delay on the part of Meridian in exercising any remedy or any waiver of the rights given to them hereunder or any Security shall operate as a waiver thereof except if such waiver is specifically given in writing by Meridian, and no forbearance on the part of Meridian with respect to any event of default shall be deemed to be any waiver by Meridian of that event of default or any subsequent or similar event of default.

If there is any inconsistency or conflict between the terms of this letter and the terms of the Credit Agreement or the Security the provisions of this letter shall prevail to the extent of inconsistency, but, the forgoing shall not apply to limit or restrict in any way the right and remedies of Meridian under the Credit Agreement, the Security or this letter other than as specifically contemplated herein. This letter or any amendment thereto may be executed in counterparts, and if so executed all counterparts when taken together shall comprise one and the same instrument, and facsimile and e-mail copies of signatures shall be treated as originals for all purposes.

The parties hereto shall execute and deliver such supplemental documents and take such supplemental action as may be necessary or desirable to give effect to the provisions and purpose of this letter, all at the expense of the Member.

To evidence your acknowledgement of and concurrence to the forgoing, kindly sign and return to us the enclosed copy of this letter by the close of business on May 31, 2019.

Yours truly,

MERIDIAN CREDIT UNION LIMITED

Carson Griffi// Senior Relationship Manager, Commercial Services

Steve,Otten / Regional Vice President, Commercial Services

#### ACKNOWLEDGEMENT:

The undersigned hereby confirms receipt of this letter, acknowledges and accepts the within letter and the terms and conditions contained there-in.

#### Adelaide Street Lofts Inc.

Signature of Authorized Officer (I have the authority to bind the Corporation)	Name/Title	Date
Signature of Authorized Officer (I have the authority to bind the Corporation)	Name/Title	Date
GUARANTORS		
Dimitrios Neilas		
Guarantor Signature	Date	
<u>Ioannis Neilas</u>		
Guarantor Signatúre	Date	

c.c. High Rise Captial Ltd., Subordinated Lender c.c. Community Trust Company, Subordinated Lender This is **Exhibit "D"** referred to in the Affidavit of Jim Neilas, sworn remotely in accordance with O.Reg 431/20, this 12<sup>th</sup> day of February, 2021.

A Commissioner, etc.

Nicholas Jay Sciuk, a Commissioner, etc., Province of Ontario, while Student-at-Law Expires May 3, 2022

From:	Jim Neilas <jim@storeyliving.com></jim@storeyliving.com>
Sent:	Wednesday, June 19, 2019 1:24 PM
To:	gazeff@millerthomson.com
Cc:	Geoff R. Hall
Subject:	Meridian Demand Letter 14June19.pdf
Attachments:	Meridian Demand Letter 14June19.pdf; ATT00001.txt
Follow Up Flag:	Follow up
Flag Status:	Flagged

Greg

FYI. Thanks.

One James St.S., 14th Flr. P.O. Box 926, Depot 1 Hamilton, ON L8N 3P9

TEL (905) 523-1333 FAX (905) 523-5878

www.shlaw.ca www.classactionlaw.ca

VIA REGISTERED MAIL

#### June 14, 2019

LLP

mvalente@SHLAW.ca Direct Dial: (905) 526-4379

263 HOLDINGS INC., formerly known as Neilas Inc. 263 Adelaide Street West Suite 503 Toronto, Ontario M5H 1Y2

Attention: Ioannis Neilas, President

Dear Sirs:

Re: Your Guarantee of the Indebtedness & Liability of Adelaide Street Lofts Inc. (the "Member") to Meridian Credit Union Limited ("MCU") - Our File No. 19L1096

SCARFONE HAWKINS

We are counsel to MCU.

We refer to your unlimited Guarantee of the indebtedness and liability of the Member to MCU (the "Guarantee").

We write to advise you that the Member is in default of its obligations to MCU, and otherwise, MCU has concerns with respect to the overall financial viability of the Member.

In light of these circumstances, MCU regards the Member's account as an unacceptable risk situation, and on behalf of MCU, we have demanded payment of the Member's liabilities. You have our letter of demand, dated today, on the Member.

As at the date of this letter, the indebtedness and liability of the Member to MCU is as follows:

Demand Land Loan

Principal balance outstanding: \$16,414,000.00

Accrued interest to date, calculated at MCU's prime rate as it exists from time to time (currently 3.95% per annum) plus 2.0 percentage points:

67

Lawyers and Trade-mark Agents

Reply to: Michael J. Valente LL.M., (P.C.) ext. 235

\$ 163,218.13
Plus interest at the same rate to the date of payment, the current daily amount being \$2,675.71

Administrative Fee and Professional Fees to Date:

<u>\$ 42,610.00</u>

Plus any and all further administrative and professional fees to the date of payment

TOTAL amount owing as at June 14, 2019:

Pursuant to the terms of the Guarantee, you agreed to pay on demand the indebtedness and liability of the Member. We therefore write on behalf of MCU to require payment of your indebtedness and liability by the opening of business on Tuesday, June 25, 2019, failing which MCU will take whatever steps that are necessary and desirable to ensure full repayment.

Please govern yourself accordingly.

Yours very truly, SCARFONE HAWKINS LLP

Per:

MICHAEL J. VALENTE (P.C.)

MJV/bw cc. Our Client <u>\$16,619,828.13</u>

One James St.S., 14th Fir. P.O. Box 926, Depot 1 Hamilton, ON 18N 3P9

TEL (905) 523-1333 FAX (905) 523-5878

www.shiow.ca www.classactionlaw.ca

#### VIA REGISTERED MAIL

ADELAIDE STREET LOFTS INC. 263 Adelaide Street West Suite 503 Toronto, Ontario M5H 1Y2

Attention: Ioannis Neilas, President

Dear Sirs:

The Indebtedness & Liability of Adelaide Street Lofts Inc. (the "Member") Re: To Meridian Credit Union Limited ("MCU") - Our File No. 19L1096

We are counsel to MCU.

We refer to the Credit Agreement, dated April 2, 2018, between the Member and MCU (the "Credit Agreement").

We write to confirm that MCU has grave concerns with respect to the Member's outstanding loan obligations. These concerns were stipulated in part in MCU's Forbearance Agreement, dated May 16, 2019 (the "Forbearance Agreement") and include the following:

- the Member's failure to repay the outstanding credit facility on or before February 28, 2019 as agreed;
- the Member's failure to provide an agreement for the sale of the property municipally known as 263 Adelaide Street West, Toronto (the "Property") on terms satisfactory to MCU;
- the Member's failure to keep the Property's taxes current with the result that arrears have accrued in the amount of \$65,086.00;
- the Member's failure to keep interest current;
- the Member's failure to deliver accountant prepared financial statements as at December 31, 2018;
- the Member's refusal to accept the terms of the Forbearance Agreement; and

Lawyers and Trade-mark Agents

Reply to: Michael J. Valente LL.M., (P.C.) ext. 235 mvalente@SHLAW.ca Direct Dial: (905) 526-4379

June 14, 2019

LLP



HAWKINS

SCARFONE

**70** Page...2

• the Member's failure to provide any viable plan for the immediate repayment of its debt. In these circumstances, MCU has assessed the Member's account as an unacceptable overall risk situation, and accordingly, MCU hereby demands payment of the Member's indebtedness and liability which as at June 14, 2019 is as follows:

#### Demand Land Loan

Principal balance outstanding:	\$16,414,000.00
Accrued interest to date, calculated at MCU's prime rate as it exists from time to time (currently 3.95% per annum) plus 2.0 percentage points:	\$ 163,218.13
Plus interest at the same rate to the date of payment, the current daily amount being \$2,675.71	
Administrative Fee and Professional Fees to Date:	<u>\$ 42,610.00</u>
Plus any and all further administrative and professional fees to the date of payment	
TOTAL amount owing as at June 14, 2019:	<u>\$16,619,828.13</u>

On behalf of MCU, we therefore write to require payment of your indebtedness and liability by the opening of business on Tuesday, June 25, 2019, failing which MCU will take whatever steps that are necessary and desirable to ensure full repayment.

We also take this opportunity to enclose MCU's Notice of Intention to Enforce Security delivered pursuant to subsection 244(1) of the *Bankruptcy & Insolvency Act*.

Please govern yourself accordingly.

Yours very truly,

SCARFONE HAWKINS LLP

Per

MICHAEL J. VALENTE (P.C.)

MJV/bw Encl.

- cc. 263 Holdings Inc., Guarantor
- cc. Dimitrios Neilas, Guarantor
- cc. Ioannis Neilas, Guarantor
- cc. Our Client

#### NOTICE OF INTENTION TO ENFORCE SECURITY (Subsection 244(1)) OF THE BANKRUPTCY AND INSOLVENCY ACT

#### TO: ADELAIDE STREET LOFTS INC., an insolvent company

TAKE NOTICE THAT:

1. Meridian Credit Union ("MCU"), a secured creditor, intends to enforce its security on the property of the insolvent company described below:

- (i) All assets of Adelaide Street Lofts Inc., including Accounts Receivable, Inventory, Equipment, Motor Vehicles and Real Property.
- 2. The security that is to be enforced is in the form of:
  - \$16,414,000.00 Charge/Mortgage, registered on May 14, 2018 as instrument no. AT4862974 in the Land Titles Office for the Registry Division of Toronto with respect to the lands municipally known as 263 Adelaide Street West, Toronto (the "Lands");
  - (b) Notice of Assignment of Rents General, registered on May 14, 2018 as instrument no. AT4862975 in the Land Titles Office for the Registry Division of Toronto with respect to the Lands;
  - (c) General Security Agreement, registered on April 24, 2018 as no. 20180424 1354 1862 1257 pursuant to the Ontario Personal Property Security Act ("PPSA");
- 3. The total amount of indebtedness secured by the security is as follows:

Demand Land Loan			
Principal balance outstanding:	\$1	6,414,000.00	
Accrued interest to date, calculated at MCU's prime rate as it exists from time to time (currently 3.95% per annum) plus 2.0 percentage points:	\$	163,218.13	
Plus interest at the same rate to the date of payment, the current daily amount being \$2,675.71			
Administrative Fee and Professional Fees to Date	<u>\$</u>	42,610.00	
Plus any and all further administrative and profess fees to the date of payment	ional		
TOTAL amount owing as at June 14, 2019:	<u>\$1</u>	<u>6,619,828.13</u>	

4. The secured creditor will not have the right to enforce the security until after the expiry of the 10-day period following the sending of this notice, unless the insolvent company consents to an earlier enforcement.

Dated at Hamilton, this 14<sup>th</sup> day of June, 2019.

Ţ

MERIDIAN CREDIT UNION LIMITED by its solicitors,

Per:

Michael J. Valente

### SCARFONE HAWKINS LLP

Barristers and Solicitors One James Street South, 14th Floor P.O. Box 926, Station "A" Hamilton, Ontario L8N 3P9 (905) 523-1333 2

This is **Exhibit "E"** referred to in the Affidavit of Jim Neilas, sworn remotely in accordance with O.Reg 431/20, this 12<sup>th</sup> day of February, 2021.

A Commissioner, etc.

.

Nicholas Jay Sciuk, a Commissioner, etc., Province of Ontario, while Student-at-Law Expires May 3, 2022



MILLER THOMSON LLP SCOTIA PLAZA 40 KING STREET WEST, SUITE 5800 P.O. BOX 1011 TORONTO, ON M5H 3S1 CANADA T 416.595.8500F 416.595.8695

MILLERTHOMSON.COM

July 4, 2019

#### **Important Update on Proposed Transaction**

Pursuant to the Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of ustice (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 (the **Project**), 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 <a href="https://www.millerthomson.com/en/hirise/">https://www.millerthomson.com/en/hirise/</a>.

Pursuant to the Order, 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.

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 June 20, 2019 entitled Update on Status of Proceeding (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.

#### **Proposed Transaction and Joint Venture Agreement**

As you may now know, Hi-Rise has received an offer in respect of a proposed transaction related to the Property (the **Transaction**). The due diligence period has now been completed and the Transaction is now firm, subject to Investor and Court approval. As such, the details of the Transaction can now be disclosed.

The main holding company and owner of Adelaide, 263 Holdings Inc. (**Holdco**) and Lanterra Developments Limited (in Trust) or its designee (**Lanterra**) have entered into a oint Venture Agreement (the **JV Agreement**) to complete development of the Property. The JV Agreement is subject to Investor and Court approval.

On June 27, 2019, Representative Counsel and members of the Official Committee were permitted to review the JV Agreement. The key details of the JV Agreement are as follows:

- 1. Lanterra and Holdco intend to proceed with a joint venture in the form of a single purpose limited partnership (**LP**). Lanterra will hold a 75% interest in the LP, and Holdco will hold the remaining 25% interest in the LP.
- 2. On closing of the Transaction, Holdco will transfer its interest in the Property to the LP.
- 3. Following the transfer of the Property to the LP, the LP shall grant a new first mortgage (the **Senior Mortgage**) to a commercial lender in the amount of \$36,575,000. On

closing of the Transaction, the proceeds of the Senior Mortgage will be applied as follows:

- (a) An amount of approximately \$16.7 million will be used to retire the mortgage held by Meridian Credit Union; and
- (b) The balance (net of professional fees, commissions, taxes and certain other disbursements) will be distributed to Investors.
- 4. On closing of the Transaction, Holdco will be granted a vendor takeback mortgage (the **VTB Mortgage**) in the amount of 18,287,500. The VTB Mortgage expires on the earlier of (a) completion of certain development milestones at the Property, or (b) three years following the closing date.
- 5. The VTB Mortgage will rank as a second mortgage on the Property behind the Senior Mortgage, and will be in favour of securing the interests of the Investors (and not the Vendor).
- 6. Interest on the VTB Mortgage will be 5% per annum for the first two years and 8% thereafter, to be paid to Investors quarterly.
- 7. Proceeds of repayment of the VTB Mortgage will be distributed to Investors upon maturity.
- 8. Lanterra s main holding company will guarantee the repayment of the VTB Mortgage.

#### **Next Steps**

Hi-Rise is preparing a disclosure document (the **Disclosure Document**) intended to provide full details of the JV Agreement and its anticipated impact on Investors and their investment in the Project. We expect that the Disclosure Document will be distributed to Investors in the next 10 days. We will be posting a copy of the Disclosure Document on the Website as soon as it is available.

Representative Counsel, in consultation with the Official Committee, is negotiating with Hi-Rise and its affiliates toward a form of settlement agreement (the **Settlement Agreement**) that will set out, among other things, the amounts to be paid to Investors. The Settlement Agreement will be distributed along with the Disclosure Document for consideration by the Investors, and a copy will also be posted on the Website.

Investors will have the opportunity to vote for or against acceptance of the JV Agreement and Settlement Agreement. At this time, we expect this vote to take place in late July 2019. The Disclosure Document will provide full details on this voting process.

Please continue to check the Communications section of the Website regularly for further updates as they become available.

Yours Truly,

Miller Thomson LLP, solely in its capacity as Representative Counsel This is **Exhibit "F"** referred to in the Affidavit of Jim Neilas, sworn remotely in accordance with O.Reg 431/20, this 12<sup>th</sup> day of February, 2021.

A Commissioner, etc.

Nicholas Jay Sciuk, a Commissioner, etc., Province of Ontario, while Student-at-Law Expires May 3, 2022



# Hi-Rise Capital Ltd.

Privileged and Confidential Report of the Financial Advisor August 30, 2019



August 30, 2019

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

Attention: John Birch

#### Hi-Rise Capital Ltd. – Transaction Analysis

Grant Thornton Limited has been engaged as a financial advisor (the "Financial Advisor") to Cassels Brock & Blackwell LLP ("Cassels") with respect to its client, Hi-Rise Capital Ltd. ("Hi-Rise") for the purpose of reviewing and commenting on the term sheet between Lanterra Developments Limited (in Trust) or its designee ("Lanterra" or the "Purchaser") and 263 Holdings Inc. ("Holdings" or "Vendor"). Specifically, the Vendor is contemplating entering into a transaction (the "Transaction") with the Purchaser for the disposition, development, and joint venture related to the property at 263 Adelaide Street West, Toronto, Ontario (the "Property").

Hi-Rise's interest in the Property is through a mortgage with Adelaide Street Lofts Inc. ("Adelaide"). The Financial Advisor understands that Adelaide holds the Property in trust for Holdings.

#### **Engagement Letter**

Our work focused on the areas set out in our engagement letter (the • "Engagement Letter"). Please see **Appendix "A"** for a copy of our • Engagement Letter. While this engagement is subject to privilege, the •

Engagement Letter specifies that this report may be filed with the Court in respect of a *Trustee Act application* brought by the Company in respect of the Borrower and the Property. The Financial Advisor acknowledges that Cassels may choose to share this report with investors of Hi-Rise who have an interest in the Property (the "**Investors**"). That being the case, the terms of our Engagement Letter as it relates to limitation of liability continue to apply, and our responsibility in respect of our work product is to our client, Cassels.

#### Sources of Information

The information contained in this report (the "Report") is based primarily on:

- Hi-Rise's internal accounting ledgers and historical accounting records;
- Hi-Rise's internal interim financial statements;
- Project budgets;
- Project appraisals and valuations;
- Certain of Hi-Rise's marketing materials;
- Discussions with Jim Neilas and Peter Neilas ("Management");
- General research; and,

• Discussions with and documentation from BMO Capital Markets Real Estate Inc. ("**BMO**").

#### Scope of work and limitations

Our review does not constitute an audit in accordance with Generally Accepted Auditing Standards and no verification work has been carried out by us. Consequently, we do not express an opinion on the figures included in this Report.

The responsibility for forecasts and the assumptions on which they are based is solely that of Management. It must be emphasized that forecasts by their nature necessarily depend on subjective judgement and are subject to inherent uncertainties. As a consequence, they are not capable of being audited or substantiated in the same way as financial statements which present the results of completed accounting periods.

The scope of our work has been limited both in terms of the areas of the business and operations which we have reviewed and the extent to which we have reviewed them. There may be matters, other than those noted in this Report, which a wider scope review might uncover.

#### Forms of Report

For your convenience, this Report may be made available to you in hard copy format as well as in electronic format. Multiple copies and versions of this Report may, therefore, exist; in the case of any discrepancy, the final signed hard copy should be regarded as definitive.

#### Confidentiality

This Report should not be used, reproduced or circulated for any other purpose except as permitted herein, in whole or in part, without our prior written consent, such consent will only be given after full consideration of the circumstances.

#### General

This Report is issued on the understanding that Management has drawn our attention to all matters, financial or otherwise, of which they are aware and which may have an impact on our Report up to the date of signature of this Report. Events and circumstances occurring after the date of our Report will render our Report out of date and, accordingly, we will not accept a duty of care nor assume a responsibility for decisions and actions which are based upon an out of date Report. Additionally, we have no responsibility to update this Report for events and circumstances occurring after this date.

#### Contacts

If there are any matters upon which you require clarification or further information please contact Dan Wootton or Rob Stelzer.

Yours truly,

### GRANT THORNTON LIMITED Per:

Teastly)

Dan Wootton, CIRP, LIT

Rob Stelzer, CPA, CA, CIRP, LIT

#### **Contents**

Overview	8
Summary of the Property	10
Sale Process	13
Proposed Transaction	18
Alternatives	22
Conclusion	26

Unless otherwise noted, all dollar amounts are in Canadian Dollars.

Note: Some of the tables contained in this Report may appear to be off by \$1 or 1%. This is due to rounding.

## Glossary

Adelaide	Adelaide Street Lofts Inc.	Investors	SMI Investors in Hi-Rise
Appraisals	CW Appraisal & Colliers Appraisal	JV	Joint Venture
Banks	Schedule 1 Banks in Canada	Lanterra or Purchaser	Lanterra Developments Limited (in Trust)
BMO	BMO Capital Markets Real Estate Inc.	Lanterra LOI	JV structure bid submitted by Lanterra on
Breakeven	Estimated sale price in receivership needed		November 13, 2018
	to obtain comparable cash proceeds to the	Ledcor Report	Construction cost report by the Ledcor
	Transaction		Group dated February 27, 2018
Breakeven with Priority	Breakeven including Priority	Low	Low recovery liquidation scenario
Breakeven without Priority	Breakeven excluding Priority	Litton or Conservatory Group	Litton Developments Inc., backed by the
Hi-Rise	Hi-Rise Capital Ltd.	<i>v</i> 1	Conservatory Group
Cassels	Cassels Brock & Blackwell LLP	LOI	Letter of Intent
CIM	Confidential Information Memorandum	LP	Limited Partnership between Lanterra and
Colliers Appraisal	Colliers International appraisal of the		Holdings
	Project dated July 16, 2018	LPA	Loan Participation Agreement between
Community Tust	Community Trust Company		Investors and Hi-Rise
Conservatory LOI	JV structure bid of the Conservatory Group	Management	Jim Neilas and Peter Neilas
-	dated October 10, 2018	Meridian	Meridian Credit Union
CW Appraisal	Cushman & Wakefield appraisal of the	Meridian Demand Letter	Demand letter of Meridian dated June 14,
	Project dated February 27, 2018		2019
EDR	Electronic Data Room	Permitted Alterations	The approved alternations to the Heritage
EllisDon Report	Construction cost report by EllisDon dated		Wall pursuant to the HEA
	June 19, 2018	Priority	Amounts asserted by Management to be
Financial Advisor	Grant Thornton Limited		payable in priority to Investors in a
FSRA	Financial Services Regulatory Authority		receivership
FSCO	Financial Services Commission of Ontario	Proforma	Proforma financial forecast as at May 8,
HEA	Heritage Easement Agreement		2019 prepared by Lanterra
Heritage Wall	The north façade of the Property, a	Project	47-storey condominium to be constructed
	designated heritage site per the Ontario		on the Property
	Heritage Act	Property	263 Adelaide Street West, Toronto, ON
High	High recovery liquidation scenario	Sale Process	The process to sell the Property which was
Holdings or Vendor	263 Holdings Inc.		conducted by BMO
Institutional Investor	BRE Fund LP, a subsidiary of BMO		-

Senior Mortgage	New first mortgage to be granted by LP for \$36,575,000
SMI	Syndicated Mortgage Investments
2017 Sale Process	The first phase of the Sale Process, occurring in 2017
2018 Sale Process	The second phase of the Sale Process, occurring in 2018
Term Sheet	Term Sheet between Lanterra and Adelaide dated April 10, 2019
Transaction	Offer by the Purchaser to buy the Property as described in this report
Tricon	Tricon Lifestyle Rental Investment LP
Tricon APS	Tricon Agreement of Purchase and Sale dated July 19, 2019
Tricon LOI	JV structure bid submitted by Tricon on July 9, 2019
Tridel LOI	JV structure bid submitted by the Tridel Group on November 26, 2018
VTB Mortgage	Vendor takeback mortgage granted to Holdings by the LP
Widmer Property	The property located at 40 Widmer Street, Toronto, ON

### Appendices

Appendix A	- Engagement Letter
FF	

Appendix B – Meridian Demand Letter

Appendix C – Adelaide PPSA and Land Titles Search

Appendix D – BMO Confidential Information Memorandum

Appendix E – EllisDon Report

Appendix F – Ledcor Report

Appendix G – BMO Bid Summary (2017 Sale Process)

Appendix H – BMO Bid Summary (2018 Sale Process)

Appendix I – BMO Letter (2018 Sale Process)

 $Appendix \ J-\mathrm{CW} \ \mathrm{Appraisal}$ 

Appendix K – Colliers Appraisal

Appendix L – Tricon LOI

Appendix M - Investor Recovery Analysis

Appendix N – Proforma

Appendix O – Estimate of Recovery in Receivership

### 1 Overview

#### 1.1 Introduction

Hi-Rise is a registered mortgage broker and administrator that raised investor money for the purpose of making syndicated mortgage investments ("**SMI**") in the real estate development industry. Investors provided capital to Hi-Rise which advanced such funds to Adelaide for the purpose of planning and constructing a 47-storey condominium project on the Property (the "**Project**"). Hi-Rise is the second mortgagee of Adelaide, behind Meridian Credit Union Limited ("**Meridian**"). These relationships are shown in the chart below:



As is typical in the SMI industry, once an investor participates in an SMI, the best opportunity to recover their principal and realize a return is when the underlying project is completed.

#### 1.2 Syndicated Mortgage Challenges

Over the past few years, the SMI industry has been under significant scrutiny which has resulted in challenges in obtaining construction financing. Generally, in the past two to three years, Schedule 1 Banks (the "**Banks**") have been reluctant to provide construction financing for transactions where subordinate financing originated from SMI investors, as is evidenced by the lack of SMI transactions financed by Banks during this time period. Without the ability to obtain construction financing from Banks, projects, such as Adelaide, are unable to borrow on a cost effective basis and proceed with their development plans.

Since early 2016, the Financial Services Commission of Ontario ("**FSCO**") requested the production of certain information from Hi-Rise. We understand that in the fall of 2017 FSCO began monitoring Hi-Rise's activity. Hi-Rise continues to cooperate with FSCO, and its successor regulator, the Financial Services Regulatory Authority ("**FSRA**").

Since July of 2017, Hi-Rise has begun to implement a voluntary wind up of its operations and mortgage positions. Accounting records show that Holdings advanced Adelaide \$3.0 million (\$952,000 of which relates to funds injected after September 2017 when Hi-Rise was no longer able to raise SMI funding). Management notes that without these funds, which were used to pay zoning lawyers, consultants and fund operations through the Sale Process (defined

below), a quick receiver's sale (initiated by Meridian or Hi-Rise) of Adelaide may have occurred, which likely would have been financially unfavourable for Investors.

