

**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.**

**CROSS-MOTION RECORD OF LANTERRA DEVELOPMENTS LIMITED
(Re: Amendment of Minutes of Settlement and Agreement of Purchase and Sale)
(Returnable April 22, 2020)**

April 16, 2020

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**ONTARIO
SUPERIOR COURT OF JUSTICE
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I N D E X

TAB	DOCUMENT
1.	Notice of Cross-Motion
2.	Affidavit of Christopher J. Wein sworn April 16, 2020
A.	Exhibit A: Affidavit of Noor Al-Awqati sworn April 1, 2020 (without exhibits)
B.	Exhibit B: Extension Request Letter to Representative Counsel
3.	Order

TAB 1

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

**NOTICE OF CROSS-MOTION
(Re: Amendment of Minutes of Settlement and Agreement of Purchase and Sale)**

Lanterra Developments Limited ("**Lanterra**") will make a cross-motion to Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) by teleconference on April 22, 2020 at 11:00 a.m.

PROPOSED METHOD OF HEARING:

This motion is to be heard orally.

THE MOTION IS FOR:

1. An Order, substantially in the form of the draft order attached as Tab 3 of the Motion Record:
 - a) amending the Minutes of Settlement dated December 20, 2019 (the "**Minutes of Settlement**") among Lanterra, Jim Neilas ("**Neilas**"), 263 Holdings Inc. ("**263 Holdings**"), Adelaide Street Lofts Inc. ("**Adelaide**"), Hi-Rise Capital Ltd. ("**Hi-Rise**"), Miller Thomson LLP, solely in its capacity as Court-appointed Representative Counsel ("**Representative Counsel**"), and Vipin Berry, Michael Singh, Nick Tsakonacos, and Marco Arquilla in their capacity as court-appointed members of the Official Committee of Investors (the "**Official Committee**", and

together with Lanterra, Neilas, 263 Holdings, Adelaide, Hi-Rise and Representative Counsel, the “**Parties**”) to revise the definition of the Closing Date in section 3(a)(iii) of the Minutes of Settlement to a date that is the earlier of (i) the date to which the Parties agree, (ii) the date that is 8 weeks following the lifting of the Declaration of Emergency issued by the Province of Ontario pursuant to the *Emergency Management and Civil Protection Act* (the “**Declaration of Emergency**”), and (iii) December 15, 2020;

- b) amending the Agreement of Purchase and Sale dated December 20, 2019 between Adelaide and Lanterra, in trust (the “**APS**”), to revise the definition of the Closing Date in section 1.1(7) of the APS to the earlier of (i) the date to which the Parties agree, (ii) the date that is 8 weeks following the lifting of the Declaration of Emergency and (iii) December 15, 2020; and
- c) such further and other relief as the Court deems just.

THE GROUNDS FOR THE MOTION ARE:

Background

2. Lanterra is a developer of high-end commercial condominium projects whose operations include land acquisition, development, design, construction, marketing, rental management and support services for residential condominium projects in the Greater Toronto Area;

3. A comprehensive background setting out the circumstances leading to the Minutes of Settlement and the APS is contained in the affidavit of Noor Al-Awqati sworn April 1, 2020 (the “**Al-Awqati Affidavit**”), All capitalized terms not otherwise defined herein are defined in the Al-Awqati Affidavit;

4. Pursuant to section 3(a) of the Minutes of Settlement, Lanterra entered into the APS with Adelaide dated December 20, 2019, to purchase the Property for a total purchase price of \$69 million with a closing date of May 14, 2020 (the “**Closing Date**”). Section 6.1 of the APS provides that the Sale will close at 2:00pm on the Closing Date;

5. On April 1, 2020, Hi-Rise served motion materials seeking approval of the Minutes of Settlement and authorizing the sale of the Property pursuant to the Minutes of Settlement and the APS. Hi-Rise’s motion is scheduled to be heard by teleconference at 11:00am on April 22, 2020;

Impact of the COVID-19 Pandemic on Ability to Close the Sale

6. In light of the COVID-19 pandemic and the severe disruption to the normal operation of businesses in Ontario resulting from the measures introduced by the Province of Ontario, the Closing Date is no longer commercially feasible;

7. Lanterra's business has been directly impacted by the Declaration of Emergency, which has recently been extended until May 12, 2020. Since April 4, 2020, Lanterra, and all developers of residential condominiums, are prohibited by the Government of Ontario from active construction of projects for which we do not have above-grade structural permits;

8. As a result, Lanterra has had to immediately suspend construction of over 2,000 residential units and tens of thousands of square feet of commercial development, including suspension of construction activity with respect to the Property;

9. Lanterra's business operations have also been inhibited drastically by, amongst other things:

- a) an inability to effectively diligence potential projects including to obtain off-title responses and conduct physical due diligence;
- b) an inability to finalize crucial zoning by-laws, seek site plan approvals and receive notice of approval conditions;
- c) deferred rent payments from commercial and residential tenants throughout Lanterra's portfolio;
- d) decreased access to capital from financial institutions and equity partners;
- e) forced closure of Lanterra's sales offices and a decreased ability to market properties effectively; and
- f) delayed closings of the sale of completed condominiums;

10. The impact of the COVID-19 restrictions on Lanterra's business, and the businesses of all developers of residential condominiums in Ontario, prevents Lanterra from being able to close the Sale on the Closing Date;

11. On April 7, 2020, Lanterra wrote a letter to Representative Counsel (the "**Representative Counsel Letter**") summarizing the adverse impact of the COVID-19 pandemic on Lanterra's

operations, and seeking Representative Counsel's consent to an extension of the Closing Date until the date which is eight weeks following the resumption of normal commercial business activity within the City of Toronto and the Province of Ontario, with a potential outside date of December 15, 2020;

12. The Minutes of Settlement and the APS remain subject to approval of the Court;

13. When making an order the Court may impose such terms and give such directions as are just;

14. Lanterra is seeking an order from this Court revising the definition of Closing Date in the Minutes of Settlement and the APS until the earlier of (i) the date to which the Parties agree, (ii) the date that is 8 weeks following the lifting of the Declaration of Emergency and (iii) December 15, 2020;

