

**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 OF COURT-APPOINTED REPRESENTATIVE COUNSEL,
(IN WRITING)**

April 6, 2020

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INDEX

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ADELAIDE STREET LOFTS INC.**

I N D E X

Tab	Description
1.	Notice of Motion
2.	Fifth Report of Miller Thomson LLP, in its capacity as Court-Appointed Representative Counsel
Appendices	
A	Order and Endorsement of Justice Hailey dated March 22, 2019
B	Order of the Honourable Mr. Justice Hailey dated April 15, 2019
C	Endorsement of the Honourable Mr. Justice Hailey dated April 4, 2019
D	Second Report of Miller Thomson LLP dated September 13, 2019, in its capacity as Court-Appointed Representative Counsel
E	Third Report of Miller Thomson LLP dated October 18, 2019. in its capacity as Court-Appointed Representative Counsel
F	Fourth Report of Miller Thomson LLP dated January 9, 2020, in its capacity as Court-Appointed Representative Counsel
G	Minutes of Settlement
H	Letter to Investors dated January 9, 2020
I	Email to Investors dated January 9, 2020
J	Print out of Representative Counsel Website
K	Communication to Investors dated January 13, 2020
L	Email to Investors dated January 13, 2020
M	Information Statement
N	Voting Ballot

O	Email to Investors dated January 27, 2020
P	Summary of Votes
Q	Representative Counsel Vote Summary
R	Communication to Investors dated January 31, 2020
S	Email to Investors dated January 31, 2020
T	Order of the Honourable Mr. Justice Hailey dated January 20, 2020
U	Application for Restrictions Based on Court Order
V	PPSA in respect of 263 Adelaide Street West
W	Status Update and COVID-19 Communication dated March 17, 2020
X	Email to Investors dated March 17, 2020
Y	Order of the Honourable Mr. Justice Hailey (Charge Order) dated September 17, 2019
Z	Hi-Rise's Notice of Application dated March 14, 2019
AA	Order of the Honourable Mr. Justice Hailey (Appointing Information Officer) dated September 17, 2019
3.	Draft Order

TAB 1

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**NOTICE OF MOTION
(Returnable in writing)**

The moving party, Miller Thomson LLP, in its capacity as Court-appointed 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 (the “**Opt-Out Investors**”)) 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**”), will make a motion in writing to the Honourable Mr. Justice Hainey presiding over the Commercial List, to be read at such time as may be reasonably practicable, at 330 University Avenue, 8th Floor, Toronto, Ontario M5G 1R7.

PROPOSED METHOD OF HEARING: The motion is to be heard:

- ☒ in writing under subrule 37.12.1(1) and pursuant to the “Changes to Commercial List Operations in Light of COVID-19” dated March 16, 2020.
- ☐ in writing as an opposed motion under subrule 37.12.1(4);
- ☐ orally.

THE MOTION IS FOR:

1. an Order, substantially in the form attached as Tab 3 of the Motion Record:
 - (a) approving the conduct and activities of Representative Counsel as disclosed in its Second Report dated September 13, 2019 (the “**Second Report**”), Third Report dated October 18, 2019 (the “**Third Report**”), Fourth Report (the “**Fourth Report**”) and Fifth Report dated April, 6, 2020 (the “**Fifth Report**”) (collectively, the “**Court Reports**”);
 - (b) removing the maximum amount of the Rep Counsel Charge (as defined below), or alternatively, increasing the Rep Counsel Charge to an amount that will enable Representative Counsel to complete its mandate;
 - (c) expanding the Post-Appointment Fees (as defined below) and Rep Counsel Charge (as defined below) to include disbursements incurred by Representative Counsel from and after the date of the Appointment Order;
 - (d) expanding the Rep Counsel Charge to include the Pre-Appointment Fees (as defined below);
 - (e) increasing the IO Charge (as defined below) to a maximum amount of \$125,000 (plus HST), or as may otherwise be ordered by the Court;
 - (f) authorizing, but not obligating, Representative Counsel to obtain the assistance of an accounting firm, consultant or other third party professional as agent to Representative Counsel (the “**Distribution Agent**”) in connection with the Distribution of the Investor Settlement Amount (as such terms are defined below); and
 - (g) that the fees and disbursements of the Distribution Agent, if retained, shall be a disbursement to Representative Counsel included in the Rep Counsel Charge;
2. Such further and other relief as this Honourable Court may deem just;

THE GROUNDS FOR THE MOTION ARE:

Appointment of Representative Counsel and Official Committee

3. Pursuant to the Appointment Order, Representative Counsel was appointed to represent the interests of all Investors that hold an interest in a syndicated mortgage administered by Hi-Rise;
4. Pursuant to the Order of the Honourable Mr. Justice Hainey dated April 15, 2019 (the “**Approval Order**”), an Official Committee of Investors (the “**Official Committee**”) was approved and constituted;
5. Representative Counsel consults with and takes instruction from the Official Committee on matters related to this proceeding;

Minutes of Settlement and Transaction

6. On November 27, 2019, Representative Counsel, members of the Official Committee, 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**”);
7. The Judicial Mediation was successful insofar as the parties agreed upon a settlement (the “**Settlement**”) that was later memorialized in Minutes of Settlement dated December 20, 2019 between Hi-Rise, Adelaide, Representative Counsel, the Official Committee and Lanterra (the “**Minutes**”);
8. Pursuant to the terms of Settlement and Minutes, *inter alia*, Lanterra will pay the amount of \$69,000,000 (the “**Purchase Price**”) in respect of its purchase of 100 percent of the Property (the “**Transaction**”), and expects to close the Transaction by May 14, 2020 (the “**Closing Date**”);
9. As further particularized in the Fourth Report, the Minutes contemplate a “waterfall” of payments being made from the Purchase Price upon the Closing Date;

10. After certain priority payments and agreed upon payments are made from the Purchase Price in accordance with the Minutes, the balance of the purchase price (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;

11. In accordance with the terms of the Minutes, Representative Counsel will undertake the distribution of the Investor Settlement Amount (the “**Distribution**”) to Investors in accordance with the terms of the Minutes;

12. For the reasons set out in the Fourth Report, Representative Counsel supports the Settlement and Minutes, and recommended that Investors approve same;

The Vote

13. Pursuant to the Appointment Order, the Settlement and Minutes were subject to approval of Investors and Opt-Out Investors, and approval by the Court;

14. In accordance with sections 27 to 30 of the Appointment Order, Hi-Rise called a vote of Investors (the “**Vote**”) order to allow the Investors to vote on the Minutes and the terms of the Settlement, including the Transaction, by the voting deadline of January 28, 2020 at 5:00 p.m. (the “**Voting Deadline**”);

15. In connection with the Vote, Representative Counsel issued its Fourth Report to Investors which set out its recommendation that Investors vote in favour of the Settlement, Minutes and Transaction. The Fourth Report was delivered by: (a) regular mail to every Investor on the mailing distribution List; (b) email to every Investor on the email distribution list; and (c) posting a copy of the Fourth Report on Representative Counsel’s website;

16. Further, Representative Counsel issued subsequent communications and emails to Investors to respond to inquiries regarding the Settlement and the Vote;

17. Representative Counsel is of the view that all Investors have been properly and fully advised of the terms of Settlement and the recommendation of Representative Counsel and the Official Committee to support same;

18. The Vote was successful insofar as the Vote results indicate that the Settlement was overwhelmingly supported by Investors;

19. Pursuant to section 31 of the Appointment Order, the Settlement and Minutes are now subject to approval by the Court. Accordingly, Hi-Rise seeks Court approval of the Minutes and the Settlement, including the Transaction contemplated therein (the “**Approval Motion**”);

20. Representative Counsel supports the relief sought by Hi-Rise as set out in its Notice of Motion filed in respect of the Approval Motion. Representative Counsel recommends and respectfully requests that the Court approve the Minutes, Settlement and Transaction contemplated therein;

21. Representative Counsel also recommends that the granting of the Approval Motion be made without prejudice to the rights of any of the Investors or Opt Out Investors in respect of the Distribution and the amounts to which they may be entitled thereunder;

Distribution Matters

22. If approved by the Court, the Minutes contemplate that Representative Counsel shall be responsible for attending to the Distribution of the Investor Settlement Amount in accordance with the mechanism set out in section 13 of the Minutes;

23. Over the course of these proceedings, and since issuing its Fourth Report, many Investors have inquired on the status of their loan participation agreement with Hi-Rise (“**LPA**”). It has come to Representative Counsel’s attention that there are a number of different iterations of the LPAs and certain of these LPA forms are inconsistent in respect of the subordination language contained in the most commonly used form of LPA;

24. Representative Counsel anticipates that the Distribution process will involve a review of each LPA in order to ensure that each Investor is properly categorized as a Registered or Non-Registered Investor. Where necessary, Representative Counsel will seek advice and directions from the Court so that any issues regarding priorities and subordinations are appropriately addressed prior to Distribution;

25. Accordingly, Representative Counsel will be heavily involved in the claims verification process and Distribution to Investors. Representative Counsel seeks authority from the Court (which authority will be exercised in consultation with the Official Committee) to obtain the assistance of a Distribution Agent in connection with same, if necessary, with a view to maximizing effectiveness and cost-efficiency in respect of the Distribution process;

26. Representative Counsel also seeks an Order that the fees and disbursements of the Distribution Agent, if retained, shall be a disbursement to Representative Counsel and included in the Rep Counsel Charge, as further described below;

Court Reports

27. Pursuant to the Endorsement of the Honourable Mr. Justice Hainey dated April 4, 2019 (the “**Justice Hainey Endorsement**”), Representative Counsel was granted leave to file reports with the Court;

28. In accordance with the Justice Hainey Endorsement, Representative Counsel has filed the Court Reports in connection with this proceeding. The Court Reports set out the activities, conduct and in some circumstances, the recommendations of Representative Counsel to Investors and the Court as it relates to matters in this proceeding;

29. Representative Counsel seeks an Order approving the conduct and activities of Representative Counsel as set out in the Court Reports;

Rep Counsel Charge

30. Pursuant to paragraphs 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;

31. Pursuant to paragraph 18 of the Appointment Order, Representative Counsel was granted a charge on the Property (the “**Rep Counsel Charge**”) 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;

32. Under the current terms of the Appointment Order, the Post-Appointment Fees and the Rep Counsel Charge do not include the disbursements incurred by Representative Counsel from and after the date of the Appointment Order;

33. For the reasons set out in the Fourth Report and Fifth Report, Representative Counsel expects to continue to provide services to and on behalf of Investors past the Closing Date, including but not limited to, all matters related to the Distribution of the Investor Settlement Amount such as the review of each LPA and the claim verification process, among other things;

34. In connection with these services, Representative Counsel anticipates to also incur disbursements, including but not limited to, the fees and disbursements of the Distribution Agent, if retained;

35. Representative Counsel continues to represent the interests of Investors and fulfill its duties and mandate under the Appointment Order. Representative Counsel's role in this proceeding has been extensive, and will continue to be extensive up until the Distribution is complete;

36. Accordingly, Representative Counsel respectfully requests that the Post-Appointment Fees and Rep Counsel Charge be expanded to include disbursements from and after the date of the Appointment Order, and that the maximum amount of the Rep Counsel Charge be removed, or alternatively, be increased to an amount that will enable Representative Counsel to complete its mandate;

37. Notwithstanding the requested expansion to include disbursements incurred from and after the date of the Appointment Order, and the requested removal of maximum amount of the Rep Counsel Charge, the fees and disbursements of Representative Counsel will remain subject to Court approval;

Pre-Appointment Fees

38. Prior to the Appointment Order, Miller Thomson LLP was engaged by Hi-Rise to act as counsel to a group of Investors, specifically to act on their behalf in seeking a resolution to matters related to Adelaide, including recovery of funds advanced under the syndicate mortgage (the “**Engagement**”);

39. Pursuant to such Engagement, Hi-Rise was to pay fees and disbursements incurred by Miller Thomson LLP (the “**Pre-Appointment Fees**”);

40. On Hi-Rise’s application for the appointment of Representative Counsel, Hi-Rise sought an administration charge on the Property to secure the fees of Representative Counsel, including the Pre-Appointment Fees and the post-Appointment Order fees and disbursements;

41. At the time the Appointment Order was granted, the Engagement terminated and the Rep Counsel Charge was only in respect of the Post-Appointment Fees (which excludes disbursements, as noted above);

42. An amount of approximately \$85,000 remains outstanding from this “pre-appointment” Engagement, and is not secured by the Rep Counsel Charge. All of this work performed by Representative Counsel pursuant to the Engagement was for the benefit of the Investors, would have to have been completed in any event, and was not duplicated subsequent to the granting of the Appointment Order. Representative Counsel requests that the terms of the Rep Counsel Charge also be expanded to include these Pre-Appointment Fees;

IO Charge

43. 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**”);

44. Pursuant to the IO Order, the Information Officer was granted a charge (the “**IO Charge**”) in the maximum amount of \$100,000 or as may otherwise be ordered by the Court;

45. The Information Officer has completed its mandate and provided assistance to Representative Counsel in this proceeding, however it has incurred total fees and disbursements (including those of its legal counsel) in the approximate amount of \$125,000, which amount is exclusive of HST;

46. Accordingly, Representative Counsel requests, on behalf of the Information Officer, that the amount of the IO Charge be increased to a maximum of \$125,000 (plus HST), or as may otherwise be ordered by the Court;

47. Representative Counsel makes this request to the Court on behalf of the Information Officer as it is much more cost-effective for Representative Counsel to seek this relief than for the Information Officer to bring its own motion for same;

48. Representative Counsel is of the view that the increase in the IO Charge is reasonable in the circumstances;

General

49. The Appointment Order and Justice Hainey Endorsement;

50. Rule 1, 3, 10, 16 and 37 of the *Rules of Civil Procedure* R.R.O. 1990, Reg. 194, as amended;

51. Section 137(2) of the *Courts of Justice Act*, R.S.O. 1990, c. 43; and

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

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

53. Court Reports; and

54. Such further and other material as counsel may advise and as this Honourable Court may permit.

April 6, 2020

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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 -
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Proceeding commenced at Toronto

NOTICE OF MOTION
(Returnable in writing)

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TAB 2

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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.**

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

April 6, 2020

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Court-appointed Representative Counsel

TABLE OF CONTENTS

INTRODUCTION	4
COURT REPORTS OF REPRESENTATIVE COUNSEL	5
PURPOSE OF REPORT.....	6
THE VOTE AND REPRESENTATIVE COUNSEL’S CONDUCT & ACTIVITIES.....	8
Delivery of Fourth Report to Investors	8
Communications to Investors	9
The Vote.....	9
Inquiries from Investors regarding Vote Procedure.....	10
“Late Votes”	11
VOTE RESULTS.....	11
Successful Vote Results	11
Impact of “Late Votes”	12
Communication to Investors	13
Comparison of Vote Results to Initial Vote.....	13
RECOMMENDATION OF REPRESENTATIVE COUNSEL	14
CURRENT STATUS OF THE PROPERTY	15
POST-COURT APPROVAL MATTERS	16
Distribution of Investor Settlement Amount.....	16
Terms of Minutes.....	16
Anticipated Impact of Settlement	16
Agreement with Hi-Rise regarding Production of Investor Distribution List	17
Anticipated Distribution Matters	18
Mutual Releases	19
MATTERS RELATED TO COVID-19	19

COURT OFFICER CHARGES.....	20
Post-Appointment Fees and Amendment to Rep Counsel Charge	20
Pre-Appointment Fees	21
Increase in IO Charge	23
CONCLUSION.....	23

**ONTARIO
SUPERIOR COURT OF JUSTICE
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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**”) 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**”).

3. 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.

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

COURT REPORTS OF REPRESENTATIVE COUNSEL

5. Pursuant to the Endorsement of the Honourable Mr. Justice Hainey dated April 4, 2019, a copy of which is attached hereto as **Appendix “C”**, Representative Counsel was granted leave to file reports with the Court, among other things.

6. Pursuant to the Official Committee Approval Order, the activities and conduct of Representative Counsel as disclosed in its First Report dated April 9, 2019 (the “**First Report**”) were approved. Representative Counsel has yet to seek Court approval of its conduct and activities since the First Report.

7. Thereafter and in connection with these proceedings, Representative Counsel filed a Second Report dated September 13, 2019 (the “**Second Report**”), Third Report dated October 18, 2019 (the “**Third Report**”) and Fourth Report dated January 9, 2020 (the “**Fourth Report**”), copies of which (including appendixes) are attached hereto as Appendixes “**D**”, “**E**” and “**F**”, respectively. All capitalized terms not otherwise defined herein shall have the meaning prescribed to them in the Fourth Report.

8. As set out below, Representative Counsel seeks Court approval of its activities and conduct as disclosed the Second Report, Third Report and Fourth Report, and as disclosed herein.

PURPOSE OF REPORT

9. As set out in the Fourth Report, 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**”).

10. The Judicial Mediation was successful insofar as the parties agreed upon a settlement (the “**Settlement**”), which Representative Counsel and the Official Committee recommended to the Investors in its Fourth Report. The Settlement is memorialized in the Minutes of Settlement (the “**Minutes**”, a copy of which is attached as **Appendix “G”** hereto). Full details in respect of the Settlement and the Minutes are set out in the Fourth Report.

11. The Settlement will allow the Company to move forward with a sale of 100% of the Property to Lanterra (the “**Lanterra Sale**”) and the other transactions set out in the Minutes, and was subject to approval of Investors.

12. Accordingly and in accordance with the terms of the Appointment Order, Hi-Rise called a vote (the “**Vote**”) in order to allow the Investors to vote on the Minutes and the terms of the Settlement, including the Lanterra Sale. Investors were required to cast their Vote by January 28, 2020 at 5:00 p.m. (the “**Voting Deadline**”).

13. The Vote was successful, such that the Settlement and the Minutes have been approved by the Investors. Pursuant to section 31 of the Appointment Order, the Settlement and Minutes are now subject to approval by the Court. A motion was scheduled for March 19, 2020, in order for Hi-Rise to seek Court approval of the Minutes and the Settlement, including the transaction contemplated therein (the “**Approval Motion**”).