In the Financial Advisor's view, any realistic exit plan for the Property likely involves Investors being "bought out" or the Property being sold so that the Project would no longer be financed by SMI's and would, therefore, be capable of attracting construction financing from Banks. The subject Transaction proposes to buy Investors out primarily through a cash payment and a VTB Mortgage (defined later in this Report).

#### 1.3 Investor Structure

The SMI funds which have been invested to date total \$52.2 million. Records of Hi-Rise show that Investors have received interest payments of \$10.5 million meaning that the average Investor would have received the equivalent of approximately 20% of principal invested back through interest payments.

We understand from counsel to Hi-Rise that the majority of Investors invested directly into Hi-Rise (the "**Non-Registered Investors**"). However, Investors who invested via Registered Retirement Savings Plans or Tax Free Savings Accounts (the "**Registered Investors**"), did not invest directly into Hi-Rise but through Community Trust Company ("**Community Trust**"). Records from Hi-Rise show that Registered Investors represent approximately 33% of the funds from Investors, being \$17.4 million of the \$52.2 million of principal invested.

We understand that any funds recovered will go first to pay Registered Investors their principal plus interest, leaving the balance payable, if any, to the Non-Registered Investors.

#### 1.4 Investor Vote

We understand that Hi-Rise will be convening a meeting of the Investors. At the meeting, Investors will have the opportunity to either vote 'yes' or 'no' to the Transaction. Investors must come to their own conclusion regarding the Transaction, but this Report is intended to provide helpful background and analysis.

### 2 Summary of the Property

2.1 Introduction

The Property is a 0.35 acre parcel of land and building located just east of John Street on the south side of Adelaide Street West in Toronto, Ontario. Located in Toronto's Entertainment District, the Property presents an investment opportunity for real estate developers.

The Property currently includes a 5-storey commercial building built in the early 1930's. Based on our review of the rent roll as at July of 2019, the building is 82% occupied with monthly rent of approximately \$73,000.

We understand the following parties have registrations on title against the Property:

- Meridian, which mortgage is in default, is owed \$16,619,828 as of June 14, 2018, and have issued a demand letter for the repayment of same (the "Meridian Demand Letter" is attached hereto as Appendix "B");
- Community Trust, where Investors are owed \$21,663,052 as of June 30, 2019 (of which \$17,419,500 represents principal); and,
- Hi-Rise, where Investors are owed \$45,024,972 as of June 30, 2019 (of which \$34,823,000 represents principal).

A copy of the PPSA search and land titles search is attached hereto as **Appendix "C"**.

#### 2.2 Project

The proposed plan of the Project is to erect a 47-storey condominium project consisting of 397 units and 349,164 square feet of gross floor area on the Property.

We understand that zoning approvals were provided by the City of Toronto as of July 18, 2018 (zoning approvals are further discussed later in this Report).

#### 2.3 Heritage Wall

The north-facade of the Property has been designated as a heritage site (the "Heritage Wall") pursuant to Part IV of the Ontario Heritage Act. As a result of this classification, the Heritage Wall cannot be removed, demolished or altered in any way without permission from the City of Toronto. However, we understand that pursuant to a Heritage Easement Agreement ("HEA") dated October 16, 2017, and related documents such as the Heritage Impact Assessment and Conservation Plan, the Heritage Wall can be altered in certain ways to allow for future development on the Property (the "Permitted Alterations").

#### 2.4 Construction Challenges

BMO, whose role is explained in the following section, prepared a Confidential Information Memorandum dated June 19, 2018 (the "**CIM**" which is attached hereto as **Appendix "D"**), which summarizes the Property. The following image identifies the Property.

The Ledcor Group, a Canadian construction firm, provided a report dated February 27, 2018 (the "Ledcor Report") to examine the construction costs and considerations of the Project. EllisDon, a leading Canadian builder,

provided a similar report dated June 19, 2018 (the "EllisDon Report") to examine the construction costs of the Project. The Ledcor Report and EllisDon Report are attached hereto as Appendix "E" and Appendix "F", respectively.



Based on our review of the Ledcor Report and the EllisDon Report, as well as information derived from the Lanterra LOI and the Conservatory LOI (both

defined later in this Report) we note the following challenges and obstacles which may impact the feasibility, profitability and timeline of the Project:

- As seen in the picture above, site access is restricted by a proposed 48storey residential development (west), from the back of the building (south) and inaccessible from the east side (due to an existing building). Furthermore, the Heritage Wall is located on the north side of the Property along Adelaide Street West. As a result of these restrictions, demolition is more difficult, time consuming and costly;
- The retention of the Heritage Wall will result in cost premiums and timeline delays, particularly relating to relocation of above grade utilities and sidewalk encroachment on Adelaide Street West;
- Construction along Adelaide Street West is a heavily trafficked (both vehicular and pedestrian/cyclists) one-way street which is also across from a local fire station (Fire Station 332);
- Eastbound cycle lanes and hydro lines on the South side of Adelaide Street West will limit the access of drilling equipment, thereby requiring smaller equipment which may result in increased cost and time; and,
- Staging areas throughout the site may be limited which may also result in inefficiencies and delays in construction.

#### 2.5 Construction Approach

Based on a review of the Ledcor Report and the EllisDon Report and discussions with Management, we understand that the Permitted Alterations, as they are presently drafted, may not allow for sufficient access to build the Project in a cost effective manner.

Management has received feedback from Lanterra that absent additional permissions to create a second access point to the Property through the Heritage Wall, the costs of the Project would significantly increase. Management believes this increase in cost would likely make the Project less viable. The Financial Advisor has been unable to secure an estimate at this time as to how much the cost would increase if the site could only be built based on the current Permitted Alterations. If the Permitted Alterations were amended to allow for a second opening in the Heritage Wall, construction costs would be reduced. However, an amended HEA would need to be submitted to the City of Toronto for review and approval by city councilors. There is a risk to any purchaser that municipal approval of the requested amendments would not be obtained.

### 3 Sale Process

#### 3.1 2017 Sale Process

BMO, acting as agent to market and sell the Property, appears to be experienced and qualified in this space. BMO's team includes professionals with significant experience in due diligence and underwriting, debt and equity financing and real estate brokering. This has allowed BMO to participate in several transactions similar to the sale of the Property, which includes the sale of 1 Front Street (\$275 million), 40 Widmer Street (the "**Widmer Property**") (\$75 million) and the FedEx Lakeshore Site (\$166 million), among others in Toronto. The Financial Advisor is of the view that BMO is a qualified agent capable of executing a robust sale process.

Adelaide engaged BMO to market the Property for sale (the "Sale Process"). The Sale Process initially started in June of 2017 (the "2017 Sale Process") The Widmer Property, another property Hi-Rise invested in, was also marketed at that time. Through discussions and correspondence with BMO, we understand that initial marketing under the Sale Process resulted in the receipt of 47 confidentiality agreements and <u>ten</u> first round bids – there were <u>three</u> offers for the Widmer Property alone and <u>zero</u> offers for Adelaide alone. Although the bids themselves are confidential, and thus not disclosed to the Financial Advisor, we understand that the highest bid for Adelaide in the first round of bidding was \$80,000,000. BMO advised that even Management was not made aware of the names of the ten bidders until after round two of the marketing process was complete. Attached as **Appendix "G"** is a summary of the bids received, as prepared by BMO.

The <u>three</u> bidders were then asked to make second round submissions. Only <u>two</u> of the bidders submitted bids in the second round, with Concord Adex submitting the most attractive bid. The bid prices were not higher in the second round of bidding. There existed significant conditions regarding construction challenges, including constructing within limited alterations allowed under the Permitted Alterations. Ultimately, negotiations with Concord Adex were unable proceed due to the lack of certainty related to the conditions in their bid, leaving no sale agreement for the Property. It should be noted that Concord Adex was the successful purchaser on the Widmer Property, which transaction ultimately closed on December 20, 2017.

#### 3.2 2018 Sale Process

Following advances in gaining further zoning approvals and finalizing the HEA, BMO requested the EllisDon Report be commissioned in order to provide prospective purchasers with a better understanding of the Property and to shorten due diligence periods and conditions. BMO relaunched the Sale Process on August 8, 2018 by contacting over 2,600 of its real estate investors via an email launch (the "2018 Sale Process").

Pursuant to the CIM, we understand that the deadline to submit a bid was set as September 18, 2018 and that <u>two</u> out of the <u>four</u> bidders were then allowed an additional week to enhance their bids. The second round submission date was October 5, 2018.

We understand from BMO that bidders were not provided with a minimum price or a minimum closing period, nor were any offers discouraged – it was acknowledged that the Project was complex and significant due diligence would be required. All bidders were asked to submit cash offers.

#### 3.3 Data Room and CIM

The CIM was made available to interested parties via the Electronic Data Room (the "**EDR**") upon execution of a confidentiality agreement. We have been provided access to the EDR which includes, among other things, the following:

- Marketing materials, such as the CIM;
- Property Surveys;
- The EllisDon Report and the Ledcor Report
- Documents pertaining to easements and rights-of-way, including the executed HEA;
- Architectural plans, renderings and drawings;
- Historical property tax bills, current lease agreements and rent roll;
- Planning documents including zoning by-law amendments, Ontario Municipal Board decisions, City of Toronto planning amendments and an unexecuted Section 37 Agreement (under which the developer agrees to contribute to the communities in which they are building projects); and,
- Third party reports including preconstruction cost consultations, environmental, heritage and waste generation reports and rental housing replacement reports.

We note that critical information which impacts construction costs and timelines specific to the Project, such as heritage reports, easement agreements and zoning-related correspondence was included in the EDR. Furthermore, information pertaining to the current status of the Property, including the rent roll and property taxes, was also included, allowing parties to assess the current as-is value as well as the known challenges related to construction.

#### 3.4 2018 Sale Process Results

BMO advised that <u>37</u> interested parties were provided access to the EDR and four bids were received on September 18, 2018, with the highest bid being \$75 million. Attached as **Appendix "H"** is a summary of the bids received, as prepared by BMO. However, when asked to submit on the Vendor's form of agreement of purchase and sale, <u>zero</u> bids were received in the second round (bids were due on October 5, 2018). Although BMO could not provide us with copies of the first round bids in the 2018 Sale Process, we note that the highest bid was lower than the highest bid in the 2017 Sale Process (when bidders had been less educated about the construction challenges with the Property). No parties submitted a firm cash offer to purchase the Property outright, despite the CIM requesting same. BMO provided a letter summarizing the results of the Sale Process, which is attached as **Appendix "I"**.

We understand from BMO and Management that prospective purchasers were unable to commit to an acceptable cash offer without extensive due diligence, due to the uncertainties related to obtaining the required amendments to the Permitted Alterations and construction risk associated with the limited accessibility of the Property. Since no bids were submitted on the Vendor's form of letter of intent ("**LOI**"), parties were asked to make a submission based on a joint venture ("**JV**") structure. BMO advises that it suggested a JV structure to lower the initial capital required for the Project (until zoning and construction challenges were resolved) and to encourage these bidders to submit an offer at a higher purchase price.

Under the JV structure, the two interested parties subsequently provided a written LOI. BMO then advised Management that another reputable developer with in-house construction capabilities (the Tridel Group) was

interested in submitting a bid on a JV structure and was allowed to do so (the "**Tridel LOI**").

The Tridel LOI, was based on an offering price of \$72,500,000 for the Property. Under Tridel's LOI, there would be no funds received until late in 2020 with the balance being received six-and-a-half years after signing the LOI. The Tridel offer was considered too conditional given the construction-related conditions with payment streams too long into the future to be competitive.

Litton Developments Inc. ("Litton"), backed by the Conservatory Group, submitted an LOI on October 10, 2018 and a further refined update letter dated November 2, 2018 (collectively the "Conservatory LOI"). We obtained a copy of the Conservatory LOI and note the following:

- It identified a number of risks and concerns with construction of the Project, primarily in regard to the Heritage Wall, but also access issues with surrounding properties and rights-of-way in nearby streets;
- It did not include a formal conditional offer, and rather indicated that it would offer "in the vicinity of \$80 million" if all of the issues that it identified were resolved; and,
- It contemplated a partnership based on the selling price of the units rather than construction costs.

We understand that the Conservatory LOI was predicated on a 75% / 25% sharing consistent with the Lanterra LOI described below. We have been advised that the Conservatory LOI was considered to have too many conditions. Both the Tridel LOI and Conservatory LOI did not provide a closing date.

Lanterra Developments Inc. submitted an LOI on November 13, 2018. The LOI was subsequently negotiated and executed on February 13, 2019 (the "Lanterra LOI"). The Lanterra LOI proposed a 75% cash contribution based upon a purchase price of \$73.15 million.

BMO was of the view that the Lanterra LOI was superior to both the Conservatory LOI and Tridel LOI, as it provided much clearer conditions, greater cash up front and BMO calculated that it would generate the highest overall cash of the LOIs received. The Lanterra LOI also provided a closing date, making the timing of cash inflows more clear.

Negotiations related to the Lanterra LOI culminated in a Term Sheet dated April 10, 2019 (the "**Term Sheet**"). Under the Term Sheet, Lanterra initially would have a 75% stake in the Project. The particulars of the Term Sheet are discussed in the following section.

The Financial Advisor notes that the Transaction has the private equity group of the Bank of Montreal participating (at its option) as an equity investor. The Financial Advisor understands from BMO that the idea of the Bank of Montreal participating was proposed by Management to act as a safeguard to protect the Vendor's interest in the deal and was not contemplated until after no cash offers materialized in the second part of the 2018 Sale Process. The Financial Advisor also understands that the Bank of Montreal's private equity group was encouraged by the Project's potential returns; the Bank of Montreal was comforted by the reputable nature of the builder (Lanterra) and that BMO had undertaken due diligence on Jim Neilas as part of its client onboarding procedure prior to commencing the Sale Process. Under the Term Sheet, the Bank of Montreal's private equity group would only participate after construction financing was obtained.

#### 3.5 Comparison of Offers to Appraisals

Two appraisals were prepared for the Property and are as follows:

- Cushman & Wakefield Appraisal dated February 27, 2018 (the "CW Appraisal") values the Project at \$81.8 million (see Appendix "J"); and
- 2. Colliers International Appraisal dated July 16, 2018 (the "Colliers Appraisal") values the Project at \$82.1 million (see Appendix "K").

The Sale Process described above and the resulting Transaction yield a lower recovery than the CW Appraisal and the Colliers Appraisal (together, the "**Appraisals**").

The Appraisals consider site-specific considerations such as the additional cost of construction and delay caused by retention of the Heritage Wall and challenges related to access to the site. **The Appraisals do not ascribe a risk discount for the potential inability of a purchaser to negotiate acceptable alterations to the Permitted Alterations. A purchaser is likely to pay less than the appraised value so long as that risk exists.** It should be noted that the Colliers Appraisal values the Property at \$12.5 million, instead of \$82.1 million, on the alternate basis that the five-storey building were to remain. Accordingly, the development potential is key to the assessment of value of the Property.

#### 3.6 Best Indication of Value

Both the 2017 Sale Process and the 2018 Sale Process were administered by a qualified professional advisor (BMO), involved a broad canvassing of the market (over 2,600 parties were contacted with 47 and 37 parties, respectively,

gaining access to the EDR in the 2017 Sale Process and 2018 Sale Process) and included professionally-prepared marketing materials. While the Appraisals provide a helpful benchmark for the value of the site, the Financial Advisor is of the view that the Sale Process is a better indication of market value.

#### 3.7 Tricon LOI

On July 9, 2019, well after the 2018 Sale Process had concluded, Tricon Lifestyle Rentals Investment LP ("**Tricon**") provided a letter of intent (the "**Tricon LOI**") to purchase the Property. Attached as **Appendix "L"** is a copy of the Tricon LOI. Key terms are as follows:

- Purchase price of \$72 million;
- After execution of a purchase agreement, Tricon would have a 45 day inspection period for its lawyers, engineers, auditors, architects, etc. to review the Property;
- If Tricon did not waive all conditions then the purchase agreement would be null and void;
- Following the execution of the Tricon LOI, Holdings may not negotiate with any other party (i.e. the Tricon offer would be exclusive); and,
- The Tricon LOI is non-binding other than the obligation not to negotiate with other parties and confidentiality obligations.

The Financial Advisor notes that the Tricon LOI does purport to offer more for Investors. The estimated returns from the Tricon LOI are discussed in section 5 of this Report. However, there are major areas of concern with respect to the Tricon LOI. The Tricon LOI is not a firm offer, but rather an agreement for Holdings to negotiate exclusively with Tricon; there is nothing binding about the LOI should Tricon, at its sole discretion, decide to terminate the LOI.

We further understand that Tricon followed up with an agreement of purchase and sale on July 19, 2019 (the "**Tricon APS**"). The Tricon APS is essentially a formal agreement offered on substantially the same terms as the Tricon LOI including the \$72 million purchase price, 45 day due diligence period and ability of Tricon to terminate the agreement while it is conducting its due diligence. There is a deposit included in the Tricon APS but it is to be returned to Tricon except in the event of default by the Purchaser (i.e. Tricon).

Tricon had the opportunity to participate in the Sale Process. We understand, based on reviewing e-mails between Management and Tricon, in November of 2016, prior to the 2017 Sale Process and the 2018 Sale Process, Tricon offered \$132 per square foot (equating to approximately \$46 million for the Property). We also understand from BMO that Tricon was included in the 2017 Sale Process and ultimately submitted a bid for \$56 million (\$160 per square foot), which was highly conditional and not considered high enough to participate in the second round of bidding. BMO advised that in the 2018 Sale Process, Tricon didn't sign a Confidentiality Agreement and accordingly, were not invited into the EDR.

It is unclear why Tricon came forward with the Tricon APS at a much higher purchase price than what they had submitted in the 2017 Sale Process and after having decided not to participate in the 2018 Sale Process. We understand from BMO that it asked Tricon to submit a revised APS without the due diligence conditions and that Tricon confirmed that it did not intend to do so. The Lanterra Term Sheet is ready to be presented for Investor approval and Court approval. If Holdings had elected not to proceed with the Term Sheet with Lanterra and instead moved forward with the Tricon APS, it could find itself in a difficult position should Tricon decide not to move forward at the purchase price included in the Tricon APS. We understand from BMO that in early August of 2019, Tricon withdrew the Tricon APS and that Tricon is no longer pursuing a transaction for the Property.

### 4 Proposed Transaction

#### 4.1 Introduction

The Financial Advisor reviewed the Term Sheet which was provided to BMO. We understand that the Investors' representative counsel and the Investor committee has also reviewed the Term Sheet. Below is a summary of the more significant terms:

- Lanterra and Holdings would create a Limited Partnership ("LP") joint venture with Lanterra holding a 75% interest and Holdings holding a 25% interest.
- BRE Fund LP (the "Institutional Investor" i.e. the Bank of Montreal's private equity group) will have the option to purchase 15% of the total from Lanterra's 75% interest.
- On closing of the Transaction, Holdings will transfer its interest in the Property to the LP at an agreed value of \$73,150,000.
- The LP will grant a new first mortgage (the "Senior Mortgage") of \$36,575,000 to a commercial lender (we understand the intention is that the Bank of Montreal would provide the Senior Mortgage) with the proceeds being advanced as follows:
  - \$17.0 million to retire the first mortgage held by Meridian; and,
  - The balance (net of professional fees, commissions, taxes and certain other disbursements) to be distributed to Investors (see the following section on estimated recoveries to Investors) in exchange for a full and final release of the Hi-Rise mortgage.

- On closing, Holdings will be granted a vendor takeback mortgage (the "**VTB Mortgage**") of approximately \$18.3 million. The VTB Mortgage matures on the earlier of (a) completion of certain development milestones at the Property, or (b) three years following the closing date.
- The VTB Mortgage will rank second after the Senior Mortgage and will secure the interests of Investors only.
- Interest of the VTB Mortgage will be 5% per annum for the first two years and 8% for the third year.
- Lanterra Developments Inc. (who we have been advised is Lanterra's parent company) will guarantee the repayment of the VTB Mortgage.
- There are no terms which require Holdings, or Investors, to participate in a capital call or to contribute additional equity into the LP.
- Lanterra may, at its option, require Holdings to guarantee 25% of all obligations in respect of any construction loan or project debt (we have been advised by McCarthy Tétrault LLP, counsel to Holdings, that the LPA between Lanterra and Holdings makes this 25% guarantee a requirement of Holdings). We understand that this guarantee may result in a \$25,000,000 exposure to Holdings.

#### 4.2 Estimated Investor Recovery

In projecting recoveries, we understand that two changes have been made to the Transaction from what was described in the Term Sheet:

a) VTB Mortgage - The Term Sheet the Financial Advisor reviewed had the VTB Mortgage interest paid at maturity, but we understand from Management that the intention is now is for the first two years of interest to be paid into an interest reserve funded on closing. Accordingly, we have modelled the payment streams based on this understanding.  b) Holdings guarantee – We understand that Holdings will be providing guarantee of \$8 million to be paid following construction and that this guarantee would ultimately be paid to Investors.

#### The Transaction results in three payment streams to Investors:

- After Closing Proceeds from the Senior Mortgage less prior ranking amounts plus an upfront interest payment on the VTB Mortgage (estimated to be \$17.5M)
- After Year 2 Payment on the VTB Mortgage (estimated to be \$18.3M)\*
- 3) Holdings Guarantee Upon completion of development, which may be 5 years (assuming 2 years for zoning and 3 years for construction), payment would take place pursuant to the guarantee (\$8 million).

\* If the VTB Mortgage is not paid at end of year 2, it can be extended for 1 year at an 8% interest rate (representing a further \$1.5 million of interest income for Investors).

The above noted payment streams total approximately \$43.8 million; this results in an estimated recovery of \$22.2 million (100% of principal and interest) for Registered Investors leaving \$21.6 million (62% of principal or 47% of principal and interest) for Non-Registered Investors.

The following table illustrates the estimated payment to Investors (excluding any interest payments made to Investors already, which total \$10.5 million). For these calculations, we have assumed a closing date of October 16, 2019 (the intended closing date) and have not accounted for any accrued interest after that date. See **Appendix "M"** for the full analysis and related notes to the calculations.

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

(CDN\$)

(CDN\$)	Notes	Cost Detail	Proceeds after Closing	Proceeds from VTB Maturity	Holdings Guarantee
Senior Mortgage	1)		36,575,000		
Meridian Balance Owing Meridian Accrued Interest Total Bank Loan	2)	16,619,828 332,000	(16,951,828)		
BMO Commission City of Toronto (outstanding taxes) Total Paid via Direction from Legal C	3) 4) ounsel	1,614,588 280,437	(1,895,025)		
Cassels Brock & Blackwell LLP Legal Cost Reimbursement of Hi-Rise	<i>5)</i> e	160,000	(160,000)		
Stikeman Elliott LLP McCarthy Tetrault LLP Miller Thomson LLP Due to Consultants Holdings own costs	6) 7) 8) 9) 10)	250,000 300,000 350,000 4,158 1,000,000			
Cost Reimbursement paid to Holding		1,000,000	(1,904,158)		
VTB Face Value VTB Upfront Interest Payment VTB Interest for year 3	11) 12) 13)		1,850,000	18,270,000 -	
Holdings Guarantee					8,000,000
Total Proceeds for Investors			17,513,989	18,270,000	8,000,000
Proceeds for Registered Investors Proceeds for Non-Registered Investo Total Proceeds for Investors	14) rs		22,171,120 21,612,869 <b>43,783,989</b>		
Recovery Percentage		Principa	+ Interest	Principa	al Only
Recovery for Registered Investors Recovery for Non-Registered Investor	'S	100% 47%		127% 62%	

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#### 4.3 Qualitative Factors

The Transaction provides \$17.5 million after closing and a VTB Mortgage of \$18.3 million guaranteed by Lanterra Developments Inc. We have not reviewed the financial statements of Lanterra Developments Inc., but understand that it is one of the larger developers in Toronto, has developed Maple Leaf Square, Ice I & II, One Bedford, Waterpark City and Murano/Burano and has over 3,000 units under construction. We note that the collectability of the VTB Mortgage is not tied to the success of the Project, nor could it be subordinated to any construction financing (as such risk currently exists under the terms of the Hi-Rise mortgage on the Property).

The Financial Advisor views the Holdings guarantee as having a greater collection risk than the cash or the VTB Mortgage from Lanterra Developments Inc. If the final Project was not successful, then Holdings could find itself unable to pay an \$8 million guarantee.

We understand that as part of the closing, a settlement agreement would be competed as between Hi-Rise and Investors. We understand that the purpose of a settlement agreement would be to preclude Investors from seeking further recovery from Hi-Rise. However, we have not seen the proposed terms.

#### 4.4 Vendor's Interest

As noted in the table in section 4.2, Holdings is requesting approximately \$1.9 million for cost reimbursement. In assessing the reasonableness of this request, the Financial Advisor requested details to support the request for same. The Financial Advisor has been made aware of the following costs incurred by Holdings on behalf of Adelaide:

- a) \$1 million payable to Holdings as partial reimbursement of:
  - I. Advances from Holdings of \$3.0 million (\$952,000 relates to funds injected after September 2017 when Hi-Rise was no longer able to raise SMI funding) – Management notes that without these funds, which were used to pay interest on the first mortgage, property taxes, insurance, payments to architects, surveyors, engineers, etc., a quick receiver's sale of Adelaide may have occurred, which likely would have been financially unfavourable for Investors; and,
  - II. Uncollected developer fees of \$2.5 million from Adelaide per accounting system records.
- b) Zoning and property related legal fees of Stikeman Elliott LLP and McCarthy Tetrault LLP;
- c) Legal fees of Cassels;
- d) Investor representative counsel fees; and,
- e) Property taxes.