15. In light of all the circumstances, including the Declaration of Emergency issued by the Province of Ontario and its extension until May 12, 2020, and the resulting impact upon the normal operation of businesses in Ontario, including the closure of all non-essential retail outlets (and the resulting deferral of rent payments, the curtailment of construction, and the inability to access capital), Lanterra submits that it is appropriate to grant the requested order;

16. Lanterra remains committed to closing the transaction contemplated by the APS and the Minutes of Settlement, and since June 2019 has entered into numerous agreements with engineering, architectural and consulting firms which require Lanterra to expend significant sums to develop the Property;

Other Grounds

17. Section 10 of the *Trustee Act*, R.S.O. 1990, c. T.23, as amended;

18. Section 96, 97, 98 and 100 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended;

19. Rules 1.04, 1.05, 2.01, 2.03, 3.02, 16, 37, and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended;

20. The inherent and equitable jurisdiction of this Honourable Court; and

21. Such further and other grounds as counsel may advise and this Court may permit.

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

22. the Affidavit of Christopher J. Wein sworn April 16, 2020;
23. the Al-Awqati Affidavit; and
24. Such further and other materials and evidence as counsel may advise and this Honourable Court may permit.

April 16, 2020

Stikeman Elliott LLP
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Lawyers for Lanterra Developments Limited

HI-RISE CAPITAL LTD.
Applicant

-and-

SUPERINTENDENT OF FINANCIAL SERVICES
Respondent

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

NOTICE OF CROSS-MOTION

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Lawyers for Lanterra Developments Limited

TAB 2

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

**ONTARIO
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**IN THE MATTER OF SECTION 60 OF THE *TRUSTEE ACT*, R.S.O. 1990, C. T.23, AS
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1990, REG. 194, AS AMENDED**

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

**AFFIDAVIT OF CHRISTOPHER J. WEIN
(Sworn April 16, 2020)**

I, Christopher J. Wein, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Chief Operating Officer of Lanterra Developments Limited ("**Lanterra**"). I have been the Chief Operating Officer of Lanterra since June 1, 2018. Due to my involvement with Lanterra, I have knowledge of the matters to which I hereinafter depose, except where otherwise stated. I have also reviewed the records of Lanterra and have spoken with certain of the directors, officers and/or employees of Lanterra, as necessary. Where I have relied upon information from others, I believe the information to be true.

2. This affidavit is sworn in support of a cross-motion brought by Lanterra in the within proceedings seeking an order substantially in the form of the draft order attached as Tab 3 of the Cross-Motion Record:

- a) amending the Minutes of Settlement dated December 20, 2019 (the "**Minutes of Settlement**") among Lanterra, Jim Neilas ("**Neilas**"), 263 Holdings Inc. ("**263 Holdings**"), Adelaide Street Lofts Inc. ("**Adelaide**"), Hi-Rise Capital Ltd. ("**Hi-Rise**"), Miller Thomson LLP, solely in its capacity as Court-appointed Representative Counsel ("**Representative Counsel**"), and Vipin Berry, Michael Singh, Nick Tsakonacos, and Marco Arquilla in their capacity as court-appointed

members of the Official Committee of Investors (the “**Official Committee**”, and together with Lanterra, Neilas, 263 Holdings, Adelaide, Hi-Rise and Representative Counsel, the “**Parties**”) to revise the definition of the Closing Date in section 3(a)(iii) of the Minutes of Settlement to a date that is the earlier of (i) the date to which the Parties agree, (ii) the date that is 8 weeks following the lifting of the Declaration of Emergency issued by the Province of Ontario pursuant to the *Emergency Management and Civil Protection Act* (the “**Declaration of Emergency**”), and (iii) December 15, 2020; and

- b) amending the Agreement of Purchase and Sale dated December 20, 2019 between Adelaide and Lanterra, in trust (the “**APS**”), to revise the definition of the Closing Date in section 1.1(7) of the APS to the earlier of (i) the date to which the Parties agree, (ii) the date that is 8 weeks following the lifting of the Declaration of Emergency and (iii) December 15, 2020; and
- c) Such further and other relief as the Court deems just.

Background

3. Lanterra is a developer of high-end commercial condominium projects whose operations include land acquisition, development, design, construction, marketing, rental management and support services for residential condominium projects in the Greater Toronto Area. Lanterra prides itself on its record of scaling new heights in design, style and elegant urban living since the company’s inception over 20 years ago.

4. A comprehensive background setting out the circumstances leading to the Minutes of Settlement and the APS is contained in the affidavit of Noor Al-Awqati sworn April 1, 2020 (the “**Al-Awqati Affidavit**”), a copy of which (without exhibits) is attached hereto as **Exhibit “A”**. All capitalized terms not otherwise defined herein are defined in the Al-Awqati Affidavit.

5. Pursuant to section 3(a) of the Minutes of Settlement, Lanterra entered into an agreement of purchase and sale with Adelaide dated December 20, 2019, to purchase the Property for a total purchase price of \$69 million with a closing date of May 14, 2020 (the “**Closing Date**”). Section 6.1 of the APS provides that the Sale will close at 2:00pm on the Closing Date.

6. On April 1, 2020, Hi-Rise served motion materials seeking approval of the Minutes of Settlement and authorizing the sale of the Property pursuant to the Minutes of Settlement and the APS. Hi-Rise's motion is scheduled to be heard by teleconference at 11:00am on April 22, 2020.

Impact of the COVID-19 Pandemic on Ability to Close the Sale

7. For the reasons detailed below, in light of the COVID-19 pandemic and the severe disruption to the normal operation of businesses in Ontario resulting from the measures introduced by the Province of Ontario and the City of Toronto, the Closing Date is no longer commercially feasible.

8. Lanterra's business has been directly impacted by the Declaration of Emergency, which has recently been extended until May 12, 2020. Since April 4, 2020, Lanterra, and all developers of residential condominiums, are prohibited by the Government of Ontario from active construction of projects for which the developer does not have above-grade structural permits. For Lanterra, this required the immediate suspension of construction of over 2,000 residential units and tens of thousands of square feet of commercial development. These restrictions would also apply to construction activity on the Property.