14. Due to the spread of the 2019 novel coronavirus (“**COVID-19**”), the Ontario Superior Court of Justice (“**SCJ**”) suspended all regular operations, effective Tuesday, March 17, 2020, until further notice. Pursuant to the direction and authorization of the Court, the Approval Motion and all other motions in this proceeding, shall proceed in writing until further notice.

15. On Friday April 3, 2020, Hi-Rise served its motion materials in support of its Approval Motion. Representative Counsel understands that Hi-Rise will seek to convene a telephone case conference with the Court during the week of April 20, 2020 for the Court to hear the Approval Motion.

16. Accordingly, Representative Counsel files this Fifth Report to provide Investors and the Court with an update in respect of the Vote, to provide its recommendation that the Court grant the Approval Motion, and in support of Representative Counsel's motion in writing for an Order:

- (a) approving the conduct and activities of Representative Counsel as disclosed in its Second Report, Third Report, Fourth Report and this Fifth Report (collectively, the **"Court Reports"**);
- (b) removing the maximum amount of the Rep Counsel Charge (as defined below), or alternatively, increasing the Rep Counsel Charge to an amount that will enable Representative Counsel to complete its mandate;
- (c) expanding the Post-Appointment Fees (as defined below) and Rep Counsel Charge (as defined below) to include disbursements incurred by Representative Counsel from and after the date of the Appointment Order;
- (d) expanding the Rep Counsel Charge to include the Pre-Appointment Fees (as defined below);
- (e) increasing the IO Charge (as defined below) to a maximum amount of \$125,000 (plus HST), or as may otherwise be ordered by the Court;
- (f) authorizing, but not obligating, Representative Counsel to obtain the assistance of an accounting firm, consultant or other third party professional as agent to Representative Counsel (the **"Distribution Agent"**) in connection with the Distribution of the Investor Settlement Amount (as such terms are defined below); and
- (g) that the fees and disbursements of the Distribution Agent, if retained, shall be a disbursement to Representative Counsel included in the Rep Counsel Charge.

17. If and when the telephone case conference in respect of the Approval Motion is scheduled with the Court, Representative Counsel intends to participate and make submissions on the above-noted relief sought if the Court requires.

THE VOTE AND REPRESENTATIVE COUNSEL'S CONDUCT & ACTIVITIES

Delivery of Fourth Report to Investors

18. In advance of the Vote, Representative Counsel prepared the Fourth Report, which sets out full details of the Minutes, the Settlement and the Lanterra Sale, as well as the payment scheme contemplated thereunder and the estimated recoveries to Investors.

19. In order to ensure that the terms of Settlement and Representative Counsel's recommendation to support the Settlement/Minutes were brought to the attention of all Investors, Representative Counsel completed the following:

- (a) On or about January 9, 2020, Representative Counsel mailed hard copies of the Fourth Report (including the appendices) to the mailing address of every Investor on the mailing distribution list (Opt Out Investors were not included). In total, 659 copies of the Fourth Report were mailed. Attached as **Appendix "H"** is a copy of the cover letter dated January 9, 2020, included along with the Fourth Report in every package mailed to Investors;
- (b) On January 9, 2020, Representative Counsel delivered a copy of the above-noted cover letter and Fourth Report to every Investor on its email distribution list. In total, there are 501 Investors on the email distribution list. Attached as **Appendix "I"** is a copy of the email delivered to Investors; and
- (c) On January 9, 2020, Representative Counsel posted a copy of the Fourth Report on the website that it maintains at the following URL: <https://www.millerthomson.com/en/hirise/> (the "**Website**"). Attached as **Appendix "J"** is a copy of the printout of the Website.

Communications to Investors

20. After delivering the Fourth Report to Investors, Representative Counsel received numerous inquiries from Investors by telephone and email regarding, *inter alia*, details surrounding the Vote (*i.e.* when Investors could expect to receive information from Hi-Rise regarding the Vote procedure), the difference between Registered versus Non-Registered Investors, and the distribution contemplated under the Minutes and the Settlement. In other words, many Investors inquired on what the Settlement meant for them.

21. Accordingly, on January 13, 2020, Representative Counsel prepared a communication to respond to the inquiries received by Investors (the “**Communication**”). Attached as **Appendix “K”** is a copy of the Communication, which provides a comprehensive breakdown of Registered vs. Non-Registered Investors, sample loan participation agreements (each an “**LPA**”) for each type of Investor, and an explanation as to why Registered Investors would receive a full recovery on their investment and as to why Non-Registered Investors would not.

22. On January 13, 2020, a copy of the Communication was delivered to all Investors on the email distribution list and was also posted to the Website. Attached as **Appendix “L”** is a copy of the email delivered to Investors.

23. Thereafter, Representative Counsel continued to receive inquiries from some Investors on an individual basis. Representative Counsel either directed the Investors to the Fourth Report or Communication when applicable, or in some cases, provided a direct response if the inquiry involved a discrete question.

24. Representative Counsel is of the view that all Investors have been properly and fully advised of the terms of Settlement and the recommendation of Representative Counsel and the Official Committee to support same.

The Vote

25. In connection with the Vote, Hi-Rise prepared an Information Statement dated January 13, 2020 (the “**Information Statement**”), which set out details regarding the Minutes, the Settlement

and the Lanterra Sale that Investors were being asked to Vote on, among other things. Attached as **Appendix “M”** is a copy of the Information Statement.

26. Hi-Rise retained the TMX Group Limited (“**TMX**”) to undertake the Vote process. In particular, TMX distributed the Information Statement to Investors, assigned control numbers to each Investor and prepared voting ballots for each Investor with said control numbers (each a “**Voting Ballot**”), and collected the completed Voting Ballots and tabulated the Vote results. A copy of a sample Voting Ballot is attached as **Appendix “N”**.

27. Pursuant to the Information Statement, Investors could cast their Vote by submitting their Voting Ballot to TMX by mail, email or by facsimile by the Vote deadline of January 28, 2020 at 5:00 p.m. (the “**Vote Deadline**”).

28. Hi-Rise advised Representative Counsel that on or about January 22, 2020, TMX delivered a mass email in respect of the Vote to Investors and delivered a hard copy of the Vote package (*i.e.*, the Information Statement and Voting Ballot) to all Investors by regular mail.

Inquiries from Investors regarding Vote Procedure

29. After the Vote package was delivered by TMX to Investors, Representative Counsel received numerous inquiries from Investors regarding the Vote procedure. These inquiries included, but were not limited to, questions related to how Investors could cast their Vote, questions surrounding the control number and Voting Ballot (*i.e.*, some Investors advised they did not receive a control number, others advised that they received more than one Voting Ballot, among other things), and some Investors expressed that they had not received a Vote package in time to cast their Vote by the Voting Deadline.

30. Representative Counsel worked with both Hi-Rise and TMX to ensure that all Investor inquiries regarding the Vote procedure were addressed. In some instances, Representative Counsel put Investors directly in touch with representatives of Hi-Rise and/or TMX, and in other instances, obtained the information from Hi-Rise and/or TMX and provided it to the inquiring Investor.

31. On January 27, 2020 and in advance of the Voting Deadline, Representative Counsel delivered an email to Investors to: (i) advise Investors that TMX was administering the Vote

procedure; (ii) provide the contact information of a representative at TMX to assist Investors with the Vote procedure and Voting Ballot inquiries; and, (iii) remind Investors of the Voting Deadline. Attached as **Appendix “O”** is a copy of Representative Counsel’s email dated January 27, 2020.

32. Representative Counsel understands that Mr. Oliver Keung of TMX assisted Investors directly with their inquiries in respect of the Vote Procedure.

“Late Votes”

33. Between January 28, 2020 and January 30, 2020, certain Investors advised Representative Counsel that they only received their Vote package on either the day of the Voting Deadline or after, and therefore were unable to cast their Vote by the Voting Deadline.

34. In light of receiving the Vote package late (and by no fault of their own), Representative Counsel asked these specific Investors to cast their votes notwithstanding that the Voting Deadline had passed. This direction was made on the basis that if the “late votes” would be material to the outcome of the Vote, Representative Counsel would seek Court approval to include these “late votes” in the final tabulation.

35. Representative Counsel also advised TMX to tabulate the “late votes” but not include same in the total Vote results.

VOTE RESULTS

Successful Vote Results

36. On January 31, 2020, Hi-Rise advised Representative Counsel of the total Vote results tabulated by TMX. Attached as **Appendix “P”** is a copy of the Summary of Votes Cast effective January 29, 2020 prepared by TMX, which Vote results are separated into Class 1 (Registered Investors) and Class 2 (Non-Registered Investors) (the **“Vote Results”**).

37. The Vote Results indicate that the Settlement was overwhelmingly supported and that the Vote passed. The details are as follows:

- (a) In total, 417 Investors voted, representing approximately 58.9% of Investors, broken down as follows:
 - (i) 195 Registered Investors voted, representing approximately 62% of Registered Investors; and
 - (ii) 222 Non-Registered Investors voted, representing approximately 56% of Non-Registered Investors.
- (b) 100% of Registered Investors (representing \$11,861,862 in value) voted in favour of the Settlement.
- (c) Approximately 93% of Non-Registered Investors (representing \$19,960,791 in value) voted in favour of the Settlement.

Impact of “Late Votes”

38. Hi-Rise also advised that a total of 18 Votes (5 by Registered Investors and 13 by Non Registered Investors) were received after the Voting Deadline. While these 18 votes are not counted in the above-noted Vote Results, TMX tabulated all of the “late votes” submitted and provided same to Representative Counsel. All such “late votes” were in favour of the Settlement.

39. In light of this information, Representative Counsel prepared a summary of the Vote Results, broken down by Investor type (*i.e.* Registered Investors versus Non-Registered Investors), and by votes cast by the Voting Deadline and after the Voting Deadline (the “**Vote Summary**”). A copy of the Vote Summary is attached as **Appendix “Q”**.

40. As set out in the Vote Summary, only 1.6% of Registered Investors casted their vote after the Voting Deadline, and only 3.3% of Non-Registered Investors casted their vote after the Voting Deadline.

41. Representative Counsel also calculated the impact of the “late votes” on the results of the Vote. In other words, Representative Counsel has considered what the outcome of the Vote would be if the “late votes” were counted. As set out in the Vote Summary, if all “late votes” are counted,

the percentage of Non-Registered Investors that voted in favour of the Settlement increases to approximately 93.6%.

42. In light of the overwhelming support in favour of the Settlement, these “late votes” are not material to the outcome of the Vote. Accordingly, in Representative Counsel’s view, there is no need for Court approval to count the “late votes” in the Vote Results, notwithstanding the delivery of the late Vote package to these certain Investors.

Communication to Investors

43. On January 31, 2020, Representative Counsel prepared a communication to all Investors, a copy of which is attached as **Appendix “R”**, therein advising of the Vote results, the impact of the “late votes” and the next steps in this proceeding.

44. On January 31, 2020, a copy of this communication was delivered to all Investors on the email distribution list and a copy was also posted to the Website. Attached as **Appendix “S”** is a copy of the email delivered to Investors.

Comparison of Vote Results to Initial Vote

45. During the course of these proceedings, the main holding company and owner of Adelaide entered into a joint venture agreement (the “**JV Agreement**”) with Lanterra to complete the development of the Property (the “**Initial Lanterra Transaction**”).

46. Hi-Rise scheduled a meeting in the Fall of 2019, at which Investors were asked to vote on a proposed settlement (the “**Initial Proposed Settlement**”) of the Investors’ investments in the mortgage on the Property (the “**Initial Vote**”), which Initial Proposed Settlement was a result of the JV Agreement and the Initial Lanterra Transaction.

47. Representative Counsel and the Official Committee did not support the Initial Proposed Settlement, and recommended that Investors vote against the Initial Proposed Settlement at the Initial Vote.

48. The Initial Vote results were delivered on October 28, 2019. The Initial Vote was unsuccessful, the details of which are as follows:

- (a) In total, 404 Investors voted, representing 61.77% of Investors;
- (b) 29.364% of Investors (representing \$10,202,272 in value) voted in favour of the Proposed Settlement; and
- (c) 70.636% of Investors (representing \$24,542,125 in value) voted against the Proposed Settlement.

49. In summary, the Vote Results demonstrate that more Investors voted at the current Vote (and by the Voting Deadline) than at the Initial Vote.

50. As set out in the Vote Summary, a total of 95.6% of Investors voted in favour of the current Settlement (representing \$31,822,654.04 in value), in comparison to the only 29.3% (representing \$10,202,272 in value) of Investors that voted in favour of the Initial Proposed Settlement in the Fall of 2019.

RECOMMENDATION OF REPRESENTATIVE COUNSEL

51. For the reasons set out in the Fourth Report and in light of the successful Vote Results, Representative Counsel supports the relief sought by Hi-Rise as set out in its Notice of Motion filed in respect of the Approval Motion.

52. As further set out below, Representative Counsel has identified certain matters it must later address in respect of its Distribution of the Investor Settlement Amounts (as such terms are defined below). Further, Representative Counsel has been advised by certain of the Opt Out Investors of their concerns related to the later Distribution.

53. Representative Counsel respectfully recommends that the Honourable Court approve the Minutes and the Settlement, and the transactions contemplated thereunder. Representative Counsel also recommends that the granting of the Approval Motion be made without prejudice to the rights of any of the Investors or Opt Out Investors in respect of the Distribution and the amounts to which they may be entitled thereunder.

54. Representative Counsel has advised the Financial Services Regulatory Authority of Ontario (“**FSRA**”) of its recommendation in support of the Approval Motion. FSRA does not take a position in respect of the Approval Motion.

CURRENT STATUS OF THE PROPERTY

55. It is a term of the Minutes that upon execution by the parties, Representative Counsel shall be entitled to bring a motion to the Court in these proceedings in order to obtain the Order in the form attached as Appendix “A” to the Minutes. In accordance with section 6 of the Minutes, on January 20, 2020, Representative Counsel attended at Court to obtain said Order.

56. Pursuant to the Order of the Honourable Mr. Justice Hainey dated January 20, 2020 (the “**January Order**”), *inter alia*, the Property shall not be further encumbered by any person or entity pending further Order of the Court, Adelaide shall not execute any lease or lease amendment in respect of the Property which specifies an expiration date later than May 14, 2020 (being the Closing Date), and nothing in said Order shall prejudice the rights of Meridian in respect of its Receivership Application. Attached as **Appendix “T”** is a copy of the January Order and Endorsement of Justice Hainey dated January 20, 2020.

57. On or about February 4, 2020, Lanterra registered a copy of the January Order on title to the Property. Attached as **Appendixes “U”** and **“V”**, respectively, are copies of the Application for Restrictions Based on Court Order receipted on February 4, 2020, and the updated parcel register in respect of the Property.

58. Accordingly, while title to the Property remains in Adelaide until the Closing Date, the Property is not to be encumbered or otherwise dealt with so that the status of the Property shall be maintained and preserved pending the Closing Date.

POST-COURT APPROVAL MATTERS

Distribution of Investor Settlement Amount

Terms of Minutes

59. If approved by the Court, the Minutes contemplate that Representative Counsel shall be responsible for attending to the distribution (the “**Distribution**”) of the balance of the settlement proceeds as set out in section 10(e) of the Minutes (the “**Investor Settlement Amount**”) to the Investors.

60. In particular, section 13 of the Minutes provides, *inter alia*, that: (i) Hi-Rise shall be responsible for preparing a list of Investors and corresponding distribution entitlements and priorities of each of the Investors (together with appropriate documentation establishing same) (the “**Investor Distribution List**”); (ii) solely for the purpose 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; (iii) if there are disputes over the Investor entitlements or any part of the Investor Distribution List, Representative Counsel shall seek directions from the Court prior to effecting any Distribution; and, (iv) Representative Counsel shall be entitled, in consultation with Hi-Rise, to delegate the task of Distribution of the Investor Settlement Amount.

61. Section 14 of the Minutes provides that prior to effecting any Distribution of the Investor Settlement Amount, Representative Counsel shall obtain Court approval of the Investor Distribution List and proposed mechanism for Distribution.

Anticipated Impact of Settlement

62. The Fourth Report and Distribution Summary attached thereto set out Representative Counsel’s assessment of the anticipated impact of the Settlement on Investors. Full details in respect of same are set out in paragraphs 37 to 39 of the Fourth Report, a copy of which is previously attached as Appendix “F” hereto.

63. As further set out in the Fourth Report, the Distribution Summary is based on projected estimations only, and the Distribution to Investors will be subject to ordinary closing adjustments as at the Closing Date. Accordingly, the estimated numbers contained in the Fourth Report (particularly, in the Distribution Summary attached as Appendix “O” to the Fourth Report) are not final.

Agreement with Hi-Rise regarding Production of Investor Distribution List

64. As noted above, pursuant to the Minutes Hi-Rise is required to provide the Investor Distribution List to Representative Counsel. This is necessary in order for Representative Counsel to complete its mandate and duties under the Minutes and attend to the Distribution matters described below.

65. Representative Counsel understands from Hi-Rise that some Investors have executed more than one LPA with Hi-Rise, meaning that they have more than one investment document.

66. On April 2, 2020, Hi-Rise delivered the Investor Distribution List to Representative Counsel which includes, *inter alia*, the names of each Investor broken down by class (*i.e.*, Registered or Non-Registered), and the total amounts owed under their investments and a column to document the number of LPAs each Investor has executed with Hi-Rise, which column currently remains blank (the “**LPA Number Column**”).

67. Due to the number of LPAs and the current constraints on server access imposed by COVID-19, Hi-Rise expects it may take a few weeks to provide all of the LPAs to Representative Counsel. Accordingly, Hi-Rise and Representative Counsel have agreed as follows:

- (a) Hi-Rise will provide the LPAs to Representative Counsel in batches and on a rolling basis every other day, which process is expected to commence by the week of April 6, 2020;
- (b) Hi-Rise will update the Investor Distribution List, and in particular the LPA Number Column, to correspond with the batch of LPAs delivered to Representative Counsel; and

- (c) By the time all of the LPAs are delivered to Representative Counsel, the LPA Number Column will be fully updated and the Investor Distribution List will be complete, such that Representative Counsel will be able to ascertain the total number of LPAs that exist and the total amounts invested by each Investor.