As noted in section 4.1, under the Transaction, Holdings is provided with a 25% interest in the Project. This 25% interest would be for Holdings and not the Investors. A proforma financial forecast was provided by Lanterra on May 8, 2019 (the "**Proforma**"). The Proforma estimates that potential profit on the Project to be \$66 million (inclusive of hard and soft construction costs, land costs, marketing costs and financing charges). Attached as **Appendix "N"** is the Proforma. Based on the Proforma, Holdings' 25% stake could result in \$16.5 million of profits after construction is completed.

The following suggests that the Proforma may be reasonable and not overly conservative:

- The Proforma presumes a revenue per square foot of \$1,275; this compares with the following comments from the CIM.
  - "Currently, there are eight active projects in the Entertainment District, an area bound by University Avenue to the east, Spadina Avenue to the west, Queen Street West to the north and Front Street West to the south totaling 3,926 units which are 91% sold featuring a weighted average price for remaining units of \$1,163 per sq. ft."
  - "Currently there are eight active condominium developments in the immediate vicinity ... with high end units achieving over \$1,400 per sq. ft."
- The Proforma forecasts hard costs to be \$133 million, which is lower than estimated by the EllisDon Report, where hard construction costs, exclusive of development charges and design fees, were estimated to be \$140.5 million.

The Proforma suggests that a 25% equity stake could be worth \$16.5 million. This value could be higher if higher profitability was achieved and lower if lower profitability were achieved. It should be noted that equity participation involves risk since equity holders, such as Holdings, will be expected to provide a guarantee to the construction lender. Management expects that the guarantee would be \$100 million, meaning a \$25 million exposure for a 25% equity interest.

Lastly, as part of managing the Project, Adelaide would be paid a management fee of 0.25% of net revenues, which the Proforma calculates to be \$912,500.

In summary, the total estimated payments to Holdings would be as follows:

Cost Reimbursement	\$1.9 million
Management Fee	\$0.9 million
Profit Forecasted in Lanterra Proforma	<u>\$16.5 million</u>
Total Forecasted	\$19.3 million

It should be noted that the profit forecasted would not be payable until completion of the Project, which may take five years. Variances in construction and other costs will affect the profit available to Lanterra, Holdings and the Institutional Investor.

### 5 Alternatives

#### 5.1 Introduction

We understand that Investors will be consulted and may either vote 'yes' or 'no' to the Transaction. This section explores the impact of a 'no' vote and thoughts on what alternative recovery may result.

#### 5.2 Syndicated Mortgagee Rights

As indicated earlier in this Report, Hi-Rise and Community Trust hold a second mortgage against the Property behind the first mortgagee, Meridian. Meridian has made demand, but no forbearance agreement is in place. Accordingly, Meridian has the right to seek the appointment of a receiver, yet as at the date of this Report, they have not elected to do so. If the creditors vote 'no' to the Transaction, Meridian would be the likely party to commence any enforcement proceedings, including the appointment of a receiver. Alternatively, FSRA could intervene and request the appointment of a receiver over Hi-Rise. While an application to appoint a receiver by FSRA would be on behalf of the Investors, it would be subject to the rights of Meridian, and may be opposed by Meridian.

The balance of this section operates under the presumption that a 'no' vote would lead to a receivership proceeding.

#### 5.3 Property Value in Receivership

If Investors vote 'no' to the Transaction, then that would likely preclude a sale to Lanterra and likely result in a receivership. The receiver would most likely choose to conduct a sale process in order to encourage Tricon and other bidders from the prior Sale Process to submit a bid. The Financial Advisor has presented four different scenarios in order to project what alternative recoveries could look like.

Even though the offer was withdrawn, the Financial Advisor has used the \$72 million dollar purchase price from the Tricon APS for the high ("**High**") scenario. The Financial Advisor considered using the Colliers Appraisal value in-use figure of \$12.5 million for the low scenario ("**Low**"). However, the Financial Advisor is of the view that this is far too conservative an assumption for the Low scenario; the party which buys the Property is unlikely to want to operate a five-storey rental building in the long run, without ascribing value to the development potential. There are no figures from the Sale Process which indicate the price offered under a condition-free cash offer. For illustrative purposes, the Financial Advisor has used the lowest offer received in the Sale Process of \$43,678,095 (which has been rounded to \$44,000,000) as the Low estimate. This offer was heavily conditional and may not represent the value under a condition-free cash offer.

For illustrative purposes, the Financial Advisor has also assembled breakeven scenarios ("**Breakeven**") showing the approximate purchase price needed in order to generate a \$43.8 million recovery to Investors (i.e. a recovery which is comparable with the Transaction). Management has indicated that in a receivership, they would be entitled to a priority ("**Priority**") for certain costs pursuant to section 4 of the loan participation agreement (the "**LPA**"); for further detail of these costs, see Appendix "O", which is defined below. A detailed review of the LPA and other related documents was outside of the Financial Advisor's mandate. Accordingly, the Financial Advisor has shown the breakeven needed assuming there is no legitimate claim for a priority (the "**Breakeven Without Priority**").

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#### 5.4 Receivership Costs

In creating the foregoing scenarios, the Financial Advisor has made certain assumptions in order to provide for a comprehensive view of the financial impacts and benefits to the Investors. The detail of the Financial Advisor's estimates of realizations, costs, time and other factors involved in monetizing Hi-Rise's interests and the resulting recovery to Investors is included in this Report and is attached hereto as **Appendix "O"**. The assumptions regarding costs are summarized as follows:

- Timing A receivership order is successfully obtained, and within 15 (for the Low), 12 (for the Breakeven) or 9 (for the High) months a sale for the Property closes and the cash is collected.
- 2. Zoning It is difficult to estimate future costs associated with modifying the Permitted Alterations and returning to city council for a new application, but we have attempted to do so for illustrative purposes. The Low scenario assumes that the Property is sold 'as is' and that no zoning costs are incurred. The High and Breakeven scenarios include cost estimates shown in Appendix "O".
- 3. Selling Costs Assumed to be 1.75% of the sale price.
- Property Taxes Arrears outstanding and accrued as at October 16, 2019, plus the requisite number of months (see point 1 above) of future taxes.
- 5. First Mortgage Balance owing per the Meridian Demand Letter.

- 6. Mortgage Carrying Costs Assuming \$83,000 a month (the current mortgage interest) and that the mortgagee would provide liquidity in order to cover zoning and other costs needed to maximize value of the Property if financing were not obtained from Meridian then the Property would have to be sold at a lower 'as is' value or more expensive financing would have to be obtained from an alternative lender.
- 7. Consultants Costs to continue access to the premises and retain certain staff in order to administer the receivership.
- 8-10. Receiver Receiver's counsel and enforcement legal fees are described in detail in Appendix "O".
- 11. Management has indicated that in a receivership scenario, they would assert the Priority for the costs listed in Appendix "O" pursuant to section 4 of the LPA which provides a priority for, "all costs, charges and expenses of, and incidental to, collecting, demanding, recovering and enforcing payment of the Participation Loan." Management has provided a preliminary estimate of these costs, but has indicated that that the preliminary estimate is not complete and that further costs would be claimed as part of the Priority.

#### 5.5 Receivership Recovery

The table below provides a summary of the recoveries calculated in each scenario both before and after the Priority asserted by Management. Note that many of the costs, such as the mortgage or property taxes, are greater than as calculated under the Transaction simply because of the 9, 12 or 15 month timelines assumed.

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

#### (CDN\$)

			Breakeven		
			without	Breakeven	
	Notes	Low	Priority	with Priority	High
Estimated Sale Price	1)	44,000,000	66,600,000	71,800,000	72,000,000
Months		15	12	12	9
Less:					
Zoning	2)	-	750,000	750,000	450,000
Sale Commission/Selling Costs	3)	770,000	1,165,500	1,256,500	1,260,000
Property Taxes	4)	900,709	776,655	776,655	652,600
First Mortgage	5)	16,619,828	16,619,828	16,619,828	16,619,828
Mortgage Carrying Costs	6)	1,577,000	1,328,000	1,328,000	1,079,000
Gross Sale Proceeds		24,132,462	45,960,017	51,069,017	51,938,571
Hi-Rise/Consultants	7)		921,572	921,572	691,179
Legal Fees of Appointing Creditor	8)	250,000	250,000	250,000	100,000
Receiver's Fees	9)	840,932	676,083	676,083	511,233
Receiver's Legal Fees	10	446,513	358,575	358,575	270,638
Total Costs		1,537,444	2,206,230	2,206,230	1,573,050
Investor Recovery (without Hi-Rise Priority)		22,595,018	43,753,787	48,862,787	50,365,522
Priorities Asserted by Hi-Rise	11)				
Professsional Fees & Consultants		2,954,442	2,954,442	2,954,442	2,954,442
Wages, benefits & office		1,749,651	1,749,651	1,749,651	1,749,651
Miller Thomson LLP		350,000	350,000	350,000	350,000
Payment to Holdings		5,054,093	5,054,093	5,054,093	5,054,093
Investor Recovery (with Hi-Rise Priority)		17,540,925	38,699,695	43,808,695	45,311,429
Investor Recovery (without Hi-Rise Prio	ority)				
Proceeds for Registered Investors		22,171,120	22,171,120	22,171,120	22,171,120
% for Registered Investors		100%	100%	100%	100%
Proceeds for Non-Registered Investors		423,898	21,582,667	26,691,667	28,194,401
% for Non Registered Investors		1%	47%	58%	61%
Investor Recovery (with Hi-Rise Priority	)				
Proceeds for Registered Investors	,	17,540,925	22,171,120	22,171,120	22,171,120
% for Registered Investors		79%	100%	100%	100%
Proceeds for Non-Registered Investors		-	16,528,574	21,637,574	23,140,309
% for Non Registered Investors		0%	36%	47%	50%
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As noted in section 4 of this Report, the Transaction is expected to yield recovery of \$22.2 million (100% of principal plus interest) for Registered Investors and \$21.6 million (47% of principal plus interest) for Non-Registered Investors.

In the Low scenario, depending on whether a Priority can be asserted, recoveries are expected to be 17.5 - 22.2 million (79 - 100% of principal plus interest) for Registered Investors and 0 - 0.4 million (0 - 1% of principal plus interest) for Non-Registered Investors.

In the High scenario, depending on whether a Priority can be asserted, recoveries are expected to be \$22.2 million (100% of principal plus interest) for Registered Investors and \$23.1 - \$28.2 million (50 - 61% of principal plus interest) for Non-Registered Investors. As noted earlier in this Report, the High scenario is based on the withdrawn Tricon APS, which should be viewed with caution because it was non-binding, Tricon submitted a much lower bid in the 2017 Sale Process, and Tricon did not participate in the 2018 Sale Process.

The Breakeven scenarios show that a cash purchase price of \$66.6 million (without Priority) or \$71.8 million (with Priority) would be necessary in order to achieve a similar result to the Transaction (i.e. \$22.2 million (100% of principal plus interest) for Registered Investors and \$21.6 million (47% of principal plus interest) for Non-Registered Investors).

The Financial Advisor notes the challenges associated with obtaining a condition-free cash offer equal to the High scenario or even equal to the Breakeven scenarios:

• The Sale Process was administered by a professional party (BMO), involved a broad canvassing of the market (over 2,500 parties were

contacted with 37 of them gaining access to the EDR) and professionally prepared materials with no cash offers with reasonable conditions being received despite the CIM asking for cash offers.

- A JV offer ties up significantly less capital than a cash offer where the purchaser must finance the purchase price through zoning and to completed construction (a process which is expected to take 5 years)

   if a competitive sale process yielded a \$73.15 million JV offer, then an equivalent cash offer would be significantly lower due to the cost of capital.
- In a distressed receivership sale where a property has been extensively marketed in a prior process, property values are often lower as the most likely purchasers have already been contacted.

It should be noted that all scenarios are prior to accounting for the \$10.5 million of interest paid to Investors to date.

### 6 Conclusion

#### 6.1 Concluding Comments

Voting 'no' to the Transaction would likely result in a receivership. It is possible that a receivership could result in a successful arrangement with Tricon at the purchase price included in the withdrawn Tricon APS. In that case, a receivership may result in higher recovery than the Transaction. However, the Tricon APS was highly conditional, and carried significant closing risk as compared to the Transaction. This is particularly evident in that Tricon's interest in the Property was valued substantially lower in the 2017 Sale Process, and they chose not to participate at all in the 2018 Sale Process. It is reasonable to assume if Investors vote 'no' that the Transaction with Lanterra will be lost.

If Investors vote 'no' to the Transaction, a receivership sale would be challenging as the market appears to have been exhaustively canvassed in the Sale Process over the past several years through BMO's efforts, and a cash offer (which would be the desirable outcome for a receiver) is likely to be substantially less, according to BMO. Investors would have to achieve a condition-free cash offer of \$66.6 to \$71.8 million in order to achieve a similar outcome to the Transaction. The Financial Advisor's view is that there is a low probability this would be achieved given the pre-existing efforts taken to sell the Property.

If Investors vote 'yes' to the Transaction, there is a payment stream for Investors estimated to total \$43.8 million (\$22.2 million for Registered Investors and \$21.6 million for Non-Registered Investors). For further information on the payments streams, please see sections 4.2 and 4.3 of this Report. Management recommends that the Investors vote 'yes' to the Transaction, as the Transaction:

- a) is the byproduct of the Sale Process, which was a competitive and professionally run process, in which the best overall bid was accepted and culminated in the Term Sheet with Lanterra;
- b) provides a clear exit strategy in order to allow the Project to move forward and does so by 'buying out' the Investors, which has the benefit of greatly improving the Project's prospects of attracting construction financing from Banks;
- c) provides greater certainty to Investors than a 'no' vote and a receivership; and,
- d) is expected to yield a total of \$22.2 million (100% of principal plus interest) for Registered Investors and \$21.6 million (62% of principal or 47% of principal plus interest) for Non-Registered Investors this is more than the Financial Advisor expects from a receivership if investors voted 'no'.

Each Investor will evaluate risk differently, and accordingly, would weigh each of the alternatives based on their own risk tolerance. At this point, the Transaction appears to possess less risk and provides clarity and certainty to Investors. From a balanced view, nothing has come to the Financial Advisor's attention to disagree with Management's recommendation. This is **Exhibit "G"** referred to in the Affidavit of Jim Neilas, sworn remotely in accordance with O.Reg 431/20, this 12<sup>th</sup> day of February, 2021.

A Commissioner, etc.

Nicholas Jay Sciuk, a Commissioner, etc., Province of Ontario, while Student-at-Law Expires May 3, 2022
## 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.

## SECOND REPORT OF MILLER THOMSON LLP, IN ITS CAPACITY AS COURT-APPOINTED REPRESENTATIVE COUNSEL

September 13, 2019

#### MILLER THOMSON LLP

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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.

#### SECOND 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 investment ("SMI") administered by Hi-Rise Capital Ltd. ("Hi-Rise") in respect of the proposed development known as the "Adelaide Street Lofts" (the "Property") at the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the "Property") and owned by Adelaide Street Lofts Inc. (the "Adelaide"), in connection with the negotiation and implementation of a settlement with respect to such investments. Copies of the Appointment Order and Endorsement of Justice Hainey dated March 22, 2019, respectively, are attached as Appendices "A" and "B".

2. Pursuant to the Endorsement of the Honourable Mr. Justice Hainey dated April 4, 2019 (the "Justice Hainey Endorsement"), a copy of which is attached as Appendix "C", Representative Counsel was granted leave to file reports with the Court, among other things.

#### PURPOSE OF REPORT

3. Representative Counsel has filed this Second Report for the sole purpose of updating the Court on the status of certain issues including, in particular, the Representative Counsel's efforts toward the appointment of a Financial Advisor. This Second Report does not provide a comprehensive update of Representative Counsel's activities and conduct since the First Report of Representative Counsel dated April 9, 2019 (the "First Report"), but rather only includes details and facts relevant to these issues. Representative Counsel will fully update the Court in respect of its activities and conduct since the First Report at a later time and in a subsequent Court report. This Second Report also does not include all correspondence that has been exchanged over the last several weeks between Representative Counsel and counsel to Hi-Rise and Adelaide, as such correspondence has been extensive and much of it is repetitive (insofar as it sets out the positions of the parties).

4. For ease of reference, the position of Representative Counsel and the Official Committee with respect to the need for transparent disclosure of information and the appointment of the Financial Advisor is set out in Representative Counsel's letter to counsel to the Companies (as defined below) dated August 29, 2019, a copy of which is attached as **Appendix "D**".

5. Representative Counsel is of the view that in order to properly fulfill its mandate and ensure that Investors are properly advised, it requires the issuance of an Order (the "Financial Advisor Appointment Order") in the draft form attached as Appendix "E", *inter alia*:

- (a) appointing Alvarez & Marsal Canada Inc. as financial advisor (in such capacity, the "Financial Advisor"), without security, to Representative Counsel to provide financial advisory and strategic services to assist Representative Counsel with the fulfillment of its mandate and duties as specified in the Appointment Order;
- (b) granting the Financial Advisor's Charge (as defined below) as security for its fees and disbursements, to rank subordinate in priority only to: (i) the Rep Counsel Charge; and (ii) any encumbrances ranking in priority to the Rep Counsel Charge;
- prohibiting any Person (as defined in the Financial Advisor Appointment Order) from further encumbering the Property, pending further Order of the Court; and

(d) restricting Hi-Rise and Adelaide from communicating with Investors, either directly or indirectly, until further Order of the Court.

6. All capitalized terms not otherwise defined herein shall have the same meaning ascribed to them in the Appointment Order and the First Report. Hi-Rise and Adelaide shall hereinafter be referred collectively as the "**Companies**".

#### TERMS OF REFERENCE

7. In preparing this Second 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 Second 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

8. 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 ("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 (the "Transaction") are insufficient to pay the full amounts under the Syndicated Mortgage.

9. 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.

10. Pursuant to the Justice Hainey Endorsement, the Court set a timetable for further steps in this proceeding and set a scheduling appointment returnable April 17, 2019. The declaratory relief sought by Hi-Rise has been adjourned to a date to be scheduled by the Court. As further set out below, the parties and Representative Counsel have attended at Court numerous times to provide a status update on the steps in this proceeding.

## OFFICIAL COMMITTEE

11. Pursuant to paragraph 10 of 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 (the "Official Committee Establishment Process").

12. As further described in the First Report, Representative Counsel fully carried out the Official Committee Establishment Process and selected 5 Investors to act as Members of the Official Committee and 2 Investors to act as Alternates to the Official Committee. Accordingly, on April 15, 2019, Representative Counsel brought a motion to the Court for the approval of the Official Committee.

13. 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, along with the Endorsement of Justice Hainey dated April 15, 2019, is attached as Appendix "F".

#### PROPOSED TRANSACTION AND THE PROPERTY

#### Information related to Transaction

14. In the summer of 2018, BMO Capital Markets ("**BMO**") undertook a marketing and sales process in respect of the Property (the "**2018 Marketing and Sales Process**"), which resulted in a joint venture agreement (the "**Proposed JV Agreement**") between Lanterra Developments Limited (in trust) or its designee and 263 Holdings Inc. (the main holding company and owner of Adelaide) to complete the development of the Property (the "**Lanterra Transaction**"). Representative Counsel learned of the Lanterra Transaction through Adelaide during the course of this proceeding, as summarized below.

15. In or around April 2019, Representative Counsel was advised by Adelaide that it received an offer for a proposed Transaction in respect of the Property. At this time, the name of the offeror was anonymous and details in respect of the Transaction were not disclosed to Representative Counsel.

16. Representative Counsel was advised that these details remained confidential at the time because the offeror was still in the process of completing its due diligence, and that such due diligence was expected to be completed by the end of May 2019.

#### Non-Disclosure Agreement

17. On May 7, 2019, the parties to this proceeding attended at Court to provide a status update on this proceeding and the proposed Transaction in respect of the Property.

18. At this time, the details in respect of the Transaction were not disclosed to Representative Counsel and the name of the offeror remained anonymous as it was still completing its due diligence.

19. Pursuant to the Endorsement of the Honourable Mr. Justice Hainey dated May 7, 2019, a copy of which is attached as **Appendix "G"**, *inter alia*, the Court directed Representative Counsel to enter into the NDA in respect of the Transaction.

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20. Accordingly, on May 8, 2019, after consulting with and receiving instructions from the Official Committee, Representative Counsel entered into the NDA with Adelaide in order to permit Representative Counsel to obtain the Transaction details and offerors name on a "counsel-only" basis. A copy of the NDA is attached as **Appendix "H"**.

21. Representative Counsel reported this information to Investors through the Communication dated May 8, 2019, a copy of which is attached as **Appendix "I"**.

22. Thereafter, Representative Counsel attended at the offices of Adelaide's counsel (McCarthy Tetrault LLP), and reviewed the proposed Lanterra Transaction details. As set out in the NDA, Representative Counsel was not permitted to make copies of the Lanterra Transaction documents or disclose the details of the Lanterra Transaction with Investors or the Official Committee until such time as Adelaide advised given that the offeror was still in the process of completing its due diligence conditions.

## **Extension to Due Diligence Period**

23. In June 2019, Adelaide advised Representative Counsel that the offeror in respect of the Transaction requested an extension to the due diligence period to June 24, 2019 in order to permit to make further due diligence inquiries related to the Property.

24. After consulting with and receiving instruction from the Official Committee, Representative Counsel agreed to grant Adelaide the extension to June 24, 2019 ("**Due Diligence Expiry Date**").

25. At this time, Representative Counsel was still bound by the terms of the NDA and not permitted to disclose the details in respect of the Lanterra Transaction with Investors or the Official Committee.

## **Transaction Details and Joint Venture Agreement**

26. In or around the Due Diligence Expiry Date, Representative Counsel was advised by Adelaide that the offeror had completed its due diligence, and that certain details of the Lanterra Transaction were capable of being reviewed and disclosed by the Official Committee to Investors.

27. Accordingly, on or about June 27, 2019, Representative Counsel and 2 Members of the Official Committee attended at the offices of Adelaide's counsel to review the Lanterra Transaction summary documents.

28. Due to confidentiality concerns expressed by Adelaide, Representative Counsel was permitted to review the Lanterra Transaction details in person with Adelaide's counsel present and take hand-written notes, but was not permitted to take away copies of the documents or otherwise make copies.

## NEED FOR APPOINTMENT OF FINANCIAL ADVISOR

#### **Overview of Representative Counsel's Position**

29. Despite frequent and repeated requests, Representative Counsel and the Official Committee have not been provided with a copy of the Proposed JV Agreement. The Companies are only prepared to share the Proposed JV Agreement on unreasonably restrictive terms that will, among other things, prevent the Investors from reviewing it in advance of voting as to whether to compromise their interests. Attached as **Appendix "J"** is an email exchange between Geoff Hall and Representative Counsel dated September 11-12, 2019, in this regard.

30. Adelaide's proposed terms for the disclosure of the Proposed JV Agreement is not acceptable to Representative Counsel or the Official Committee, as it is unnecessarily and unreasonably restrictive. Hi-Rise is asking the Investors to vote on a proposed settlement that arises from and is funded through the Proposed JV Agreement, but at the same time. will not allow the Investors access to review the Proposed JV Agreement. As such, Investors are unable to assess for themselves, among other things, the risks associated with the payments that they are supposed to receive in the future. In the opinions of Representative Counsel and the Official Committee, this position is unfeasible and simply unfair.

31. At this time, the Official Committee is not prepared to recommend to Investors that they vote in favour of the Lanterra Transaction. The Official Committee is of the view that it does not have the information it needs to adequately advise Investors on the Lanterra Transaction and that this proceeding entirely lacks transparency.

32. The Official Committee, Representative Counsel and the Companies agree that a financial advisor ought to be engaged. The dispute between the parties relates to the scope of the financial advisor's mandate and whether such engagement ought to proceed by way of Court appointment.

33. As further set out below, Representative Counsel and the Official Committee are of the view that transparency is required in this proceeding and that: (i) a financial advisor ought to be appointed by the Court; (ii) the Financial Advisor's mandate include reviewing all aspects of Adelaide's proposed sale or transactions in respect of the Property; (iii) the Financial Advisor be empowered by the Court to collect information and documents from all persons in possession of same in order to fulfill that mandate; and, (iv) the Companies and Mr. Neilas ought not to be the gatekeeper of information and documentation (*i.e.* that the Financial Advisor need not go through the Companies in order to gain access to such information and documents).

#### **Relevant Facts to the Dispute**

34. On August 21, 2019, Representative Counsel and counsel to the Companies had a conference call to discuss the terms of the financial advisor's appointment (the "**Conference Call**"). Representative Counsel advised that it required a third party to review and assess the circumstances surrounding all proposed transactions related to the Property, which would include a review of the marketing and sales process undertaken by BMO. At such time, the Companies did not agree to disclosure of information through a third party, but did agree to provide information to Representative Counsel. It was agreed that Representative Counsel would prepare a draft form of Order for review by counsel to the Companies.

35. 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 Opt-Out Investors, in order for Investors to consider and, if determined advisable, pass a resolution approving the Transaction and the distribution proceeds therefrom (the "Vote"). Paragraphs 28 to 31 of the Appointment Order sets out a mechanism and rules for the Vote.

36. On the Conference Call, counsel to Hi-Rise advised Representative Counsel that it intended to call a meeting of Investors on September 25, 2019 in order to hold a Vote respect of

the Lanterra Transaction. At such time, Representative Counsel agreed to same given that the Companies appeared to agree to the Court appointment of a financial advisor.

37. On August 22, 2019, Representative Counsel delivered the draft Order as discussed on the Conference Call. Attached as **Appendix "K"** is a copy of Representative Counsel's email and the draft Order.

38. By letter dated August 24, 2019, a copy of which is attached as **Appendix "L**", Mr. Geoff Hall (counsel to Adelaide) advised, among other things, that it would not be possible to obtain the Order on consent.