9. Lanterra's business operations have also been inhibited drastically by, amongst other things:

- a) an inability to effectively diligence potential projects, including to obtain off-title responses and conduct physical due diligence;
- b) an inability to finalize crucial zoning by-laws, seek site plan approvals and receive notice of approval conditions;
- c) deferred rent payments from commercial and residential tenants throughout our portfolio;
- d) decreased access to capital from financial institutions and equity partners;
- e) forced closure of our sales offices and a decreased ability to market properties effectively; and
- f) delayed closings of the sale of completed condominiums.

10. Lanterra remains committed to closing the transaction contemplated by the Minutes of Settlement and the APS. Since June 2019, and as recently as yesterday, Lanterra has entered into a number of agreements with design, engineering, architectural, energy, marketing and transportation consulting firms, which financially obligates Lanterra to more than \$2.5 million in commitments. However, the impact of the COVID-19 restrictions on the businesses of all developers of residential condominiums in Ontario prevents Lanterra from being able to close the Sale on the Closing Date.

Relief Sought

11. On April 7, 2020, Lanterra wrote to Representative Counsel (the “**Representative Counsel Letter**”) summarizing the adverse impact of the COVID-19 pandemic on Lanterra’s operations, and seeking Representative Counsel’s consent to an extension of the Closing Date until the date which is eight weeks following the resumption of normal commercial business activity within the City of Toronto and the Province of Ontario with a potential outside date of December 15, 2020. A copy of the Representative Counsel Letter is attached hereto as **Exhibit “B”**.

12. Lanterra is bringing this cross-motion seeking an order revising the definition of the Closing Date in the Minutes of Settlement and the APS until the earlier of (a) the date to which the Parties agree, (b) the date that is 8 weeks following the lifting of the Declaration of Emergency and (c) December 15, 2020.

SWORN BEFORE ME at the City of
Toronto, Province of Ontario, on April
16, 2020.

DocuSigned by:
Sanja Sopic
E820930A2731482...

Commissioner for Taking Affidavits

DocuSigned by:

Christopher J. Wein

9803396FB74B431...

Christopher J. Wein

TAB A

EXHIBIT "A"

referred to in the Affidavit of

CHRISTOPHER J. WEIN

Sworn April 16, 2020

DocuSigned by:
Sanja Sopic
E820930A2731482...

Commissioner for Taking Affidavits

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

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

**AFFIDAVIT OF NOOR AL-AWQATI
(SWORN APRIL 1, 2020)**

I, Noor Al-Awqati, of the City of Toronto, in the Province of Ontario, MAKE OATH
AND SAY:

1. I am the Chief Operating Officer of the Applicant, Hi-Rise Capital Ltd. ("**Hi-Rise**"). I am also a licensed mortgage broker and the principal broker of Hi-Rise. As such, I have knowledge of the matters to which I hereinafter depose.

2. I previously swore an affidavit in this application (the "**Trustee Application**") on March 19, 2019, a copy of which has been attached to this affidavit (the body of the affidavit and only exhibits A-F, L, and O-W) ("**First Al-Awqati Affidavit**") as **Exhibit "A"**. The First Al-Awqati affidavit provides extensive background about this matter and thus I only propose to provide a brief statement of background in this affidavit.

A. Overview

3. Hi-Rise brings this motion for approval of a transaction whereby Adelaide Street Lofts Inc. ("**Adelaide**"), the owner of a property known municipally as 263 Adelaide St. West, Toronto, Ontario (the "**Property**"), proposes to sell the Property to Lanterra

Developments Ltd. or its designee (“**Lanterra**”) pursuant to the terms of Minutes of Settlement dated December 20, 2019 (the “**Minutes of Settlement**”) for a purchase price of \$69,000,000, to be paid on closing. A copy of the Minutes of Settlement are attached hereto and marked as **Exhibit “B”**.

4. In addition, Hi-Rise seeks the granting of a vesting order that will facilitate the closing of the transaction and make it clear that Hi-Rise and certain other parties have the authority to take certain steps only on closing, including permitting the discharge of a syndicated second mortgage (the “**Syndicated Mortgage**”) over the Property.

5. Hi-Rise believes that, in the circumstances the Minutes of Settlement provide for the best recovery available in the marketplace. The Property was exposed to the market over the course of a two-year sales process by an experienced agent (Bank of Montreal (“**BMO**”)).

6. Miller Thomson LLP in its capacity as court-appointed representative counsel for investors (“**Representative Counsel**”) supports the transaction. In addition, the two classes of investors that participate in the Syndicated Mortgage have voted in favour of the transaction by an overwhelming majority by both number and value.

B. Background

7. Hi-Rise is the administrator and trustee of the Syndicated Mortgage. The Syndicated Mortgage is a second mortgage over the Property in the principal amount of \$52,242,500 that ranks subordinate to a commercial first mortgage (the “**Meridian Mortgage**”) granted by Meridian Credit Union Limited (“**Meridian**”). As of December 5, 2019, the amount outstanding on the Meridian Mortgage was \$17,045,466.82.

8. Advances made under the Syndicated Mortgage were by approximately 650 investors (“**Investors**”),¹ each of whom holds a share of such mortgage. There are generally two types of participant in the Syndicated Mortgage:

- (a) Individuals whose registered plans (e.g., RRSP or TFSA) have made the investment (“**Registered Investors**”). Registered Investors’ interests in the Syndicated Mortgage are held by Community Trust Company (“**CTC**”) as trustee, in order to comply with the requirements of the *Income Tax Act*;
- (b) Individuals who have directly advanced funds (“**Non-Registered Investors**”): their interest is held by Hi-Rise.

9. Under the terms of Investors’ Loan Participation Agreements and Mortgage Administration Agreements, Registered Investors received a priority for the repayment of their principal and interest.

10. Hi-Rise and CTC are both shown as joint chargees in respect of the Syndicated Mortgage and therefore both parties are required to discharge such mortgage.

11. As described in detail in the First Al-Awqati Affidavit, Adelaide and Hi-Rise completed a value-added re-zoning of the Property in 2018 which resulted in approvals for a 390-unit development. The re-zoning process was complex in part because the City of Toronto designated certain aspects of the building as heritage attributes which must be retained despite any redevelopment.

12. By 2018, and as described further below, it was apparent to Hi-Rise that because the Property had not been developed (due to the construction-related challenges and

¹ Some Investors held both Registered and Non-Registered investments.

difficulty obtaining construction financing following the collapse of other administrators of syndicated mortgages), it was appropriate to explore a transaction that would generate sufficient proceeds from the Property in the short term to repay at least part of the Syndicated Mortgage.