Anticipated Distribution Matters

68. Over the course of these proceedings, and since issuing its Fourth Report, many Investors have inquired on the status of their LPA and investment documentation. It has come to Representative Counsel's attention that there are a number of different iterations of the LPAs. In particular, certain of these LPA forms are inconsistent in respect of the subordination language contained in the most commonly used form of LPA.

69. These matters will need to be addressed and resolved prior to Representative Counsel undertaking any Distribution of the Investor Settlement Amount. Prior to effecting any Distribution, Representative Counsel will need to ensure that each Investor is properly categorized as a Registered or Non-Registered Investor. In order to do so, Representative Counsel anticipates that this will involve a detailed review of each LPA (to be delivered by Hi-Rise in accordance with the above-noted agreement), and where necessary, will seek advice and directions from the Court so that any issues regarding priorities and subordinations are appropriately addressed prior to Distribution.

70. Representative Counsel intends to work with Hi-Rise in order to undertake this task prior to the Closing Date, with the view to resolving all Distribution matters on a timely basis and effecting the Distribution of the Investor Settlement Amount to the Investors within 4 to 6 weeks of the Closing Date.

71. As set out in the Fourth Report, if the Settlement is approved then Representative Counsel will be heavily involved in the claims verification process and Distribution to Investors. Representative Counsel seeks authority from the Court (which authority will be exercised in consultation with the Official Committee) to obtain the assistance of a Distribution Agent in connection with same, if necessary, with a view to maximizing effectiveness and cost-efficiency in respect of the Distribution process.

72. Representative Counsel is of the view that retaining the Distribution Agent is the most cost effective manner in which to obtain assistance on the Distribution, as opposed to appointing a Distribution Agent separately and having that Distribution Agent appoint its own separate counsel. In Representative Counsel's view, the discrete task of attending to Distribution matters can be accomplished by Representative Counsel and the Distribution Agent, with the additional assistance of Hi-Rise.

73. Accordingly, Representative Counsel also seeks an Order that the fees and disbursements of the Distribution Agent, if retained, shall be a disbursement to Representative Counsel and included in the Rep Counsel Charge, as further described below.

Mutual Releases

74. If approved by the Court, paragraph 20 of the Minutes provides that the parties shall each execute a full and final mutual release of all directors, officers and affiliates of Lanterra and the remaining parties (and their legal counsel), in a form to be agreed upon between counsel (the "**Releases**"). The Releases shall include a carve out in respect of the activities and conduct of Hi-Rise and Representative Counsel solely in respect of the Distribution of the Investor Settlement Amount. Paragraph 20 further provides that upon completion of the Distribution, the parties shall execute a further full and final release in a form substantially similar to the Releases.

75. Given that the Minutes and the Settlement have not yet been approved by the Court, the Releases have not been prepared or executed by the parties. If the Settlement is approved by the Court, Representative Counsel intends to prepare the Releases. Upon agreement of all counsel with respect to form, it is anticipated that the Releases will be executed by the parties and a further release will be executed upon completion of the Distribution at a later date.

MATTERS RELATED TO COVID-19

76. In light of the current circumstances due to COVID-19, on March 17, 2020, Representative Counsel prepared a communication to Investors (the "**Status Update and COVID-19 Communication**") to advise that, *inter alia*, (i) due to the suspended services of the SCJ, the Approval Motion and within motion will proceed to the Court in writing; (ii) the suspended Court

services are not expected to disrupt this proceeding; (iii) the expected Closing Date and anticipated timeline for Distribution remain in effect; and; (iv) notwithstanding that the lawyers at Miller Thomson LLP are now predominately working remotely, Representative Counsel will continue to represent the interests of Investors and there will be no disruption in its legal services or representation. Attached as **Appendix “W”** is a copy of the Status Update and COVID-19 Communication.

77. On March 17, 2020, a copy of the Status Update and COVID-19 Communication was delivered to all Investors on the email distribution list and was also posted to the Website. Attached as **Appendix “X”** is a copy of the email delivered to Investors.

COURT OFFICER CHARGES

Post-Appointment Fees and Amendment to Rep Counsel Charge

78. 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 the Court, which amount shall exclude the disbursements incurred by Representative Counsel.

79. Pursuant to paragraph 18 of the Appointment Order, Representative Counsel was granted a charge on the Property (the “**Rep Counsel Charge**”) 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.

80. Under the current terms of the Appointment Order, the Post-Appointment Fees and the Rep Counsel Charge do not include the disbursements incurred by Representative Counsel from and after the date of the Appointment Order.

81. Pursuant to the Order of the Honourable Mr. Justice Hainey dated September 17, 2019, a copy of which is attached as **Appendix “Y”**, 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.

82. 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 of Investors in October 2019 and the Initial Vote. The amount did not contemplate a second Investor vote, the Judicial Mediation or the other many unforeseen complications associated with reaching a settlement.

83. For the reasons set out in the Fourth Report and in this Fifth Report, Representative Counsel expects to continue to provide services to and on behalf of Investors, including but not limited to, all matters related to the Distribution of the Investor Settlement Amount. In connection with these services, Representative Counsel anticipates to also incur disbursements, including but not limited to, the fees and disbursements of the Distribution Agent, if retained.

84. Accordingly, Representative Counsel respectfully requests that the Rep Counsel Charge be expanded to include disbursements from and after the date of the Appointment Order, and that the maximum amount of the Rep Counsel Charge be removed, or alternatively, be increased to an amount that will enable Representative Counsel to complete its mandate.

85. Notwithstanding the requested expansion to include disbursements incurred from and after the date of the Appointment Order, and the requested removal of maximum amount of the Rep Counsel Charge, the fees and disbursements of Representative Counsel will remain subject to Court approval.

Pre-Appointment Fees

86. In or around September 2018, prior to the Appointment Order, Miller Thomson LLP was engaged by Hi-Rise to act as counsel to a group of Investors, specifically, to act on their behalf in seeking a resolution to matters related to Adelaide, including recovery of funds advanced under the syndicated mortgage (the "**Engagement**").

87. The structure of the Engagement without a Court Order was unsustainable for Representative Counsel, as Miller Thomson LLP received direct communications from individual Investors (which necessitated countless conflict checks) and Miller Thomson LLP was unable to

communicate to Investors due to concerns regarding potential conflicts of interest and *Canada's Anti-Spam Legislation* requirements, among other difficulties.

88. These reasons, among others, necessitated Hi-Rise's application for the appointment of Representative Counsel. A copy of Hi-Rise's Notice of Application dated March 14, 2019 is attached hereto as **Appendix "Z"**.

89. Pursuant to such Engagement and as set out in the Notice of Application, Hi-Rise was to pay the fees and disbursements incurred by Miller Thomson LLP in connection with same (the **"Pre-Appointment Fees"**).

90. Initially, Hi-Rise sought a court-ordered Administration Charge on the Property to secure the fees and disbursements of Representative Counsel, among other things. These included both the Pre-Appointment Fees in respect of Representative Counsel's services to Investors until that point, and all post-Appointment Order fees and disbursements.

91. However, as at the time the Appointment Order was granted, the Engagement was terminated¹ and the Rep Counsel Charge was only in respect of Post-Appointment Fees², excluding disbursements, as noted above.

92. Notwithstanding that Hi-Rise was required to pay Miller Thomson LLP's fees and disbursements prior to the Appointment Order, an amount of approximately \$85,000 remains outstanding from this "pre-appointment" Engagement, and is not secured by the Rep Counsel Charge. All of this work performed by Representative Counsel pursuant to the Engagement was for the benefit of the Investors, would have to have been completed in any event, and was not duplicated subsequent to the granting of the Appointment Order. Representative Counsel requests that the terms of the Rep Counsel Charge be expanded to include these Pre-Appointment Fees.

¹ See sections 7 to 9 of the Appointment Order.

² See sections 17 and 18 of the Appointment Order.

Increase in IO Charge

93. 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 “AA”**), Alvarez & Marsal Canada Inc. was appointed as Information Officer (in such capacity, the “**Information Officer**”).

94. Pursuant to the IO Order, the Information Officer was granted a charge (the “**IO Charge**”) in the maximum amount of \$100,000 or as may otherwise be ordered by the Court. As set out in the Fourth Report, the Information Officer has completed its mandate and provided assistance to Representative Counsel in this proceeding, however it has incurred total fees and disbursements (including those of its legal counsel) in the approximate amount of \$125,000, which amount is exclusive of HST.

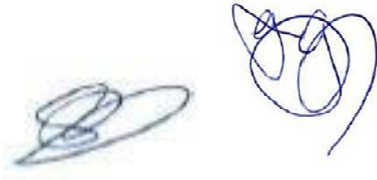
95. Accordingly, Representative Counsel requests, on behalf of the Information Officer, that the amount of the IO Charge be increased to a maximum of \$125,000 (plus HST), or as may otherwise be ordered by the Court.

96. Representative Counsel makes this request on behalf of the Information Officer in the within motion, as it is much more cost-effective for Representative Counsel to seek this relief than for the Information Officer to bring its own motion for an increase to the IO Charge (as the fees associated with the Information Officer bringing a motion for same would ultimately impact Investor recoveries under the Settlement).

CONCLUSION

97. For all of the foregoing reasons, Representative Counsel respectfully recommends that this Honourable Court: (i) grant the relief sought by Hi-Rise as set out in its Notice of Motion filed in respect of the Approval Motion; (ii) approve the Settlement, the Minutes and the transactions contemplated thereunder; and (iii) grant the relief sought by Representative Counsel as set out herein and its Notice of Motion.

All of which is respectfully submitted at Toronto, Ontario this 6th day of April, 2020.

Two handwritten signatures in blue ink. The signature on the left is a stylized, cursive 'M' followed by a horizontal stroke. The signature on the right is a more complex, cursive signature with multiple loops and a long, sweeping tail.

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

APPENDIX A

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

THE HONOURABLE

)

THURSDAY, THE 21st

)

MR. JUSTICE HAINEY

)

DAY OF MARCH, 2019

)

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

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

ORDER

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

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

SERVICE

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

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

APPOINTMENT OF REPRESENTATIVE COUNSEL

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

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

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

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

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

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

TERMINATION OF EXISTING ADVISORY COMMITTEE

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

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

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

APPOINTMENT OF OFFICIAL COMMITTEE

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

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

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

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

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

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

INVESTOR INFORMATION

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

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

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

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

FEES OF COUNSEL

which amount shall exclude disbursements incurred by Representative Counsel

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

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

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

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

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

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

GENERAL

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

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

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

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

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

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

Attention: Gregory Azeff & Stephanie De Caria

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

POWERS OF HI-RISE CAPITAL LTD.

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

INVESTOR AND COURT APPROVAL

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

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

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

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

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

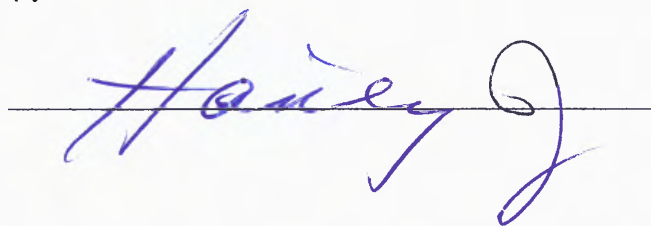
31. **THIS COURT ORDERS** that if at the Meeting a majority in number of the investors representing two-thirds in value present and voting either in person or by proxy cast votes in favour of the proposed Transaction and Distribution, Hi-Rise may proceed to bring a motion to this court, on a date to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

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

NOTICE TO INVESTORS

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

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

A handwritten signature in blue ink, appearing to read "Honey", is written over a horizontal line. The signature is stylized with a large initial 'H' and a long, sweeping tail that loops back under the line.

Schedule "A"

OPT-OUT NOTICE

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

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

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

Attention: Stephanie De Caria

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

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

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

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

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

Date

Signature

Date

Signature

If the Investor is a corporation, please execute below:

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

Schedule "B"

Official Committee Establishment Process

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

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

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

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

Establishment of the Official Committee

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

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

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

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

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

(a) all of the interviews will follow the same structure and will be approximately the same length (about half an hour); and

(b) substantially similar questions will be posed to each interviewee.

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

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

Schedule "C"

Official Committee Protocol

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

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

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

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

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

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

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

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

HI-RISE CAPITAL LTD.
Applicant

SUPERINTENDENT OF FINANCIAL SERVICES *et. al.*
Respondents

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**PROCEEDING COMMENCED AT
TORONTO**

ORDER

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2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

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Fax: 416.640.3057
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Lawyers for the Applicant, Hi-Rise Capital Ltd.



9:30 A.M

COUNSEL - SLIP

H

COURT FILE NO. CV-19-616261-00CL

DATE: MAR 22, 2019

No. ON LIST 4A

TITLE OF
PROCEEDING

HI-RISE CAPITAL LTD.

COUNSEL FOR:

Plaintiff (s)

Applicant (s)

Petitioner (s)

Stephanie Vautour's counsel for
Hi-Rise

Phone & Fax No

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COUNSEL FOR:

Defendant (s)

Respondent (s)

Phone & Fax No

Stephanie DeCarla

~~Counsel for~~ proposed Rep Counsel

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(T) 416-304-0558

(F) 416-304-1313

JOHN FINNIGAN

for Financial Services Commission Ontario
(FSRO)

March 22, 2019

The attached order
shall issue on the

Consent of The Foster,
2-hour hearing scheduled
with Me on April 4/19
GO ROAD.

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APPENDIX B

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

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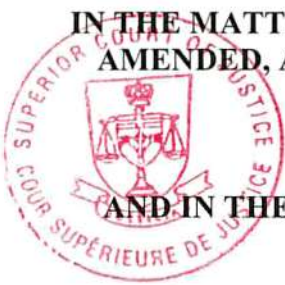
MONDAY THE 15th

JUSTICE HAINEY

DAY OF APRIL, 2019

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

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



ORDER

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

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

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

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



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

APR 15 2019

PER / PAR:



HI-RISE CAPITAL LTD.

Applicant

and

SUPERINTENDENT OF FINANCIAL
SERVICES et. al.
Respondents

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

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

Proceeding commenced at Toronto

**ORDER
(April 15, 2019)**

MILLER THOMSON LLP

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Court-appointed Representative Counsel



COUNSEL - SLIP

COURT FILE NO. CV-19-00616261-00CL

DATE: APR 15 2019

No. ON LIST

8

TITLE OF
PROCEEDING

Hi-Rise Capital Ltd v. Superintendent of Financial
Services et al

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Applicant(s)

Petitioner(s)

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Respondent: Superintendent of
Financial Services

Tamara Markovic

~~TH~~
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April 15, 2019

I am satisfied that
the attached order
should remain on

APPENDIX C



10:00

COUNSEL = SLIPCOURT FILE NO. CV-19-00616261-00CLDATE: APR 04 2019No. ON LIST 4TITLE OF
PROCEEDING

HI-RISE CAPITAL LTD.

SUPERINTENDANT OF FINANCIAL SERVICES

V.

et al.

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April 4, 2019

- ① Representative Counsel has leave to file reports with the Court;
- ② Respondents must deliver responding Material by April 12/19;
- ③ All cross-examinations to be conducted on April 16/19;
- ④ Parties to re-attend before the on April 17/19 at 9:30 AM to provide status update and further details;
- ⑤ Any investors not represented by Representative Counsel who wish to participate in this proceeding must opt out of Representative Counsel and file a Notice of Appearance.

Hainey J.

APPENDIX D

**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

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Lawyers for the Respondent, Anoop Sayal

**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 “**Project**”) 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;
- (c) 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.

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.”

43. This First Notice was delivered after Representative Counsel advised it would be seeking a stay of the Vote and therefore inaccurately advises Investors that it will be hearing information and opinions of Representative Counsel.

Conference Call with Justice Hailey

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 Hailey 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 Hailey 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 Hailey.

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

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 Al-Awqati of Hi-Rise as proxyholder. A copy of the Information Statement and the Voting Ballot 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"**.

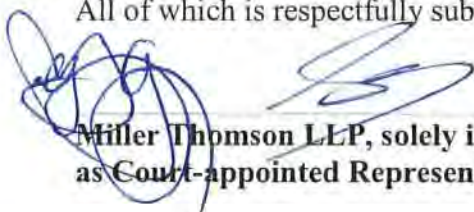
CONCLUSION

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.



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

APPENDIX A

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

THE HONOURABLE

)

THURSDAY, THE 21st

)

MR. JUSTICE HAINEY

)

DAY OF MARCH, 2019

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



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

ORDER

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

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

SERVICE

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

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

APPOINTMENT OF REPRESENTATIVE COUNSEL

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

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

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

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

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

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

TERMINATION OF EXISTING ADVISORY COMMITTEE

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

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

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

APPOINTMENT OF OFFICIAL COMMITTEE

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

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

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

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

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

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

INVESTOR INFORMATION

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

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

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

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

FEES OF COUNSEL

which amount shall exclude disbursements incurred by Representative Counsel

17. **THIS COURT ORDERS** that the Representative Counsel shall be paid by the Borrower its reasonable fees ~~and disbursements~~ 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~~ ^{its} *Post-Appointment Fees* on a monthly basis, forthwith upon rendering its accounts to the Borrower for fulfilling its mandate in accordance with this Order, and subject to such redactions to the invoices as are necessary to maintain solicitor-client privilege between the Representative Counsel and the Official Committee and/or Investors. In the event of any disagreement with respect to such fees and disbursements, such disagreement may be remitted to this Court for determination. Representative Counsel shall also obtain approval of its fees and disbursements from the Court on notice to the Official Committee.

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

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

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

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

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

GENERAL

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

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

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

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

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

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

Attention: Gregory Azeff & Stephanie De Caria

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

POWERS OF HI-RISE CAPITAL LTD.