## First Notice from Hi-Rise to Investors regarding Vote

39. By email dated August 27, 2019, Mr. Brinn Norman (General Counsel of Hi-Rise), advised Representative Counsel that it intended to deliver an update to Investors in respect of the Vote proceeding on September 25, 2019. A copy of said email and the proposed draft letter to Investors is attached as **Appendix "M"**.

40. By email response dated August 27, 2019, Representative Counsel advised Mr. Norman that the appointment of a financial advisor would not be proceeding on consent, that Representative Counsel would bring a motion for same, and that as part of that motion, Representative Counsel would be seeking a stay of the Vote. Accordingly, Representative Counsel requested that Hi-Rise not print and send out the update to Investors regarding a Vote in the interim. A copy of said email is attached as **Appendix "N"**.

41. Representative Counsel did not receive a response to this correspondence. By letter dated August 27, 2019, Hi-Rise delivered an update to all Investors advising of a meeting of Investors and Vote scheduled to take place on September 25, 2019 (the "First Notice"), a copy of which is attached as Appendix "O".

42. The First Notice provides that "At the Adelaide Investor Meeting, details of the pending sale transaction of the property and corresponding Settlement will be presented to investors in the Adelaide Mortgage. Investors will be provided with information and opinions from: .... (iv) Miller Thomson."

#### **Conference Call with Justice Hainey**

44. On August 28, 2019, Representative Counsel discussed a potential resolution in respect of the financial advisor's appointment with counsel to Hi-Rise, and also advised that it intended to seek advice and directions from Justice Hainey immediately. Said discussion was later documented in an email exchange that day, a copy of which is attached as **Appendix "P"**.

45. On August 28, 2019, Representative Counsel had a conference call with Justice Hainey pursuant to section 13 of the Appointment Order to seek the Court's advice and direction regarding the Official Committee's instructions on the appointment of a financial advisor. His Honour directed that Representative Counsel send an email to all parties with its proposed terms, and then forward a copy of same to His Honour for review and approval.

46. As a courtesy, Representative Counsel first delivered a copy of its draft email to counsel to the Companies for its review. The Companies objected. Attached as **Appendix "Q"** is a copy of the email thread between Representative Counsel and the Companies dated August 28, 2019, which also includes the positions of the parties and a summary of Representative Counsel's conference call with Justice Hainey.

 As the request of counsel to Adelaide, Representative Counsel forwarded the above-noted email thread to Justice Hainey.

## **Proposed Settlement Offer from Hi-Rise**

48. By email dated August 28, 2019, and subsequent to the above-noted correspondence, Mr. Birch provided a copy of the final settlement offer made by the Borrower (the "Final Offer") and advised, among other things, that Hi-Rise intends to proceed with the Vote scheduled for September 25, 2019. A copy of said email and the Final Offer is attached as Appendix "R".

49. By responding letter dated August 29, 2019, a copy of which is previously attached as Appendix "D", Representative Counsel reiterated its position that the Official Committee

requires true transparency in this process and that it did not view the Official Committee's requirements for a truly independent and court empowered financial advisor as unreasonable, among other things. Therein, Representative Counsel advised the Companies that it would be bringing a motion, and again advised that it would be seeking a stay of the Vote.

50. Further, Representative Counsel advised that the Final Offer mischaracterizes and grossly overstates the benefits to Investors. For example, the Final Offer characterizes interest payments already received by Investors as recoveries, when they are not, and fails to highlight that non-registered Investors (*i.e.* Investors that do not hold their investment in an RRSP) will receive nothing on closing, with all other recoveries being highly contingent.

51. Further letters were exchanged thereafter regarding the position of Hi-Rise (on September 4, 2019) and Representative Counsel (September 6, 2019), copies of which are attached as **Appendix "S"**.

## Second Notice to Investors from Hi-Rise regarding Vote

52. On August 29, 2019, Hi-Rise delivered a second notice to Investors advising of the time and location of the Vote it set to proceed on September 25, 2019 (the "Second Notice"), a copy of which is attached as Appendix "T".

## **Communication from Representative Counsel**

53. On August 30, 2019, Representative Counsel issued a Communication to Investors in an effort to respond to the Second Notice, and in particular, in order to outline its position in respect of the settlement offer and the Vote. Therein, Representative Counsel made clear that it has not been provided with the requisite information to properly provide advice to Investors and that it does not support the Vote. A copy of this Communication is attached as **Appendix "U"**.

#### Third Notice to Investors from Hi-Rise and Report of Grant Thornton Limited

54. On September 3, 2019, Hi-Rise delivered a third notice to Investors (the "**Third Notice**"), enclosing the report of its financial advisor, Grant Thornton Limited dated August 30, 2019, in respect of the settlement offer by Adelaide among other things. A copy of this letter and enclosures are attached as **Appendix** "V".

55. In the course of these proceedings, Representative Counsel received an unsolicited expression of interest in respect of a cash purchase of the Property from Tricon Lifestyle Rentals LP ("**Tricon**") in the form of a binding agreement of purchase and sale, subject to certain conditions including due diligence (the "**Tricon Offer**").

56. Tricon advised Representative Counsel that it had submitted the Tricon Offer to BMO for its review and consideration.

57. The Grant Thornton report provides that "We understand from BMO that in early August of 2019, Tricon withdrew the Tricon APS and that Tricon is no longer pursuing a transaction for the Property."

58. At one of its meetings, BMO advised Representative Counsel that Tricon is no longer interested in the Property.

59. Tricon has confirmed to Representative Counsel that this information is not correct and that it remains interested and has not withdrawn its offer. Attached as **Appendix "W"** is an email thread dated September 5, 2019 to September 7, 2019 in this regard.

#### Notice of Enforcement from Meridian Credit Union

60. By letter dated September 6, 2019 from Mr. Steve Graff (counsel to Meridian), Meridian advised, *inter alia*, that it is owed the principal amount of \$16,414,000, that it was only in the last week of August 2019 that it became aware of these proceedings and the Appointment Order and that absent repayment by October 31, 2019 and a satisfactory forbearance agreement, Meridian will bring an application to appoint a receiver. A copy of said letter is attached as **Appendix "X"**.

#### Fourth Communications from Hi-Rise to Investors

61. On September 10, 2019, Hi-Rise delivered a fourth communication to Investors regarding the Meridian letter (the "Fourth Notice"), a copy of which is attached as Appendix "Y". Such letter states, among other things, "We have reviewed the Rep Counsel web site and it appears that Miller Thompson has not disclosed this information to you (as at the date of this letter). We believe that you should have all the information that is relevant to making an informed decision about your investment..." Therein, Hi-Rise also invites Investors to directly contact Mr. Gregory Azeff of Miller Thomson LLP.

#### **Communication from Representative Counsel**

62. On September 11, 2019, Representative Counsel issued a Communication to Investors in an effort to respond to the Fourth Notice. Therein, Representative Counsel made clear that it has still not been provided with the requisite information to properly provide advice to Investors and that it does not support the Vote. A copy of this Communication is attached as **Appendix "Z**".

# Fifth Communication from Hi-Rise to Investors - Notice of Meeting and Information Statement

63. On or about Wednesday September 11, 2019, it came to Representative Counsel's attention that Hi-Rise delivered a "Notice of Meeting and Information Statement" dated September 6, 2019 (the "Information Statement") and a Voting Ballot, which is a form of proxy for Investors to share their vote and appoint Noor AI-Awqati of Hi-Rise as proxyholder. A copy of the Information Statement and the Voting Ballet is attached as Appendix "AA".

64. The Information Statement contains misleading and inaccurate information regarding Representative Counsel and the Official Committee (in particular, at pages 11 to 13 of the Information Statement).

65. Further, the Information Statement does not contain important information regarding the distinction between registered versus non-registered Investors, namely, that under the terms of the proposed settlement, non-registered Investors will not receive repayment on their principal for a least 2 to 3 years, if ever.

#### IMPROPER COMMUNICATIONS

66. In Representative Counsel's view, the statements contained in its communications and the Information Statement are a deliberate attempt to undermine the role and credibility of the Official Committee and Representative Counsel.

67. In Representative Counsel's view, the communications from Hi-Rise to Investors are misleading, factually inaccurate, and incomplete. Moreover, such communications directly interfere with Representative Counsel's ability to fulfill its Court-prescribed mandate and duties.

68. Since the Fourth Notice and the Information Statement were delivered to Investors, Representative Counsel has received a flood of personal emails and telephone calls from Investors. It is clear from such correspondence that Investors are confused and are also concerned by the information they are receiving from Hi-Rise. Representative Counsel is of the view that the Investors need to be protected from misinformation and that a communication restriction against Hi-Rise and Adelaide ought to be granted.

69. The Official Committee and the Financial Services Regulatory Authority of Ontario support the imposition of a communication restriction.

#### PROPOSED FINANCIAL ADVISOR APPOINTMENT ORDER

70. Pursuant to paragraph 5 of the Appointment Order, Representative Counsel is authorized to retain actuarial, financial, and other advisors and assistants as may be reasonable necessary or advisable in connection with its duties of Representative Counsel.

71. Pursuant to paragraph 6 of the Order, Representative Counsel is authorized to take all steps and do all acts necessary or desirable to carry out the terms of the Appointment Order and fulfill its mandate thereunder.

72. The proposed Financial Advisor's mandate is limited and reasonable in scope, in that it permits the Financial Advisor to review and report to Representative Counsel and to the Court on all matters related to the Company's proposed sale of the Property, including proposed transactions in respect of the Property and the financial implications of the same.

73. The Financial Advisor Appointment Order contemplates granting the Financial Advisor the power to compel access to information and records in respect of Adelaide's proposed sale of the Property, save and except for privileged information and/or records.

74. The Financial Advisor Appointment Order also contemplates granting the Financial Advisor the power to meet with and discuss with affected Persons (which includes Adelaide and Hi-Rise, among others) on all matters relating to the Company's proposed sale of the Property.

75. In Representative Counsel's view, these powers are necessary for the Financial Advisor's mandate as described above.

76. The Official Committee is highly skeptical of the unwillingness of the Hi-Rise and Adelaide to provide true transparency. The Companies stand to potentially make a significant profit through the Lanterra Transaction if it proceeds, even as they ask the Investors to compromise more than \$20 million of the amounts they are owed. Neither the Official Committee nor Representative Counsel will accept any information gathering process in which the Companies are positioned as disclosure gatekeepers.

77. In light of the foregoing, Representative Counsel is of the view that the appointment of the Financial Advisor is necessary for the following reasons:

- (a) The Financial Advisor will be empowered to review and advise on all matters related to the Company's proposed sale of the Property, including but not limited to, all aspects of any and all proposed transactions in respect of the Property and the financial implications of such proposed transactions. This will include the Lanterra Transaction being put forward by Adelaide, as well as exploring the viability of the Tricon Offer, and the financial implications of each;
- (b) The Company's proposed sale of the Property, and any proposed transaction in respect of the Property, directly impacts the economic interests of the Investors, which interests Representative Counsel represents. The Investors ought to have the benefit of all information available prior to voting on any proposed transaction related to the Property, which the Financial Advisor would be in the best position to provide;
- (c) As noted above, Representative Counsel and Members of the Official Committee were permitted to review the Lanterra Transaction details in person and take hand-written notes, but were not permitted to take away copies of the documents.

The Financial Advisor will have the power to compel document production and analyze same, as noted above;

- (d) Representative Counsel seeks to appoint the Financial Advisor with a view to assisting Representative Counsel to fulfill its mandate under the Appointment Order and achieve the best possible financial outcome for Investors;
- (e) In Representative Counsel's view, it will be in a better position to meaningfully report to the Court and to the Investors in respect of the financial implications of the Lanterra Transaction after the Financial Advisor has had the opportunity to review and analyze all proposed transactions in respect of the Property; and
- (f) The Financial Advisor is a third party that will provide an impartial and transparent perspective on all proposed transactions in respect of the Property and the financial implications of same.

#### Financial Advisor's Charge

78. As noted above, the Rep Counsel Charge excludes disbursements of Representative Counsel, which disbursement would include the fees of the Financial Advisor. In Representative Counsel's view, and the fees and disbursements of the Financial Advisor ought to be paid by the Company.

79. The Financial Advisor Appointment Order contemplates granting a charge on the Property in favour of the Financial Advisor as security for its fees and disbursements incurred both before and after the making of the Financial connection with fulfilling its duties under the Financial Advisor Appointment Order, up to a maximum amount of \$100,000 (the "Financial Advisor's Charge").

80. The proposed Financial Advisor's Charge will rank subordinate in priority only to: (i) the Rep Counsel Charge; and, (ii) any encumbrances ranking in priority to the Rep Counsel Charge. For greater certainty, the proposed Financial Advisor's Charge will rank in priority to all other encumbrances on the Property, including the Hi-Rise Mortgage.

81. Accordingly, if the Financial Advisor's Charge is granted the scheme of priority in respect of the charges on title to the Property would be as follows:

- (a) first-ranking charge Meridian Mortgage
- (b) second-ranking charge Rep Counsel Charge
- (c) third-ranking charge Financial Advisor Charge
- (d) fourth-ranking charge Hi-Rise Mortgage

82. The Official Committee and the Financial Services Regulatory Authority of Ontario support the Financial Advisor Appointment Order and the Financial Advisor's Charge.

#### INCREASE TO REP COUNSEL CHARGE

83. 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.

84. 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 Meridian Mortgage (updated amounts owing in respect of each are set out above).

85. Representative Counsel continues to represent the interests of Investors and fulfill its duties and mandate under the Appointment Order, as set out in this Second Report. Representative Counsel's role in this proceeding has been extensive, and will continue to be extensive, and it has incurred legal fees in respect of same.

86. This proceeding has continued far longer than originally anticipated, due to factors outside of Representative Counsel's control including the repeated delays in completing the JV Agreement. In addition, the Companies have frustrated all attempts by Representative Counsel to

obtain truly transparent disclosure. As at the date of this Second Report, Representative Counsel's Post-Appointment Fees are in excess of \$250,000.

87. Accordingly, Representative Counsel intends to seek an increase to the Rep Counsel Charge in respect of its Post-Appointment Fees up to a maximum amount of \$400,000.00, which amount shall exclude the disbursements incurred by Representative Counsel.

## Attendance at Court on September 12, 2019

88. On September 12, 2019, Representative Counsel, counsel to the Companies, Meridian, and the Financial Services Regulatory Authority of Ontario, among others, attended at Court to provide an update on these proceedings.

89. At such attendance, Justice Hainey orally directed the Companies to refrain from communicating with Investors until September 16, 2019 (being the next scheduled Court date). Shortly after the Court attendance on September 12, 2019, Representative Counsel received an email from a financial advisor enclosing a screen shot of a text message sent by John Neilas, whom Representative Counsel understands to be Mr. Jim Neilas' brother. A copy of the text message screen shot is attached as **Appendix "BB"**.

90. The text message reflects the discussions at the court attendance. Representative Counsel is of the view that this correspondence directly circumvents Justice Hainey's oral direction and brought it to the attention of counsel to Hi-Rise.

91. Counsel to Hi-Rise maintains that it has "no knowledge of this alleged communication nor does Hi-Rise."

#### **Position of the Parties**

92. The position of Hi-Rise in respect of the proposed Financial Advisor Appointment Order is set out in the email thread dated September 12-13, 2019, a copy of which is attached as **Appendix "CC"**. The position of Meridian in respect of the proposed Financial Advisor Appointment Order is set out in the correspondence dated September 13, 2019, a copy of which is attached as **Appendix "DD"**.

#### CONCLUSION

93. Representative Counsel is not in a position to fulfill its mandate. Representative Counsel and the Official Committee cannot provide meaningful and reliable advice to the Investors unless they (and their Financial Advisor) have received all of the information, documents and access to parties that they believe are relevant to fulfilling their mandate, on a truly transparent basis, unfettered by and independent from the Companies. Representative Counsel is of the opinion that Court appointment of a Financial Advisor is critical for this purpose.

94. It is unfortunate that the Companies refuse to cooperate in implementing true transparency on a basis that is acceptable to the Official Committee and the Investors, which are the only parties (other than Meridian) with a financial interest in the Property. Instead, the Companies continue their attempts to inappropriately control the process and the flow of information.

95. Simply put, given the massive compromise the Companies are asking the Investors to accept and the massive potential profits the Companies stand to make through the Lanterra Transaction, Representative Counsel is of the view that the Official Committee is entitled to demand the highest level of transparency, and all aspects and circumstances of the proposed sale of the Property and the Proposed JV Agreement must be subjected to rigorous scrutiny.

All of which is respectfully submitted at Toronto, Ontario this 13th day of September, 2019.

Atiller Thomson LEP, solely in its capacity as Court-appointed Representative Counsel This is **Exhibit "H"** referred to in the Affidavit of Jim Neilas, sworn remotely in accordance with O.Reg 431/20, this 12<sup>th</sup> day of February, 2021.

A Commissioner, etc. Nicholas Jay Sciuk, a Commissioner, etc., Province of Ontario, while Student-at-Law Expires May 3, 2022

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

### ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST

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THE HONOURABLE MR.	
JUSTICE HAINEY	

SUPERIEURE

TUESDAY, THE 17<sup>TH</sup>

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

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("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'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 with all such assistance in gaining immediate access to 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

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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

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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

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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 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 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 <u>http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/</u>) 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 TOUL

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

This is **Exhibit "I"** referred to in the Affidavit of Jim Neilas, sworn remotely in accordance with O.Reg 431/20, this 12<sup>th</sup> day of February, 2021.

A Commissioner, etc.

Nicholas Jay Sciuk, a Commissioner, etc., Province of Ontario, while Student-at-Law Expires May 3, 2022
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** 

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	2019)
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## INTRODUCTION

- 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")<sup>1</sup> 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").

<sup>&</sup>lt;sup>1</sup> 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".
- 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.
- This Report should be read in conjunction with the Initial Application, the Information Officer Appointment Order and Representative Counsel's Reports.
- 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.
- 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").

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

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## 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;
  - 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 Property<sup>2</sup>.

<sup>&</sup>lt;sup>2</sup> 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 closing<sup>3</sup>.
- 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

<sup>&</sup>lt;sup>3</sup> 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")<sup>4</sup>. 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

<sup>&</sup>lt;sup>4</sup> 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 transaction<sup>5</sup>.
- 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

<sup>&</sup>lt;sup>5</sup> 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 reports<sup>6</sup>;
  - (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.

<sup>&</sup>lt;sup>6</sup> 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 performed<sup>7</sup>.
- 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

<sup>&</sup>lt;sup>7</sup> 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 "nonames" 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 contacted<sup>8</sup> 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;
  - 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

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<sup>&</sup>lt;sup>8</sup> 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> <li>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;</li> <li>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.</li> </ul>
Transaction	<ul> <li>Transaction value of \$73.15 million, capitalized as follows:</li> </ul>
Value and Initial Capitalization	<ul> <li>i. LP will grant a first mortgage on the Property in the amount of \$36.58 million (the "First Mortgage");</li> </ul>
	<ul> <li>ii. The Company will be granted a vendor takeback mortgage of approximately \$18.29 million (the "VTB"); and</li> </ul>
	<li>iii. The Company will contribute equity-in-kind of approximately \$18.29 million in exchange for its 25% share of the Lanterra Project.</li>
First Mortgage Terms	<ul> <li>The LP will immediately distribute the mortgage proceeds as follows:</li> <li>i. to discharge the Meridian Mortgage; and</li> <li>ii. to be used as a return of capital to allow it to retire the Syndicated Mortgage.</li> </ul>
VTB Mortgage Terms	<ul> <li>Secured against title to the Property, ranking behind the First Mortgage and any surety financing. Will not be subordinate to construction financing;</li> </ul>
	• Expires on the earlier of (a) receipt of certain construction permits; and (b) three years from the closing date of the Lanterra Transaction;
	<ul> <li>Bears interest at 5% per annum during the first two years and 8% per annum for the final year;</li> </ul>
	<ul> <li>Entirety of the VTB to be guaranteed by Lanterra; and</li> </ul>
	<ul> <li>Lanterra to repay principal and interest then due on the VTB out of Lanterra's own resources.</li> </ul>

Interest Reserve	<ul> <li>Lanterra will fund approximately \$1.85 million to an interest reserve account to prefund the first two years of interest obligations under the VTB.</li> </ul>
Company's Fees	<ul> <li>The Company is entitled to the following fees:</li> <li>i. Development Fee: 0.25% of revenues from the Lanterra Project<sup>9</sup>; and</li> <li>ii. Property Management Fee: \$5,000 per month during the term of the Lanterra Project (5-6 years).</li> </ul>
The Company Guarantee	<ul> <li>The Company is required to jointly and severally guarantee 25% of all obligations of the LP in respect of any project debt.</li> </ul>

- 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

<sup>&</sup>lt;sup>9</sup> 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

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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> <li>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</li> <li>Approval will require Investors representing two thirds in value and majority in number to vote in favour of the Proposed Settlement.</li> </ul>
Offer to Settle	<ul> <li>Repayment to Investors of approximately \$17,036,000 on closing (the "Initial Settlement");</li> <li>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 VTB<sup>10</sup>; and</li> <li>A debenture from Holdings in the amount of \$15,000,000 (the "Debenture")<sup>11</sup>, unsecured and non-interest bearing, payable six years from the date of closing.</li> </ul>
Guarantees in Respect of Debenture	<ul> <li>Corporate guarantee of Holdings; and</li> <li>Personal guarantee by Jim Neilas limited to 25% of the total debenture.</li> </ul>
Implementation	<ul> <li>October 23, 2019 – Meeting to vote on the Proposed Settlement</li> <li>November 2019 – Final Court Order</li> <li>December 2019 – Closing &amp; Initial Repayment to Investors</li> <li>December 2021 or December 2022 – Repayment of VTB</li> <li>December 2025 (estimate) – Debenture paid</li> </ul>

<sup>&</sup>lt;sup>10</sup> The Information Officer understands that specific documentation related to the structure of the VTB and the Debenture has not yet been prepared.

<sup>&</sup>lt;sup>11</sup> 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 <sup>[10]</sup>
Proceeds from Lanterra Transaction			
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
Drangood Distrik tions to Desistand Investors			
Proposed Distributions to Registered Investors		17.026	17.020
On Closing (December 2019)		17,036 5,280	17,036
On Repayment of VTB Mortgage (December 2021)	_	<u> </u>	4,364 <b>21,399</b>
Total Distribution to Registered Investors	9	100%	21,399 96%
Return to Investors Excluding Interest Paid to Date	9	100%	96%
Proposed Distributions to Non-Registered Investors			
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
Return to Investors Excluding Interest	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, 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 principal<sup>12</sup> per the books and records of Hi-Rise, including interest accrued to December 11, 2019 and are presented below on an undiscounted basis:

<sup>&</sup>lt;sup>12</sup> 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:

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- (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 Tricon<sup>13</sup> 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.

<sup>&</sup>lt;sup>13</sup> 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: <a href="https://www.triconcapital.com">www.triconcapital.com</a>.

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	Tricon Lifestyle Rentals Investment LP
Purchase Price	<ul> <li>\$72.0 million;</li> <li>Payment of the Purchase Price: <ol> <li>\$2.0 million deposit on the third business day following execution of the APS ("First Deposit");</li> <li>\$3.0 million deposit on the third business day following the Due Diligence Date ("Second Deposit"); and</li> <li>Balance of the of the Purchase Price on the Closing Date ("Final Payment").</li> </ol> </li> <li>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;</li> <li>The Final Payment is subject to customary real estate transaction closing adjustments.</li> </ul>
Due Diligence Conditions	<ul> <li>The Purchaser has requested a number of additional diligence materials (the "Deliveries") from the Vendor;</li> <li>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;</li> <li>The APS includes the following due diligence condition for the benefit of the Purchaser:</li> <li>"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, which may be exercised arbitrarily for any reason or for no reason at all, 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"; [emphasis added]</li> </ul>
Closing Date	<ul> <li>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;</li> <li>Purchaser to be granted exclusivity.</li> </ul>

- 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 offerTricon 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 time<sup>14</sup>;
- (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

<sup>&</sup>lt;sup>14</sup> 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 actions<sup>15</sup>.
- 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").

<sup>&</sup>lt;sup>15</sup> 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 million<sup>16</sup>, 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 million<sup>17</sup>;
  - (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

<sup>&</sup>lt;sup>16</sup> 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.

<sup>&</sup>lt;sup>17</sup> 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 (no	minal dollars)				('000s)
	Proposed Settlement <sup>1</sup>	Truncated Receivership Low <sup>2</sup>	Truncated Receivership High <sup>2</sup>	GT Receivership Low <sup>3</sup>	GT Receivership High <sup>3</sup>
Estimated Sale Price	73,150	71,170	76,071	44,000	72,000
Without Hi-Rise Potential Priority Cos	sts				
Registered Investors					
Investor Recovery (\$)	22,316	22,605	22,605	22,171	22,171
Investor Recovery (%)	100%	100%	100%	100%	100%
Non-Registered Investors					
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					
Registered Investors					
Investor Recovery (\$)	n/a	22,605	22,605	17,541	22,171
Investor Recovery (%)	n/a	100%	100%	79%	100%
Non-Registered Investors					
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 7<sup>th</sup> day of October, 2019.

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

Per:

Name: Stephen Ferguson Title: Senior Vice-President

## **APPENDIX "A"**

Information Officer Appointment Order (September 17, 2019)

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

## ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST

))))

THE HONOURABLE MR.	
JUSTICE HAINEY	

SUPERIEURE

TUESDAY, THE 17<sup>TH</sup>

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'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 with all such assistance in gaining immediate access to 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

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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

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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 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.