13. However, since it was unlikely that every Investor would approve the proposed terms of sale, some mechanism was needed to hold a vote (the “**Vote**”) and bind Investors to a sale transaction that was acceptable to the majority. Hi-Rise proposed that a Vote would pass if Investors representing two-thirds of value and a majority in number voted in favour (the “**Specified Majority**”). No Investor or minority group of Investors should have a veto. To ensure that Investors’ interests would be properly represented, Hi-Rise also proposed the appointment of Representative Counsel.

14. On March 21, 2019, Justice Hainey granted an initial order (the “**Appointment Order**”) in this matter which, among other things, (i) appointed Miller Thomson LLP as Representative Counsel and authorized Representative Counsel to establish an Official Committee of Investors (the “**Official Committee**”), which it would regularly consult and from which it would take instruction on matters in this proceeding; (ii) granted Hi-Rise permission to hold the Vote; and (iii) if the Specified Majority voted in favour, to return to seek court approval of the transaction. A copy of the Appointment Order is attached hereto and marked as **Exhibit “C”**.

15. The current affidavit is sworn to provide additional information regarding the events that have transpired since the Appointment Order. In particular, I will discuss in greater detail the two-year sales process and court-ordered mediation that have

ultimately led to the Minutes of Settlement and Investor approval of the Sale and distribution of proceeds as described in the Minutes of Settlement.

C. The 2017 and 2018 Sales Process

16. As described in the First Al-Awqati Affidavit, Adelaide has been attempting to realize value for the Property for more than the last two years. In particular, after the market for syndicated mortgages “froze” in 2017 because of the failure of other mortgage administrators in Canada, Adelaide retained BMO as a financial advisor to market the Property for sale in its current, undeveloped state. BMO contacted approximately 2,500 parties to solicit bids, received 47 NDAs, and 10 Letters of Intent for the Property (seven of which also contained bids for another property located at 40 to 58 Widmer Street in Toronto, over which Hi-Rise administered a syndicated mortgage).

17. BMO invited five of the ten bidders to participate in the next phase as qualified bidders (chosen based on the purchase price and the quality of their due diligence). Ultimately, the lead qualified bidder communicated to BMO that, primarily because of construction challenges relating to the Property, it would not proceed.

18. During the 2017 sales process, several interested parties identified various construction and zoning issues that would make development of the Property more difficult and expensive. Challenges included a heritage façade that needed to be preserved and limited access to the building site, given the presence of adjacent structures.

19. Because of these construction challenges, the 2017 sales process did not result in a transaction. Adelaide took the Property off the market to allow time to address the

construction-related concerns and re-market the Property. Adelaide took various steps to reassure potential bidders. This included commissioning two construction methodology reports that provided potential solutions to the development challenges and completing the re-zoning process to add more certainty to the construction process and constructions costs that would be incurred to develop the Property. Hi-Rise completed the re-zoning process at its own expense with the assistance of a \$9,000,000 injection of capital from Adelaide. This capital injection was provided by Adelaide on an unsecured basis. Without it, Adelaide would have had to seek additional secured financing to complete the re-zoning, which would have resulted in a charge on the Property that would have ranked in priority to the Syndicated Mortgage.

20. In 2018, after completing the re-zoning process, and providing the capital injection, Adelaide asked BMO to conduct a second sales process. The purpose of the sales process was to obtain the highest possible value for the Property and thereby maximize recoveries for Investors.

21. Again, BMO contacted over 2,500 parties to solicit interest in the sales process, received 37 executed NDAs, and four Letters of Intent. The Letters of Intent were subject to various diligence and closing conditions (including construction and development-related investigations). BMO invited two bidders (including Lanterra) to participate in the second phase, and to make a cash bid. Neither party submitted a cash offer because of the construction-related challenges.

22. BMO began to explore alternatives and determined that, in order to effect a transaction which would obtain the highest possible value for the Property, the bid deadline should be extended and qualified bidders should be invited to submit joint

venture proposals. A joint venture was intended to allow the external bidder to work with Adelaide to develop the Property, leverage its knowledge of the Property, and thereby mitigate much of the development risk.

23. Ultimately, three parties submitted joint venture proposals. To maintain the integrity of the bidding process, BMO did not disclose the bidders' names to Adelaide. Adelaide, with the input of BMO, ultimately determined that one joint venture bid (which Adelaide later learned was from Lanterra) was materially better than the other bids because

- (a) it contained the highest purchase price;
- (b) this bidder had performed considerable due diligence on the Property and spent effort determining how to approach the construction-related challenges; and
- (c) this bidder is a reputable developer with extensive experience building in downtown Toronto on sites that have faced similar construction challenges.

24. Over a period of months, Lanterra and Adelaide (with the assistance of BMO) negotiated the terms of a joint venture agreement to develop the Property using a limited partnership ("**LP**") structure (the "**JV Transaction**").

25. The key terms of JV Transaction were as follows:

- (a) Lanterra would acquire a 75% interest in the LP and Adelaide's parent company, 263 Holdings Inc. ("**263 Holdings**") would hold the remaining 25% interest;

- (b) Lanterra would pay a portion of its share of the purchase price on closing and the balance would be secured by an interest-bearing vendor take-back mortgage maturing in two or three years; and
- (c) The consideration to be paid by Lanterra for its 75% interest would result in the following recoveries for Investors:
 - (i) Registered Investors would receive the majority of their principal and interest on closing of the JV Transaction, with the balance in December 2021 or 2022; and
 - (ii) Non-Registered Investors would potentially receive 60% of their principal and interest, depending on certain contingencies, in December 2021 or 2022 (with no payment on closing).

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

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

28. Pursuant to the Endorsement of Justice Hainey dated May 7, 2019, the Court directed Representative Counsel to enter into the NDA in respect of the Transaction. A copy of this endorsement is attached hereto and marked as **Exhibit "D"**.

29. Accordingly, on May 8, 2019, after consulting with and receiving instructions from the Official Committee, Representative Counsel entered into the NDA with Adelaide to permit Representative Counsel to obtain the Transaction details and offeror's name on a "counsel-only" basis. A copy of the NDA is attached as **Exhibit "E"**.