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

INVESTOR AND COURT APPROVAL

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

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

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

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

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

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

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

NOTICE TO INVESTORS

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

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

A handwritten signature in blue ink, appearing to read "Haley", is written over a horizontal line. The signature is stylized with a large initial 'H' and a long, sweeping tail that loops around.

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 ^{April 1} ~~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.

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
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Toronto, ON M5H 3C2

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Lawyers for the Applicant, Hi-Rise Capital Ltd.

APPENDIX B



9:30 A.M

COUNSEL - SLIP

H

COURT FILE NO. CV-19-616261-00CL

DATE: MAR 22, 2019

TITLE OF
PROCEEDING

HI-RISE CAPITAL LTD.

No. ON LIST 4A

COUNSEL FOR:

Plaintiff (s)

Applicant (s)

Petitioner (s)

Stephane Vaudan's counsel for
H-rise

Phone & Fax No

416-860-0617

416-642-7145

COUNSEL FOR:

Defendant (s)

Respondent (s)

Phone & Fax No

Stephane D'Amico
check for proposed Repayment
(T) 416-245-3452
(F) 416-545-8675

JOHN FINNIGAN
for Financial Services Commission Ontario
(FSRO)

(T) 416-304-0558

(F) 416-304-1313

March 22, 2019

The attached order
shall issue on the

Consent of The Pastor,
2-hour hearing scheduled
with Me on April 4/19
GO 10507.

Haring

APPENDIX C



10:00

COUNSEL - SLIPCOURT FILE NO. CV-19-00616261-00CLDATE: APR 04 2019No. ON LIST 4TITLE OF
PROCEEDING

HI-RISE CAPITAL LTD.

V.

SUPERINTENDANT OF FINANCIAL SERVICES

et al.

COUNSEL FOR:

Plaintiff (s)

Applicant (s)

Petitioner (s)

John N. Birch

Stephanie Voudouris

Phone & Fax No

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JBIRCH@CASSELLSBROCK

C

Phone & Fax No

COUNSEL FOR:

Defendant (s)

Respondent (s)

JOHN FINNIGAN

TAMARA MARKOVIC

For Financial Services Commission
(FSCO)

416-304-0558 (P)

416-304-1313

JUNIOR STRIVAR

PUE ADELAIDE STREET LOFTS

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Greg Azell

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Daniel Perlin

For

Antonio

Torese

Ran

Nadeem

Kumar

Jinselli

Jansfurelli

Johnson

Ghoreen

Ghoreen

willfreds Vagos

T 647-989-3510

F. 647-499-4357

April 4, 2019

- ① Representative Counsel has leave to file reports with the Court;
- ② Respondents must deliver responding material by April 12/19;
- ③ All cross-examinations to be conducted on April 16/19;
- ④ Parties to re-appear before the on April 17/19 at 9:30 AM to provide status update and further details;
- ⑤ Any inventory not represented by Representative Counsel who wish to participate in this process must opt out of Representative Counsel and file a Notice of Appearance

Haining J.

APPENDIX D



MILLER THOMSON
AVOCATS | LAWYERS

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

T 416.595.8500
F 416.595.8695

MILLERTHOMSON.COM

August 29, 2019

Sent via E-mail

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

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

File: 0242209.0001

Attention: Geoffrey Hall

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

Attention: John Birch

Dear Counsel:

Re: 263 Adelaide Street West, Toronto Ontario (the "Property") and proposed development known as the "Adelaide Street Lofts" (the "Project")

And Re: Final Settlement Offer from Borrower

As you know, Miller Thomson LLP was appointed as Representative Counsel pursuant to the Order of Justice Hainey dated March 21, 2019 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 owned by Adelaide Street Lofts Inc. ("**Adelaide**").

We refer to your email message of 6:06 pm EST on August 28, 2019. We acknowledge your advice that the board of Hi-Rise believes that the final settlement offer attached to your email (the "**Final Offer**") represents the best available return to participants in the syndicated mortgage. Regrettably, in the circumstances we are unable to reach the same conclusion. We take this opportunity to explain our rationale, as well as respond to the balance of your email.

First, we wish to make clear that the Official Committee's position is not some sort of veiled attempt to frustrate the proposed transaction contemplated under the Joint Venture Agreement between 263 Holdings Inc. and Lanterra Developments Limited ("**Lanterra**") (the "**Lanterra Transaction**") or advance a personal grievance against Adelaide or its principal, Mr. Jim Neilas. Rather, the Official Committee has taken its mandate seriously and has attempted to ensure that the Investors are not effectively forced into voting on a transaction based on selective information.

The overarching position of the Official Committee is that any assurances of "transparency" have been undermined by inappropriate and relentless attempts by Adelaide to control access to information and stage manage the review process. We have repeatedly advised you that the Official Committee will not voluntarily accept any course that places Mr. Neilas as the information "gatekeeper". We remind you that Mr. Neilas personally stands to make millions of dollars if the Project is successful, while seeking Investor approval to compromise claims of millions of dollars in lost investment funds.

In such circumstances we do not view the Official Committee's requirements for a truly independent and court-empowered financial advisor as unreasonable. We acknowledge that Hi-Rise and Adelaide have encouraged the Official Committee to retain a financial advisor. However, Adelaide and Hi-Rise have at all times attempted to limit the scope of the financial advisor's authority and mandate to a level unacceptable to the Official Committee and inconsistent with the required transparency. We are of the view that Representative Counsel and the Official Committee should be directing the financial advisor's role, given that they are the financial advisor to us and ultimately to the Investors as a whole. To date, the Official Committee's attempts to retain a financial advisor on its own terms have been rejected.

Second, we have repeatedly confirmed that, based upon the information available to us thus far, the marketing and sales process undertaken by BMO Capital Markets Real Estate Inc. ("BMO") was thorough, and we concede that it was run by experienced personnel. However, we do not agree that it is thus rendered "unimpeachable". It is our view that the marketing and sales process – and the related facts and circumstances – should not be immune from further independent, unfettered scrutiny in the manner determined by the Official Committee. The Official Committee's skepticism has also been heightened by BMO's confirmation that Mr. Neilas met with Lanterra's CEO alone (*ie*, without BMO's supervision) at the onset of the joint venture discussions. Specifically, BMO advised Representative Counsel that Mr. Neilas and Lanterra's CEO met over "casual beers". The Official Committee views this as fundamentally inconsistent with a sales process purportedly intended to mimic an ordinary-course court-supervised sales process. It may be that BMO's process did lead to the best possible transaction. However, given the massive investment losses that you expect Investors to sustain, we are of the view that the Official Committee is entitled to make its own inquiries, without regard for Mr. Neilas' preferences in that regard.

Third, Representative Counsel has advised on numerous occasions that it agrees Hi-Rise should be permitted to conduct an Investor vote with respect to any final settlement offer. However, we remind you that our agreement to an Investor vote on September 25 2019 was predicated on consensual court approval of the proposed financial advisor and its mandate. As noted above, H-Rise and Adelaide subsequently refused to consent to same. Accordingly, in response to the draft notice of the meeting forwarded by Mr. Brinn Norman of Hi-Rise on September 27 2019, Representative Counsel advised Hi-Rise not to send the notice to Investors as our instructions were to bring a motion seeking court appointment of the financial advisor and a stay of the vote. While Hi-Rise is free to put any proposed settlement offer to an Investor vote, our view is that such vote cannot reasonably occur before the Lanterra Transaction and the circumstances leading to it have been thoroughly and independently reviewed, without the restrictions for which Hi-Rise and Adelaide advocate.



Despite repeated requests, Mr. Neilas still refuses to provide a copy of the joint venture agreement with Lanterra to Representative Counsel, the Official Committee and the larger body of Investors, yet is seeking to ask Investors to effectively vote blindly on a settlement arising from that very same agreement. We note that Adelaide has thus far only permitted Representative Counsel and the Official Committee to attend the offices of its counsel and review the documents under the supervision of counsel. Such restrictive conditions prohibit Representative Counsel and the Official Committee from having meaningful discussions with documents in front of us, and therefore, from being able to fully formulate a recommendation to Investors in respect of the vote.

Fourth, with respect to your contention that further delay will have a negative financial effect on Investors, unfortunately that is another conclusion that we cannot accept in the absence of true transparency. Furthermore, it must be noted that the continued resistance to an independent, unfettered, court-sanctioned inquiry into the Company's proposed transaction in respect of the Property and related circumstances does not bolster the Official Committee's confidence in that conclusion. Further, the appointment of a financial advisor and the Order that the Official Committee is seeking is not coercive by any means, but rather seeks to obtain information the Official Committee needs in order to effectively represent the interests of Investors.

We have been trying to put in place a court-empowered financial advisor for months, but all such efforts have been rejected by Adelaide and Hi-Rise. We have throughout the course of this process advised you that such access is a necessary precondition to any endorsement of the BMO process and negotiation toward a settlement. As such, we view Adelaide and Hi-Rise as entirely at fault for any lack of progress toward a settlement and any threat to the Lanterra Transaction.

Finally, we wish to comment on the Final Offer attached to your email. It overstates the benefits of the Final Offer to Investors, as it seems to characterize interest payments previously received by Investors as recoveries, when they are not. It fails to highlight that non-registered Investors will receive nothing on closing, with all other recoveries being highly contingent. It also fails to highlight the highly speculative nature of the "Remaining Mortgage Payment from holdings guarantee". We view the Final Offer as providing little incentive for support among non-registered Investors. In short, the Official Committee is of the view that a cash sale of the Property at a substantially lower valuation than that attributed to the Lanterra Transaction would be preferable to non-registered Investors.

In summary, we are of the view that neither Representative Counsel nor the Official Committee can fulfil their respective Court-prescribed mandates and duties under the constraints that you seek to impose. As such, we intend to bring a motion for an Order, among other things, staying the vote and appointing a financial advisor on terms acceptable to the Official Committee, not those dictated by parties that would reap massive profits from the proposed Lanterra Transaction.



We trust that the foregoing is sufficiently clear.

Yours truly,

MILLER THOMSON LLP

Per:

Greg Azeff
Partner
GA/sg

40778490.1



APPENDIX E

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

)
)
)
)

FRIDAY, THE 13TH

JUSTICE HAINEY

DAY OF SEPTEMBER, 2019

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

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

ORDER

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

ON HEARING the submissions of Representative Counsel, and upon being advised of the consent of Hi-Rise, the Company, and the Financial Services Regulatory Authority of Ontario,

APPOINTMENT

1. **THIS COURT ORDERS** that, pursuant to section 5 of the Appointment Order, Alvarez & Marsal Canada Inc. is hereby appointed as financial advisor (in such capacity, the “**Financial Advisor**”), without security, to Representative Counsel to provide financial advisory and strategic services to support Representative Counsel with the fulfillment of its mandate and duties as specified in the Appointment Order.

2. **THIS COURT ORDERS** that the Financial Advisor 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 the Company, including, without limitation, the Property.

FINANCIAL ADVISOR'S POWERS

3. **THIS COURT ORDERS** that the Financial Advisor is hereby empowered and authorized to provide services to Representative Counsel at once in respect of the Property and the Company's proposed sale of the Property and, without in any way limiting the generality of the foregoing, the Financial Advisor is hereby expressly empowered and authorized to do any of the following where the Financial Advisor 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, subject to the prior approval of Representative Counsel, to assist with the exercise of the Financial Advisor's powers and duties, including, without limitation, those conferred by this Order;
- (b) to review and report to Representative Counsel and the Court in respect of all matters relating to 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 the financial implications of such proposed transactions;
- (c) to meet with and discuss with such affected Persons (as defined below) as the Financial Advisor deems appropriate on all matters relating to the Property and

the Company's proposed sale of the Property, and the Financial Advisor's mandate, and to share information, subject to such confidentiality terms as the Financial Advisor deems advisable; and

- (d) to take any steps reasonably incidental to the exercise of these powers or the duties and the mandate of Representative Counsel pursuant to the Appointment Order.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE FINANCIAL ADVISOR

4. **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 Financial Advisor of the existence of any information in respect of the Property or the efforts of Hi-Rise and the Company to sell the Property in such Person's possession or control, shall grant immediate and continued access to such information to the Financial Advisor, and shall deliver all such information to the Financial Advisor upon the Financial Advisor's request, provided that nothing contained in this paragraph 4 shall oblige any Person to disclose information that is subject to privilege or due to statutory provisions prohibiting such disclosure.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Financial Advisor of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the the Property or the efforts of Hi-Rise and the Company to sell the Property, 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 Financial Advisor or permit the Financial Advisor to make, retain and take away copies thereof and grant to the Financial Advisor unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of

Records, or the granting of access to Records, which may not be disclosed or provided to the Financial Advisor due to privilege or due to statutory provisions prohibiting such disclosure.

6. **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 Financial Advisor for the purpose of allowing the Financial Advisor 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 Financial Advisor in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Financial Advisor. Further, for the purposes of this paragraph, all Persons shall provide the Financial Advisor with all such assistance in gaining immediate access to the information in the Records as the Financial Advisor may in its discretion require including providing the Financial Advisor with instructions on the use of any computer or other system and providing the Financial Advisor 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

7. **THIS COURT ORDERS** that upon request by the Financial Advisor, the Company and/or Hi-Rise shall immediately provide consent or authorization for any Person to release and disclose Records to the Financial Advisor, which Records may be requested by the Financial Advisor in connection with its mandate hereunder, provided that nothing contained herein shall oblige any Person to disclose information that is subject to privilege or due to statutory provisions prohibiting such disclosure.

NO PROCEEDINGS AGAINST THE FINANCIAL ADVISOR

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

LIMITATION ON THE FINANCIAL ADVISOR'S LIABILITY

9. **THIS COURT ORDERS** that the Financial Advisor 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.

COMMUNICATION RESTRICTION

10. **THIS COURT ORDERS** that Hi-Rise and the Company, all of their directors, officers, employees, agents, advisors, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, are hereby restricted from communicating with Investors, either directly or indirectly, pending further Order of the Court.

ENCUMBRANCES IN RESPECT OF THE PROPERTY

11. **THIS COURT ORDERS** that the Property shall not be further encumbered by any Person, pending further Order of this Court.

PIPEDA

12. **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 Financial Advisor 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.

FINANCIAL ADVISOR'S ACCOUNTS

13. **THIS COURT ORDERS** that the Financial Advisor and counsel to the Financial Advisor shall be paid by the Company their reasonable fees and disbursements, both before and after the making of this Order. For greater certainty, Representative Counsel shall not be liable for the fees and disbursements of the Financial Advisor or its counsel.

14. **THIS COURT ORDERS** that the Financial Advisor and counsel to the Financial Advisor shall be entitled to and are hereby granted a charge (the "**Financial Advisor's 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 Financial Advisor's 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, and, for greater certainty, the Financial Advisor's 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).

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

SERVICE AND NOTICE

16. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (the "**Rules**"), this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission.

17. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Financial Advisor 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

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

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

HI-RISE CAPITAL LTD.

and SUPERINTENDENT OF
FINANCIAL SERVICES et. al.
Respondents

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

Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST

Proceeding commenced at Toronto

ORDER

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

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

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

Court-appointed Representative Counsel

APPENDIX F

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

)
)
)
)

MONDAY THE 15th

JUSTICE HAINEY

DAY OF APRIL, 2019

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

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

ORDER

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

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

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

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

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

ENTERED IN THE REGISTRY OF THE COURT OF ONTARIO
ON / BOOK NO.
LE / DANS LE REGISTRE NO.

APR 15 2019

PER / PAR: 

HI-RISE CAPITAL LTD.

and

SUPERINTENDENT OF FINANCIAL
SERVICES et. al.
Respondents

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

Applicant

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

Proceeding commenced at Toronto

ORDER
(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
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Stephanie De Caria LSO#: 68055L
sdecaria@millerthomson.com
Tel: 416.595.2652/Fax: 416.595.8695

Court-appointed Representative Counsel



COUNSEL - SLIP

COURT FILE NO. CV-19-00616261-00CL

DATE: APR 15 2019

No. ON LIST 81

TITLE OF
PROCEEDING

Hi-Rise Capital Ltd v. Superintendent of Financial
Services et al

COUNSEL FOR: Stephanie De Coria
Plaintiff(s) Representative Counsel
Applicant(s) (T) 416-595-2652
Petitioner(s) (F) 416-595-8695
(e) sdecoria@miller-thurston.com

Phone & Fax No

Email: forly@forlymiguere.com

COUNSEL FOR:

Defendant(s)

Respondent(s)

Neelam Ghai and Uzma Ghai

Phone & Fax No

ph 416-938-7679

fax 647-554-7644

Email: forly@forlymiguere.com

PULAT YUNISOV FOR DAVID POZO

PULAT@LAWTO.ZA

416-628-5521

647-933-1171 (fax)

Respondant: Superintendent of
Financial Services

Tamara Markovic

twarkovic@tsg.ca

416-304-0601

416-304-1313 (fax)

April 15, 2019

I am satisfied that
the attached order
should issue on

The Terms of the attached
Para. 6 of my order
does not preclude
any official Committee
members from seeking
and obtaining independent
legal advice ..

Hairy J

There shall be a sealing
ordered on the Terms of
para 7 of the order

Hairy J

APPENDIX G

COUNSEL SLIP

COURT FILE NO V-19-616261-0001

DATE May 7, 2019

NO ON LIST ADD ON

TITLE OF
PROCEEDING

In the matter of Section 60 of the Trustee
Act, RSO 1990 C.T. 3 and Rule 10 of the Ontario
Rules of Civil Procedure RRO 1990 Reg 194

COUNSEL FOR:

PLAINTIFF(S)

APPLICANT(S)

PETITIONER(S)

And in the matter of H. Rise

Capital Ltd. and in the matter of

Adelaide Street Lofts Inc

PHONE & FAX NOS.

T 416 860 5225

F 416 640 3057

→ JOHN N. BIRCH for H. Rise Capital J. BIRCH
@ CASSELS

COUNSEL FOR:

DEFENDANT(S)

RESPONDENT(S)

PHONE & FAX NOS BROCK,

Gregory Azoff of Miller Thomson LLP as
Representative Counsel.