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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 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 <u>http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/</u>) 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 TOUL

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.

ENTERED AT / INSCRIT À TORONTO ON / BOOK NO: LE / DANS LE REGISTRE NO:

SEP 1 7 2019

PER / PAR

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



## **APPENDIX "B"**

## Lanterra Project Proforma

### 263 Adelaide

Project Pro Forma - DISCUSSION ONLY May 8, 2019

Scenario - Quadrangle Drawings (May 9, 2017)			
Project Salient Information			
Residential Condo			
# of Floors			47
# of Buildings			1
Total FSI			22.65
Total GFA			349,490
Total Units			
Total No. of Condo Units			397
Key Schedule Assumptions	Start	End	Duration
Project Start	1-Mar-19	-	
Pre-Development	1-Mar-19	31-Aug-19	5 Months
Sales	31-Aug-19	31 <b>-</b> Aug-20	12 Months
Construction	31-Aug-20	31-Aug-24	48 Months
Construction At Grade	28-Feb-22		
Occupancy	31-Dec-23	31-Aug-24	8 Months
Registration	31-May-24		
Construction Loan Repayment	30-Jun-24	31-Aug-24	1 Months
Total			65 Months
Key Revenue Assumptions			
Condo Sales Revenue (\$psf)			\$1,275
Townhome Sales Revenue (\$psf)			
Parking Revenue (\$/Stall)			\$85,000
Locker (\$/Locker)			\$7,500
Key Project Cost Assumptions			
Total Construction Hard Cost (\$ psf GFA)			\$317
Above Grade Construction Hard Cost (\$/sf)			\$290
Below Grade Construction Hard Cost (\$/sf)			\$120
Consultants & Engineers (3.0%)			\$5,231,400
Fees & Contingencies			
Total Fees - Lanterra			\$14,716,300
Total Fees - Storey			\$912,500
Total Contingencies			\$8,987,500
Project Returns			
Net Revenue			\$364,988,900
Total Costs			\$298,981,450
Total Profit			\$66,007,450
Profit / Net Revenue			18.1%
Source of Funds			
Cash Equity		48,287,500	16%
Deferred Equity/Land Appraisal Surplus		-	0%
Deposits		50,722,900	17%
Deferred Costs		9,054,900	3%
Loan		190,916,200	64%
Total Costs		298,981,500	100%
Sensitivity Analysis	Profit (\$)	Profit (%)	Change
At \$1,250 PSF Revenues	\$59,797,850	16.7%	(\$6,209,600)
At \$1,300 PSF Revenues	\$72,217,050	19.4%	\$6,209,600

#### Project Pro Forma - DISCUSSION ONLY

Site Statistics           Area of Site           Density           Total OFA           GFA - Condos           GFA - Tourhouses           Building Efficiency	Pròject	22,65 349,490 349,490	Average Resider Total Residential 1 Bedroom 2 Bedroom 3+ Bedroom	ntial Unit Size	748 sq.ft.           397           52%           205           37%           11%           45	Fees Good Contingendids           Fees         Construction Management         1.4251.900           Development Fee         \$6.387.200         Admin Mgmt Fee           Admin Mgmt Fee         \$6.387.100         314.716.300	Partner \$912,500 \$912,500
Total Selable GFA Read Selable GFA Office Setable GFA Residential Selable GFA Cumulative Cost Of Land Cost Of Land/Avas Of Ste		2,698 	Residential Parki Residential Parki Commercial Park Lockers Acqu Amount Of Land Amount Outstan	ng - Tovnhouse ding isition Of Land Paid To Date	0% - 28% 112 0% - 3% 11 76% 300 \$17,500,000 \$55,650,000	Contingencies Hard Cost & Escalation Contingency \$7,289,100 Soft Cost Contingency \$1,698,400 Total \$8,387,500	
Cost O' Land' GFA Cost O' Land' GFA Revenue Item Residential Units Residential Units Residential Units	Factors	\$209,30	VTB/ Mortgage Land Mortgage k Rave	nterest tuc On Closing Revenue ale Of Inventory	\$18.297.500 Loan to Value rati 5.45%	2 : 25%	
Parking Lockers Retail Revenues Land Sale Revenue Land Sale Revenue Total Revenue From Sales		230,103 112 300 2,698	\$85,000 \$7,500 \$1,555	\$9.520.000 \$2.250.000 \$4,196.100 \$0	) Rate per sql: \$ 70.00 at cap rate of 4 :	8	
Recoveries Upon Closing Tarion Recovery Development Charge Recovery (1 Bedroom) Development Charge Recovery (2 Bedroom) Development Charge Recovery (3 Bedroom) Meter Charge Recovery Other Recoveries Total Recoveries		397 205 147 45 397 397		\$633.200 \$2,460.000 \$2,058.000 \$720.000 \$397.000 \$397.000 \$542.000 \$6,810,200	)         Tarion Admin Fee (\$350/unit), Form 4	Fee (3350/unit). Status Certificate (\$100/unit). Discharge Fee (\$	150/unit).
Deductions to Revenue HST on Revientual Sales HST on Chica/Commercial Sales Total Deductions Net Revenue Upon Closing Modes Name		\$390,176,000 \$4,196,100 For Calculation	0,00%	(\$36,193,400) \$0 (\$36,193,400)	HST On Average unit price Commercial Revenue assumes Net of	HST	
Land Purchase Proc Land Appraical Surplus Land Transfor Tax Really Taxa Really Taxa Land Mongage Interest VTB kiterest	\$73,150.000 \$30,723,000 \$00,723,000 \$0	<u>5.0</u> 1.50	0.0%	and Costs \$73,150,000 \$0 \$957,000 \$2,511,600 \$0 \$0	Estimated \$2.7M to be paid by Lanterr Cost to be paid by Lanterra ONLY per	g. <b>RJ</b> a ONLY (per proposed JV Agreement)	
Land Legais Internal Planning Site Plan Approval Fees Municipal Legais Planning Consultants Total Land Costs Construction	NSA CGFA	299,497		\$350,000 \$400,000 \$400,000	Assumed allowance of \$200K Assumed allowance of \$250K Assumed allowance of \$400k Assumed allowance of \$400K §260.65 / seliable sq. ft.		
Above Grade : Belgy: 47 Floors     Above Grade : Prennum for High Quality     Below Grade     Above Grade Parking     Permits     Lane Chaine & Misc     Provisions for Hentage Requirements     Renal Reglacement Und Provision	Construction cost Excl Contigency Total \$110.634.900	349.490 77.772 \$110.684.900 \$110.684.900	\$290 \$0 \$120 \$0 1.00% 0.20%	\$101,352,200 \$0 \$9,332,700 \$0 \$1,106,800 \$221,400 \$1,800,000 \$1,200,000	No Above grade Parking		
Construction Security Construction Isurance Office Tengnt Inducements Retail Tengnt Inducements Surveying Costs Technical Audits Warranty,		2,698 397 397 397	\$25 \$25 \$300 \$1.200 \$1.200	\$0 \$0 \$67,500 \$219,100 \$476,400 \$476,400	Assumed in construction budget 5300 / unit plus \$100,000 ellowance to \$1.200 / unit	r common eres Total Cost Construction cost 3300.03 3315,70	
Consultants Construction Management Fee Exabilities Contingency Contingentity Total Construction Hards Tarion Engliment	Per Suite Hard Cox		2.00% (10)- Cons	truction (Soft)	+6A (299,487.sft) 	5444.18 \$209.50	
Gash In Lieu Of Parkland		397 \$73,150,000	\$1,595	\$633.200 \$7,315.000	Per unit (Tarion fees) plus registration	and renewal fees	
Cash h Lieu Of Parkland Developmet Charges Condo - 1 Bedroom Condo - 2 Bedroom Educational Development Charge Educational Development Charge - Commercial / SM Educational Development Charges / SM Section 37 Emission Sciences / SM	Total Hard & Solt Costs	\$73,150,000 205 192 397 2,698 251	10.00% \$34.504 \$52.857 \$2,737 \$6.56 \$458	\$7.315.000 \$7.073.300 \$10.148.500 1.086.600 17.700 114.800 \$2.500.000	Anlicipated DC charges paid at Feb 20 Anticipated DC charges paid at Feb 20 Anticipated BC charges paid at Feb Anticipated EDC charges are paid at Fe Anticipated EDC charges paid at Feb Anticipated EDC charges paid at Feb Assumed allowance of S2-5M	22 rales 22 rales 5 2022 rales 5 2022 rales 5 2022 rales	
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## **APPENDIX "C"**

Hi-Rise Notice of Meeting and Information Statement (September 6, 2019)

## NOTICE OF MEETING

## and

## INFORMATION STATEMENT

## with respect to the

# SETTLEMENT TO INVESTORS IN THE HI-RISE CAPITAL LTD. MORTGAGE OVER THE PROPERTY MUNICIPALLY KNOWN AS 263 ADELAIDE STREET WEST

## under the

## TRUSTEE ACT

### September 6, 2019

This Information Statement is being distributed to investors in a Hi-Rise Capital Ltd. mortgage over the property municipally known as 263 Adelaide Street West, Toronto, Ontario, in respect of the Meeting called to consider the proposed early resolution and settlement of the mortgage to be held on September 25, 2019, at the InterContinental Toronto Centre, 225 Front Street West, Toronto, Ontario, M5V 2X3.

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 Thompson LLP, by telephone at (416)-595-2660 (Toronto local) or by email at gazeff@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/.

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## LETTER TO INVESTORS

September 6, 2019

#### Dear Investor:

You are invited to attend a meeting of investors in a syndicated mortgage over the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the "**Property**"), administered by Hi-Rise Capital Ltd. ("**Hi-Rise**") to be held at the InterContinental Toronto Centre, 225 Front Street West, Toronto, ON, M5V 2X3.

At the meeting, investors will be asked to consider, and if thought advisable, approve a settlement with 263 Adelaide Street Lofts (the "**Borrower**") discharging the syndicated mortgage in place on the Property. If the settlement is not approved, the Borrower may need to seek alternate solutions, including but not limited to, bankruptcy proceedings.

Following the syndicated mortgage market "freeze" involving properties with a syndicated mortgage on title in 2017, the Borrower has concluded, based on communications with potential lenders on separate projects, that it will not be able to secure construction financing for the development project on the Property. As such the Property remains in an underdeveloped state.

After reviewing the possible alternatives for the Property, in 2017, Hi-Rise and the Borrower commenced a sales process for the property to obtain the highest possible value for the Property and to maximize recovery for investors. During the sales process, it became apparent that instead of an outright sale of the Property, a joint venture between a purchaser and the Borrower to co-develop the Property would result in a higher recovery to investors.

To ensure that investors were adequately protected in the sale negotiations, Hi-Rise brought an application before the Ontario Superior Court of Justice (Commercial List) to, among other things, appoint representative counsel for investors, being Miller Thompson LLP.

In order to complete the sale of the property and the settlement of the syndicated mortgage, Hi-Rise is required to obtain the final approval of the Court, which will only be granted if a majority of the investors representing two-thirds of the value of the syndicated mortgage, voting either in person at the meeting or by proxy votes, cast in favour of the proposed transaction.

The Information Statement contains a detailed description of the proposed sale of the Property and the settlement of the syndicated mortgage. Please give this material your careful consideration and, if you require assistance, consult your financial, legal, tax or other professional advisors. If you are unable to attend the Meeting in person and wish your vote to be counted, please complete and deliver the applicable form of proxy which is enclosed in order to ensure your representation at the Meeting. There are several ways for your vote to be cast which are set out in the proxy form included in this Information Statement.

After reviewing the transaction and the settlement, the Hi-Rise board of directors (the "Hi-Rise Board") unanimously determined that the transaction and settlement are (i) in the best interests of the investors; (ii) fair, from a financial point of view, to the investors; and (iii) resolved to recommend that the investors vote in favour of the settlement resolution.

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#### The Hi-Rise Board unanimously recommends that you vote FOR the Settlement Resolution

Key considerations made by management in supporting the transaction and the settlement include:

- a) the transaction is the byproduct of a sale process, which was a competitive and professionally run process, in which the best overall bid was accepted;
- b) the transaction and settlement provides a clear exit strategy in order to allow the project to move forward and does so by 'buying out' the Investors, which has the benefit of greatly improving the project's prospects of attracting construction financing from banks;
- c) the transaction and settlement provides greater certainty to Investors than a 'no' vote and a receivership; and,
- d) the transaction and settlement are expected to yield a total of \$22.2 million (100% of principal plus interest) for Registered Investors (as defined in the information statement enclosed herein) and \$21.6 million (62% of principal or 47% of principal plus interest) for Non-Registered Investors (as defined in the information statement enclosed herein) this is more than the Financial Advisor, Grant Thornton Limited (engaged by Hi-Rise Capital Ltd. to advise on the transaction), expects from a receivership if investors voted 'no'.

It is important that your investment be represented at the Meeting. If you are unable to attend the Meeting in person, please complete and deposit the enclosed Instrument of Proxy with TSX Trust at Attn: Investor Services, 301-100 Adelaide Street West, Toronto, ON M5H 4H1 or online at https://www.voteproxyonline.com/pxlogin so that it is received no later than 1:00 p.m. (Toronto time) on September 23, 2019 or by 1:00 p.m. (Toronto time) on the business day prior to the date on which any adjournment or postponement of the meeting is held. Late proxies may be accepted or rejected by the Chairman of the Meeting in his sole discretion, and the Chairman is under no obligation to accept or reject any particular late proxy.

On behalf of Hi-Rise, I would like express our gratitude for your consideration of this important transaction.

#### Yours very truly,

"Noor Al-Awgati"

Noor Al-Awqati Chief Operating Officer

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**NOTICE IS HEREBY GIVEN** that a meeting (the "**Meeting**") of investors (the "**Investors**") in a Hi-Rise Capital Ltd. ("**Hi-Rise**") mortgage (the "**Hi-Rise Mortgage**") over the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the "**Property**") entitled to vote on a settlement proposal (the "**Settlement**") proposed by 263 Adelaide Street Lofts Inc. will be held for the following purposes:

## to consider and, if deemed advisable, approve, the Settlement on vote terms set out in the Order.

The Meeting is being held pursuant to an order (the "**Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated March 21, 2019. Capitalized terms used but not defined herein have the meanings ascribed in the Order.

NOTICE IS ALSO HEREBY GIVEN that the Meeting will be held at the following dates, times and location:

Date: September 25, 2019

Time 1:00 p.m. (Toronto time)

Location: InterContinental Toronto Centre, 225 Front Street West, Toronto, ON, M5V 2X3

Investors will be eligible to attend the Meeting by person or by proxy to vote on the Settlement.

An Investor who is unable to attend the Meeting may be entitled to vote by proxy, subject to the terms of the Order. Further, any Investor who is not an individual may only attend and vote at the Meeting if a proxyholder has been appointed to act on its behalf at such Meeting.

If the Settlement is approved at the Meeting by the required majorities of Investors and other conditions of the Settlement are met, Hi-Rise intends to make a motion to the Court in October 2019, or on such other date as may be set by the Court seeking an order approving the Settlement and allowing Hi-Rise to discharge the Hi-Rise Mortgage, and all loan obligations and all encumbrances related to the Hi-Rise Mortgage.

In order for the Settlement to become effective:

- the Settlement must be approved by the required majorities of Investors set out in the Order and voting on the Settlement must be in accordance with the terms of the Order;
- 2. the Settlement must be approved by the Court after the Meeting; and
- the conditions to the Settlement as set out in the Settlement must be satisfied or waived, as applicable.

Miller Thompson LLP has been appointed representative counsel of the Investors ("**Representative Counsel**"). Additional copies of the Information Package, including the Information Statement and the Settlement, may be obtained from the Representative Counsel website at <u>https://www.millerthomson.com/en/hirise/</u> or by contacting Representative Counsel by telephone at (416) 595-2660 (Toronto local) or by email at gazeff@millerthomson.com.

DATED at Toronto, Ontario, this 6th day of September, 2019.

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## INFORMATION STATEMENT SUMMARY OF SETTLEMENT

This information statement (the "Information Statement") provides a summary of certain information contained in the schedules hereto (collectively, the "Schedules" and is provided for the assistance of Investors only). The governing documents are the Settlement, which is attached as Schedule "B" to this Information Statement, and the Order granted by the Court on March 21, 2019 (the "Order"), which is attached as Schedule "C" to this Information Statement. This summary is qualified in its entirety by the more detailed information appearing in the Settlement, the Order or that is referred to elsewhere in the Information Statement. Investors should carefully read the Settlement and the Order, and not only this Information Statement. In the event of any conflict between the contents of this Information Statement and the provisions of the Settlement or the Order, the provisions of the Settlement or the Order, as applicable, govern.

The documents which have been made available to Investors on the Representative Counsel website at <u>https://www.millerthomson.com/en/hirise/</u> by Representative Counsel are specifically incorporated by reference into, and form an integral part of this Information Statement.

Overview	You are receiving this Information Statement as you hold an interest in a syndicated mortgage, administered by Hi-Rise Capital Ltd. (" <b>Hi-Rise Capital</b> ") in respect of the property municipally known as 263 Adelaide Street West, Toronto Ontario (the " <b>Property</b> ") and the proposed development known as the "Adelaide Street Lofts" (the " <b>Project</b> ").
	As set out in the notice of meeting enclosed herein, a meeting of the investors of the syndicated mortgage (the " <b>Investors</b> ") will be held on September 25, 2019 to consider and vote on a settlement proposal proposed by 263 Adelaide Street Lofts (the " <b>Borrower</b> ") in respect of the amounts owing to Investors under the syndicated mortgage. This Information Statement includes background information to the Settlement and a description of your rights as an Investor for the upcoming Meeting.
HOW TO FILL OUT THE FORM OF PROXY	If you are not able to attend the Meeting in person you may fill out and execute the form of proxy enclosed herein, within which you will appoint someone to attend the Meeting and vote on your behalf. If you fill out and execute your form of proxy but do not appoint a proxyholder on your form, Noor Al-Awqati and failing her, Brinn Norman, both of Hi-Rise will be appointed as your proxyholder (the "Management Proxyholders"). They will attend the meeting and

Capitalized words and terms not otherwise defined in this Information Statement have the meaning given to those words and terms in the Settlement and the Order.

	vote in accordance with your instructions. <u>They do not have the</u> <u>power to change your vote</u> . If you appoint a proxyholder other than a Management Proxyholder, your proxyholder must attend the Meeting or your vote will not be counted.
Ηοω το νοτε	Once you have reviewed the materials included herein and as necessary, have consulted with your legal, financial, tax and other professional advisors, it is important that you vote either in support of the Settlement (as defined herein) or against the Settlement.
	Voting can be completed as follows:
	In Person: Attend the Meeting in person on September 25, 2019 and vote by ballot.
	Mail: Appoint either a Management Proxyholder or a proxyholder of your choice, enter voting instructions, sign the form of proxy and send your completed form of proxy to:
	TSX Trust Company 301-100 Adelaide Street West Toronto, Ontario, M5H 4H1
	<b>Internet</b> : Go to www.voteproxyonline.com. Enter the 12-digit control number printed on the form of proxy and follow the instructions.
	<b>Fax</b> : Appoint either the Management Proxyholder or a proxyholder of your choice, enter voting instructions, sign the form of proxy and fax a completed copy of the enclosed proxy form to 416-595-9593.
	<b>IMPORTANT</b> if you do not appoint a Management Proxyholder, your appointed proxyholder must attend the Meeting. If your appointed proxyholder does not attend the Meeting, <u>your vote will</u> <u>not be counted</u> . If you appoint a Management Proxyholder, <u>your</u> <u>vote for or against the Settlement will be voted according to the</u> <u>instructions you have provided</u> . Management Proxyholders cannot change your vote.
BACKGROUND TO THE MEETING	The Property was first purchased by the Borrower in June 2011 for the purpose of developing a high-rise condominium. In order to finance the development of the Property, the Borrower obtained a loan from Hi-Rise Capital in the form of a syndicated mortgage (the " <b>Hi-Rise Mortgage</b> ").

	The Borrower subsequently encountered a number of delays in obtaining site approvals, certain of those delays stemming from the fact that parts of the building were designated as heritage attributes. As a result of the syndicated mortgage "freeze" in 2017, the Borrower concluded it would not be able to obtain construction financing for the Project as institutional lenders would not provide financing to projects with a syndicated mortgage in place. As such the Project remains in an undeveloped state.
	Under the terms of the loan agreement entered into with the Borrower, there is no mechanism for Hi-Rise to discharge the Hi- Rise Mortgage unless it receives full payment of principal and interest, which becomes due upon the completion of the Project. As such, Hi-Rise has applied to the Court for authorization to discharge the mortgage. However, to receive the Court's final approval to discharge the mortgage, Hi-Rise and the Borrower must obtain the approval of the Settlement by a majority of Investors representing two-thirds in value of the Hi-Rise Mortgage (the " <b>Required</b> <b>Majorities</b> ").
	On March 21, 2019, pursuant to the Order attached hereto as Schedule "C", the Court approved the holding of a meeting of Investors to consider, and if deemed advisable, pass a resolution approving the Settlement and the distribution of proceeds therefrom. If the Settlement is approved at the Meeting, Hi-Rise may proceed to bring a motion to the Court for final approval of the Settlement. If the Settlement is not approved at the meeting, Hi-Rise will need to seek other alternatives, set out below under " <i>Alternatives to the</i> <i>Settlement</i> ".
CLASSES OF INVESTORS	There are two types of Investors, registered and non-registered. Those Investors who invested their cash investment directly through Hi-Rise are considered " <b>Non Registered Investors</b> ". Investors who invested via a Registered Savings Plan or Tax Free Savings Account through Community Trust Company are considered " <b>Registered Investors</b> ".
OFFER TO SETTLE	On August 26, 2019, 263 Holdings Inc. ("263 Holdings") made an irrevocable offer to settle the Hi-Rise Mortgage consisting of the following offer to Investors:

-	1	0	-	

<ul> <li>an immediate repayment to all Investors of least \$17,513,000 on closing (the "Initial Settlement Payment");</li> </ul>
<ul> <li>Investors holding back a second mortgage (the "Remaining Mortgage") for the balance of their principal investment totalling an estimated \$18,270,000.</li> </ul>
<ul> <li>a debenture of the Borrower in the amount of \$8,000,000, unsecured and non-interest bearing, payable six years from the date of closing.</li> </ul>
A corporate guarantee of 263 Holdings, the beneficial owner of the Property and other projects, will be provided along with a personal guarantee by Mr. Jim Neilas in respect of an \$8 million debenture. The personal guarantee will be limited to 25% of the total debenture.
A complete copy of the offer to settle is attached hereto as Schedule "B" attached hereto (the "Settlement"). The Settlement was accepted on August 29, 2019 by the Hi-Rise Board.
The Remaining Mortgage is expected to be paid out in full within two to three years on the earlier of (i) the Borrower securing construction financing or (ii) the third anniversary of the Remaining Mortgage being registered on title . Under the Remaining Mortgage, interest earns a rate of 5% per annum for the first two years. The Remaining Mortgage earns a rate of 8% per annum for the third year (if required).
The payout of the Initial Settlement Payment and the registration of the Remaining Mortgage will represent the consideration payable for the full satisfaction and release of all rights and obligations of the Borrower under the Loan Agreement, including the obligation of the Borrower to repay the Hi-Rise Mortgage.
Hi-Rise acknowledges that upon receipt of the Initial Settlement Payment, it waives any rights to any further payments to Investors, if any, that may become payable to Hi-Rise under the Loan Agreement or any related documentation.
The total payments expected to be paid to Investors pursuant to the Settlement are as follows:
<ul> <li>Interest Paid to Date Investors:</li> <li>Registered Accounts: \$3,094,770</li> <li>Non-registered Accounts: \$7,430,963</li> </ul>
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REPRESENTATIVE COUNSEL AND THE INVESTOR COMMITTEE

<sup>&</sup>lt;sup>1</sup> Note that this figure does not take into account the accrued interest, being \$15,987,059.79 as at October 16, 2019. Interest continues to accrue on a daily basis.

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<sup>&</sup>lt;sup>2</sup> Note that this figure does not take into account the accrued interest. With accrued interest the total amount payable is \$68,229,559.79 as at October 16, 2019.

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review and analysis of the Settlement to the Investors without retaining an advisor.
<ol> <li>Requested that Hi-Rise and the Borrower agree to the Investor Committee engaging an advisor to complete a comprehensive investigation on the Borrower's entire operations, from the inception of its operating history, including all other projects the Borrower has been involved with.</li> </ol>
3. On August 24, 2019, opted to make retaining a financial advisor conditional on terms that Hi-Rise and the Borrower could not accept, the result of which being the Investor Committee directing Representative Counsel to not engage an advisor to assist with analyzing the transaction and settlement at all.
<ol> <li>Applied to the Court to cancel the Trustee Application and stop the vote.</li> </ol>
5. Threatened to apply to the Court for a receivership over the Borrower.
The Investor Committee has to date refused to meet and negotiate with the Borrower or participate in the settlement process or hire a financial advisor (or has made the hiring of a financial advisor conditional on terms not related to the Settlement that Hi-Rise and the Borrower could not accept). The Borrower for its part, has offered to agree and pay for a financial advisor to assess the transaction and the settlement and has agreed to provide access to the Borrower and BMO. The Investor Committee has declined unless the Borrower agrees to an order that results in a review and audit of its entire operations, including all related entities and third party consultants from the company's inception in 2004.
As the Borrower and Representative Counsel have been unable to agree on the terms of a settlement, on August 28, 2019 the Borrower was forced to make a firm offer to Hi-Rise setting out terms of Settlement, without the endorsement of Representative Counsel or the Investor Committee. On August 29, the board of Hi-Rise reviewed and accepted the offer and resolved to recommend the offer to Investors.
Upon reviewing and considering the Settlement, the Investor Committee and Representative Counsel have decided to recommend AGAINST the Settlement.