30. Representative Counsel reported this information on May 8, 2019 to Investors by publishing a communication on its website. A copy of this communication is attached as **Exhibit "F"**.

31. Thereafter, Representative Counsel attended at the offices of Adelaide's counsel (McCarthy Tétrault LLP), and reviewed the proposed Transaction details. As set out in the NDA, Representative Counsel was not permitted to make copies of the Transaction documents or disclose the details of the Transaction to 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.

D. Extension to Due Diligence Period

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

33. 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**").

34. 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 Transaction with Investors or the Official Committee.

E. Transaction Details and Joint Venture Agreement

35. Around the Due Diligence Expiry Date, Adelaide informed Representative Counsel that the offeror had completed its due diligence, and that certain Transaction details were capable of being reviewed and disclosed by the Official Committee to Investors.

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

37. Because of 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.

38. Over the summer of 2019, Representative Counsel raised questions about how the BMO sales process operated and what offers were received. Adelaide made BMO personnel available to meet and speak with Representative Counsel and members of the Official Committee, in order to answer questions and address any concerns. Representative Counsel and the Official Committee requested that the circumstances surrounding the JV Transaction and Adelaide's efforts to market and sell the Property be reviewed by an independent financial firm. Accordingly, on September 17, 2019, on the consent of all relevant parties, Justice Hailey appointed Alvarez & Marsal Canada Inc. as

Information Officer (the “**Information Officer**”) with the power to review and report to the Court and all stakeholders on the BMO sales process, the JV Transaction and estimated realizations by Investors. A true copy of Justice Hainey’s order appointing the Information Officer is attached hereto and marked as **Exhibit “G”**.

F. The Information Officer’s Report

39. The Information Officer’s report (the “**Report**”) was completed on October 7, 2019 and published on Representative Counsel’s website the same day. A true copy of the Report is attached hereto and marked as **Exhibit “H”**.

40. The Report reached the following conclusions:

- (a) The 2017 and 2018 sales process (collectively the “**Sales Process**”) was a robust and thorough market test designed to achieve the maximum transaction value in the circumstances;
- (b) The Sales Process was consistent with industry standards and was carried out by BMO in a thoughtful and professional manner;
- (c) Nothing led the Information Officer to believe that the JV Transaction would be considered improvident; and
- (d) The Information Officer did not believe there was any reasonable prospect of a sales process generating sufficient funds to repay both the Meridian Mortgage and the Syndicated Mortgage in full.

41. The Information Officer also considered whether reopening the sales process, or commencing a receivership, might generate a result that would provide greater recovery

for Investors than the JV Transaction. The Information Officer concluded that while a receivership may result in a faster distribution of proceeds to Investors, to achieve the same returns as the JV Transaction, the receivership selling price would have to be higher. Moreover, if a receivership was initiated, interest on the Meridian Mortgage and the Syndicated Mortgage and receivership costs would continue to accrue and ultimately reduce net recoveries for Investors, with no certainty that a new process would generate a higher purchase price than under the JV Transaction.

42. The Information Officer concluded as follows:

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. 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. 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. 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. [emphasis added]

43. Following the release of the Report, Hi-Rise convened a Vote of Investors. Hi-Rise sent Investors a disclosure package about the JV Transaction. Representative Counsel recommended to Investors that they vote against the JV Transaction. Representative Counsel was concerned, among other things, that payment of Non-Registered Investors in particular was not guaranteed because they would receive funds several years in the

future and, further, that by retaining a 25% interest in the development, Adelaide would receive a profit upon completion.

44. Investors had the opportunity to attend a meeting in Toronto on October 23, 2019. At the meeting, Representative Counsel and representatives of Adelaide and Hi-Rise had the opportunity to speak to Investors and answer their questions. In addition to being able to vote without attending the meeting, Investors also had an opportunity to vote at the meeting.

45. After the votes were tallied, it became apparent that the JV Transaction had not been approved by the Specified Majority. In particular, of the 61.77% share of investors that voted, a margin of 70.636% by value voted against the JV Transaction.

G. Threatened Receivership, Judicial Mediation, and Minutes of Settlement

46. On October 28, 2019, Meridian Credit Union 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**”). Such application followed the “no” vote of Investors.

47. Hi-Rise, Adelaide, and Representative Counsel were all concerned that a receivership over Adelaide had the potential to reduce sale proceeds because the Property would be sold in a “distress” situation, although it was likely that it would be a cash sale. These parties opposed the receivership application and wanted to obtain more time to try to negotiate a transaction that maximized recoveries for stakeholders. Lanterra remained interested in acquiring the Property.

48. As well, the Developer indicated it would be redeeming the Meridian Mortgage and moving forward with another partner and plan that would involve more time. Hi-Rise and Representative Counsel were opposed to this because there would be no definitive date of exit.

49. Rather than allowing the receivership application to immediately proceed, or instead of allowing the developer to redeem and payout the Meridian mortgage leaving investors invested for undetermined period on November 1, 2019, Justice McEwen adjourned the Receivership Application to December 12, 2019 and scheduled a Judicial Mediation for November 27, 2019. A copy of Justice McEwen's endorsement is attached hereto as **Exhibit "I"**.

50. Prior to the mediation, the Official Committee declined an earlier offer made by Lanterra that included a vendor take-back mortgage on the basis that, as long as Adelaide retained a residual interest in the Property, it would not recommend the settlement to investors. As a result, Lanterra made a revised offer for the JV Transaction. The revised offer no longer contemplated financing part of the purchase price with a vendor take-back mortgage, but instead Lanterra offered to pay the entire purchase price on closing. A vendor take-back mortgage would have provided a cash payment to non-registered investors of approximately 60% on closing and could have provided investors with an opportunity to recover the balance of their principal with a future payout from the development, upon completion.

51. At the Judicial Mediation—which ran all day and lasted into the evening—Lanterra, Adelaide, and 263 Holdings agreed to the terms of a new transaction (previously defined

as the “Sale”) for an all-cash sale of the Property to Lanterra, with an expected closing date of May 14, 2020 (the “**Closing Date**”).