T: 416 595 2660

F: 416 595 8695

Rory McGovern

ph: 416-438-7679

fax: 647-554-9694

mail: rory@rorymcgovernpc.com

Jasdeep Bahl

ph: 647-983-3309

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email: jbal@Guardian-Law.com

Tamara Markovic

ph: 416-304-6601

F: 416-304-1313

tmarkovic@tgf.ca

Counsel for the Respondents

Superintendent of Financial
Services

Graff R. Hall

for Adelaide Street Lofts Inc.

416 601-7878 tel

ghall@mccarthy.ca

Counsel for the respondent,

Nadeem Ghori

RAHUL SHASTRI

p. 416 368 2100 EXT 223

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E. rshastri@ksllp.ca

Lawyers for Anoop Saxal

PULAT YLINISOV

FOR DAVID POZO

PULAT@LAWTO-CA

416-628-5521

647-933-1171 (fax)

May 7, 2019

If Mr. Hall enters into
an ADA with Mr. Azeff
he will advise the
opt out's counsel and
provide them with a
copy of the ADA if
his client agrees. The
opt out counsel may
then schedule a 9:30 AM
attorneys ^{with the} schedule
a Motion if the
court agrees.

Hairy J

APPENDIX H

NON-DISCLOSURE AGREEMENT

THIS AGREEMENT is made as of May 8, 2019

BETWEEN

Adelaide Street Lofts Inc. ("**Adelaide**")

- and -

Miller Thomson LLP and Gregory R. Azeff (collectively, the "**Representative Counsel**").

Background:

The Representative Counsel has been appointed by order of the Ontario Superior Court of Justice (Commercial List) as representative counsel for investors in a syndicated mortgage 263 Adelaide Street West, Toronto (the "**Investors**"), which property is owned by Adelaide.

Adelaide has been endeavouring to conclude a potential transaction in respect of 263 Adelaide Street West (the "**Potential Transaction**") which will maximize recoveries for the Investors. The Potential Transaction is currently in a conditional phase, and disclosure at this time could imperil the transaction. At the same time, the Representative Counsel requires information about the Potential Transaction in order to assess the Potential Transaction and provide appropriate advice to the Investors.

Adelaide is willing to provide certain information about the Potential Transaction to the Representative Counsel, provided such disclosure is on a confidential basis and for a limited purpose. The Representative Counsel is prepared to receive information about the Proposed Transaction on a confidential basis and for a limited purpose.

Accordingly, the parties agree as follows.

ARTICLE 1 - INTERPRETATION

1.01 Definitions

In this Agreement:

"**Affiliate**" has the meaning attributed thereto in the *Business Corporations Act* (Ontario).

"**Agreement**" means this agreement, including its recitals, as amended from time to time.

"**Business Day**" means a day other than a Saturday, Sunday or statutory holiday in the Province of Ontario.

“Confidential Information” means all information relating to the Potential Transaction furnished by or on behalf of Adelaide to the Representative Counsel, regardless of the manner in which it is furnished (whether oral or in writing or in any other form or media), but does not include information that:

- (a) is already published or otherwise is or becomes readily available to the public, other than by a breach of this Agreement;
- (b) is rightfully received by the Representative Counsel from a third party not in breach of any obligation of confidentiality to Adelaide;
- (c) is proven to be known by the Representative Counsel on a non-confidential basis prior to disclosure hereunder; or
- (d) is proven to be developed by the Representative Counsel independent of any disclosure by Adelaide.

“Purpose” means the purpose of considering and evaluating the Potential Transaction.

1.02 **Headings**

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. The terms “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references to Articles and Sections are to Articles and Sections of this Agreement.

1.03 **Extended Meanings**

In this Agreement words importing the singular number only include the plural and *vice versa*, words importing any gender include all genders and words importing persons include individuals, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures and governmental authorities. The term “including” means “including without limiting the generality of the foregoing”.

ARTICLE 2 - CONFIDENTIAL INFORMATION

2.01 **Disclosure of Confidential Information**

Adelaide will at its discretion provide such of the Confidential Information to the Representative Counsel as is required for the Purpose. Nothing in this Agreement obligates Adelaide to disclose any particular Confidential Information.

2.02 Use of Confidential Information

The Representative Counsel will use the Confidential Information solely for the Purpose. Subject to Section 2.06, only Gregory R. Azeff will have access to the Confidential Information and the Representative Counsel will not disclose the Confidential Information to any person other than Mr. Azeff (including other partners, employees, and staff of Miller Thomson LLP). The Confidential Information will not be copied, reproduced in any form or stored in a retrieval system or data base by the Representative Counsel without the prior written consent of Adelaide, except for such copies and storage as may be required by the Representative Counsel for the Purpose. The Representative Counsel will take reasonable security measures and use care to preserve and protect the secrecy of, and to avoid the disclosure or use of, the Confidential Information. The Representative Counsel will promptly advise Adelaide in writing of any misappropriation or misuse by any person of the Confidential Information that may come to its attention.

2.03 Return of Confidential Information

Upon the request of Adelaide, any Confidential Information it has furnished to the Representative Counsel will be promptly returned (accompanied by all copies thereof made by the Representative Counsel) and deleted from all retrieval systems and data bases by the Representative Counsel. With the consent of Adelaide, any Confidential Information that would otherwise be returned to Adelaide may instead be destroyed by the Representative Counsel. The Representative Counsel will deliver to Adelaide a certificate by an officer of the Representative Counsel of such return (or destruction) and deletion.

2.04 Rights in Confidential Information

(1) All right, title and interest in and to the Confidential Information will remain the exclusive property of Adelaide and the Confidential Information will be held in trust and confidence by the Representative Counsel for Adelaide. No interest, licence or any right respecting the Confidential Information, other than expressly set out herein, is granted to the Representative Counsel under this Agreement by implication or otherwise.

(2) This Agreement does not constitute any representation, warranty or guarantee with respect to the accuracy or completeness of any Confidential Information or whether the Confidential Information infringes any rights of third parties. Adelaide will not be held liable for any errors or omissions in the Confidential Information or the use or the results of the use of the Confidential Information.

2.05 List of Individuals with Access

When requested by Adelaide, the Representative Counsel will promptly provide a list containing the full name, title, location and function of each person having access to or copies of the Confidential Information.

2.06 **Legally Required Disclosure**

If the Representative Counsel is requested pursuant to, or required by, applicable law or legal process to disclose any Confidential Information, the Representative Counsel may make sure disclosure but must first provide Adelaide with prompt notice of such request or requirement, unless notice is prohibited by law, in order to enable Adelaide to seek an appropriate protective order or other remedy or to waive compliance with the terms of this Agreement or both. The Representative Counsel will not oppose any action by Adelaide to seek such a protective order or other remedy. If, failing the obtaining of a protective order or other remedy by Adelaide, such disclosure is required, the Representative Counsel will use reasonable efforts to ensure that the disclosure will be afforded confidential treatment.

ARTICLE 3 - GENERAL

3.01 **Relationship of the Parties**

Nothing contained in this Agreement creates any partnership, joint venture or relationship of principal and agent between the parties or to provide either party with the right, power or authority, whether express or implied, to create any duty or obligation on behalf of the other party.

3.02 **Further Assurances**

The Representative Counsel will from time to time execute and deliver all such further documents and instruments and do all acts and things as Adelaide may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

3.03 **Benefit of the Agreement**

This Agreement will enure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

3.04 **Entire Agreement**

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties other than as expressly set forth in this Agreement.

3.05 **Amendments and Waivers**

No amendment to this Agreement will be valid or binding unless set forth in writing and duly executed by both of the parties. No waiver of any breach of any provision of this Agreement will be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided, will be limited to the specific breach waived.

3.06 **Assignment**

This Agreement may not be assigned by either party without the other party's prior written consent.

3.07 **Ambiguities**

Each of the parties has participated in the drafting of this Agreement and any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not apply to the interpretation of this Agreement.

3.08 **Indemnity**

The Representative Counsel will indemnify and save harmless Adelaide from and against all losses, damages, expenses, liabilities, claims and demands of whatever nature or kind including all legal fees and costs on a solicitor and client basis resulting from any breach of this Agreement by the Representative Counsel.

3.09 **Severability**

If any provision of this Agreement is held to be invalid or unenforceable in whole in part, such invalidity or unenforceability will attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof will continue in full force and effect.

3.10 **Notices**

Any demand, notice or other communication to be given in connection with this Agreement must be given in writing and will be given by electronic means of communication as follows:

To Adelaide:

Geoff R. Hall, McCarthy Tétrault LLP

E-Mail: ghall@mccarthy.ca

To the Representative Counsel:

Gregory R. Azeff, Miller Thomson LLP

E-mail: gazeff@millerthomson.com

or to such other street address, individual or electronic communication number or address as may be designated by notice given by either party to the other. Any demand, notice or other communication given by personal delivery will be conclusively considered to have been given on the day of transmittal thereof if given during the normal business hours of the Representative

Counsel and on the Business Day during which such normal business hours next occur if not given during such hours on any day.

3.11 **Remedies**

The Representative Counsel agrees that monetary damages would not alone be sufficient to remedy any breach by the Representative Counsel of any term or provision of this Agreement and that Adelaide will also be entitled to equitable relief, including injunction and specific performance, in the event of any breach hereof and in addition to any other remedy available pursuant to this Agreement or at law or in equity. The Representative Counsel further waives any requirement for Adelaide to provide an undertaking as to damages in connection with any equitable remedy.

3.12 **Governing Law**

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

3.13 **Attornment**

For the purpose of all legal proceedings this Agreement will be considered to have been performed in the Province of Ontario and the courts of the Province of Ontario will have jurisdiction to entertain any action arising under this Agreement. The Representative Counsel attorns to the exclusive jurisdiction of the courts in the Province of Ontario.

3.14 **Counterparts**

This Agreement may be executed in counterparts, each of which will be considered to be an original and both of which taken together will constitute one and the same instrument.

3.15 **Electronic Execution**

Delivery of an executed signature page to this Agreement by either party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

IN WITNESS WHEREOF the parties have executed this Agreement.

Adelaide Street Lofts Inc.

Per: _____
Authorized Signatory

Miller Thomson LLP

Per: _____
Authorized Signatory

Gregory Azeff

A handwritten signature in blue ink, appearing to be 'Gregory Azeff', is written over a horizontal line. The signature is stylized with loops and a long vertical stroke extending downwards.

APPENDIX I



MILLER THOMSON
AVOCATS | LAWYERS

MILLER THOMSON LLP
SCOTIA PLAZA
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MILLERTHOMSON.COM

May 8, 2019

Update on Status of Proceeding

Pursuant to the Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated March 21, 2019 (the "**Order**") Miller Thomson LLP ("**Representative Counsel**") was appointed to represent all individuals and/or entities ("**Investors**") that hold an interest in a syndicated mortgage ("**SMI**"), 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 <https://www.millerthomson.com/en/hi-rise/>.

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.

Representative Counsel writes this update further to our communication dated April 25, 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:

1. As further set out in the Last Update, the Official Committee of Investors (the "**Official Committee**") was approved and constituted by Order of the Court dated April 15, 2019. Representative Counsel continues to engage and consult with the Official Committee regularly.
2. As further set out in the Last Update, Representative Counsel has been advised by Hi-Rise that it has received an offer in respect of a proposed transaction related to the Property (the "**Transaction**"). We understand that the offeror is in the process of completing its due diligence in connection with the Transaction. As at the time of the Last Update, the details and documents related to the Transaction would be made available to Representative Counsel and Investors at the end of this due diligence period.
3. A court date was scheduled for May 7, 2019 at 9:30 a.m. for further scheduling and for Hi-Rise to provide an update to the Court on the status of the proposed Transaction (as defined below) (the "**May 7 Court Date**"). Representative Counsel attended at the May 7 Court Date and the following occurred:
 - (a) Counsel for Adelaide advised the Court that it will prepare a Non-Disclosure Agreement ("**NDA**") so that Representative Counsel can have access to the Transaction details on a "counsel-only" basis

before the end of the due diligence period. The details of the NDA are further described in paragraph 4 below.

- (b) Some Investors have opted-out of Representative Counsel's representation and have retained their own separate lawyers. One of these lawyers (the "**Opt-Out Lawyer**") requested that the Court schedule a motion for an Order requiring that all information that is disclosed to Representative Counsel by Hi-Rise shall also be disclosed to an opted out Investor (the "**Disclosure Motion**").

The Court did not schedule Disclosure Motion at the May 7 Court Date, although this may be scheduled at a later date.

A copy of the Endorsement of Justice Hainey dated May 7, 2019, made at the May 7 Court Date, is posted on the 'Documents' section of the Website.

- 4. As stated above, the NDA will permit Representative Counsel to obtain the Transaction details on a "counsel-only" basis. This means that Representative Counsel will receive details of the Transaction from Adelaide in order to review and analyze the Transaction while the offeror is still conducting its due diligence. However, Representative Counsel will not be permitted to disclose such information to any of the Investors or the Official Committee until such time that Adelaide advises.

Entering into the NDA will permit Representative Counsel to commence its review and formulate its legal opinion in order to later advise all Investors connection with the negotiation and implementation of a settlement agreement with respect to Investor's investments in the Project. In other words, it will permit Representative Counsel to get a "head-start" on its analysis and advice to Investors.

Representative Counsel will review the terms of the NDA and will seek instruction and authorization from the Official Committee to enter into the NDA. Once Adelaide advises that the Transaction details can be made available (*i.e.*, at the end of the offeror's due diligence period), then Representative Counsel will disclose the information to the Investors and Official Committee and the negotiation process can begin. You will be provided with a communication from Representative Counsel in this regard. In the meantime, there is nothing further for you to do.

- 5. At this time, no further Court date is scheduled. We will update all Investors through a further Communication if the Opt Out Lawyer schedules the Disclosure Motion.

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

Yours Truly,

Miller Thomson LLP,
solely in its capacity as
Representative Counsel



APPENDIX J

Garrafa, Shallon

From: Hall, Geoff R. <GHALL@MCCARTHY.CA>
Sent: Thursday, September 12, 2019 7:48 AM
To: Azeff, Gregory
Cc: De Caria, Stephanie; jbirch@casselsbrock.com; Novek, Mira
Subject: RE: **[**EXT**]** Adelaide - information from BMO about your call to Tricon [MTDMS-Legal.FID7573766]

It is difficult to understand why a summary of the JV agreement in the disclosure document plus the review of your firm and your Committee would not be sufficient.

It is also disheartening that every effort on my part to engage you and your Committee is met with a refusal to discuss unless Mr. Neilas is willing to give you everything you demand – for example, you refuse to engage in discussion of a financial adviser unless it is pursuant to a court order, and you refuse to discuss the provision of a copy of the JV agreement to you and your Committee unless Mr. Neilas also agrees to make it public.

But my frustrations are not relevant. What we need to do is to get to the vote on September 25, 2019. With a view to achieving that goal, Mr. Neilas is prepared to offer the following. The JV agreement is currently subject to a confidentiality agreement between Mr. Neilas, Lanterra and BMO. If you and your Committee will agree that the vote will proceed on September 25, 2019 without any further court proceedings, Mr. Neilas will waive his rights under the confidentiality agreement and will ask Lanterra and BMO to do so as well. If Lanterra and BMO agree, the JV agreement will be provided to the investors.

To be clear, there must be no roadblocks to a vote on September 25, 2019. The investors deserve a say on the Lanterra proposal, and unless the vote happens on September 25, 2019 Meridian will take over control from all of us. Mr. Neilas is quite content to take steps to get the JV agreement to the investors (subject to the agreement of Lanterra and BMO) if those steps will facilitate the vote on September 25, 2019, but he is not prepared to do so if it just leads to further squabbling or attempts to delay.



Geoff R. Hall
Partner | Associé
Litigation | Litige
T: 416-601-7856
C: 416-315-6423
F: 416-868-0673
E: ghall@mccarthy.ca

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



From: Azeff, Gregory <gazeff@millerthomson.com>
Sent: Wednesday, September 11, 2019 11:42 PM
To: Hall, Geoff R. <GHALL@MCCARTHY.CA>
Cc: De Caria, Stephanie <sdecaria@millerthomson.com>; jbirch@casselsbrock.com; Novek, Mira <MNOVEK@mccarthy.ca>
Subject: Re: **[**EXT**]** Adelaide - information from BMO about your call to Tricon [MTDMS-Legal.FID7573766]

Your proposal is not acceptable.

Our view is that the JV agreement needs to be disclosed to Investors in order for them to properly assess the transaction and its specific terms - including the speculative nature and very real risks associated with promised future payments - in order to make an informed vote.

Hi Rise is asking the Investors to vote on a proposed settlement that arises from and is funded through this JV agreement, but bizarrely, won't let them see the JV agreement itself. We have asked for the JV agreement over and over, yet all you have offered is to deliver it on uselessly restrictive terms that don't assist in addressing our concerns.

In short, you have refused to provide the JV agreement to the Investors. We see no way forward given that refusal.

Those are our views. Absent court direction we don't intend on communicating on this point any further as it is clear that it is a waste of time.

Please let us know if your client changes his mind.

Sent from my iPhone

GREGORY AZEFF
Partner

Miller Thomson LLP
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, Ontario M5H 3S1
Direct Line: +1 416.595.2660
Fax: +1 416.595.8695
Email: gazeff@millerthomson.com
millerthomson.com



Please consider the environment before printing this email.

On Sep 11, 2019, at 5:49 PM, Hall, Geoff R. <GHALL@mccarthy.ca> wrote:

On July 9, 2019, Mr. Neilas offered to send one hard copy of the JV agreement to Miller Thomson, on the condition that it will reviewed only by you, Mr. Azeff and Committee members at your firm's premises, with no additional copies or photographs made: please see the attached email. I do not recall ever having received a response to that offer. In any event, I am happy to reiterate the proposal now. Please let me know if these terms are acceptable. If they are, I will send over the hard copy forthwith. Thanks.

