

Re Hi-Rise Capital Ltd.

① I am satisfied that this Motion should be granted on the terms of the attached Order approving an Initial Distribution.

Hainey J.

March 17, 2021

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

THE HONOURABLE

)

WEDNESDAY, THE 17th

)

)

MR. JUSTICE HAINEY

)

DAY OF MARCH, 2021

**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
(Approval of Initial Distribution)**

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 (the “**Opt Out Investors**”)) that have invested funds in a syndicated mortgage investment (the “**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. (the “**Company**”), was heard this day by Zoom web conference,

ON READING the Seventh Report of Representative Counsel dated March 10, 2021 (the “**Seventh Report**”) and the Supplementary Seventh Report dated March 16, 2021 (the “**Supplemental Seventh Report**”) and on hearing the submissions of Representative Counsel, and upon being advised that there is no opposition to the within motion by such other counsel present as indicated on the Counsel Slip,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPROVAL OF REPORTS & CONDUCT

2. **THIS COURT ORDERS** that the Seventh Report and the Supplemental Seventh Report of Representative Counsel and the activities and conduct of Representative Counsel and the Distribution Agent, Alvarez & Marsal Canada Inc. (the “**Distribution Agent**”), as disclosed therein, be and they are hereby approved.

APPROVAL OF INITIAL DISTRIBUTION AMOUNT

3. **THIS COURT ORDERS** that Representative Counsel be and it is hereby authorized and directed to distribute (or cause to be distributed, as more particularly described herein) up to the amount of \$41,010,039.27 (the “**Initial Distribution Amount**”) to the Investors and the Opt Out Investors in accordance with the Revised Claim Index, the Investor Claim Notices and the Distribution Plan (as such terms are defined in the Seventh Report).

DISTRIBUTION OF FUNDS

4. **THIS COURT ORDERS** that Representative Counsel be and is hereby authorized and permitted, but not obligated, to reserve additional funds from the Initial Distribution Amount if it deems appropriate or necessary.

5. **THIS COURT ORDERS** that Representative Counsel be and it is hereby authorized and directed to transfer the portion of the Initial Distribution Amount payable to Registered Investors (as defined in the Seventh Report) directly to Community Trust Company (“**CTC**”) for the purpose of distribution to the Registered Investors.

6. **THIS COURT ORDERS** that the Distribution Agent be and it is hereby authorized and directed to open a trust account (the “**Distribution Trust Account**”).

7. **THIS COURT ORDERS** that Representative Counsel be and it is hereby authorized and directed to transfer the Initial Distribution Amount (after the payment contemplated in Paragraph 5 above) to the Distribution Trust Account.

8. **THIS COURT ORDERS AND DIRECTS** that the Distribution Agent shall distribute amounts in the Distribution Trust Account to the Non-Registered Investors, on a *pro rata* basis based upon the Revised Claim Index.

DETERMINATION OF INVESTOR CLAIMS

9. **THIS COURT ORDERS AND DECLARES** that the amount payable to each Investor shall be determined as of November 16, 2020.

INVESTOR CLAIM NOTICES

10. **THIS COURT ORDERS** that the form of Investor Claim Notice (including the attached Notice of Objection) attached as Appendix "I" to the Seventh Report be and is hereby approved.

11. **THIS COURT ORDERS AND DECLARES** that, unless otherwise authorized by this Court, any Investor who has not filed a Notice of Objection with Representative Counsel is deemed to have: (i) accepted the Investor Claim Amount, classification and other information set out in his or her Investor Claim Notice, and (ii) waived any further objection to the Investor Claim Amount, classification and other information set out in his or her Investor Claim Notice.

RESOLUTION OF OBJECTIONS

12. **THIS COURT ORDERS AND DECLARES** that Representative Counsel is authorized to settle the claim of any Objecting Investor (as such term is defined in the Seventh Report) on such terms as are deemed reasonable and appropriate as determined by Representative Counsel and approved by the Official Committee.

GENERAL

13. **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 Representative Counsel 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 Representative Counsel, as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist Representative Counsel and its agents in carrying out the terms of this Order.

14. **THIS COURT ORDERS** that Representative Counsel be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order,

15. **THIS COURT ORDERS** that Representative Counsel may apply to this Court for advice and direction in connection with the discharge or variation of its powers and duties under this Order.

SEALING ORDER

16. **THIS COURT ORDERS** that Confidential Appendix "1" to the Seventh Report and Confidential Appendix "1" to the Supplemental Seventh Report shall be permanently sealed and not form part of the public record.

A handwritten signature in blue ink, appearing to read "Ainey J", is written over a horizontal line. The signature is cursive and extends to the right of the line.

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

Proceeding commenced at Toronto

**ORDER
(APPROVAL OF INITIAL DISTRIBUTION)**

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Court-appointed Representative Counsel