52. The Sale did not involve Adelaide or 263 Holdings retaining any residual interest in the Property. As such, neither Adelaide nor 263 Holdings will earn any profit from developing the Property. Lanterra, as purchaser of a 100% interest, will bear all risk and reward of development. Accordingly, to compensate 263 Holdings for the approximately \$9,000,000 in funds that it expended to preserve the Property over past years (including payment of interest on the Meridian Mortgage), the parties agreed that 263 Holdings may receive \$4 million as partial reimbursement of its expenses. This amount is subject to a deduction of \$216,000 for 263 Holdings’ one-third contribution to the fees of BMO which BMO has agreed to reduce to \$649,000 in aggregate (the “**BMO Commission**”). (Lanterra and Investors will each bear one-third of the cost of BMO’s fees.)

53. Following the Judicial Mediation, counsel for the parties worked to draft formal Minutes of Settlement. Finalizing the Minutes of Settlement and related agreements took until the afternoon of December 24, 2019, when all parties signed. In the meantime, Adelaide, Hi-Rise, and Representative Counsel secured further adjournments of the receivership application. To complement the Minutes of Settlement, Meridian, Adelaide, and 263 Holdings (among others) entered into a forbearance agreement with Meridian (attached as **Exhibit “J”**) by which Meridian agreed to forbear from enforcing its security if

- (a) Hi-Rise held a Vote on the Minutes of Settlement and received Investor approval by a specified date;
- (b) Adelaide immediately paid all accrued interest on the Meridian Mortgage (which it did using an interim loan from Lanterra secured by a new second

mortgage ranking in priority to the Syndicated Mortgage (the “**Lanterra Mortgage**”));

- (c) the principal amount of the Meridian Mortgage was increased to \$17,250,000; and
- (d) the Sale is completed by May 20, 2020 and proceeds are paid to Meridian by May 22, 2020.

54. To permit the Lanterra Mortgage to be promptly registered on title and avoid the need for each Registered Investor to provide consent to Meridian, Representative Counsel brought a motion requesting such relief. Justice Conway made an order dated December 20, 2019 (attached as **Exhibit “K”**) that authorized Representative Counsel to instruct Community Trust Company to consent to the subordination of the Syndicated Mortgage to the Lanterra Mortgage.

55. The key terms of the Minutes of Settlement are as follows:

- (a) Lanterra will purchase a 100% interest in the Property for \$69,000,000 cash on closing;
- (b) The sale terms between Lanterra and Adelaide are reflected in an agreement of purchase and sale dated December 20, 2019 (the “**APS**”), a copy of which is attached as **Exhibit “L”**;
- (c) The transaction shall be completed by the Closing Date;
- (d) 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;

- (e) 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; and
- (f) 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 Syndicated Mortgage. 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.

56. The Minutes of Settlement also provide for the following “waterfall” of proceeds distribution on the Closing Date:

- (a) To Aird & Berlis LLP in trust to repay the Meridian Mortgage, including interest and expenses, which amounts shall be reviewed by Representative Counsel prior to payment;
- (b) To Stikeman Elliott LLP in trust (on behalf of Lanterra):
 - (i) the amounts owing under the Forbearance Fee Loan, which amounts shall be reviewed by Representative Counsel prior to payment;

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- (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; and
- (iii) the sum of \$50,000 on behalf of 263 Holdings in respect of the breakage fee associated with the JV Transaction;
- (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 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 as described in paragraphs 56(a) to 56(c), above.

57. The amount paid to Miller Thomson LLP in trust as described in paragraph 56(d) of this affidavit shall be distributed by Miller Thomson LLP in the following order of priority:

- (a) First, to professionals with charges on the Property (such as Miller Thomson LLP and (if applicable) the Information Officer) the amount of their outstanding fees plus a reasonable reserve to be retained to cover future fees of those professionals;
- (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, the Minutes of Settlement, and the Sale (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 Sale 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 Sale, 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 Syndicated

Mortgage, in accordance with the mechanism set out in the Minutes of Settlement for effecting such Distribution to Investors.

H. Distribution to Investors

58. Representative Counsel estimates that, after paying the amounts noted above, there will be a total of approximately \$45,000,000 in net proceeds available for distribution to Investors. A copy of the Fourth Report of Representative Counsel is attached hereto and marked as **Exhibit “M”** and contains information regarding the net proceeds available for distribution to Investors:

- (a) As I have noted above, Registered Investors have a priority to recover under the Syndicated Mortgage and are entitled to be paid in full before any other Investors. Representative Counsel estimates that the amount owing to Registered Investors is approximately \$22,810,717.84 as of the Closing Date (composed of \$17,133,872.86 in principal and \$5,676,844.98 in accrued interest). Since the Registered Investors have priority, they will receive a 100% recovery of principal and interest.
- (b) Representative Counsel estimates that Investors other than Registered Investors will receive an aggregate of approximately \$22.68 million after Registered Investors are paid. With respect to Non-Registered Investors, they will be owed \$48,235,032.06 as of the Closing Date, (composed of \$34,973,891.58 in principal and \$13,261,140.48 in accrued interest) and therefore Hi-Rise estimates that they will receive recoveries of around 64.86% (based on principal alone) or 47.03% (based on principal and interest).

I. Investors Approve the Sale and Distribution In Accordance With the Minutes of Settlement

59. On January 9, 2020, Representative Counsel posted its Fourth Report on its website, which appended a copy of the Minutes of Settlement for Investors to review and consider in advance of the Vote. As described above, a copy of the Fourth Report is attached hereto as Exhibit “M”.

60. On January 13, 2020, Representative Counsel sent an important update to Investors (a copy of which is attached as **Exhibit “N”**). In this update, Representative Counsel recommended that all Investors approve the Minutes of Settlement.

61. To ensure that the Vote was properly tabulated and the results could be relied on, Hi-Rise engaged TSX Trust to prepare and distribute ballots (each containing a unique control number). On January 13, 2020, at the instruction of Hi-Rise, TSX Trust mailed an information statement (the “**Information Statement**”) and ballot to all Investors. The Information Statement provided a summary of the Sale and Distribution as well as information and instructions regarding the Vote. The Information Statement also referred Investors to the Fourth Report and the Minutes of Settlement appended to that report and provided Investors with another copy of estimated recoveries. Hi-Rise informed Investors their votes could be submitted by mail, online, or by fax anytime during the voting window of January 22, 2020 to January 28, 2020.