<image001.png>

Geoff R. Hall

Partner | Associé

Litigation | Litige

T: 416-601-7856

C: 416-315-6423

F: 416-868-0673

E: ghall@mccarthy.ca

McCarthy Tétrault LLP

Suite 5300

TD Bank Tower

Box 48, 66 Wellington Street West

Toronto ON M5K 1E6

<image002.png>

<image003.jpg>

From: De Caria, Stephanie <sdecaria@millerthomson.com>

Sent: Wednesday, September 11, 2019 3:20 PM

To: Azeff, Gregory <gazeff@millerthomson.com>; Hall, Geoff R. <GHALL@MCCARTHY.CA>;

jbirch@casselsbrock.com; Novek, Mira <MNOVEK@mccarthy.ca>

Cc: jbirch@casselsbrock.com

Subject: RE: [**EXT**] Adelaide - information from BMO about your call to Tricon [MTDMS-Legal.FID7573766]

Geoff:

Please keep me copied on all correspondence.

You have had our position for quite some time now with respect to acceptable terms for the engagement of the F&A and the requirement for its court authority. Any access to communication with your client as the gatekeeper is not acceptable to the Official Committee. This is the last piece of correspondence that we will send on this issue. Should your client change his mind, please let us know.

Will you be providing a copy of the JV Agreement? Our request is still being ignored.

Thanks
Steph

STEPHANIE DE CARIA

Associate

Miller Thomson LLP

Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, Ontario M5H 3S1
Direct Line: +1 416.595.2652
Fax: +1 416.595.8695
Email: sdecaria@millerthomson.com
millerthomson.com

<image004.png>

Please consider the environment before printing this email.

From: Azeff, Gregory

Sent: Wednesday, September 11, 2019 2:16 PM

To: De Caria, Stephanie <sdecaria@millerthomson.com>

Subject: Fwd: [**EXT**] Adelaide - information from BMO about your call to Tricon

Sent from my iPhone

GREGORY AZEFF

Partner

Miller Thomson LLP

Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, Ontario M5H 3S1
Direct Line: +1 416.595.2660
Fax: +1 416.595.8695
Email: gazeff@millerthomson.com
millerthomson.com

<image004.png>

Please consider the environment before printing this email.

Begin forwarded message:

From: "Hall, Geoff R." <GHALL@MCCARTHY.CA>

Date: September 11, 2019 at 11:53:05 AM EDT

To: "Azeff, Gregory" <gazeff@millerthomson.com>

Cc: "Birch, John" <jbirch@casselsbrock.com>, "Ellis, Larry" <LEllis@casselsbrock.com>, "Novek, Mira" <MNOVEK@mccarthy.ca>

Subject: [**EXT**] Adelaide - information from BMO about your call to Tricon

I received an email from BMO letting me know that Tricon contacted them to advise that you called Tricon over this past weekend and asked if Tricon was still interested in the property. Tricon told BMO that while they are still interested (as I'm sure countless

people are "interested"), they find the construction of the proposed building challenging.

At this point it defies logic that you refuse to retain A & M to actually provide meaningful input and advice, and instead choose to go it alone with the Committee. Neither you nor your Committee possess the specialized experience and expertise to make an assessment of the sale process, much less put together a transaction for an asset like 263 Adelaide Street West.

I want to reiterate Mr. Neilas' position: he will agree to and pay for A & M to review the sales process undertaken by BMO to market the property. Given the pending Meridian receivership, investors deserve some proper advice.

<image001.png> **Geoff R. Hall**
Partner | Associé
Litigation | Litige
T: 416-601-7856
C: 416-315-6423
F: 416-868-0673
E: ghall@mccarthy.ca
McCarthy Tétrault LLP
Suite 5300
TD Bank Tower
Box 48, 66 Wellington Street West
Toronto ON M5K 1E6

<image002.png> <image003.jpg>

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<mime-attachment>

APPENDIX K

Garrafa, Shallon

From: De Caria, Stephanie <sdecaria@millerthomson.com>
Sent: Thursday, August 22, 2019 6:07 PM
To: Hall, Geoff R.; Birch, John; Ellis, Larry
Cc: Azeff, Gregory
Subject: Hi-Rise [MTDMS-Legal.FID7573766]
Attachments: 41572073_1_Draft Order (Aug 21 2019) .doc

Hi everyone - further to our call yesterday, please see attached draft Order.

Thanks.
Steph

STEPHANIE DE CARIA Associate

Miller Thomson LLP
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, Ontario M5H 3S1
Direct Line: +1 416.595.2652
Fax: +1 416.595.8695
Email: sdecaria@millerthomson.com
millerthomson.com



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**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

)
)
)
)

THE

JUSTICE HAINEY

DAY OF , 2019

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

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

ORDER

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

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 ● sworn ●, 2019, filed,

SERVICE

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.

REPRESENTATIVE COUNSEL'S POWERS

2. **THIS COURT ORDERS** that Representative Counsel is hereby empowered and authorized, but not obligated, to review and report to the Court in respect of all matters relating to the Company and the Property as it considers necessary or desirable, 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. In such case where Representative Counsel takes such action or step, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Company, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION

3. **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, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise Representative Counsel of the existence of any information in respect of Hi-Rise, the Company and/or the Property in such Person's possession or control, shall grant immediate and continued access to such information to Representative Counsel, and shall deliver all such information to Representative Counsel upon Representative Counsel's request.

2. **THIS COURT ORDERS** that all Persons shall forthwith advise Representative Counsel of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Company, Hi-Rise and/or the Property, 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 Representative Counsel or permit Representative Counsel to make, retain and take away copies thereof and grant to Representative Counsel unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 2 or in paragraph 3 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to Representative Counsel due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

3. **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 Representative Counsel for the purpose of allowing Representative Counsel 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 Representative Counsel in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of Representative Counsel. Further, for the purposes of this paragraph, all Persons shall provide Representative Counsel with all such assistance in gaining immediate access to the information in the Records as Representative Counsel may in its discretion require including providing Representative Counsel with instructions on the use of any computer or other system and providing Representative Counsel with any and all access codes, account names and account numbers that may be required to gain access to the information.

ENCUMBRANCES IN RESPECT OF THE PROPERTY

4. **THIS COURT ORDERS** that the Property shall not be further encumbered by any Person, pending further Order of this Court.

PIPEDA

5. **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, Representative Counsel shall 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.

INCREASE OF REP COUNSEL CHARGE

4. **THIS COURT ORDERS** that the Rep Counsel Charge (as defined in the Appointment Order) in respect of its Post-Appointment Fees (as defined in the Appointment Order) be and is hereby increased up to a maximum amount of \$350,000.00.

GENERAL

6. **THIS COURT ORDERS** that Representative Counsel is hereby permitted to delegate its duties and powers granted under this Order and the Appointment Order to any of its Advisors (as defined in paragraph 5 of the Appointment Order) and that all provisions of this Order applicable to such Advisors.

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

37006261.2

APPENDIX L



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

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

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

August 24, 2019

Via Email (gazeff@millerthomson.com)

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

Dear Mr. Azeff:

Re: 263 Adelaide Street West, Toronto, Ontario

I was disappointed with the proposed draft order you forwarded late on August 22, 2019 to deal with the engagement of Alvarez & Marsal ("**A&M**"). The draft bore no resemblance to what you, Stephanie De Caria, John Birch, Larry Ellis and I had discussed the previous day. Even aside from that, it should be obvious that an order granting such broad and unrestricted powers to a committee of stakeholders is both unprecedented and unnecessary. It will not be possible to get such an order on consent. Seeking such an order on a contested basis would require numerous affected parties to be put on notice (including but not limited to BMO Capital Markets), making it completely unfeasible to get such an order on such a basis.

It has been apparent for a considerable length of time that your Committee requires the assistance of a financial adviser to understand and analyze a complex situation. It is surprising that there has been such resistance to the idea.

It is both obvious and urgent that your Committee particularly requires the assistance of a financial adviser to address the two points you identified in the meeting of August 13, 2019, namely (i) whether the sales process undertaken by BMO Capital Markets was proper and robust; and (ii) whether there is any prospect of a successful transaction with Tricon that would achieve a better outcome for stakeholders than the proposed Lanterra transaction. Indeed, Mr. Neilas has been urging your Committee for some time to engage a financial adviser, and has indicated that he is willing to pay the reasonable cost of such an adviser. Since you identified the two points on August 13, 2019, there have been meetings or calls with you and Hi-Rise Capital's counsel on four occasions (on August 14, 20 and 21, 2019) to address the issue of a financial adviser. Yet after 10 days of discussions and four meetings/calls, I have not seen a proposed scope of A&M's work, and there is no draft documentation in respect of the engagement except for a draft order which obviously is unfeasible.

The parties have agreed that the investor vote will take place on September 25, 2019. The investors deserve to be properly advised in advance of that meeting. The work of A&M must

start immediately. We cannot afford to wait any longer. There is no need for a court order. The A&M engagement should be commenced immediately, and should be documented by an engagement letter. Mr. Neilas reiterates his offer to pay the reasonable fees and expenses of A&M, and to provide full access to information from BMO Capital Markets (as he has done, most recently in the meeting with BMO Capital Markets that you and two Committee members attended on August 19, 2019) and with respect to the Tricon overture.

Yours truly,



Geoff R. Hall

GRH/dw

cc. Stephanie De Caria, Miller Thomson LLP (by email)
John Birch and Larry Ellis, Cassels Brock & Blackwell LLP (by email)

APPENDIX M

Garrafa, Shallon

From: Brinn Norman <brinn@hirisecapital.com>
Sent: Tuesday, August 27, 2019 4:24 PM
To: Azeff, Gregory
Cc: Noor Al-Awqati; Birch, John; De Caria, Stephanie
Subject: [**EXT**] Adelaide Update Letter
Attachments: 2019-08-28 Adelaide Update Letter to Investors Final.docx

Hello Greg,

HRC intends on sending out an update to investors providing them with plenty of notice to hold the September meeting date. Attached is a draft of the letter. We will begin the printing process tomorrow so we would greatly appreciate your comments (if any) by 10:00am tomorrow.

Thanks!

Regards,

Brinn Norman | General Counsel | Mortgage Agent | Hi-Rise Capital Ltd. |
Mortgage Brokerage # 10897 | Mortgage Administrator # 11893 |
130 King Street West, Suite 1800 | Toronto, ON M5X 1E3 | Tel: 416-865-3398 x 232 |
e-mail: brinn@hirisecapital.com

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August 28, 2019

Via Regular Mail

[Investor Name]

[Address 1]

[Address 2]

Re: Investment in mortgage registered against title to the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the "Adelaide Mortgage")

Dear [Name],

You are receiving this letter because you are an investor in the Adelaide Mortgage.

Hi-Rise is very pleased to advise that a meeting (the "Adelaide Investor Meeting") has now been set for investors to vote on the proposed settlement of the Adelaide Mortgage (the "Settlement").

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: (i) the independent board of directors of Hi-Rise; (ii) the Borrower; (iii) Grant Thornton; and (iv) Miller Thomson.

An information statement and package will be sent to you in the coming days which will provide more information and background about the Settlement to be voted on. Upon receipt of the information statement and accompanying report(s) and, if desired, attendance at the Adelaide Investor Meeting, investors in the Adelaide Mortgage will have the opportunity to either accept or reject the Settlement.

The Adelaide Investor Meeting details are as follows:

Hi-Rise Adelaide Mortgage Investor Meeting

Date: Wednesday September 25, 2019 at 1:00 pm

Due to the number of attendees expected, only investors will be allowed to attend.

Please arrive at least 30 minutes prior to the commencement of the meeting to have your identification checked and verified at the door prior to entry.

The location of the meeting is yet to be finalized and will be communicated in the coming days.

Information shared at the meeting is highly confidential and competitively sensitive, as such we cannot extend an invitation to friends, relatives or guests other than investors of the Hi-Rise Adelaide Mortgage.

Address:
130 King St. W., Suite 1800
Toronto, ON, M5X 1E3

Phone/Fax:
416-865-3398
416-865-3399

Email:
info@hirisecapital.com
www.hirisecapital.com

*****Only investors will be allowed to attend, identification will be verified at the door*****

Should you require any assistance with your investment, please do not hesitate to contact Jason Riddle, Manager of Investor Relations at Jason@hirisecapital.com or at 416-865-3398 x 252 between the hours of 9:00 AM to 5:00 PM Monday to Friday.

Sincerely,
Hi-Rise Capital Ltd.

Noor Al-Awqati
Chief Operating Officer and Principal Broker

Address:
130 King St. W., Suite 1800
Toronto, ON, M5X 1E3

Phone/Fax:
416-865-3398
416-865-3399

Email:
info@hirisecapital.com
www.hirisecapital.com

APPENDIX N

Garrafa, Shallon

From: De Caria, Stephanie <sdecaria@millerthomson.com>
Sent: Tuesday, August 27, 2019 4:46 PM
To: Brinn Norman; Azeff, Gregory
Cc: Noor Al-Awqati; Birch, John; Ellis, Larry; Hall, Geoff R.
Subject: RE: Adelaide Update Letter [MTDMS-Legal.FID7573766]

Hi Brinn – since our last discussion with counsel, there have been some changes (I am copying Geoff Hall and Larry Ellis here). We understand that the appointment of a Financial Advisor will not be made on consent, and as such, we will be bringing a motion for same.

As part of the relief, we have instructions to seek a stay of the voting provisions in the Order of Justice Hainey dated March 21, 2019. In other words, we will be seeking a stay of the Vote that Hi-Rise is attempting to put to investors. Accordingly, we would ask that you do not print/send your letter out to investors in the interim.

If anyone would like to discuss, we are available for a telephone call tomorrow.

Steph

STEPHANIE DE CARIA

Associate

Miller Thomson LLP

Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, Ontario M5H 3S1
Direct Line: +1 416.595.2652
Fax: +1 416.595.8695
Email: sdecaria@millerthomson.com
millerthomson.com



Please consider the environment before printing this email.

From: Brinn Norman [mailto:brinn@hirisecapital.com]
Sent: Tuesday, August 27, 2019 4:24 PM
To: Azeff, Gregory <gazeff@millerthomson.com>
Cc: Noor Al-Awqati <noor@hirisecapital.com>; Birch, John <jbirch@casselsbrock.com>; De Caria, Stephanie <sdecaria@millerthomson.com>
Subject: [**EXT**] Adelaide Update Letter

Hello Greg,

HRC intends on sending out an update to investors providing them with plenty of notice to hold the September meeting date. Attached is a draft of the letter. We will begin the printing process tomorrow so we would greatly appreciate your comments (if any) by 10:00am tomorrow.

Thanks!

Regards,

Brinn Norman | General Counsel | Mortgage Agent | Hi-Rise Capital Ltd. |
Mortgage Brokerage # 10897 | Mortgage Administrator # 11893 |
130 King Street West, Suite 1800 | Toronto, ON M5X 1E3 | Tel: 416-865-3398 x 232 |
e-mail: brinn@hirisecapital.com

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APPENDIX O

August 27, 2019

Via Regular Mail

Re: Investment in mortgage registered against title to the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the "Adelaide Mortgage")

Dear Investor,

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Hi-Rise is very pleased to advise that a meeting (the "Adelaide Investor Meeting") has now been set for investors to vote on the proposed settlement of the Adelaide Mortgage (the "Settlement").

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: (i) the independent board of directors of Hi-Rise; (ii) the Borrower; (iii) Grant Thornton; and (iv) Miller Thomson.

An information statement and package will be sent to you in the coming days which will provide more information and background about the Settlement to be voted on. Upon receipt of the information statement and accompanying report(s) and, if desired, attendance at the Adelaide Investor Meeting, investors in the Adelaide Mortgage will have the opportunity to either accept or reject the Settlement.

The Adelaide Investor Meeting details are as follows:

HI-RISE ADELAIDE MORTGAGE INVESTOR MEETING

Date: Wednesday September 25, 2019 at 1:00 pm

Due to the number of attendees expected, only investors will be allowed to attend. Please arrive at least 30 minutes prior to the commencement of the meeting to have your identification checked and verified at the door prior to entry.

The location of the meeting is yet to be finalized and will be communicated in the coming days.

Information shared at the meeting is highly confidential and competitively sensitive, as such we cannot extend an invitation to friends, relatives or guests other than investors of the Hi-Rise Adelaide Mortgage.

****ONLY INVESTORS WILL BE ALLOWED TO ATTEND, IDENTIFICATION WILL BE VERIFIED AT THE DOOR****

Should you require any assistance with your investment, please do not hesitate to contact Jason Riddle, Manager of Investor Relations at Jason@hirisecapital.com or at 416-865-3398 x 252 between the hours of 9:00 AM to 5:00 PM Monday to Friday.

Sincerely,
Hi-Rise Capital Ltd.



Noor Al-Awqati
Chief Operating Officer and Principal Broker

Address:
130 King St. W., Suite 1800
Toronto, ON, M5X 1E3

Phone/Fax:
416-865-3398
416-865-3399

Email:
info@hirisecapital.com
www.hirisecapital.com

APPENDIX P

Garrafa, Shallon

From: Azeff, Gregory
Sent: Wednesday, August 28, 2019 11:47 AM
To: Ellis, Larry
Subject: RE: Terms

No – will keep you posted. Will copy everyone once we hear back re timing.

From: Ellis, Larry [mailto:LEllis@casselsbrock.com]
Sent: Wednesday, August 28, 2019 11:45 AM
To: Azeff, Gregory <gazeff@millerthomson.com>
Subject: [**EXT**] RE: Terms


Thanks.

Any idea regarding timing for Hainey?

Also email everyone on the next email. That helps me avoid having to circulate to the parties.

Thanks Greg.