	The Investor Committee cited the following reasons for recommending against the Settlement:		
	<ol> <li>They do not believe that the Property yielded no all cash offers during the sales process;</li> </ol>		
	<ol> <li>They believe that a financial recovery to Investors would be greater if Meridian Credit Union ("Meridian") were to sell the Property as a distressed asset; and</li> </ol>		
	<ol> <li>They believe that the cash payable on closing should be higher for Non-Registered Investors.</li> </ol>		
	The Investor Committee has also taken the position that they are unwilling to agree on any deal in which the Borrower would receive any form of financial recovery, unless Investors are paid full principal and interest. This would require a fairly quick sale at a price of \$86 million, and there is no evidence that leads Hi-Rise or the Borrower to believe that a sale price anywhere near this amount can be achieved.		
	The Borrower and Hi-Rise both disagree with the conclusion reached by the Investor Committee and share concerns regarding the conduct of the Investor Committee during the negotiation process. In particular, concerns about the leadership of Nikolas George Tsaconakos, who previously has been fined \$175,000 and banned from seeking any employment with regulatory compliance or regulatory supervisory responsibilities for conduct unbecoming and detrimental to the public interest through a general and systemic failure to design, establish, oversee and implement an effective compliance program. In this case, Nikolas Tsakonacos opposed retaining a financial advisor on behalf of investors taking the position that he could provide the review and analysis required. The Board of Hi-Rise strongly took issue and disagreed with this decision. Details of the settlement reached by Mr. Tsacanokos can be found here: https://www.iiroc.ca/Documents/2002/096BD07D-5B7B-46D1- 9C23-0C971C4256B5_en.pdf.		
TIMING OF SETTLEMENT IMPLEMENTATION	It is currently anticipated that the Settlement will be implemented in accordance with the following timetable:		
	September 25 2019 Meeting to vote on the Settlement		

	October 2019	Final Order		
	December 2019	Initial Repayment	to Investors	
	December 2021 (or December, 2022)	Remaining Mortg (this payment may year at the option	be delayed by	one
	December, 2024 (estimated)	Remaining Mortg from the Holdings the project is com	Guarantee aft	
	Note that the dates abov dates will be adjusted a			
ANTICIPATED RETURN OF CAPITAL UPON IMPLEMENTATION OF THE SETTLEMENT	For illustrative purpose Registered Investors of \$142,127 on an initial in Investor could receive a The below table sets of Registered and Non-Re <b>Registered Investor:</b> <b>Initial Investment</b> Interest Paid to Date to Inv Initial Repayment of Princ Partial Interest Payment of Remaining Interest Payment Second Mortgage paid on	could receive a provestment of \$100, a payment of \$84,8 out the estimated gistered Investors of vestors <sup>(1)</sup> : ipal <sup>(2)</sup> : n Closing <sup>(3)</sup> : nt converted to	ayment of an 000 and a Non- 53. payments to b	estimate Registere e made
	Maturity <sup>(4)</sup> :			
	Total Repayment on S10	0,000 Investment:	\$145,079	145%
	Non-Registered Invest	tor:		
	Initial Investment Interest Paid to Date to Inv		<b>\$100,000</b> \$21,339	100% 21%
	Initial Repayment of Princ Remaining Mortgage paid		\$0	0% 39%
	Maturity <sup>(3)</sup> :	on wordgage	\$40,551	
	Remaining Mortgage paid guarantee paid on project of		\$22,973	23%
	Total Repayment on \$10	0,000 Investment:	\$84,863	83%
	Notes: (1) Interest paid to date to In depending on how much int (2) There is no payment ma	erest has been received	to date.	

	<ul><li>(3) Payment is expected on or before October 2022.</li><li>(4) Payment is expected on project completion for October 2025.</li></ul>	
INITIAL INVESTMENT AND DISCLOSURE	Investors have previously been informed of the high risk nature of their investment in the Hi-Rise Mortgage. The loan-to-value ratio, which is a financial term used by lenders to express the ratio of a loan to the value of an asset, disclosed to Investors within the Hi- Rise Mortgage documentation between 2011 and 2017 ranged from 181% to 300%. The higher the loan-to-value ratio, the higher the risk for a lender. For example, a loan-to-value ratio of 181% represents a loss of 79% an Investor's principal invested if the property is liquidated in its existing state and a loan-to-value ratio of 300% represents a loss of 100% of an Investor's principal if the property is liquidated in its existing state. The loan-to-value ratio for the Remaining Mortgage obtained as a result of the Settlement is 90% if past interest payments are included, and 70% if no past interest payments are included. The Settlement represents a significantly higher recovery and lower risk exposure than what which was disclosed to Investors as the potential loss in the event of an early exit. The disclosure document	
HI-RISE WAIVES RECOVERY OF Administrative Costs		
ALTERNATIVES TO THE SETTLEMENT	<ul> <li>In the event that that a majority of Investors fail to approve the Settlement at the Meeting, the options Hi-Rise has to exit and wind up the Hi-Rise Mortgage are as follows:</li> <li>Commence litigation with the Borrower;</li> <li>Initiate bankruptcy proceedings under the <i>Bankruptcy and Insolvency Act</i>;</li> </ul>	

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	<ul> <li>Complete a court ordered sale by first mortgagee;</li> <li>Initiate an insolvency proceeding under the <i>Companies and Creditors Arrangement Act</i>; or</li> <li>Leave the Hi-Rise Mortgage in place indefinitely and seek alternatives to constructing the building.</li> <li>After consulting with its advisors, Hi-Rise has concluded that the above listed processes will take longer to complete and will result in the Investors receiving a substantially less advantageous outcome than the Settlement.</li> <li>In the event that the Investors vote no to the Settlement, it is expected that Meridian would seek a court ordered sale. In such a scenario, Investors will lose control of the process and will not have a say or vote on what happens with their investment.</li> </ul>
DISPOSITION OF THE PROPERTY	The Exit Process The intended exit for the Property was construction and sale of the completed building (or units). However given that the Borrower will be unable to secure construction financing with a syndicated mortgage in place, Hi-Rise has concluded that the completion of the Project by the Borrower alone is no longer possible. Unfortunately, this fact is harmful to your investment as the exit plan you have invested in is no longer possible. Given that the Borrower is entitled to extend the Hi-Rise Loan Agreement and accrue interest and Hi-Rise is not entitled to enforce its security due to a standstill agreement with Meridian Credit Union
	investors requested an early exit of the Hi-Rise Mortgage. The only option available was to request an outright sale of the property. Hi-Rise approached the Borrower began the process of selling the Property in June of 2017. Shortly thereafter, an independent board of directors of Hi-Rise was established to ensure that the interests of the Investors would be protected throughout the sales process. <i>Engagement of BMO</i>
	In May of 2017, the Borrower began interviews with potential brokers and advisors to cause an early exit of the Property by way of outright sale of the Property. The size, type of asset, location, and stage of development, are all aspects the Borrower considered when selecting an advisor.

After considering several brokerage firms and investment banks, the Borrower retained BMO to act as the advisor on the sale of the Property. In the opinion of the Borrower, BMO was best suited for the role based on recent transactions they had advised on, their expertise in the area and the strength of their proposal to the Borrower in respect of the Property.
Sale Process
The Borrower began seeking purchasers for the Property in July of 2017 with the assistance of BMO. It conducted two rounds of bids (with the first round failing to identify a potential purchaser) and eventually identified purchasers who would enter into a joint venture for the development of the Property. The joint venture is not considered to be an outright sale of the Property, but rather an agreement to jointly build and develop the Property. The Borrower was not able to secure an outright purchase of the Property through the process.
BMO was originally engaged to sell two properties: the Property (263 Adelaide Street West) and 40 Widmer Street, a residential development property close to the Property. Widmer successfully sold and set a new record for residential land transactions. Adelaide did not sell due to uncertainties with the constructability.
The Borrower stopped marketing the property for sale and re-listed the Property in August of 2018 after it made more progress on the zoning and clarified some requirements relating to the heritage and rental replacement aspects of the Property.
Joint Venture Agreement
On April 10, 2019, the purchaser, being Lanterra Developments Limited (the " <b>Purchaser</b> ") entered into a binding term sheet (" <b>Term Sheet</b> ") with 263 Holdings Inc. (the " <b>Vendor</b> ") an affiliate of the Borrower, pursuant to which the Purchaser agreed to enter into a joint venture agreement in respect of the Property pursuant to which it would hold a 75% interest in the Property and the Borrower would retain a 25% interest in the property through a single purpose limited partnership (the " <b>Property Transaction</b> ").
Pursuant to the terms set out in the Term Sheet, the Purchaser will secure a land loan of \$36,575,000 and will make \$20,000,000 available for distribution to the Investors after paying out an aggregate amount of \$16,414,000 to the first mortgage lender, Meridian. The Purchaser will also secure a second loan in the form

of the Remaining Mortgage, the terms of which are set out below under the section "Key Terms of the Remaining Mortgage".
It is anticipated that the Project will take approximately five years to complete. The Borrower will guarantee all loans on the Property. The Borrower will also earn a development fee as well as property management fees in the following amounts:
<ul> <li>0.75% of the gross sales value as a developer fee; and</li> <li>\$5,000 per month as a property management fee for managing all aspects of the property (such as: (i) managing all tenant; (ii) working with real estate agents for leasing units (iii) day to day care of the building including tenant and building emergencies, fire, electrical, water and mechanical maintenance requirements).</li> </ul>
The Purchaser will also provide all development, construction and cost-overrun and completion cost guarantees required for the redevelopment of the Property, including but not limited to, land and construction financing.
The closing of the Property Transaction is subject to a number of standard and customary closing conditions including, among other things, (i) the absence of pending or threatened litigation in respect of the Property Transaction, (ii) delivery of customary legal opinions, closing certificates and other closing documentation and (iii) all other necessary consents, approvals, exemptions, and authorizations of governmental bodies, lenders, lessors and other third parties but which shall specifically exclude the rezoning or development approvals which are not conditions to closing.
The Term Sheet sets out that the Project is anticipated to require capitalization of approximately \$300,000,000 comprised of \$195,000,000 of debt, \$57,000,000 of deferred costs and insured deposits, and \$48,000,000 of equity. Ultimately project debt is expected to represent 65% of the Project's capitalization.
Note that the Property Transaction has the private equity group of BMO participating (at its option) as an equity investor. BMO's participation was not contemplated until after no cash offers materialized in the second part of the sale process. BMO's private equity group will only participate after construction financing is obtained.
Under the terms of an amending agreement entered into between the Vendor and the Purchaser on June 28 <sup>th</sup> , 2019, the Term Sheet will

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	terminate and be of no further effect upon (i) the failure of the parties to settle and enter into definitive agreements, (ii) the failure of the Vendor to obtain approval of the Transaction from Hi-Rise Capital within a set time frame, (iii) at the option of the Purchaser upon the failure of the Vendor to deliver all closing deliverable required under the Term Sheet (iv) at the option of the Vendor upon the failure of the Purchaser to deliver the closing deliverable required under the terms sheet (v) by mutual written agreement of the parties and (vi) October 16, 2019. Note that it is anticipated that the parties will agree to an extension of the outside date for the agreement to December 2019.	
KEY ITEMS TO HIGHLIGHT IN THE PROPERTY TRANSACTION	<ul> <li>The Property Transaction was specifically negotiated with the interests of the Investors and Hi-Rise in mind, as evidenced by the following:</li> <li>the Purchaser has agreed to secure new debt, in the form of a \$36,575,000 mortgage (the "New First Mortgage") in order to pay out a portion of the existing mortgages on title;</li> <li>the Purchaser has also agreed to secure a second mortgage (the "Remaining Mortgage") for the benefit of Investors in the amount of \$18,270,000, and under the terms of the Remaining Mortgage, has agreed to provide a full guarantee on the principal and interest.</li> <li>the Purchaser has agreed to discharge the Remaining Mortgage on or prior to the earlier of (i) the date on which any construction loan (which is expected to exceed \$250 million) is advanced or (ii) three years following the registration of the Remaining Mortgage on title. This will reduce the Investor's exposure to risk.</li> <li>the Purchaser has agreed to provide a full corporate guarantee on the Remaining Mortgage. The Purchaser's provide a full corporate guarantee on the Remaining Mortgage. The Purchaser's provide a full corporate guarantee on the Remaining Mortgage. The Purchaser's provide a full corporate guarantee on the Remaining Mortgage. The Purchaser's provide a full corporate guarantee on the Remaining Mortgage.</li> </ul>	
KEY TERMS OF THE HI-RISE Mortgage	Corporate guarantee is considered strong by BMO. Under the terms of the Hi-Rise Mortgage, the Borrower is entit to renew the mortgage annually, and is permitted to accrue inter until completion of the Project. There is no restriction on how lo the Borrower may accrue interest and the Borrower is under obligation to pay the mortgage out until the completion and sale the Project.	

	The Hi-Rise Mortgage must be subordinate to all project financing, including construction financing, or any other project financing that is secured to fund construction and completion of the Project. At present, the Hi-Rise Mortgage is in second position behind Meridian which holds a mortgage with principal owing of \$16,414,000, plus accrued interest of \$166,000 as of September 5, 2019. Hi-Rise has agreed to a standstill, a condition typically required by first mortgage lenders when they permit a second to be registered on title. Under the terms of the standstill, Hi-Rise cannot take any action to enforce the mortgage. If it could take action to enforce the mortgage, the Borrower has a potential cause of action against Hi-Rise for failing to advance on the mortgage as well as not remaining until completion of the Project.
KEY TERMS OF THE REMAINING MORTGAGE	<ul> <li>The Remaining Mortgage will be granted by the Purchaser, as mortgagor, to a Hi-Rise entity who will act as trustee and hold the Remaining Mortgage for the benefit of Investors as mortgagee (the "Remaining Mortgagee") and will be subordinated and postponed to the New First Mortgage, the terms of which will be set out in an inter-lender agreement between the Remaining Mortgage and the mortgagee of the New First Mortgage.</li> <li>The Remaining Mortgage will have the following terms and conditions:</li> </ul>
	<ul> <li>The maturity date of the Remaining Mortgage will be the earlier of (i) the receipt of the shoring and excavation permit for the project to be developed at the Property, and (ii) the date which is three years next following the closing date of the Property Transaction.</li> </ul>
	<ul> <li>The principal amount of the Remaining Mortgage will be equal to the positive difference between (i) 73,150,000, and (ii) the aggregate of (1) the principal amount of the New First Mortgage and (2) the equity contribution made by 263 Holdings Inc.to the Purchaser of \$18,287,500. The anticipated principal amount of the New First Mortgage is \$36,575,000. The anticipated principal amount of the Remaining Mortgage is therefore \$18,287,500.</li> </ul>
	<ul> <li>Interest on the Remaining Mortgage will be payable at five percent per annum during the first two years</li> </ul>

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	<ul> <li>of the term and eight percent per annum for the final year of the term, in each case calculated semi-annually not in advance. This amount is being advanced on closing.</li> <li>o The Borrower shall have the right to prepay the Remaining Mortgage in whole or in part, without penalty, bonus, set-off or deduction on note less than thirty days' prior written notice.</li> </ul>	
	<ul> <li>The Remaining Mortgage will be assignable by the Remaining Mortgagee with the prior written consent of the joint-venture partnership, such consent not to be unreasonably withheld, conditioned or delayed.</li> </ul>	
	• The interest reserve will be held in trust with a law firm mutually acceptable to the Purchaser and Hi-Rise. The interest reserve will be released immediately for distribution on closing and will form part of the closing proceeds to investors.	
	<ul> <li>Upon the repayment in full of the Remaining Mortgage, the Remaining Mortgagee will agree to execute an acknowledgement and direction authorizing the discharge of the registered charge from title and if so requested by the joint-venture partnership, a full and final release of each of parties.</li> </ul>	
OTHER MATERIAL FACTORS AFFECTING RECOVERY OF THE ORIGINAL FIRST MORTGAGE	The following is a list of factors supporting Hi-Rise's decision to complete the Property Transaction and move forward with the Settlement:	
	First Mortgage Loan Non-Renewal:	
	The Meridian Credit Union loan came due in February of 2019. Meridian is not renewing the loan. Meridian has agreed to not enforce their mortgage until Hi-Rise Capital completes the Meeting and completes its court application.	
	Dramatic Increase in Construction Costs:	
	Construction costs have increased dramatically. The current zoning for the Property has rendered construction cost prohibitive and changes to the zoning are required.	

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	Sale Process:	
	The sale process yielded no all cash offers that offered an acceptable recovery for the Hi-Rise Mortgage (only joint venture offers).	
RECOMMENDATION OF HI-RISE CAPITAL BOARD OF DIRECTORS	The boards of directors of Hi-Rise Capital Ltd. recommend that the Investors vote FOR or YES to the resolution to approve the Settlement.	
	In reaching its decision to support and recommend the Settlement, the board concluded that the Settlement would:	
	<ul> <li>provide Investors with an efficient process to achieve an early exit of the Hi-Rise Mortgage;</li> </ul>	
	<ul> <li>provide Investors with more control over the process than it recovery of the investment was completed through litigation or sold under court order by Meridian as a distressed asset;</li> </ul>	
	<ul> <li>provide Investors with direct independent legal representation ensuring that Investor's interests are strongly advocated;</li> </ul>	
	<ul> <li>provide for a settlement of, and consideration for, all claims by Investors;</li> </ul>	
	<ul> <li>add certainty to the ultimate outcome of the Hi-Rise Mortgage; and</li> </ul>	
	<ul> <li>avoid a distress sale which would likely result in a significantly lower price for the Property and a worse recovery for Investors.</li> </ul>	
SUPPORT OF GRANT THORNTON AS FINANCIAL Advisors To Hi-Rise Capital	Grant Thornton Limited ("Grant Thornton") were retained to act as financial advisors to Hi-Rise in connection with the Settlement As part of their review of the Settlement, Grant Thornton conducted a thorough review of the documentation related to the Hi-Rise operations, and the Settlement, and have prepared two reports that detail their findings in respect of the following:	
	Report on Hi-Rise Operations	
	<ul> <li>Hi-Rise's bank statements;</li> </ul>	

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<ul> <li>Project appraisals and valuations;</li> </ul>	
<ul> <li>Sample of Investor loan participation agreements, Investo disclosure packages and mortgage loan documents;</li> </ul>	
<ul> <li>Sample Hi-Rise marketing materials; and</li> </ul>	
<ul> <li>Correspondence from Investors.</li> </ul>	
Based on their review of the above, Grant Thornton concluded:	
<ul> <li>The actions taken by Hi-Rise have been well documented and supported;</li> </ul>	
<ul> <li>Hi-Rise completed an adequate credit analysis prior to making amendments to the mortgage commitment;</li> </ul>	
<ul> <li>Adequate disclosure was provided to Investors in respect of the risks associated with the real estate development market potential conflicts of interest, related party transactions Investor rights and fees (including amounts and fees);</li> </ul>	
<ul> <li>Hi-Rise did consider project viability and recovery when setting mortgage lending limits and subsequen amendments;</li> </ul>	
<ul> <li>Investor payments were paid in accordance with the respective loan agreements and Investors were provided with adequate disclosure in respect of the risk of the investment;</li> </ul>	
<ul> <li>There was no co-mingling of Investor proceeds;</li> </ul>	
<ul> <li>The marketing materials did not contain information that was inconsistent with Investor disclosure;</li> </ul>	
<ul> <li>The financial data provided to Investors was consistent with the pro forma financials statements and claims regarding the status of the Project; and</li> </ul>	
<ul> <li>The Investors received consistent updates regarding any material changes to the Project</li> </ul>	
Report on the Settlement	
<ul> <li>The circumstances which have led to the Settlement appear to be separate and distinct from the circumstances that led to the failure of other syndicated mortgages in Ontario.</li> </ul>	
<ul> <li>The sales process undertaken by BMO was thorough and yielded the best price</li> </ul>	

	• They support management's decision to approve the settlement because it represents a better outcome than the alternatives
	• Were it not for management's efforts and capital injection over the last two years, investors may not have had as good an outcome
	<ul> <li>Complexity of construction due to Heritage aspect of property is primary reason no cash offers have been received for the Property</li> </ul>
	Grant Thornton has concluded that if Investors vote NO to the Settlement, a receivership sale would be challenging as the market appears to have been exhaustively canvassed in the sales process.
	If Investors vote YES to the Settlement, there is a payment stream for Investors estimated to total \$43.8 million. As such Grant Thornton has concluded that the Settlement appears to possess less risk and provides clarity and certainty to Investors. Grant Thornton does not disagree with management of Hi-Rise's recommendation that Investors vote YES to the Settlement.
CLASSIFICATION OF Investors: First and Second Priority	Pursuant to the terms of the Settlement, Investors shall rank in priority according to their documents. Registered Investors will rank in priority to Non-Registered Investors, and will earn full principal and interest. Non-Registered Investors will be paid all remaining funds.
	Non-Registered Investors will be treated equally and shall receive their returned principal on a <i>pari passu</i> basis with all other Non- Registered Investors, regardless of when an investment was made. The amount of interest paid to the Investor to date shall have no impact on the repayment priority to Investors under the Settlement.
MEETING	Pursuant to the Order granted by the Court on March 21, 2019, the Meeting has been called for the purposes of having Investors consider and vote whether to approve the Settlement.
	The Meeting is scheduled to be held at 1:00 p.m. (Toronto time) on September 25, 2019 at the InterContinental Toronto Centre, 225 Front Street West, Toronto, ON, M5V 2X3.
	The Meeting will be held in accordance with the Order and any further Order of the Court. The only persons entitled to attend each of the Meeting are those specified in the Order.

	A representative of Hi-Rise will preside as the chair of the Meeting (the " <b>Chair</b> ") and, subject to the Order or any further Order of the Court, will decide all matters relating to the conduct of the Meeting. The Chair will direct a vote with respect to the approval of the Settlement. The form of resolution to approve the Settlement is attached as Schedule "A" to this Information Statement (the " <b>Settlement Resolution</b> "). Following collection of the votes at the Meeting and those submitted electronically, TSX Trust Company, the scrutineers appointed will tabulate the votes and Hi-Rise will determine whether the Settlement has been accepted by the Required Majorities, all in accordance with the procedure established in the Order. Hi-Rise will file a report with the Court regarding the Meeting and the Settlement, including the results of the votes. A copy of such report will be posted on the Representative Counsel's website prior to the hearing to consider the Settlement.
ENTITLEMENT TO VOTE	Investors shall be entitled to vote at the Meeting in person or by proxy. Proxy voting is a process by which an Investor's vote will count at the meeting but does not require the Investor's attendance at the Meeting. More information about this process is outlined below.
WEIGHT OF VOTING	The weight of votes shall be proportional to the size one's investment in the Hi-Rise Mortgage, with the aggregate value of \$52,242,500 to be represented by such votes. Note that the aggregate value of the mortgage will be finalized at the time of voting and discharge and may change from the value reflected herein.
APPOINTMENT OF PROXYHOLDERS AND VOTING	An individual that is not an Investor may only attend and vote at a Meeting if it has appointed a proxyholder to attend and act on its behalf at such Meeting.
	All proxies submitted in respect of the Investors must be: (i) submitted by 1:00 p.m. at least two business days prior to the Meeting; and (ii) in substantially the form of the proxy enclosed herein, or in such other form acceptable to the chair of the Meeting.
	Investors have the power to revoke proxies previously given by them. Revocation of proxies by Investors can be effected by an instrument in writing (which includes a form of proxy bearing a later date) signed by a Investor or the Investor's attorney duly authorized in writing (in the case of a corporation, such investment must be

	executed under its corporate seal or signed by a duly authorized officer or attorney for the corporation) which is either delivered to TSX Trust Company at 301-100 Adelaide Street West, Toronto, Ontario, M5H 4H1, Canada any time up to and including the close of business on the last business day preceding the day of the Meeting, or any postponement or adjournment thereof, or deposited with the Meeting Chair prior to the hour of commencement on the day of the Meeting.	
APPROVAL OF SETTLEMENT	In order for the resolution to pass, the Settlement must be approved by a majority in number of Investors representing at least two thirds in value of the voting claims of Investors, in each case present and voting in person or by proxy.	
COURT APPROVAL OF SETTLEMENT       If the Settlement is accepted by the Required Maj will bring a motion to the Court for: <ul> <li>(a) Final approval of the Settlement;</li> <li>(b) Further direction pursuant to section 60 of as is appropriate to permit it to carry out its consistent with the loan participation mortgage participation agreements; and</li> <li>(c) Approval of the conduct and fees of Counsel.</li> </ul>		

#### Schedule "A"

#### Settlement Resolution

#### "BE IT RESOLVED AS A SPECIAL RESOLUTION OF INVESTORS IN THE HI-RISE CAPITAL LTD. MORTGAGE OVER THE PROPERTY MUNICIPALLY KNOWN AS 263 ADELAIDE STREET WEST THAT:

- subject to the approval of the Superior Court of Justice (Commercial List), the proposed settlement, as more particularly described in the information statement of Hi-Rise Capital Ltd. ("Hi-Rise") dated September 6, 2019 is hereby approved.
- 2. Any one officer or director of Hi-Rise be, and each of them hereby is, authorized and empowered, acting for, in the name of and on behalf of Hi-Rise to execute or cause to be executed and to deliver or to cause to be delivered all such documents, all in such form and containing such terms and conditions as any one of them shall consider necessary or desirable in connection with the foregoing and such approve, such approval to be conclusively evidenced by the execution thereof by Hi-Rise, and to do or to cause to be done all such acts and things as any one of them shall consider necessary or desirable in connection with the foregoing or in order to give effect to the intent of the foregoing paragraph of this resolution."