62. Attached as **Exhibit “O”** to this Affidavit is a true copy of the Information Statement and sample ballot provided to Investors.

63. Investors approved the transaction as described in the Minutes of Settlement by far more than the Specified Majority. The details of the Vote results are as follows:

- (a) Out of 708 Investors, 417 cast ballots, representing a turn-out of 58.89%.
- (b) The voter turn-out among Registered Investors was 62% and among Non-Registered Investors it was 56%;
- (c) Among Registered Investors, 100% in number of votes cast (representing \$11,861,862 in value and 100% by value of votes cast) voted in favour; and
- (d) Among Non-Registered Investors, 95.9% in number of votes cast (representing \$19,960,791 in value and 93.184% by value of votes cast) voted in favour.

64. As such, the number and value of votes in favour was far in excess of the Specified Majority. Investors overwhelmingly supported the transaction. Attached as **Exhibit "P"** to this Affidavit is a true copy of Representative Counsel's communication to Investors dated January 31, 2020 providing the above-noted results of the Vote.

65. Since the Specified Majority of votes in favour of the Minutes of Settlement has been achieved, Hi-Rise brings this motion for an order approving the terms of the Minutes of Settlement and giving other directions necessary to allow the Sale to be completed and the proceeds distributed to Investors and other permitted recipients.

J. Hi-Rise's Powers and Obligations Pursuant to the Mortgage Administration Agreements and Loan Participation Agreements

66. Hi-Rise wants to ensure that it acts in a manner that is consistent with its powers pursuant to the *Trustee Act* as well as the terms of the Loan Participation Agreements and Mortgage Administration Agreements to which Investors are parties. Hi-Rise also wants

to ensure that it adequately protects Investors' rights, and that it provides Investors with the greatest possible recovery and/or benefit in the circumstances.

67. Because the Sale will not generate net proceeds (after paying prior-ranking liabilities) that will not be sufficient to fully repay all Investors, it does not wish to compromise Investor claims or allow the Syndicated Mortgage to be discharged without receiving proper direction and comfort from the court.

68. The following provisions of the Loan Participation Agreement set out Hi-Rise's powers:

- (a) pursuant to section 8: upon default of the Borrower to "make such decisions, to take such action and exercise all such rights and remedies as Hi-Rise may, in its absolute discretion, deem advisable in the best interests of all participants in the Participation Loan, including the right to re-negotiate the Loan Commitment with the Borrower upon such terms as Hi-Rise shall deem advisable";
- (b) pursuant to section 13: "to give a good and valid discharge or assignment of the Participation Loan without the consent of the participants in the Participation Loan, provided all monies due under the Participation Loan as originally agreed upon or as amended, together with all other costs and charges, have been fully repaid or will be fully repaid under the terms of any discharge or assignment". [emphasis added]

69. In addition, certain Loan Participation Agreements executed in 2011, and all of such agreements executed after 2011, permit Hi-Rise "to make all decisions and take any

actions it may deem necessary to protect the principal advanced under the Participation Loan and enhance the value of the security including, without limitation, changing the nature and scope of the mortgage security”.

70. Hi-Rise wants to ensure that, if the Sale and Distribution (as described in the Minutes of Settlement) are approved by this Court, it is acting in a manner consistent with its obligations pursuant to the Mortgage Administration Agreements and Loan Participation Agreements, and at law by allowing the Sale to be completed and the Syndicated Mortgage to be discharged (i.e., vested out) in a deficiency situation.

71. Similarly, CTC wishes to ensure that it is properly authorized to take steps (including discharging the Syndicated Mortgage) necessary to complete the Sale and allow the transfer of the Property to Lanterra on the Closing Date.

K. Release of the Parties

72. The parties to the Minutes of Settlement intended to reach a final, binding settlement that resolves all claims in respect of the Property, so that any potential disputes are left behind. In order to finalize the Minutes of Settlement, each of the parties was required to compromise and give up claims and they expected other parties to do likewise. In addition, the purpose of the Minutes of Settlement is to promote certainty for all stakeholders, including Investors.

73. In recognition of these principles, section 20 of the Minutes of Settlement requires all Parties to execute and deliver a Mutual Release.

74. Hi-Rise, Adelaide, and 263 Holdings have provided substantial consideration for the release. In particular, Hi-Rise is waiving its claim for payment of all accrued but

unpaid administration fees associated with the Syndicated Mortgage. Adelaide and 263 Holdings are waiving their claim for full reimbursement of all expenses incurred to preserve the Property and get it ready for development. Those expenses include items such as legal fees (e.g., zoning counsel), security, insurance, and interest on the Meridian Mortgage. (The Minutes of Settlement provide for a much-reduced payment to 263 Holdings, which is also forgoing its right to profit from the development of the Property.) I estimate that the amounts that these parties are giving up total approximately \$9 million. As a result of these compromises and waivers of claims by 263 Holdings, Adelaide, and Hi-Rise, the amount of money available for distribution to Investors has been materially increased, to the benefit of Non-Registered Investors in particular.

75. In light of the consideration that the parties have provided, and the concessions that they have made in order to reach a final, overall settlement that maximizes the amount of money being paid to Investors, Hi-Rise seeks, as a term of the order being sought, a release of liability relating to the Property, which would include a release of liability arising out of the Syndicated Mortgage or Investors' investments.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario on

April 1st, 2020



Commissioner for Taking Affidavits
(or as may be)

John N. Birch
LSUC# 389684

}



NOOR AL-AWQATI

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

AFFIDAVIT OF NOOR AL-AWQATI

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Lawyers for the Applicant, Hi-Rise Capital Ltd.

TAB B

EXHIBIT "B"

referred to in the Affidavit of

CHRISTOPHER J. WEIN

Sworn April 16, 2020

DocuSigned by:
Sanja Sopic
E820930A2731482...