Larry

	<p>Larry Ellis Direct: +1 416 869 5406 • Mobile: +1 416 262 3543 • lellis@casselsbrock.com 2100 Scotia Plaza, 40 King Street West, Toronto, Ontario, M5H 3C2 www.casselsbrock.com Services provided through a Professional Corporation</p>
--	--

From: Azeff, Gregory <gazeff@millerthomson.com>
Sent: Wednesday, August 28, 2019 11:02 AM
To: Ellis, Larry <LEllis@casselsbrock.com>
Subject: Terms

Larry: Below please find the terms I propose as a way forward:

1. JV Agreement will be released to Rep Counsel today, and may be shared with the Committee on the premises, on the understanding that it will not be copied or removed from the premises and any copies other than MT's "master" copy will be destroyed following any meeting
2. Within 7 business days, Rep Counsel will be provided with a version of the JV Agreement within 1 week in which commercially sensitive business terms (other than those previously disclosed by Rep Counsel in accordance with Adelaide's approval) are redacted, such that the document can be disclosed without restriction
3. The company will confirm cooperation with A&M and facilitation of its mandate, which will include a review of the following:
 - The integrity of the BMO marketing and sale process;
 - Justification for Jim Neilas' continued involvement in the Lanterra deal; and
 - Viability of the Tricon expression of interest.This will involve discussions between A&M and BMO, Lanterra, Tricon and Adelaide

APPENDIX Q

Garrafa, Shallon

From: De Caria, Stephanie
Sent: Wednesday, August 28, 2019 6:13 PM
To: Hall, Geoff R.; Azeff, Gregory
Cc: jbirch@casselsbrock.com; LEllis@casselsbrock.com
Subject: RE: Conference call with Hainey J. [MTDMS-Legal.FID7573766]

Thank you for your response. We have your position and you have ours. We will proceed with forwarding this email thread to Justice Hainey, as requested and as advised by Greg in his email below. Also, we will proceed with scheduling the motion and will be in touch in that regard.

Steph

-----Original Message-----

From: Hall, Geoff R. [mailto:GHALL@MCCARTHY.CA]
Sent: Wednesday, August 28, 2019 5:55 PM
To: Azeff, Gregory <gazeff@millerthomson.com>
Cc: jbirch@casselsbrock.com; LEllis@casselsbrock.com; De Caria, Stephanie <sdecaria@millerthomson.com>
Subject: Re: Conference call with Hainey J. [MTDMS-Legal.FID7573766]

I have difficulty understanding why you "did not have the luxury of going to [me] directly in advance". The first I heard of any notion of anyone speaking with Justice Hainey was when Mr. Ellis sent me an email at 4:49 pm Central European Time (10:49 am Eastern Time), asking me if I could be available for a conference call with Justice Hainey. I responded to Mr. Ellis at 4:52 pm Central European Time — three minutes later — advising that if there was a call with Justice Hainey today I would make myself available for it. While I have not been responding to every email I have received this week within three minutes of receiving it, anyone who has wanted to speak with me, even on short notice, has been able to reach me.

The reality is that you just did not try to reach me, then spoke to a judge to suggest that he make an endorsement that would grant relief against my client. My objection to this course of conduct cannot be dismissed as a mere "procedural" one. It is one that goes to fundamental principles of natural justice, not to mention basic courtesy as between counsel. I would have expected better from your firm, and from you personally.

It is now close to midnight in Berlin and I need to be up early in the morning, so I will not be responding to any further emails this evening.

Geoff R. Hall

Sent from my iPhone

On Aug 28, 2019, at 11:36 PM, Azeff, Gregory
<gazeff@millerthomson.com<mailto:gazeff@millerthomson.com>> wrote:

Geoff: Unfortunately we did not have the luxury of going to you directly in advance, given Justice Hainey's impending unavailability. Our first step was to ensure that we had Justice Hainey's authority and direction to proceed in the manner described in my initial to email to you below, and we did so in accordance with the clear authority granted to us pursuant to section 13 of the Order. The points in my initial email below were discussed with Larry Ellis and also communicated to him by email earlier today - a copy of our email thread is attached.

Larry advised that Cassels would attempt to deal with Jim Neilas given that you are away and may be unreachable.

It was our intention that, assuming we received such authority, all parties would then be present for the second stage - ie, to attend a conference call to obtain the relief necessary to keep this on track.

Thankfully, I pre-scripted my comments to Justice Hailey in order to keep the initial call as brief as possible. Those points are cut and pasted below, subject only to redaction only where privileged (ie, our existing instructions that have not previously been disclosed):

- The Committee's current instructions are to compel transparency with a motion to appoint Alvarez & Marsal on terms that incorporate the information-gathering provisions of the model receivership Order •We had hoped to get the requested Order on consent, but when we presented a copy of the proposed draft Order the company objected.

- We are advised by the company that any such Order would destroy the Lanterra transaction •In addition, our instructions are to seek a stay of any vote on the Lanterra transaction •Again, we are advised by the company that any stay beyond the end of September would destroy the Lanterra transaction •Finally, our instructions are [REDACTED] •We are obviously mindful of the need for transparency. But we are also mindful of the company's warnings regarding the possibility of destroying the only offer currently in hand, which is the Lanterra deal. We see preservation of the Lanterra transaction as important •In addition, we believe it is important that negotiations toward a settlement continue •We have crafted a solution that will provide our financial advisor with the information it requires to fulfill its mandate, which we believe includes include a review of the following three components:

- 1. The integrity of the BMO marketing and sale process; •2. Justification for Jim Neilas' continued involvement in the Lanterra deal; and •3. Viability of the Tricon expression of interest.

- In a nutshell, the company will provide and facilitate access to the requisite parties, information and documents •This would include, in particular, a copy of the JV Agreement on terms that would keep it confidential to the Committee, with a redacted version available within a week for circulation to all other parties, as we do not have a copy as of today.

- However, in order to provide comfort to the Committee and ensure that there are no "hiccups", we believe that it is important that the company make that commitment before Your Honour and other counsel, such that its undertaking can be encapsulated in an Endorsement •The Endorsement would also provide that any resistance would entitle Rep Counsel to bring a motion on short notice •Rep Counsel would also request direction to continue negotiating a settlement during the FA's review process •The company has scheduled the vote for the end of September, which we believe will provide our financial advisor with sufficient time to complete and report on its review •Finally, Rep Counsel needs to seek an increase to the amount of its charge. This matter has gone on far longer than anticipated and has been far more combative. We are in your hands as to how to proceed in this regard, but we have already exceeded our initial charge and have considerable work to do to get this over the finish line •What we would like to do is schedule a call with all counsel later this afternoon, whenever is convenient for Your Honour, so that we can get the requested endorsement and get the financial advisor moving

Note that it was at this point of our conversation that His Honour advised of his unavailability to deal with this matter any further by telephone prior to September 9. As such, we made a judgment call to advise His Honour of the terms outlined in the attached email and as set out below. We confirm that we will forward all of these emails to His Honour, that the company does not consent to the proposed resolution, and that we will be contacting the Commercial List office to schedule a motion returnable upon His Honour's return. We have held off from doing so in order to provide you all with an opportunity for second thought as to your procedural objections. His Honour is expecting an email from us. If we do not hear back from you by 7pm tonight, we will proceed accordingly.

Regards,
Greg

GREGORY AZEFF<mailto:gazeff@millerthomson.com>
Partner

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millerthomson.com<http://www.millerthomson.com>

<imagea8da60.PNG>

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-----Original Message-----

From: Hall, Geoff R. [mailto:GHALL@MCCARTHY.CA]
Sent: Wednesday, August 28, 2019 4:47 PM
To: Azeff, Gregory <gazeff@millerthomson.com<mailto:gazeff@millerthomson.com>>
Cc: jbirch@casselsbrock.com<mailto:jbirch@casselsbrock.com>;
LEllis@casselsbrock.com<mailto:LEllis@casselsbrock.com>; De Caria, Stephanie
<sdecaria@millerthomson.com<mailto:sdecaria@millerthomson.com>>
Subject: Re: Conference call with Hailey J.

There is a simple way to determine whether something is acceptable to me: ask me. I was not asked. You should not have assumed that I would agree to what was proposed — particularly pursuant to a procedure that at a minimum was irregular and arguably was entirely improper.

As previously requested, please disclose what was communicated to Justice Hailey ex parte. And please confirm that my last email has been sent to him. If you do so not do so, I will send it to him myself.

Geoff R. Hall

Sent from my iPhone

On Aug 28, 2019, at 10:38 PM, Azeff, Gregory
<gazeff@millerthomson.com<mailto:gazeff@millerthomson.com>><mailto:gazeff@millerthomson.com>> wrote:

First of all, we are authorized to get direction from Justice Hailey on an ex parte basis prior to complying with our Committee's instructions. That is what we were attempting to do, so that a second call could be set up with all counsel. Unfortunately His Honour was not available later today and will not be available until September 9. It was certainly not intended as a forum to obtain ex parte relief.

Simply put, we were looking to find a way to move forward despite very strong instructions from our Committee that we understood from yesterday's communications would kill the Lanterra deal. The points below would have allowed us to do so. To be clear, there is no possibility of the Committee consenting to the FA in the absence of an Endorsement at minimum.

We had understood that the points set out in our email were acceptable. They do not constitute an Endorsement; they would be effectively converted to one only if they are acceptable to Adelaide and Hi Rise. That is why I forwarded them to you in advance of the service list - so that I could confirm same to HH before

he signed off on them. If Adelaide and Hi Rise do not agree then no Endorsement will be issued and we are in the same spot as we were in yesterday.

While I understand why you and Mr. Birch are troubled by the very unusual procedure, we played the hand we were dealt in an effort to salvage this transaction and process. At this point we have done everything we can to try to get the Lanterra agreement back on track and get the FA in immediately despite His Honour's vacation and impending inaccessibility.

I did not know that you are overseas and apologize for intruding on your vacation. I am available to have a call on this at any point if there is any possibility of salvaging this, but Justice Hainey was quite clear that he will not be available to assist after this afternoon until September 9.

GREGORY AZEFF<mailto:gazeff@millerthomson.com>
Partner

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<imagee872b0.PNG>

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-----Original Message-----

From: Hall, Geoff R. [mailto:GHALL@MCCARTHY.CA]
Sent: Wednesday, August 28, 2019 4:01 PM
To: Azeff, Gregory
<gazeff@millerthomson.com<mailto:gazeff@millerthomson.com><mailto:gazeff@millerthomson.com>>
Cc: jbirch@casselsbrock.com<mailto:jbirch@casselsbrock.com><mailto:jbirch@casselsbrock.com>;
LEllis@casselsbrock.com<mailto:LEllis@casselsbrock.com><mailto:LEllis@casselsbrock.com>
Subject: [**EXT**] Re: Conference call with Hainey J.

I share Mr. Birch's incredulity that you would have an ex parte conversation with Justice Hainey without notice to Cassels and to me — with whom you have been in discussions for more than two weeks.

Since the conversation was ex parte, I assume you made full and frank disclosure, including but not limited to the fact that you neither sought nor obtained my consent to any of the terms you proposed and the fact that you have been in discussions with Cassels and me on the very subject of A&M's engagement for more than two weeks. Please give a detailed account of what you told Justice Hainey.

As I have previously requested, please provide a draft engagement letter for A&M and Adelaide will be happy to consider it and discuss it with you.

I am not sure you are aware of this fact, but I am currently on vacation with my family in Germany. I will endeavour to make myself available to deal with urgent matters, but until my return to Canada on September 1 my responsiveness will be restricted.

If you are communicating with Justice Hailey after 4 pm Toronto time (10 pm in Berlin, where I currently am), please forward this email to him.

I trust that in future there will be no ex parte judicial communications behind my back. This is truly not a conducive way to proceed with a matter that is of utmost importance to the stakeholders of the Adelaide property.

Geoff R. Hall

Sent from my iPhone

On Aug 28, 2019, at 9:16 PM, Birch, John
<jbirch@casselsbrock.com<mailto:jbirch@casselsbrock.com><mailto:jbirch@casselsbrock.com><mailto:jbirch@casselsbrock.com>> wrote:

Greg,

I am confused and deeply troubled by your email. This appears to relate to a call that you had with Justice Hailey in which you asked His Honour to grant relief. No one at Cassels ever agreed to have you seek relief from Justice Hailey in such a call and I doubt that McCarthy's did, either.

No one at Cassels was involved in this call.

How could you have got the court to order relief in the absence of parties who are affected by it, without any proper motion or evidence? This is entirely inconsistent with basic principles of justice.

This must be immediately reversed and the email should not be sent to any third parties.

I am speechless.

Since much of this order relates to the Borrower, Mr. Hall can respond with his client's position as well.

<image001.gif>

John Birch

Direct: +1 416 860 5225 • Fax: +1 416 640 3057 •

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From: Azeff, Gregory

<gazeff@millerthomson.com<mailto:gazeff@millerthomson.com><mailto:gazeff@millerthomson.com><mailto:gazeff@millerthomson.com>>

Sent: Wednesday, August 28, 2019 3:05 PM

To: Ellis, Larry

<LEllis@casselsbrock.com<mailto:LEllis@casselsbrock.com><mailto:LEllis@casselsbrock.com><mailto:LEllis@casselsbrock.com>>>; Birch, John
<jbirch@casselsbrock.com<mailto:jbirch@casselsbrock.com><mailto:jbirch@casselsbrock.com><mailto:jbirch@casselsbrock.com>>>; Geoff R. Hall
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<ghall@mccarthy.ca<mailto:ghall@mccarthy.ca><mailto:ghall@mccarthy.ca><mailto:ghall@mccarthy.ca>>>
Subject: Conference call with Hainey J.

Gentlemen: Please see the email below. As you are aware, we set up a call with Justice Hainey in accordance with section 13 of the Appointment Order. During the call Justice Hainey advised that he would not be reachable by telephone until September 9, but with His Honour's assistance we were able to formulate a solution to the impasse as set out below.

We have been instructed to forward an email to all counsel setting out the directions and instructions we received with respect to the proposed solution. The email is being forwarded to you in advance of circulation to the service list as per His Honour's instructions. Note that we intend to forward it to all counsel at 4 pm today, and will forward that email to Justice Hainey.

Dear Counsel:

Section 13 of the Order of the Honourable Mr. Justice Hainey dated March 21, 2019 ("Appointment Order") provides that prior to acting on any Committee decision, Representative Counsel may seek the advice and direction of the Court pursuant to paragraph 22 of the Order (which provides that Representative Counsel may apply to the Court for advice and direction in respect of its appointment or the fulfillment of its duties in carrying out the provisions of the Order).

As you may know, Justice Hainey is currently not sitting and we were advised by His Honour that he would not be returning or available until September 9, 2019. Accordingly, and pursuant to the above-noted sections of the Order, Representative Counsel (ie, me and Ms. De Caria) had a conference call with His Honour this afternoon to seek direction on certain interim relief intended to address our Committee's concerns and to continue on a clear path forward.

We advised Justice Hainey of the current status of the matter and proposed solution, which is outlined below. Justice Hainey directed that we send this email to all counsel on the Service List and advise that a copy of same will be forwarded to His Honour for his review and approval over email. Upon his return, His Honour will formulate a written endorsement that encompasses the terms set out below. Accordingly, this email is intended to provide notice that we have been directed as follows:

1. The Lanterra Joint Venture Agreement (the "JV Agreement") will be released to Representative Counsel today, and may be shared with the Committee on Miller Thomson's premises, on the understanding that it will not be copied or removed from the premises and any copies other than MT's "master" copy will be destroyed following any meeting.
2. Within 7 business days, Rep Counsel will be provided with a version of the JV Agreement within 1 week in which commercially sensitive business terms (other than those previously disclosed by Representative Counsel in accordance with Adelaide's approval) are redacted, such that the document can be disclosed without restriction.
3. Alvarez & Marsal will immediately be engaged as financial advisor, with costs to be paid directly by Jim Neilas.
4. A&M's mandate will include a review and analysis of the following:

- a) The integrity of the BMO marketing and sale process;
- b) Basis and rationale for Jim Neilas' continued involvement in the Lanterra deal; and
- c) Viability of the Tricon expression of interest.

The foregoing will involve discussions between A&M and each of BMO, Lanterra, Tricon and Adelaide, among others.

- 5. Adelaide and Hi Rise will facilitate such discussions and ensure satisfaction of A&M's requests for such documents and information as are reasonably necessary to the fulfillment of the mandate described above.
- 6. Representative Counsel will continue to negotiate toward a Settlement Agreement.
- 7. The Rep Counsel Charge in respect of the Post-Appointment Fees (as such terms are defined in the Appointment Order) will be increased to the maximum amount of \$350,000.

GREGORY AZEFF<mailto:gazeff@millerthomson.com>
Partner

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millerthomson.com<http://millerthomson.com><http://millerthomson.com><http://www.millerthomson.com>

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APPENDIX R

Garrafa, Shallon

From: Birch, John <jbirch@casselsbrock.com>
Sent: Wednesday, August 28, 2019 6:06 PM
To: Azeff, Gregory
Cc: Hall, Geoff R.; Voudouris, Stephanie; Ellis, Larry
Subject: [**EXT**] Final Settlement offer from Borrower
Attachments: 2019-08-22 Final Settlement offer from Borrower.PDF

Dear Mr. Azeff,

Attached is the final settlement offer made by the Borrower, a copy of which was provided to Hi-Rise Capital Ltd. ("HRC"). The board of HRC (composed of experienced, independent individuals) met to review and consider the offer. The board believes that this offer, as a key part of the overall Lanterra transaction, represents the best available return to participants in the syndicated mortgage. As you are aware, the Lanterra deal was the result of two sales processes run by BMO over approximately two years, during which time the market was thoroughly canvassed. As you and the two members of your committee would have gleaned from the meeting with BMO's representatives on August 19, the sales process was thorough, run by experienced people, and is therefore unimpeachable.

HRC intends to proceed with the meeting of investors on September 25, 2019, a date to which you previously agreed. HRC will shortly be sending investors a short update about the date of the meeting. Investors will subsequently receive a package of materials in advance of the meeting dealing with the transaction. As you know, HRC intends to rely on a Grant Thornton report analyzing the offer and the alternatives.

