

**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.**

**SUPPLEMENTAL SEVENTH REPORT OF MILLER THOMSON LLP, IN ITS
CAPACITY AS COURT-APPOINTED REPRESENTATIVE COUNSEL
(Supplemental to Seventh Report dated March 16, 2021)**

March 16, 2021

MILLER THOMSON LLP
40 King Street West
Suite 5800
Toronto Ontario
M5H 3S1, Canada

Gregory Azeff LSO#: 45324C
Tel: 416.595.2660 / Fax: 416.595.8695
Email: gazeff@millerthomson.com

Stephanie De Caria LSO#: 68055L
Tel: 416.597.2652 / Fax: 416.595.8695
Email: sdecaria@millerthomson.com

Court-appointed Representative Counsel

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. PURPOSE OF REPORT.....	2
III. TERMS OF REFERENCE	2
IV. UPDATE ON NOTICES OF OBJECTIONS	3
A. Objections Received.....	3
B. Summary of Basis of Objections.....	3
C. Proposed Initial Distribution & Objections Reserve.....	5
V. CONCLUSION.....	7

**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.**

**SUPPLEMENTAL SEVENTH REPORT OF MILLER THOMSON LLP, IN ITS
CAPACITY AS COURT-APPOINTED REPRESENTATIVE COUNSEL
(Supplemental to Seventh Report dated March 10, 2021)**

I. INTRODUCTION

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 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**”).

2. Representative Counsel filed its Seventh Report dated March 10, 2021 (the “**Seventh Report**”) in support of Representative Counsel’s Motion returnable March 17, 2021 for, among other things, approval of Representative Counsel’s calculations of individual Investor claim amounts and authorization of an initial distribution (the “**Initial Distribution**”) on the basis of such calculations. This Report is supplemental to, and should be read in conjunction with, the Seventh Report. A copy of the Seventh Report, without appendixes, is attached hereto as **Appendix “A”**.

II. PURPOSE OF REPORT

3. Further to paragraphs 38 and 39 of the Seventh Report, Representative Counsel files this Supplemental Seventh Report to update the Court on the total number of objections received, the aggregate claim amount in respect of those objections, and to provide a summary on the objections, and to recommend the Objection Reserve amount. In addition, Representative Counsel seeks an Order sealing Confidential Appendix 1 (Objections Summary) to this Supplemental Seventh Report.

III. TERMS OF REFERENCE

4. In preparing this Supplemental Seventh 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 Supplemental Seventh 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, Representative Counsel expresses no opinion or other form of assurance in respect of the Information.

5. All capitalized terms not otherwise defined herein shall have the same meaning ascribed to them in the Seventh Report. For the purposes of this Supplemental Seventh Report, all reference to the singular herein shall include the plural, and the plural shall include the singular. Unless otherwise stated, all references to dollars shall be in Canadian dollars.

IV. UPDATE ON NOTICES OF OBJECTIONS

A. Objections Received

6. At the date of this Supplemental Seventh Report, Representative Counsel has received 20 Notices of Objections from Investors with respect to their Investor Claim Notices. The timeline for all Investors to deliver their Notices of Objection has now expired. Representative Counsel has reviewed each of the Notices of Objections, which are further described below.

B. Summary of Basis of Objections

7. The Notices of Objections received from Investors can be summarized as follows:

- (a) Certain Registered Investors have objected on the basis that the Trust Statements issued by CTC sets out a higher amount owing than the Investor Claim Notice. The Distribution Agent has been in contact with CTC regarding this issue, and it was determined that when calculating interest on the principal investments, CTC was using compound interest. However, the terms of the LPAs do not prescribe

compound interest. The claim amounts set out in each Investor Claim Notice were calculated in accordance with the interest terms set out in the LPAs. Representative Counsel intends to respond to each of these Objecting Investors to explain the discrepancy and to advise that the claim amount set out in the Investor Claim Notice, as opposed to the Trust Statement, reflects the amount owing pursuant to the terms of the LPAs.

- (b) Certain Investors object to their classification as a Non-Registered Investor on the basis that:
 - (i) they executed their LPAs and invested in Hi-Rise when the only way to participate in the Second Mortgage on the Property was through Hi-Rise on a cash-basis, *i.e.*, before CTC's involvement in the Second Mortgage and any possibility of investing through a RRSP. These Investors object to the *pari passu* treatment along with other Non-Registered Investors
 - (ii) the language of their LPA indicates otherwise; and/or
 - (iii) their original investment in Hi-Rise's Cube Lofts Project (799 College Street, Toronto Ontario), was made on a Registered basis, and they ought to be treated as a Registered Investor for the purposes of Distribution;¹

¹ Provision 15 of the Minutes of Settlement provides as follows: "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." Hi-Rise has confirmed that all such Investors were included in the Master Claim Index and are thus included in the Revised Claim Index, but Representative Counsel proposes to reserve additional funds in the event it learns of additional Cube Lofts Project Investors prior to the Initial Distribution.