Commissioner for Taking Affidavits

April 7, 2020

Miller Thomson LLP

Representative Counsel for the Investors

Scotia Plaza

40 King Street West, Suite 5800

P.O. Box 1011

Toronto, Ontario, M5H 3S1

Attention: Gregory Azeff and Stephanie De Caria

RE: Purchase of 263 Adelaide Street West (the "Property") pursuant to an Agreement of Purchase and Sale dated December 20, 2019 (the "APS")

Representative Counsel,

As you are aware, the ongoing COVID-19 Pandemic has prevented the ordinary operation of businesses in Ontario and much of the world. Our business has not escaped disruption. As of April 4, 2020, Lanterra (and all developers of residential condominiums) are prohibited by the Government of Ontario from active construction on projects for which we do not have above-grade structural permits. For us, this meant the immediate suspension of construction of over 2,000 residential units and tens of thousands of square feet of commercial development. Importantly, this would include the Property. In addition, our operations as a real estate entity have been greatly constrained by, amongst other things:

- Deferred rent payments from commercial and residential tenants throughout our portfolio;
- Decreased access to capital from financial institutions and equity partners;
- Forced closure of our sales offices and a decreased ability to market properties effectively;
- Delayed closings on the sale of completed condominiums;
- Inability to finalize crucial zoning bylaws, seek site plan approvals and receive NOAC; and
- An inability to effectively diligence potential projects including to obtain off-title responses and conduct physical diligence.

As you can appreciate, these restrictions make it imprudent and potentially impossible to close the acquisition of the Property on the timeline provided in the APS and the Minutes of Settlement, being the closing date of May 14, 2020. To that end, we respectfully request that Representative Counsel consent to an indefinite extension of the closing date until the date which is eight (8) weeks following the resumption of normal commercial business activity within the City of Toronto and Province of Ontario. We would also suggest an outside date of potentially December 15, 2020 or whatever you feel is reasonable to create some certainty for the investors.

We would like to make it absolutely clear that Lanterra remains committed to the Property and all other terms in the APS and Minutes of Settlement including the fundamental economics of the transaction. We will continue to make every effort to complete the transaction as soon as possible.

Respectfully,


Lanterra Developments Limited

Christopher J. Wein, Chief Operating Officer

HI-RISE CAPITAL LTD.
Applicant

-and-

SUPERINTENDENT OF FINANCIAL SERVICES
Respondent

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**AFFIDAVIT OF CHRISTOPHER J. WEIN
Sworn April 16, 2020**

STIKEMAN ELLIOTT LLP
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Lawyers for Lanterra Developments Limited

TAB 3

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.
JUSTICE HAINEY

)
)
)

WEDNESDAY, THE 22ND
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.

ORDER

(Re Amendment of Minutes of Settlement and Agreement of Purchase and Sale)

THIS CROSS-MOTION, made by Lanterra Developments Limited ("**Lanterra**"), for an
order:

- a) amending the Minutes of Settlement dated December 20, 2019 (the "**Minutes of Settlement**") among Lanterra, Jim Neilas ("**Neilas**"), 263 Holdings Inc. ("**263 Holdings**"), Adelaide Street Lofts Inc. ("**Adelaide**"), Hi-Rise Capital Ltd. ("**Hi-Rise**"), Miller Thomson LLP, solely in its capacity as Court-appointed Representative Counsel ("**Representative Counsel**"), and Vipin Berry, Michael Singh, Nick Tsakonacos, and Marco Arquilla in their capacity as court-appointed members of the Official Committee of Investors (the "**Official Committee**", and together with Lanterra, Neilas, 263 Holdings, Adelaide, Hi-Rise and Representative Counsel, the "**Parties**") to revise the definition of the Closing Date in section 3(a)(iii) of the Minutes of Settlement to a date that is the earlier of (i) the date to which the Parties agree, (ii) the date that is 8 weeks following the lifting of the Declaration of Emergency issued by the Province of Ontario

pursuant to the *Emergency Management and Civil Protection Act* (the “**Declaration of Emergency**”) and (iii) December 15, 2020; and

- b) amending the Agreement of Purchase and Sale dated December 20, 2019 between Adelaide and Lanterra, in trust (the “**APS**”), to revise the definition of the Closing Date in section 1.1(7) of the APS to the earlier of (i) the date to which the Parties agree, (ii) the date that is 8 weeks following the lifting of the Declaration of Emergency and (iii) December 15, 2020;

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

ON READING the affidavit of Christopher J. Wein sworn April 16, 2020 and the Exhibits thereto, the affidavit of Noor Al-Awqati sworn April 1, 2020 and the Exhibits thereto, and on hearing the submissions of counsel for Lanterra, Adelaide, Hi-Rise, and Representative Counsel, and those other parties listed on the counsel slip, and on being advised that those parties listed in the affidavit of service of Sanja Sopic, filed, were given notice of this motion,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Cross-Motion and the Cross-Motion Record is hereby abridged and validated such that this Cross-Motion is properly returnable today, and further service of the Notice of Cross-Motion and the Cross-Motion Record is hereby dispensed with.

AMENDMENT TO MINUTES OF SETTLEMENT

2. **THIS COURT ORDERS** that paragraph 3(a)(iii) of the Minutes of Settlement is amended to revise the meaning of Closing Date as follows:

(iii) a closing date of the earlier of (i) the date to which the Parties agree, (ii) the date that is 8 weeks following the lifting of the Declaration of Emergency issued by the Province of Ontario pursuant to the *Emergency Management and Civil Protection Act*, and (iii) December 15, 2020 (the “**Closing Date**”),

AMENDMENT TO APS

3. **THIS COURT ORDERS** that paragraph 1.1 (7) of the APS is amended to revise the meaning of Closing Date as follows:

“**Closing Date**” means the earlier of (i) the date to which the parties to the Minutes of Settlement agree, (ii) the date that is 8 weeks following the lifting of the Declaration of Emergency issued by the Province of Ontario pursuant to the *Emergency Management and Civil Protection Act*, and (iii) December 15, 2020;

4. **THIS COURT ORDERS** that the Minutes of Settlement and the APS are hereby approved with the amendments set out in paragraphs 2 and 3 herein, and are effective in accordance with their terms.

HI-RISE CAPITAL LTD.
SERVICES
Applicant

-and-

SUPERINTENDENT OF FINANCIAL
Respondent

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

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Lawyers for Lanterra Developments Limited

HI-RISE CAPITAL LTD.
SERVICES
Applicant

-and-

SUPERINTENDENT OF FINANCIAL
Respondent

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**CROSS-MOTION RECORD OF LANTERRA
DEVELOPMENTS LIMITED**

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
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