Schedule "B"

## SETTLEMENT AGREEMENT

See attached.

263 Holding Inc.

August 26, 2019

Re: 263 Adelaide Street West Mortgage Loan

Irrevocable Offer to Settle

This is an irrevocable offer to settle the mortgage on the above noted property. This offer reflects a month of ongoing discussions with the investment committee. We do not know if they will support the offer but this is what we feel we can offer at this time.

As you know, there are three components to an investor payout:

- Closing (net funds from the \$20 million in excess of the first mortgage loan of \$36,575,000);
- 2. New 2<sup>nd</sup> mortgage in the amount of \$18,270,000
- Debenture issued by 263 Holdings Inc., Mr. Neilas' main holding company that will hold the JV interest in the Adelaide project

We are prepared to offer investors the following:

- 1. Payout of \$17,513,000 on closing, as per the Grant Thornton calculation;
- Registration of a new second mortgage as with interest payable of zero (the investment committee requested the interest reserve to be released on closing so it is included in the closing payout;
- A debenture in the amount of \$8,000,000, unsecured, non-interest bearing, payable in 6 years from the date of closing, from the 263 Holdings Inc., Mr. Neilas' main development company, and the one which will hold the interest in the JV.

We are willing to provide a corporate guarantee of the main company holding assets (263 Holdings Inc.). We are also willing to provide a personal guarantee for the debt instrument.

We propose the following:

1. Mr. Neilas will provide a debenture of \$8 million.

2. Mr. Neilas will personally guarantee 25% of the debenture, which is consistent with industry practice.

Please respond to this counter offer no later than 5 pm on Tuesday, August 27, 2019.

263 Holdings Inc. Jim Weilas, ASO

## SCHEDULE "C"

ORDER

See attached.

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

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

THE HONOURABLE

F 01

MR. JUSTICE HAINEY

THURSDAY, THE 21st

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

#### NDAN 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

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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").

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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:

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

->mich amount chall exclude disbursements incorred by Reprotente tive cause

17. THIS COURT ORDERS that the Representative Counsel shall be paid by the Borrower its reasonable fees and disbursements consisting of fees 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 takes and disbursements 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.

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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.

 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

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.

Haire

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#### 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 Hainey 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.

#### April 1

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, 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.  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 will select five Members 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
## 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

John N. Birch LSO #: 38968U Tel: 416.860.5225 Fax: 416.640.3057 jbirch@casselsbrock.com

Stephanie Voudouris LSO #: 65752M Tel: 416.860.6617 Fax: 416.642.7145 svoudouris@casselsbrock.com

Lawyers for the Applicant, Hi-Rise Capital Ltd.



#### **Hi-Rise Capital Limited**

#### Voting Ballot

(referred to as the form of proxy in the Information Statement)

#### **Investor Meeting**

September 25, 2019 at 1:00 PM (EST) InterContinental Toronto Centre 225 Front Street West, Toronto, ON M5V 2X3

#### CONTROL NUMBER: SEQUENCE #: FILING DEADLINE FOR PROXY:

September 23, 2019 at 1:00 PM (EST)

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

The undersigned hereby appoints Noor Al-Awqati of the Company, failing whom Brinn Norman of the Company (the "Management Nominees"), or instead of any of them, the following Appointee

Please print appointee name

as proxyholder on behalf of the undersigned with the power of substitution to attend, act and vote for and on behalf of the undersigned in respect of the resolution contained herein at the Meeting and at any adjournment(s) or postponement(s) thereof, to the same extent and with the same power as if the undersigned were personally present at the said Meeting or such adjournment(s) or postponement(s) thereof in accordance with voting instructions, if any, provided below.

#### - SEE VOTING GUIDELINES ON REVERSE -

RESOLUTIONS - MANAGEMENT VOTING RECOMMENDATIONS ARE INDICATED BY

#### 1. Proposed Transaction

FOR or AGAINST a special resolution approving the proposed settlement described in the Company's Information Statement dated September 5, 2019

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)

AGAINST

FOR



- 1. THIS PROXY SHOULD BE READ IN CONJUNCTION WITH THE MEETING MATERIALS PRIOR TO VOTING.
- If you appoint the Management Nominees, they will vote in accordance with your instructions or, if no instructions are given, the proxy will be considered "spoiled" and will not be voted. If you appoint someone else, they will also vote in accordance with your instructions or, if no instructions are given, as they in their discretion choose.
- Each Investor has the right to appoint a person other than the Management Nominees specified herein to represent them at the Meeting or any adjournment or postponement thereof. Such right may be exercised by inserting in the space labeled "Please print appointee name", the name of the person to be appointed, who need not be an Investor.
- To be valid, this proxy must be signed. Please date the proxy. If the proxy is not dated, it is deemed to bear the date of its mailing to the Investors.
- 5. 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 for Proxies, noted on the reverse or in the case of any adjournment or postponement of the Meeting not less than 48 hours (Saturdays, Sundays and holidays excepted) before the time of the adjourned or postponed meeting. Late proxies may be accepted or rejected by the Chairman of the Meeting in his discretion, and the Chairman is under no obligation to accept or reject any particular late proxy.
- 6. If the Investor is a corporation, the proxy must be executed by an officer or attorney thereof duly authorized, and the security holder may be required to provide documentation evidencing the signatory's power to sign the proxy.
- Guidelines for proper execution of the proxy are available at <u>www.stac.ca</u>, Please refer to the Proxy Protocol.

## **APPENDIX "D"**

# **Projected Investor Recoveries from the Proposed Settlement**

Illustrative Estimate of Proceeds ('000s)	First Mortgage	VTB Mortgage	Debenture	Total	Per GT Report
Expected timeline	December 2019	December 2021	December 2025		
Proceeds					
Senior Mortgage	36,575			36,575	36,575
VTB Mortgage - Principal		18,270		18,270	18,270
VTB Mortgage	1,850			1,850	1,850
Debenture			15,000	15,000	8,000
Total Proceeds	38,425	18,270	15,000	71,695	64,695
First Mortgage					
Meridian Balance Owing as at June 14, 2019	(16,620)			(16,620)	(16,620
Meridian Accrued Interest	(598)			(598)	(332
Proceeds Available After Meridian Mortgage	21,207	18,270	15,000	54,477	47,743
Priority Amounts					
BMO Sale Fee	(1,615)			(1,615)	(1,615
City of Toronto (outstanding taxes)	(343)			(343)	(280
Proceeds Available After Priority Amounts	19,250	18,270	15,000	52,520	45,848
Legal & Advisor Fees					
Cassels Brock & Blackwell LLP	(160)			(160)	(160
Stikeman Elliott LLP	(250)			(250)	(250
McCarthy Tetrault LLP	(300)			(300)	(300
Miller Thomson LLP	(400)			(400)	(350)
Due to Consultants	(4)			(4)	(4
263 Holdings Inc. Costs	(1,000)			(1,000)	(1,000
Information Officer	(100)			(100)	-
Proceeds Available After Legal & Advisor Fees	17,036	18,270	15,000	50,306	43,784
Total Proceeds Available for Investors					
Proceeds for Registered Investors (\$)	17,036	5,280	-	22,316	22,171
Proceeds for Non-Registered Investors (\$)	-	12,990	15,000	27,990	21,613

76%

0%

24%

28%

100%

60%

100%

47%

0%

32%

Recovery for Non-Registered Investors (%)

Recovery for Registered Investors (%)

## **APPENDIX "E"**

#### **Information Officer's Truncated Receivership Scenarios**

Truncated Receivership Scenario ('000s)			
	Notes	Low	High
Months		4	4
Estimated Sale Price	1	71,170	76,071
Less:			
Zoning	2	-	-
Sale Fee	3	(1,276)	(1,472)
Property Taxes	4	(351)	(351)
Meridian Mortgage as at June 14, 2019	5	(16,620)	(16,620)
Meridian Mortgage Carrying Costs	6	(623)	(623)
Operating Costs net of Rent Received	7	(441)	(441)
Legal Fees of Appointing Creditor	8	(100)	(100)
Receiver's Fees	8	(435)	(435)
Receiver's Legal Fees	8	(230)	(230)
Miller Thomson LLP	9	(400)	(400)
Information Officer	10	(100)	(100)
Investory Recovery (without Potential Priority Co	osts)	50,595	55,300
Priorities Asserted by Hi-Rise			
Professional Fees & Consultants	11	(2,954)	(2,954)
Wages, Benefits & Office Expenses	8	(1,750)	(1,750)
Investory Recovery (with Potential Priority Costs	s)	45,891	50,595

Summary of Notes & Key Assumptions

- 1. The purchase prices included in the Truncated Receivership summary, are based on: (a) in the Low purchase price scenario, an estimated purchase price that would be required for Non-Registered Investors to receive the same (or similar) nominal recovery as they would in the Proposed Settlement, assuming Hi-Rise does not assert, or is not successful in asserting, the Hi-Rise Potential Priority Costs (\$4.7 million); and (b) in the High purchase price scenario, an estimated purchase price that would be required for Non-Registered Investors to receive the same (or similar) nominal recovery as they would in the Proposed Settlement, assuming Hi-Rise is successful in asserting the Hi-Rise Potential Priority Costs (\$4.7 million).
- 2. The Information Officer has assumed that no zoning-related expenses will be paid in a Truncated Receivership.
- 3. Estimated based on the existing Sale Fee arrangement with BMO. Does not include HST as the Information Officer is of the view that HST is recoverable.
- 4. Per Hi-Rise, there is an outstanding balance of approximately \$334,240 in property taxes for the Property as at October 1, 2019. This amount includes the outstanding balance as at October 1, 2019 plus four months of accrued interest.
- 5. Per the Meridian demand letter dated June 14, 2019.
- 6. This amount is estimated based on the accrual of interest and other related expenses totaling approximately \$83,000 per month on the Meridian Mortgage from June 14, 2019 to the end of the receivership.
- 7. Operating Costs included herein are based on the costs included in the GT Report labelled "Hi-Rise/Consultants" net of a provision of rent revenue forecast during the Truncated Receivership period.

- 8. Costs used herein are based on those included in the GT Report, some of which are reduced to reflect the shorter time period during the Truncated Receivership.
- 9. Per Court Order (Increase of Representative Counsel Charge) dated September 17, 2019.
- 10. Per Court Order (Appointment of Information Officer) dated September 17, 2019.
- 11. Estimate per GT Report less Representative Counsel's (Miller Thomson LLP) legal fees which form a priority charge on the Property and are included above in the Miller Thompson LLP line.

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

## HI-RISE CAPITAL LTD.

## SUPERINTENDENT OF FINANCIAL SERVICES et al.

Applicant

Respondents

## ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)

## PROCEEDING COMMENCED AT TORONTO

## **REPORT OF THE INFORMATION OFFICER**

## DENTONS CANADA LLP

- and -

77 King Street West, Suite 400 Toronto-Dominion Centre Toronto, ON M5K 0A1

John Salmas (LSO # 42336B) Tel: (416) 863-4737 Fax: (416) 863-4592 john.salmas@dentons.com

Robert Kennedy (LSO # 47407O) Tel: (416) 367-6756 robert.kennedy@dentons.com

Lawyers for Alvarez & Marsal Canada Inc., in its capacity as Information Officer

This is **Exhibit "J"** referred to in the Affidavit of Jim Neilas, sworn remotely in accordance with O.Reg 431/20, this 12<sup>th</sup> day of February, 2021.

A Commissioner, etc.

Nicholas Jay Sciuk, a Commissioner, etc., Province of Ontario, while Student-at-Law Expires May 3, 2022

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

#### MILLER THOMSON LLP

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

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Court-appointed Representative Counsel

#### TO: THORNTON GROUT FINNIGAN LLP

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Lawyers for the Respondent, Superintendent of Financial Services

## AND TO:

**CASSELS BROCK & BLACKWELL LLP** 

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Lawyers for the Applicant, Hi-Rise Capital Ltd.

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#### - 3 -

## AND TO: MCCARTHY TÉTRAULT LLP

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Lawyers for Meridian Credit Union

## - 4 -

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Counsel to the Court-appointed Information Officer

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#### **Steve Ferguson**

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Court-appointed Information Officer

## 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")<sup>1</sup> 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.<sup>2</sup> 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

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<sup>&</sup>lt;sup>1</sup> 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.

<sup>&</sup>lt;sup>2</sup> 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.<sup>3</sup>

- (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.<sup>4</sup> 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.<sup>5</sup>
- (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.<sup>6</sup>
- (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.<sup>7</sup> This also appears inconsistent

<sup>&</sup>lt;sup>3</sup> IO Report at paras 59-61, 109.

<sup>&</sup>lt;sup>4</sup> IO Report at para 103(a).

<sup>&</sup>lt;sup>5</sup> IO Report at para 73.

<sup>&</sup>lt;sup>6</sup> 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.

<sup>&</sup>lt;sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup> 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),<sup>10</sup> it is also possible that a sale process would result in an inferior result than the Lanterra Transaction and Proposed Settlement.<sup>11</sup>

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.<sup>12</sup> 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

<sup>&</sup>lt;sup>8</sup> 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.

<sup>&</sup>lt;sup>9</sup> At para 105.

<sup>&</sup>lt;sup>10</sup> IO Report at paras 87-88.

<sup>&</sup>lt;sup>11</sup> 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.

<sup>&</sup>lt;sup>12</sup> 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
- a meaningful amount of the forecasted \$22.8 million net profit to the Company (c) 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 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

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## NDEN 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

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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

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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

(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

->Michamont chall exclude disbursements incorred by Repropertotive Const

17. THIS COURT ORDERS that the Representative Counsel shall be paid by the Borrower its reasonable fees and disbursements consisting of fees 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 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.

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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

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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

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.

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#### 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 Hainey 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:

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[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.

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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, 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.

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# HI-RISE CAPITAL LTD. Applicant

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# 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 John N. Birch LSO #: 38968U Tel: 416.860.5225 Fax: 416.640.3057 jbirch@casselsbrock.com Stephanie Voudouris LSO #: 65752M Tel: 416.860.6617 Fax: 416.642.7145 svoudouris@casselsbrock.com Lawyers for the Applicant, Hi-Rise Capital Ltd.

# APPENDIX B

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

# ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST

)	MONDAY THE 15 <sup>th</sup>
)	
)	
)	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

## N 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.

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 THIS COURT ORDERS that the Official Committee (as defined in the First Report) be and is hereby constituted.

 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.

 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.

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PER / PAR: 0

HI-RISE CAPITAL LTD. Applicant	SUPERIN	TENDENT 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 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

Stephanic De Caria LSO#: 68055L sdecaria@millerthomson.com Tel: 416.595.2652/Fax: 416.595.8695 290

(\*) ( ) (\*)

Court-appointed Representative Counsel

# APPENDIX 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.

# **REPORT OF THE INFORMATION OFFICER**

### ALVAREZ & MARSAL CANADA INC.

October 7, 2019

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# 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

- 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")<sup>1</sup> 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").

<sup>&</sup>lt;sup>1</sup> 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: <a href="https://www.millerthomson.com/en/hirise/">https://www.millerthomson.com/en/hirise/</a>.
- 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".
- 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.

- 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.
- 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").

 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 Property<sup>2</sup>.

 $<sup>^{2}</sup>$  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 closing<sup>3</sup>.
- 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 nondisclosure agreement ("NDA") are invited to undertake due diligence and submit a letter of interest ("LOI"). These Phase 1 LOIs are evaluated to determine which

<sup>&</sup>lt;sup>3</sup> 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.

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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")<sup>4</sup>. 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

<sup>&</sup>lt;sup>4</sup> 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 transaction<sup>5</sup>.
- 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

<sup>&</sup>lt;sup>5</sup> 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 reports<sup>6</sup>;
  - (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.

<sup>&</sup>lt;sup>6</sup> 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 performed<sup>7</sup>.
- 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

<sup>&</sup>lt;sup>7</sup> 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.

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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 "nonames" 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 contacted<sup>8</sup> 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;
  - 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

<sup>&</sup>lt;sup>8</sup> 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> <li>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;</li> <li>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.</li> </ul>
Transaction Value and Initial Capitalization	<ul> <li>Transaction value of \$73.15 million, capitalized as follows:         <ol> <li>LP will grant a first mortgage on the Property in the amount of \$36.58 million (the "First Mortgage");</li> <li>The Company will be granted a vendor takeback mortgage of approximately \$18.29 million (the "VTB"); and</li> <li>The Company will contribute equity-in-kind of approximately \$18.29 million in exchange for its 25% share of the Lanterra Project.</li> </ol> </li> </ul>
First Mortgage Terms	<ul> <li>The LP will immediately distribute the mortgage proceeds as follows:</li> <li>i. to discharge the Meridian Mortgage; and</li> <li>ii. to be used as a return of capital to allow it to retire the Syndicated Mortgage.</li> </ul>
VTB Mortgage Terms	<ul> <li>Secured against title to the Property, ranking behind the First Mortgage and any surety financing. Will not be subordinate to construction financing;</li> <li>Expires on the earlier of (a) receipt of certain construction permits; and (b) three years from the closing date of the Lanterra Transaction;</li> <li>Bears interest at 5% per annum during the first two years and 8% per annum for the final year;</li> <li>Entirety of the VTB to be guaranteed by Lanterra; and</li> <li>Lanterra to repay principal and interest then due on the VTB out of Lanterra's own resources.</li> </ul>

Interest Reserve	<ul> <li>Lanterra will fund approximately \$1.85 million to an interest reserve account to prefund the first two years of interest obligations under the VTB.</li> </ul>
Company's Fees	<ul> <li>The Company is entitled to the following fees:</li> <li>i. Development Fee: 0.25% of revenues from the Lanterra Project<sup>9</sup>; and</li> <li>ii. Property Management Fee: \$5,000 per month during the term of the Lanterra Project (5-6 years).</li> </ul>
The Company Guarantee	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

<sup>&</sup>lt;sup>9</sup> 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

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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> <li>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</li> <li>Approval will require Investors representing two thirds in value and majority in number to vote in favour of the Proposed Settlement.</li> </ul>
Offer to Settle	<ul> <li>Repayment to Investors of approximately \$17,036,000 on closing (the "Initial Settlement");</li> <li>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 VTB<sup>10</sup>; and</li> <li>A debenture from Holdings in the amount of \$15,000,000 (the "Debenture")<sup>11</sup>, unsecured and non-interest bearing, payable six years from the date of closing.</li> </ul>
Guarantees in Respect of Debenture	<ul> <li>Corporate guarantee of Holdings; and</li> <li>Personal guarantee by Jim Neilas limited to 25% of the total debenture.</li> </ul>
Implementation	<ul> <li>October 23, 2019 - Meeting to vote on the Proposed Settlement</li> <li>November 2019 - Final Court Order</li> <li>December 2019 - Closing &amp; Initial Repayment to Investors</li> <li>December 2021 or December 2022 - Repayment of VTB</li> <li>December 2025 (estimate) - Debenture paid</li> </ul>

<sup>&</sup>lt;sup>10</sup> The Information Officer understands that specific documentation related to the structure of the VTB and the Debenture has not yet been prepared.

<sup>&</sup>lt;sup>11</sup> 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.

- 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)			
			Present Value
	Notes _	Undiscounted	as at Dec. 2019 <sup>[10]</sup>
Proceeds from Lanterra Transaction			
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
Proposed Distributions to Registered Investors			
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
Return to Investors Excluding Interest Paid to Date	9	100%	96%
Proposed Distributions to Non-Registered Investors			
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
Return to Investors Excluding Interest	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).
- 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.
- 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

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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, 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 principal<sup>12</sup> per the books and records of Hi-Rise, including interest accrued to December 11, 2019 and are presented below on an undiscounted basis:

<sup>&</sup>lt;sup>12</sup> 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 Tricon<sup>13</sup> 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.

<sup>&</sup>lt;sup>13</sup> 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:

·	Thricon Offer				
Purchaser	<ul> <li>Tricon Lifestyle Rentals Investment LP</li> </ul>				
Purchase Price	<ul> <li>\$72.0 million;</li> <li>Payment of the Purchase Price: <ol> <li>\$2.0 million deposit on the third business day following execution of the APS ("First Deposit");</li> <li>\$3.0 million deposit on the third business day following the Due Diligence Date ("Second Deposit"); and</li> <li>Balance of the of the Purchase Price on the Closing Date ("Final Payment").</li> </ol> </li> <li>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;</li> <li>The Final Payment is subject to customary real estate transaction closing adjustments.</li> </ul>				
Due Diligence Conditions	<ul> <li>The Purchaser has requested a number of additional diligence materials (the "Deliveries") from the Vendor;</li> <li>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;</li> <li>The APS includes the following due diligence condition for the benefit of the Purchaser:</li> <li>"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, which may be exercised arbitrarily for any reason or for no reason at all, 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"; [emphasis added]</li> </ul>				
Closing Date	<ul> <li>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;</li> <li>Purchaser to be granted exclusivity.</li> </ul>				

- 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;
  - 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;

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- (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 time<sup>14</sup>;
- (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

<sup>14</sup> 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 actions<sup>15</sup>.
- 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").

<sup>&</sup>lt;sup>15</sup> 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 million<sup>16</sup>, 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 million<sup>17</sup>;
  - (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

<sup>&</sup>lt;sup>16</sup> 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.

<sup>&</sup>lt;sup>17</sup> 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 Recoverie	s (nominal dollars)		ARTON IN		('000s)
	Proposed Settlement <sup>1</sup>	Truncated Receivership Low <sup>2</sup>	Truncated Receivership High <sup>2</sup>	GT Receivership Low <sup>3</sup>	GT Receivership High <sup>3</sup>
Estimated Sale Price	73,150	71,170	76,071	44,000	72,000
Without Hi-Rise Potential Priorit	y Costs	-Ratios (Set			
Registered Investors					
Investor Recovery (\$)	22,316	22,605	22,605	22,171	22,171
Investor Recovery (%)	100%	100%	100%	100%	100%
Non-Registered Investors					
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 C	osts	CHARLE CHARL	なななななない。		12229333
Registered Investors					
Investor Recovery (\$)	n/a	22,605	22,605	17,541	22,171
Investor Recovery (%)	n/a	100%	100%	79%	100%
Non-Registered Investors					
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

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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 7<sup>th</sup> day of October, 2019.

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

Per:

Name: Stephen Ferguson Title: Senior Vice-President

HI-RISE CAPITAL LTD. Applicant	and	SUPERINTENDENT OF FINANCIAI SERVICES et. al Respondent	. Court File No.: CV-19-616261-00CL
			ONTARIO SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST Proceeding commenced at Toronto
			THIRD REPORT OF MILLER THOMSON LLP, IN ITS CAPACITY AS COURT-APPOINTED REPRESENTATIVE COUNSEL
			<ul> <li>MILLER THOMSON LLP Scotia Plaza 40 King Street West, Suite 5800 P.O. Box 1011 Toronto, ON Canada M5H 3S1</li> <li>Greg Azeff LSO#: 45324C gazeff@millerthomson.com Tel: 416.595.2660/Fax: 416.595.8695</li> <li>Stephanie De Caria LSO#: 68055L sdecaria@millerthomson.com Tel: 416.595.2652/Fax: 416.595.8695</li> <li>Court-appointed Representative Counsel</li> </ul>

This is **Exhibit "K"** referred to in the Affidavit of Jim Neilas, sworn remotely in accordance with O.Reg 431/20, this 12<sup>th</sup> day of February, 2021.

A Commissioner, etc.

Nicholas Jay Sciuk, a Commissioner, etc., Province of Ontario, while Student-at-Law Expires May 3, 2022

CV-19-00628145-00CL

Court File No.

# ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST

B E T W E E N:

#### MERIDIAN CREDIT UNION LIMITED

Applicant



- and -

ADELAIDE STREET LOFTS INC.

Respondent

# APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED

# NOTICE OF APPLICATION

## TO THE RESPONDENT

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 before a judge presiding over the Court at 330 University Avenue, Toronto, Ontario on October 8, 2019 at 10:00 a.m. or as soon after that time as the matter can be heard on the application of the Applicant.

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 two 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.

Date: September 27, 2019

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A. Stanojevic Issued by

Address of court office:

330 University Avenue Toronto, Ontario 9th floor 98. M5G 1R7

TO: ALL THE PARTIES ON THE ATTACHED SERVICE LIST

# APPLICATION

# THE APPLICANT, MERIDIAN CREDIT UNION LIMITED ("MERIDIAN"), MAKES APPLICATION FOR AN ORDER, amongst other things:

- a) abridging the time for service and filing of this notice of application and the application record and dispensing with and/or validating service of same;
- b) appointing msi Spergel Inc. ("Spergel") as receiver (in such capacity, the "Receiver"), without security, of all the assets, undertakings and properties of Adelaide Street Lofts Inc. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor (including, without limitation, the real property municipally known as 263 Adelaide Street West, Toronto, Ontario (the "Real Property")), including all proceeds thereof; and
- c) such further and other relief as counsel may advise and this Court may permit.