(c) Certain Investors dispute the interest rates and interest calculations, and have submitted their own calculations in an effort to demonstrate an alternative Investor Claim Amount.

8. Representative Counsel will work the Distribution Agent and Hi-Rise, as necessary, in an effort to resolve the Notices of Objection, and will report to the Court and other stakeholders on the status of same at a later date.

C. Proposed Initial Distribution & Objections Reserve

9. With respect to the Objecting Investors, Representative Counsel intends to distribute the undisputed portion of their claim, and reserve the amount that is disputed as part of the Objections Reserve. In this regard, Representative Counsel files its Confidential Appendix “1” to this Supplemental Seventh Report, which sets out (i) the names of the Objecting Investors, (ii) the claim amount set out in their respective Investor Claim Notices, (iii) the claim amount set out in their Notice of Objections (or, the amount they would otherwise receive if their objection is successful or accepted), and (iv) the amount to be reserved based on the difference between items (ii) and (iii) (the “**Objections Summary**”).

10. The Objections Summary contains private and sensitive information related to the Investors including names and investment details. Accordingly, Representative Counsel is seeking a sealing Order in respect of the Objections Summary.

11. For the benefit of Investors that read this Supplemental Seventh Report, a simple example of how the Initial Distribution and Objections Reserve works is as follows

Name of Objecting Investor	Claim Amount as per Investor Claim Notice	Claim Amount as per Investor's Notice of Objection	Amount in Dispute
Investor "A"	\$10,000	\$13,000	\$3,000

12. As further described in the Objections Summary, the total amount of the Objection Reserve is \$1,958,000 (*i.e.*, the total amount in dispute). In light of the proposed Objection Reserve, the Distribution Summary at paragraph 48 of the Seventh Report has been updated as follows:

Purchase Price	69,000,000.00
Less: Municipal Tax Arrears ¹	(914,793.40)
Less: Closing Adjustments	(68,801.94)
Less: Meridian Mortgage	(16,751,924.01)
Less: 263 Holdings Settlement Amount	(3,724,000.00)
Less: Lanterra Interest Loan and Forbearance Fee Payment	(1,465,814.38)
Funds Received By Miller Thomson In Trust	\$46,074,666.27
Funds Received By Miller Thomson In Trust	\$46,074,666.27
Less: BMO Commission	(649,000.00)
Less: Professional Fees to Date	
Representative Counsel	(928,112.74)
Counsel to Hi-Rise	(287,801.42)
Information Officer	(115,513.76)
Counsel to the Information Officer	(26,199.08)
Total Professional Fees to Date	(\$1,357,627.00)
Less: General Reserve	(1,100,000.00)
Less: Reserve for Potential Objecting Claims	(1,958,000.00)
Interim Distribution Amount	\$41,010,039.27
Less: Amounts Owing to Registered Investors (Per Revised Claim Index)	(23,762,243.67)
Interim Distribution Amount for Non-Registered Investors	\$17,247,795.60
Total Amounts Owing to Non-Registered Investors (Per Revised Claim Index)	\$49,932,965.76
Principal Amounts Owing to Non-Registered Investors (Per Revised Claim Index)	\$34,912,518.82
<i>Estimated Non-Registered Investor Initial Distribution Recovery (%)</i>	<i>34.54%</i>
<i>Estimated Non-Registered Investor Initial Distribution Recovery on Principal (%)</i>	<i>49.40%</i>

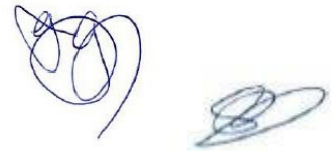
¹ Further to paragraphs 41 to 44 of the Seventh Report, at this time liability for payment in respect of the Municipal Tax Arrears has yet to be determined. Such issue is scheduled to be heard at the Municipal Tax Motion returnable May 13, 2021.

13. In light of the foregoing, Representative Counsel is seeking Court authority to make an Initial Distribution in an amount of up to \$41,010,039.27.

V. CONCLUSION

14. Representative Counsel has prepared this Supplemental Seventh Report in support of the relief sought in its Notice of Motion returnable March 17, 2021, and an Order sealing the Objections Summary filed as Confidential Appendix “1” hereto.

All of which is respectfully submitted at Toronto, Ontario this 16th day of March, 2021.



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