## THE GROUNDS FOR THE APPLICATION ARE:

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- a) the Debtor is a privately-owned Ontario corporation;
- b) the Debtor's registered address is the Real Property at Suite 503;
- c) the Debtor is directly indebted to Meridian in connection with certain credit facilities made available by Meridian to the Debtor (the "**Credit Facilities**") pursuant to and under the terms of a credit agreement dated April 2, 2018 (as may have been further amended, replaced, restated, renewed or supplemented from time to time, the "**Credit Agreement**");
- as security for its obligations to Meridian, including, without limitation, its obligations under the Credit Agreement, the Debtor provided security in favour of Meridian, including, without limitation:
  - a general security agreement dated May 14, 2018, registration in respect of which was duly made pursuant to the *Personal Property Security Act* (Ontario) (the "**PPSA**");

- a notice of assignment of rents registered on May 14, 2018 as instrument
   no. AT4862975 in the Land Titles Office for the Registry Division of
   Toronto with respect to the Real Property;
- e) Meridian is the first secured creditor on title to the Real Property, and the first secured creditor under the PPSA, each pursuant to a Priority and Standstill Agreement between Meridian as the primary lender and Hi-Rise Capital Ltd. ("**Hi-Rise**") and Community Trust Company as, together, the subordinated lender dated May 7, 2018;
- f) the Credit Facilities are repayable on demand;

ii)

- g) one or more defaults has also occurred under the Credit Agreement, including, without limitation, the Debtor having failed to pay property taxes arising in respect of the Real Property and having failed to pay interest installments due thereunder which default has continued into the present;
- h) in accordance with its rights under the Credit Agreement, Meridian made formal written demand on the Debtor for payment of its indebtedness to Meridian by letter dated June 14, 2019, which demand letter was accompanied by a Notice of Intention to Enforce Security pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA");
- i) pursuant to an order of the Honourable Mr. Justice Hainey dated March 21, 2019, Miller Thomson LLP is representative counsel ("**Rep Counsel**") to the persons who invested funds in the syndicated mortgages advanced as a loan to the Debtor administered by Hi-Rise (the "**Investors**") in the proceeding commenced by Hi-Rise (the "**Hi-Rise Proceeding**");
- j) the appointment of Rep Counsel was intended to, among other things, initiate a transparent and fair process by which the Investors could vote on a proposed

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transaction for the sale of the Property, as the documents governing the relationship between the Investors and Hi-Rise did not contemplate the settlement of the Investors' debt in a deficiency situation;

- k) in the time since the Hi-Rise Proceeding was commenced, the parties including the Borrower, Rep Counsel, and Hi-Rise – have not been able to resolve the issues that are the subject of same, and the process for the vote by the Investors continues to be delayed;
- the Debtor has failed to honour the demand or make alternative arrangements acceptable to Meridian, including entering into a forbearance agreement;
- m) the Debtor is insolvent and unable to fulfill its obligations to Meridian and other stakeholders;
- n) as of September 16, 2019, a total of \$16,828,734.56 was owing under the Credit Agreement (plus accruing interest and recovery costs and expenses);
- a receiver is necessary for the protection of the Debtor's estate, the interests of Meridian, and other stakeholders;
- p) in the circumstances, it is just and equitable that a receiver be appointed;
- q) Spergel is a licensed trustee in bankruptcy and is familiar with the Debtor's circumstances and the Debtor's arrangements with Meridian;
- r) Spergel has consented to being appointed as the Receiver;
- s) the other grounds set out in the affidavit to be sworn in support of the within application (the "Supporting Affidavit");
- t) sections 243 and 244 of the BIA;
- u) section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- v) rules 1.04, 2.03, 3.02 and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and

w) such further grounds as are required and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

a) the Supporting Affidavit;

b) the consent of Spergel to act as the Receiver; and

c) such other material as is required and this Court may permit.

September 27, 2019

# AIRD & BERLIS LLP

Barristers & Solicitors Brookfield Place 181 Bay Street, Suite 1800 Toronto, Ontario M5J 2T9

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Email: kesaw@airdberlis.com

Lawyers for Meridian Credit Union Limited

#### MERIDIAN CREDIT UNION LIMITED

Applicant

- and -

ADELAIDE STREET LOFTS INC.

Respondent

cv-19-00628145-000

Court File No.

ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)

Proceedings commenced at Toronto

#### NOTICE OF APPLICATION

#### **AIRD & BERLIS LLP**

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Lawyers for Meridian Credit Union Limited

This is **Exhibit "L"** referred to in the Affidavit of Jim Neilas, sworn remotely in accordance with O.Reg 431/20, this 12<sup>th</sup> day of February, 2021.

A Commissioner, etc.

Nicholas Jay Sciuk, a Commissioner, etc., Province of Ontario, while Student-at-Law Expires May 3, 2022

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.

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

January 9, 2020

#### MILLER THOMSON LLP

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

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Court-appointed Representative Counsel

# TAB 1

# 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.

# FOURTH 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**") 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.

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#### **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 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 Hainey 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 finding 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 1<sup>ST</sup> 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 appendixes), 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 acquire100 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"**.
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:
  - 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:
  - 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:
  - 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.

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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 This is **Exhibit "M"** referred to in the Affidavit of Jim Neilas, sworn remotely in accordance with O.Reg 431/20, this 12<sup>th</sup> day of February, 2021.

A Commissioner, etc.

Nicholas Jay Sciuk, a Commissioner, etc., Province of Ontario, while Student-at-Law Expires May 3, 2022





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

ONTARIO

SUPERIOR COURT OF JUSTICE

**COMMERCIAL LIST** 

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THE HONOURABLE MR.

JUSTICE HAINEY

MONDAY, THE 27th

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 as amended by Amending Agreement dated April 27, 2020 (collectively, 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 as amended by Amending Agreement dated April 27, 2020 (collectively, the "APS"), a copy of which is attached hereto as Schedule B;

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(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

and the cross-motion of Lanterra to amend the Minutes of Settlement and the APS were heard on April 22 and 27, 2020 by videoconference in Toronto, Ontario.

**ON READING** the Affidavit of Noor Al-Awqati sworn April 1, 2020, the Affidavit of Service of Patricia Hoogenband sworn April 3, 2020, filed, the Fourth Report, Fifth Report, and the Supplemental Fifth Report of Representative Counsel dated, respectively, January 9, April 6, and April 21, 2020, and the Affidavit of Christopher J. Wein dated April 16, 2020, and on hearing the submissions of Representative Counsel and counsel for each of Hi-Rise, Adelaide, the Superintendent of Financial Services, Meridian Credit Union Limited ("**Meridian**"), Lanterra, David Pozo, and Nadeem and Uzma Ghori, and other parties referred to on the counsel slip, 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.

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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**<sup>\*</sup>) 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** that, on the Closing Date (as defined in the APS), Lanterra shall pay to Miller Thomson LLP in trust the Extension Period Interest (as defined in the Minutes of Settlement) in accordance with the Minutes of Settlement.

6. 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.

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7. **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.

8. **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.

9. 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.

10. **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.

11. 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.

12. 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.

13. THIS COURT ORDERS that, notwithstanding:

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- (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.

14. **THIS COURT ORDERS** that, subject to further order of the court, from the date of this order until the completion of the sale of the Property on the Closing Date (as defined in the APS), no person shall take any steps to enforce security or other claims against the Property or exercise any rights in respect of mortgages registered against the Property including the Meridian Mortgage (collectively, the "Mortgages") or against guarantors of the Mortgages.

15. **THIS COURT ORDERS** that the receivership application brought by Meridian against Adelaide in Court File No. CV-19-00628145-00CL be and is hereby adjourned to a 9:30 a.m. chambers appointment before Justice Hainey on November 20, 2020.



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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.

#### FIRST AMENDMENT TO MINUTES OF SETTLEMENT

WHEREAS on December 20, 2019, Lanterra Developments Ltd. ("Lanterra"), Jim Neilas, 263 Holdings Inc., Adelaide Street Lofts Inc., Hi-Rise Capital Ltd., Miller Thomson LLP, solely in its capacity as court appointed Representative Counsel, Vipin Berry, in his capacity as court appointed member of the Official Committee, Michael Singh, in his capacity as court appointed member of the Official Committee, Nick Tsakonacos, in his capacity as court appointed member of the Official Committee, Nick Tsakonacos, in his capacity as court appointed member of the Official Committee, Nick Tsakonacos, in his capacity as court appointed member of the Official Committee, Nick Tsakonacos, in his capacity as court appointed member of the Official Committee, and Marco Arquilla, in his capacity as court appointed member of the Official Committee (collectively, the "Parties"), entered into the minutes of settlement attached hereto as Schedule "A" (the "Minutes of Settlement");

AND WHEREAS the Parties have agreed to extend the Closing Date of the Transaction to November 16, 2020 and to amend the Minutes of Settlement on and subject to the terms and conditions specified herein;

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, the Parties hereby agree as follows:

1. The Parties agree that the above-noted recitals are true and accurate.

2. All capitalized terms used and not otherwise defined in this First Amendment to Minutes of Settlement (the "Amendment") shall have the respective meanings ascribed thereto in the Minutes of Settlement.

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3. Section 3(a) of the Minutes of Settlement is hereby deleted in its entirety and replaced with the following:

"(a) Lanterra and Adelaide shall enter into an agreement of purchase and sale in respect of the Transaction (the "APS"), as amended, 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 November 16, 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;"

4. In consideration of the extension of the Closing Date, as provided for in Section 3 of this Amendment, Lanterra agrees to pay to Meridian the non-default interest due and owing by Adelaide to Meridian pursuant to the terms of the loan agreement dated April 2, 2018 (as may be or may have been subsequently amended, replaced, restated or supplemented from time to time, the "Meridian Loan Agreement"), for the period from May 15, 2020 to and including the Closing Date (the "Extension Period"), at the interest rate specified in the Meridian Loan Agreement, being the Prime Rate (as defined in the Meridian Loan Agreement) plus 2.00% per annum (the "Extension Period Interest"). The Extension Period Interest shall be compounded monthly during the Extension Period. On closing of the Transaction, in addition to the other amounts payable by Lanterra as specified in Section 9(d) of the Minutes of Settlement, Lanterra shall pay to Miller Thomson LLP in trust the Extension Period Interest. For greater certainty, this liability of Lanterra shall be in addition to the Purchase Price (as defined in the APS).

5. This Amendment shall be construed in accordance with the laws of the Province of Ontario. Any dispute arising from this Amendment 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.

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6. This Amendment and every covenant, provision and term herein contained shall enure to the benefit of and be binding upon each of the Parties and their respective heirs, executors, administrators, assigns, agents, advisors, consultants and other representatives.

7. 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 this Amendment.

8. Each of the Parties acknowledges and agrees that:

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

9. In the case of any conflict between the terms and conditions of the Minutes of Settlement and the terms or conditions of this Amendment, the terms and conditions of this Amendment will prevail.

10. On and after the date of this Amendment, any reference to "these Minutes of Settlement" in the Minutes of Settlement and any reference to the Minutes of Settlement in any other agreements will mean the Minutes of Settlement, as amended by this Amendment. Except as specifically amended by this Amendment, the provisions of the Minutes of Settlement remain in full force and effect.

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11. This Amendment 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. This Amendment becomes effective when executed by all of the Parties. After that time, it will be binding upon and enure to the benefit of the Parties and their respective heirs, executors, administrators, assigns, agents, advisors, consultants and other representatives.

12. This Amendment, the Minutes of Settlement and the documents attached thereto, together with the executed Full and Final Mutual Release, represent the entire agreement among the Parties.

[signature page follows]

DATED this _27th	day ofApril	, 2020.
		LANTERRA DEVELOPMENTS LTD.
		Per:
		(I have authority to bind the corporation)
DATED this	day of	, 2020.
Witness:		JIM NEILAS
		i
DATED this	day of	
		263 HOLDINGS INC.
		Per:
		(I have authority to bind the corporation)
DATED this	day of	, 2020.
		ADELAIDE STREET LOFTS INC.
		Per:
		(I have authority to bind the corporation)
	[signatu	tre continues on next page]

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DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

LANTERRA DEVELOPMENTS LTD.

Per:

(I have authority to bind the corporation)

DATED this 27th day of April , 2020.

Witness: \_\_\_\_\_

JIM NEILAS

DATED this 27th day of April , 2020.

263 HOLDINGS INC.

Per:

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(I have authority to bind the corporation)

DATED this <u>27th</u> day of <u>April</u>, 2020.

ADELAIDE STREET LOFTS INC.

Per:

(I have authority to bind the corporation)

[signature continues on next page]

DATED this <u>27th</u> day of <u>April</u>, 2020.

HI-RISE CAPITAL LTD.
Per: 1/66/01

(Ilhave authority to bind the corporation)

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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

Per:

(I have authority to bind the limited liability partnership)

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Witness: \_\_\_\_\_

VIPIN BERRY, in his capacity as courtappointed member of the Official Committee

[signature continues on next page]

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

## HI-RISE CAPITAL LTD.

Per:

(I have authority to bind the corporation)

DATED this <u>27th</u> day of <u>April</u>, 2020.

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

Per:

(I have authority to bind the limited liability partnership)

DATED this <u>27th</u> day of <u>April</u>, 2020.

Witness: \_\_\_\_\_

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VIPIN BERRY, in his capacity as courtappointed member of the Official Committee

Per:

[signature continues on next page]

DATED this Z9th day of , 2020. Witness:

MICHAEL SINGH, in his capacity as courtappointed member of the Official Committee 1

, 2020.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2

Witness:

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Witness:

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

Per:

Committee

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DATED this day of	, 2020.
Witness:	_ MICHAEL SINGH, in his capacity as cos appointed member of the Offic Committee
DATED this <u>1St</u> day of <u>Mar</u> Witness: <u>Barthy Starca and</u>	14, 2020. NICK TSAKONACOS, in his capacity court-appointed member of the Offic Committee
DATED this day of	2020.
Witness:	
	Per:

£.

DATED this	day of	, 2020. MICHAEL SINGH, in his capacity as court- appointed member of the Official Committee
	day of	, 2020. NICK TSAKONACOS, in his capacity as court-appointed member of the Official Committee
DATED this $\underline{3}$ Witness: $\underline{9}$	1 Spr	MARCO ARQUILLA, solely in his capacity as court-appointed member of the Official Committee
	1	Per: Maus

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# SCHEDULE "A"

# **Minutes of Settlement**

See attached.

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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.

#### 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");

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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

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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):
  - 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

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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).

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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:

- 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:

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- (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]

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DATED AT	this	day of	, 2019.
		I	ANTERRA DEVELOPMENTS LTD.
			<u> </u>
		ľ	or:
			Name: Chies lopher 5. Wein Title: Chief Offeration Officer (I have authority to bind the corporation)
DATED AT	this	day of	, 2019,
Witness:			IIM NEILAS
		:	
DATED AT	this	day of	, 2019,
			263 HOLDINGS INC.
		1	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
			(1 nuve aunority to other the

DATED AT	this da	y of, 2019.
		LANTERRA DEVELOPMENTS LTD.
		Per: Name: Title: (I have authority to bind the corporation)
DATED AT Toyon Witness:	this <u>20<sup>-4</sup></u> day	y of <u>been ber</u> , 2019. JIM NEILAS
Gavff	L. Hall	
DATED AT Torouto	this 20th day	y of <u>lecember</u> , 2019.
		263 HOLDINGS INC Per: Name Title: (I have authority to bind the corporation)
DATED AT Toronto	this $20^{4}$ da	y of <u>brember</u> , 2019
		ADELAIDE STREET LOFTS INC.
		Per: Name: Title: (I have authority to bind the

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DATED AT	this	day of	, 2019.
			HI-RISE CAPITAL LTD.
			Per: XXO
			Name: noor al AWGATI Title: COO
			(I have authority to bind the corporation)
DATED AT	this	day of	, 2019.
DATED AT	this		MILLER THOMSON LLP, solely in it
DATED AT	this		MILLER THOMSON LLP, solely in it capacity as court-appointed Representative Counsel
DATED AT	this		MILLER THOMSON LLP, solely in its capacity as court-appointed Representative Counsel Per:
DATED AT	this		MILLER THOMSON LLP, solely in it capacity as court-appointed Representative Counsel Per: Name: Title:
DATED AT	this		MILLER THOMSON LLP, solely in its capacity as court-appointed Representative Counsel Per:
			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	MILLER THOMSON LLP, solely in its capacity as court-appointed Representative Counsel Per: Name: Title: (I have authority to bind the limited

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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 23<sup>rd</sup> 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 courtappointed member of the Official Committee

- 14 -Per. Name: Tile: (I have authority to bind the corporation) day of \_\_\_\_\_, 2019. this DATED AT 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) this 23rd day of December, 2019. With VIPIN BERRY, in his capacity DATED AT Witness: court-appointed member of the Official as Committee Upin Bery

DATED AT TSISH Witness: <u>Nima</u>	the second se	day of <u>Dec</u> , 2019. 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

NICK TSAKONACOS, in his capacity as court-appointed member of the Official Committee 401

DATED AT Ottawn 10 this <u>23</u> day of <u>Dec</u> Witness: John Good MARC capaci \_\_\_\_, 2019.

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

Per: Tano

402 ÷ - 14 this \_\_\_\_\_ day of \_\_\_\_\_, 2019. DATED AT MICHAEL SINGH, in his capacity as Witness: court-appointed member of the Official Committee DATED AT TORONTO this 2012 day of December 2019. hep er NICK TSAKONACOS, in his capacity as Witness: court-appointed member of the Official Committee this \_\_\_\_\_ day of \_\_\_\_\_, 2019. DATED AT 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

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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 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 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.

al. Count File No.: CV-19-010201-00CL al.	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
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Greg Azeff LSO#: 45324C gazeff@millerthomson.com Tel: 416.595.2660/Fax: 416.595.86 Stephanie De Caria LSO#: 6805 sdecaria@millerthomson.com Tel: 416.595.2652/Fax: 416.595.86	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			MILLER THOMSON LLP Scotia Plaza 40 King Street West, Suite 5800 P.O. Box 1011 Toronto, ON Canada M5H 3S1
Stephanie De Caria LSO#: 68055 sdecaria@millerthomson.com Tel: 416.595.2652/Fax: 416.595.86	Stephanie De Caria LSO#: 68055L sdecaria@millerthomson.com Tel: 416.595.2652/Fax: 416.595.8695 Court-appointed Representative Counsel			<b>Greg Azeff LSO#: 45324C</b> gazeff@millerthomson.com Tel: 416.595.2660/Fax: 416.595.8695
	Court-appointed Representative Counsel			Stephanie De Caria LSO#: 68055L sdecaria@millerthomson.com Tel: 416.595.2652/Fax: 416.595.8695
Court-appointed Representative Co				Court-appointed Representative Counsel

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Schedule B — Agreement of Purchase and Sale

## AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT is made as of the 20<sup>th</sup> 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;

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(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:

- 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.

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(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:
  - 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.

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(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:<sup>1</sup>

- (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,

<sup>&</sup>lt;sup>1</sup> 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:

- 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.

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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:

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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 U lein Title: officer Operahay Ch

## Schedule A Real Property

All of PIN 21411-0294 (LT), being:

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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.

Errast Unknown document property name.

## FIRST AMENDING AGREEMENT

THIS FIRST AMENDING AGREEMENT (the "Agreement") made effective as of the 27<sup>th</sup> day of April, 2020,

BETWEEN:

ADELAIDE STREET LOFTS INC. (the "Vendor")

- and -

LANTERRA DEVELOPMENTS LTD., IN TRUST (the "Purchaser")

## **RECITALS:**

- (a) The Vendor and the Purchaser entered into an agreement of purchase and sale dated December 20, 2019 (the "Purchase Agreement"), wherein the Vendor agreed to sell and the Purchaser agreed to purchase all of the right, title and interest of the Vendor in and to the Purchased Assets; and
- (b) The Purchaser and the Vendor wish to amend the Purchase Agreement on and subject to the terms and conditions provided in this Agreement.

In consideration of the above, the mutual covenants and agreements set out in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties agree as follows:

#### Section 1 Capitalized Terms.

All capitalized terms used in this Agreement and not otherwise defined herein shall have the respective meanings ascribed thereto in the Purchase Agreement.

#### Section 2 Amendments to the Purchase Agreement.

The definition of "Closing Date" in Section 1.1(7) of the Purchase Agreement is hereby amended by deleting the words "May 14, 2019" and replacing them with "November 16, 2020".

## Section 3 Time of the Essence.

Except as amended by this Agreement, all other terms and conditions of the Purchase Agreement shall remain unchanged and time shall remain of the essence.

#### Section 4 Paramountcy.

In the case of any conflict between the terms and conditions of the Purchase Agreement and the terms or conditions of this Agreement, the terms and conditions of this Agreement will prevail.
#### Section 5 Reference to and Effect on the Purchase Agreement.

On and after the date of this Agreement, any reference to "this Agreement" in the Purchase Agreement and any reference to the Purchase Agreement in any other agreements will mean the Purchase Agreement, as amended by this Agreement. Except as specifically amended by this Agreement, the provisions of the Purchase Agreement remain in full force and effect.

#### Section 6 Successors and Assigns.

This Agreement becomes effective when executed by all of the parties. After that time, it will be binding upon and enure to the benefit of the parties and their respective successors and permitted assigns.

#### Section 7 Governing Law.

This Agreement is governed by, and will be interpreted and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein.

#### Section 8 Electronic Delivery.

This Agreement may be executed by the parties and transmitted by fax or other electronic means and if so executed and transmitted this Agreement will be for all purposes as effective as if the parties had executed and delivered an original agreement.

#### Section 9 Counterparts.

This Agreement may be executed in any number of original counterparts, with the same effect as if all the parties had signed the same document and will become effective when one or more counterparts have been signed by all of the parties and delivered to each of the other parties. All counterparts will be construed together and evidence only one agreement, which, notwithstanding the dates of execution of any counterparts, will be deemed to be dated the date first above written.

(signature page follows)

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement as of the date first above written.

1.1

ADELAIDE STREET LOFTS INC.

Per:

Name: Jim Neilas

Title: Authorized Signing Officer I have authority to bind the corporation

#### LANTERRA DEVELOPMENTS LTD., in trust

Per:

Name: Christopher Wein Title: Authorized Signing Officer I have the authority to bind the corporation 429

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

ADELAIDE STREET LOFTS INC.

Per:

Name: Jim Neilas Title: Authorized Signing Officer I have authority to bind the corporation

#### LANTERRA DEVELOPMENTS LTD., in trust

Per:

Name: Christopher-Wein Title: Authorized Signing Officer I have the authority to bind the corporation

[Signature Page - First Amending Agreement]

#### 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 our 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:

- C -

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.

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:

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- (a) the Real Property (as defined in the APS); and
- (b) 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

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Reg. No.	Date	Туре	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

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Reg. No.	Date	Туре	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)

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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

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

John N. Birch LSO #: 38968U Tel: 416.860.5225 Fax: 416.640.3057 jbirch@casselsbrock.com

Stephanie Voudouris LSO #: 65752M Tel: 416.860.6617 Fax: 416.642.7145 svoudouris@casselsbrock.com

Lawyers for the Applicant/Moving Party, Hi-Rise Capital Ltd.

This is **Exhibit "N"** referred to in the Affidavit of Jim Neilas, sworn remotely in accordance with O.Reg 431/20, this 12<sup>th</sup> day of February, 2021.

A Commissioner, etc.

Nicholas Jay Sciuk, a Commissioner, etc., Province of Ontario, while Student-at-Law Expires May 3, 2022



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

F 416.595.8695

MILLERTHOMSON.COM

November 16, 2020

Sent via E-mail

McCarthy Tétrault LLP 5300 - 66 Wellington Street West Toronto ON M5K 1E6

Attention: Geoffrey Hall

Greg Azeff Direct Line: 416.595.2660 Direct Fax: 416.595.8695 gazeff@millerthomson.com

File: 0242209.0001

Dear Mr. Hall:

#### Re: 263 Adelaide Street West, Toronto Ontario (the "Property")

It has come to Representative Counsel's attention that Adelaide Street Lofts Inc. ("**Adelaide**") has not paid the 2019 and 2020 municipal taxes owing to the City of Toronto in respect of the Property. The total amount of arrears owing in this regard as at November 9, 2020 is \$914,793.40 (the "**Municipal Tax Arrears**"). Enclosed please find a copy of the Statement of Adjustments and Tax Statement dated November 9, 2020.

All capitalized terms in this letter have the same meaning prescribed to them under the Court-approved Minutes of Settlement, as amended (the "**Minutes**").

Adelaide is wholly owned by 263 Holdings Inc. ("**263 Holdings**"), and both are controlled by Jim Neilas ("**Neilas**"). Adelaide, 263, and Neilas are all parties to the Minutes.

Pursuant to section 4 of the Minutes, Adelaide had an obligation to pay the operating expenses in respect of the Property. In our view, this included the obligation to pay municipal property taxes. Pursuant to section 23 of the Minutes, Adelaide, 263 Holdings and Neilas (among others) had an obligation 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 the Minutes.

The Municipal Tax Arrears have been paid by Lanterra from the closing funds, but such obligation ought to have been serviced by Adelaide in accordance with the Minutes. As such, Adelaide's failure to pay the Municipal Tax Arrears constitutes a breach of the Minutes. Similarly, the failure of Neilas and 263 Holdings to cause Adelaide to pay the Municipal Tax Arrears constitutes a breach of the Minutes.

Accordingly, we ask that upon receipt of the settlement funds under section 9(c) of the Minutes, McCarthy Tétrault LLP holdback the entire amount of the Municipal Tax Arrears from the payment to be delivered to 263 Holdings, and remit same to Miller Thomson LLP forthwith. Enclosed please find our wire-transfer instructions.

Page 2

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We trust the foregoing is satisfactory.

Yours truly,

## MILLER THOMSON LLP

Per:



Greg Azeff Partner <sub>GA/sg</sub>

cc: Jennifer Teskey

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

## ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST

Proceeding commenced at TORONTO

## MOTION OF MOTION (Re. Release of Settlement Funds) (Returnable May 13, 2021)

McCarthy Tétrault LLP Suite 5300, Toronto Dominion Bank Tower Toronto ON M5K 1E6

Anu Koshal LS#: 66338F akoshal@mccarthy.ca Tel: 416 601-7991

Lawyers for 263 Holdings Inc.

MT DOCS 21236408