Finally, let me emphasize in writing what I have said to you on many occasions over past weeks. Further delays in completing a transaction—whether delays in the Lanterra deal or delays that result from your apparent attempts to re-market the property or seek other bidders—will have a serious negative effect on those investors who invested on a non-registered basis. Registered plan investors have priority over non-registered investors and thus every dollar of interest that accrues daily on registered plan debt (about \$10,000 per day based on my rough calculation), and every dollar of reduction in a purchase price that is likely to occur if an extended or new sales process occurs, will directly reduce the recovery of non-registered investors (and, in a worst case scenario, the recovery of registered investors will also be reduced).

We trust that you and your committee will immediately retain A&M as financial advisor and let it do its work. This can occur without the need for any coercive court order. We and the Borrower have always encouraged you and your committee to retain a financial advisor but it is unfortunate that your committee previously thought that someone it did not need a financial advisor.

We believe that investors will see the value in the deal that is being offered to them, even if you or your committee appears to have difficulty doing so.

To quote from Spock in *Star Trek: The Wrath of Khan*, "Logic clearly dictates that the needs of the many outweigh the needs of the few." I would hope that you and your committee (i.e., the few) will put aside their personal grievances and recognize that the needs of the many (i.e., all other investors) require that this deal proceed, for the benefit of all.



John Birch

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2100 Scotia Plaza, 40 King Street West, Toronto, Ontario, M5H 3C2
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HRC analysis of payout to investors

Registered Investors

Initial Investment	\$100,000	100%
Interest Paid to Investor (already paid):	\$17,766	18%
Initial Repayment on closing:	\$100,000	100%
Partial Interest Payment on closing:	\$542	1%
Remaining Interest Payment converted to VTB Mortgage paid on Mortgage Maturity:	\$23,818	24%
Total Repayment on \$100,000 Investment:	\$142,127	142%

Non-registered Investors

Initial Investment	\$100,000	100%
Interest Paid to Investor (already paid):	\$21,339	21%
Initial Repayment on closing:	\$0	0%
Remaining Mortgage paid on VTB Maturity:	\$40,551	41%
Remaining Mortgage Payment from holdings guarantee paid on project completion:	\$22,973	23%
Total Repayment on \$100,000 Investment:	\$84,863	85%

APPENDIX S



September 4, 2019

Via E-Mail

jbirch@casselsbrock.com

tel: +1 416 860 5225

fax: +1 416 640 3057

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

Attention: Greg Azeff and Stephanie De Caria

Dear Mr. Azeff and Ms. De Caria:

Re: Transaction regarding Adelaide Street Lofts Inc.

As you are aware, we are counsel for Hi-Rise Capital Ltd. ("HRC").

It is with deep frustration that my client, HRC, learned that Miller Thomson LLP in its capacity as representative counsel ("**Rep Counsel**") would be bringing a motion to vary the Order of Justice Hainey dated March 21, 2019, to remove the ability of HRC to hold a vote of investors in respect of the proposed transaction with Lanterra Developments and the corresponding settlement offer made by Adelaide Street Lofts Inc. (the "**Borrower**") to pay proceeds to participants in the mortgage (collectively, the "**Transaction**").

At all times, HRC has tried to facilitate the provision of information to Rep Counsel to allow it and members of the investor committee (the "**Committee**") to fully understand the sales process that led to the Transaction and why there is no feasible alternative.

At all times, HRC has been committed to providing access to information to allow Rep Counsel to independently assess the Transaction. Unfortunately, it appears that Rep Counsel has potentially misunderstood at least some of the information that it has been provided. For example, Rep Counsel asserted last month that BMO had told it that the joint venture structure of the Transaction was something that Jim Neilas had conceived and, further, that Mr. Neilas met privately with representatives of Lanterra (and excluded BMO) over a period of multiple months to come up with the terms of the joint venture upon which investors will vote.

Since this was entirely inconsistent with information that we had received from BMO, we set up a series of meetings with you during the week of August 13, 2019. We also had a conference call with BMO representatives, during which time BMO made it clear that these beliefs about the sales process were entirely incorrect. BMO stated unequivocally that it came up with the joint venture structure around November 2018 because there was no cash offer made for the property during the 2018 sales process and because BMO believed that such structure was the



best way to maximize value and reduce risk for the purchaser in light of the serious obstacles to developing the site. BMO also confirmed that it was involved throughout the development of the joint venture structure. Further, there was only one occasion where BMO did not participate in the discussions with Lanterra, being a meeting over drinks attended by Mr. Neilas where he wanted to assess whether the Borrower could trust Lanterra to carry out the development. Mr. Neilas reported back to BMO immediately after this meeting about what occurred. Furthermore, this meeting took place on March 19, 2019, long after BMO proposed the joint venture structure (November 2018) and long after the LOI with Lanterra was executed (February 13, 2019).

In the spirit of full transparency, we did not even ask that you take our word for what BMO told us. We scheduled a meeting with BMO (attended by both of you as well as two members of the Committee) on August 19, 2019. During this meeting, which ran for more than 90 minutes, both you and the Committee members were free to ask (and did ask) any and all questions about the sales process run by BMO, including details of the bids received. In addition, BMO confirmed the above-noted information about how the joint venture came about and the fact that BMO was involved at all stages of the Lanterra deal.

In addition, at the August 19 meeting, BMO confirmed explicitly that Tricon had no interest in acquiring the property and had withdrawn the letter of intent and draft agreement of purchase and sale. Tricon's decision to pull its offer confirmed that it was not a serious bidder. Given your reaction at the meeting, it is apparent that questions posed by you and the two Committee members were answered satisfactorily.

Since the terms of the Lanterra transaction were disclosed to you many months ago, both we and counsel for the Borrower have strongly encouraged you to hire a financial advisor to review the terms. Throughout this process (and to this very day), we made it clear that the Borrower would pay for such an advisor. In fact, we recommended that FAAN be retained and even assisted in preparation of a retainer letter. However, you advised that members of the Committee believed that they had the necessary expertise to evaluate the offer without external assistance. Although we disagreed with that position (since the Committee members do not appear to possess the requisite financial and restructuring skills or expertise), we could not force Rep Counsel and the Committee to engage an expert.

By the middle of August, however, you advised that the Committee did, in fact, now wish to engage a financial expert. Thereafter, we spoke with you concerning a protocol to ensure that the expert had sufficient access to information to properly carry out its mandate. Counsel for the Borrower and we had what I thought was a productive conference call with you on August 21, at which time the parties appeared to have reached agreement in principle to allow your financial expert to have access to the information it was likely to require. You wanted the terms to be set out in a court order and Mr. Azeff tasked Ms. De Caria to prepare such an Order so that we and counsel for the Borrower could consider it.



Unfortunately, the order that Ms. De Caria sent to us on August 22, 2019 bore no resemblance to the terms of the agreement in principle reached the previous day. That draft order was clearly an investigatory receiver order that was so broad in scope that it would have allowed your expert to review any project of HRC (not just Adelaide). Further, the order was broad enough that it did not provide appropriate protection for privileged communications. Section 4 of the order was even in the nature of a *Mareva* injunction. Section 3 granted relief against third parties that are strangers to the proceedings and who would have no notice that the order would affect them. I hope that you can appreciate that we were shocked that the draft order did not respect the substance of what was discussed and agreed to the previous day.

Despite what has happened in the past, HRC still fully supports the retention of a financial investigator by Rep Counsel and the Committee. The fundamental problem is that Rep Counsel wants a court order that extends far beyond what is reasonable and, in fact, affects the rights of third parties (such as potential bidders) without their consent.

We simply cannot understand the apparent mistrust of Committee members. At all times, we and the Borrower have been open and have facilitated access to information. The Committee is exhibiting a level of paranoia that, I fear, is going to doom the Transaction and leave participants in the mortgage in a much worse state. We are concerned that the Committee members' animus towards Mr. Neilas is clouding their judgment, preventing them from soberly considering the Transaction, and potentially scuppering the best available deal that exists (and which was the product of BMO's thorough, professional sales process over the last two years).

HRC is also concerned that the delays in the process caused by Rep Counsel and the Committee are prejudicing the interests of investors that advanced their money personally ("Non-Registered Investors"), rather than through a registered plan. Over the past many months, both our firm and HRC has drawn to your attention the fact that there are two separate sets of investors, each with different interests. First, there is a group of investors that advanced funds through their registered plan (RRSP or TFSA) ("Registered Investors"). Under the terms of the syndicated mortgage, Registered Investors have priority within the mortgage and thus they are entitled to recover their principal and interest in full before any amount is paid to Non-Registered Investors. Registered Investors represent roughly one-third of principal outstanding. The remainder of the investors are Non-Registered Investors, representing approximately two-thirds of principal. Every day that the vote of investors is delayed and/or the Transaction is not approved, the greater the prejudice suffered by Non-Registered Investors. I have roughly calculated that around \$5,000 in daily interest accrues in favour of Registered Investors and, as such, Non-Registered Investors' position is further subordinated daily by this amount, thereby affecting their recovery.

There is no need for the vote of investors (scheduled to take place on September 25, 2019 at the time of the investors' meeting) to be delayed. Rep Counsel has selected Alvarez & Marsal



("A&M") as its advisor but has apparently declined to formally engage it yet. We urge you to immediately retain A&M so that it can do its analysis.

HRC will facilitate getting A&M the information that it requires for its mandate. HRC is simply offering, yet again, what it has offered to provide all along, which is access to information and relevant parties. For example, assuming that A&M wishes to obtain information directly from BMO, either we or counsel for the Borrower can facilitate that. Although we believe that a coercive, wide-ranging order along the lines that you seek would be completely inappropriate in the circumstances, there is nothing preventing you from getting A&M to start its work now. We strongly encourage you to do so. If you later obtain an order that goes beyond what HRC already provides to A&M voluntarily, HRC will of course cooperate. But we think that your proposed order is unnecessary.

In closing, let me reiterate that HRC has provided, and will continue to provide, broad cooperation and access to information. I again ask you to take up HRC on its invitation to facilitate access to information about the Transaction so that A&M can begin its analysis immediately. There is no reason for any further delay.

Yours truly,

Cassels Brock & Blackwell LLP

John N. Birch

Services provided through a Professional Corporation

JNB/ph

LEGAL*48746883.3



MILLER THOMSON
AVOCATS | LAWYERS

MILLER THOMSON LLP
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P.O. BOX 1011
TORONTO, ON M5H 3S1
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T 416.595.8500
F 416.595.8695

MILLERTHOMSON.COM

September 6, 2019

Sent via E-mail

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

File: 0242209.0001

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

Attention: John Birch

Dear Mr. Birch:

Re: Transaction regarding Adelaide Street Lofts Inc.

Representative Counsel and the Official Committee wholly disagree with the allegations and assertions contained in your letter dated September 4, 2019. We maintain our position as set out in our letter dated August 29, 2019.

May we please have a copy of the Joint Venture Agreement between 263 Holdings Inc. and Lanterra Developments Limited forthwith?

Thank you.

Yours truly,

MILLER THOMSON LLP

Per:

Greg Azeff
Partner
GA/sg
cc: Geoff Hall

41855942.1

APPENDIX T

August 29, 2019

Via Regular Mail

Re: Investment in mortgage registered against title to the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the "Adelaide Mortgage")

Dear Investor,

You are receiving this letter because you are an investor in the Adelaide Mortgage.

Hi-Rise Capital Ltd. ("Hi-Rise") is very pleased to advise that the Hi-Rise independent board of directors has now reviewed, satisfied itself and recommends that investors accept the settlement proposal from the Borrower (the "Settlement").

The Settlement will provide for significant recoveries to investors in the Adelaide Mortgage.

Hi-Rise is also pleased to advise that Grant Thornton Limited has completed a full report on the settlement process, and the settlement itself.

The report includes some key findings in the following areas:

1. The integrity and thoroughness of the sales process;
2. The economics of the settlement versus the economics of the alternatives;
3. The measures Hi-Rise Capital (and its principals) undertook to ensure the best possible results for investors.

Grant Thornton is a leading accounting and advisory firm that provides audit services to the real estate and financial services industries. They have extensive experience with regulatory compliance and corporate reorganizations.

MEETING VENUE CONFIRMED

We are also pleased to advise that a venue has now been set for the upcoming investor meeting on September 25, 2019 (the "Adelaide Investor Meeting"). The Adelaide Investor Meeting will be held at the InterContinental Toronto Centre located at 225 Front St. W., Toronto, ON M5V 2X3.

An Information Statement will be distributed in the next few weeks. The Information Statement will include a disclosure package for you to make an informed decision on the settlement.

HI-RISE ADELAIDE MORTGAGE INVESTOR MEETING

The Adelaide Investor Meeting details are as follows:

Date: Wednesday September 25, 2019 at 1:00 pm

Location: InterContinental Toronto Centre

Address: 225 Front St. W., Toronto, ON M5V 2X3

Address:
130 King St. W., Suite 1800
Toronto, ON, M5X 1E3

Phone/Fax:
416-865-3398
416-865-3399

Email:
info@hirisecapital.com
www.hirisecapital.com

Should you require any assistance with your investment, please do not hesitate to contact Jason Riddle, Manager of Investor Relations at Jason@hirisecapital.com or at 416-865-3398 x 252 between the hours of 9:00 AM to 5:00 PM Monday to Friday.

Sincerely,
Hi-Rise Capital Ltd.



Noor Al-Awqati
Chief Operating Officer and Principal Broker

Address:
130 King St. W., Suite 1800
Toronto, ON, M5X 1E3

Phone/Fax:
416-865-3398
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APPENDIX U



MILLER THOMSON
AVOCATS | LAWYERS

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MILLERTHOMSON.COM

August 30, 2019

Important Update on Proposed Transaction and Proposed Vote

TAKE NOTICE THAT THE OFFICIAL COMMITTEE DOES NOT SUPPORT THE SETTLEMENT PROPOSED BY HI-RISE AND ADELAIDE

Pursuant to the Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated March 21, 2019 (the "**Order**") Miller Thomson LLP ("**Representative Counsel**") was appointed to represent all individuals and/or entities ("**Investors**") that hold an interest in a syndicated mortgage, administered by Hi-Rise Capital Ltd. ("**Hi-Rise**"), in respect of the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the "**Property**") owned by Adelaide Street Lofts Inc. ("**Adelaide**") and the proposed development known as the "Adelaide Street Lofts" (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 <https://www.millerthomson.com/en/hi-rise/>.

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.

As set out in our Communication dated July 4, 2019, a copy of which is posted on the 'Communications' section of the Website, the main holding company and owner of Adelaide entered into a joint venture agreement ("**JV Agreement**") with Lanterra Developments Limited (in trust) or its designee ("**Lanterra**") to complete the development of the Property (the "**Lanterra Transaction**").

We understand that Hi-Rise delivered a notice to all Investors dated August 27, 2019, advising Investors that it will be holding a meeting on Wednesday September 25, 2019, at which Investors will vote on a proposed settlement regarding their investments in the mortgage on the Property (the "**First Notice**"). We also understand that Hi-Rise delivered another notice to all Investors dated August 29, 2019, setting a location for such meeting (the "**Second Notice**").

Please be advised that:

1. Representative Counsel and the Official Committee do not support the vote proceeding on September 25, 2019. Representative Counsel has not been provided with access to the information it has requested to assess the Lanterra Transaction or the circumstances around the proposed sale of the Property, or to make a recommendation to Investors on the vote.
2. Representative Counsel advised Hi-Rise and Adelaide (together, the "**Companies**") that it will be bringing a motion to the Court to appoint a financial advisor empowered by the Court to obtain and analyze the missing information that it needs, and to defer the vote pending the financial advisor's completion of its mandate. As such, Representative Counsel told Hi-Rise **NOT** to send the First Notice, but Hi-Rise proceeded to send the First Notice nonetheless. Hi-Rise delivered the Second Notice thereafter.

3. Representative Counsel has advised the Companies of its objection to the vote and the need for transparent disclosure of information. A copy of a letter from Representative Counsel to counsel to the Companies setting out this position in detail is attached.
4. The Official Committee was in the process of negotiating a settlement agreement with the Companies (the "**Settlement Agreement**") to set out, among other things, amounts to be paid to Investors. However, given Representative Counsel's views regarding the need for the court appointment of a financial advisor with the power to act and collect information independently of the Companies, Representative Counsel is not in a position to meaningfully negotiate a Settlement Agreement at this time.
5. Representative Counsel will post another Communication on the Website once the motion date with the Court is scheduled.

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



MILLER THOMSON
AVOCATS | LAWYERS

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40 KING STREET WEST, SUITE 5800
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TORONTO, ON M5H 3S1
CANADA

T 416.595.8500
F 416.595.8695

MILLERTHOMSON.COM

August 29, 2019

Sent via E-mail

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

Greg Azeff
Direct Line: 416.595.2860
Direct Fax: 416.595.8695
gazeff@millerthomson.com

File: 0242209.0001

Attention: Geoffrey Hall

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

Attention: John Birch

Dear Counsel:

Re: 263 Adelaide Street West, Toronto Ontario (the "Property") and proposed development known as the "Adelaide Street Lofts" (the "Project")

And Re: Final Settlement Offer from Borrower

As you know, Miller Thomson LLP was appointed as Representative Counsel pursuant to the Order of Justice Hainey dated March 21, 2019 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 owned by Adelaide Street Lofts Inc. ("**Adelaide**").

We refer to your email message of 6:06 pm EST on August 28, 2019. We acknowledge your advice that the board of Hi-Rise believes that the final settlement offer attached to your email (the "**Final Offer**") represents the best available return to participants in the syndicated mortgage. Regrettably, in the circumstances we are unable to reach the same conclusion. We take this opportunity to explain our rationale, as well as respond to the balance of your email.

First, we wish to make clear that the Official Committee's position is not some sort of veiled attempt to frustrate the proposed transaction contemplated under the Joint Venture Agreement between 263 Holdings Inc. and Lanterra Developments Limited ("**Lanterra**") (the "**Lanterra Transaction**") or advance a personal grievance against Adelaide or its principal, Mr. Jim Neilas. Rather, the Official Committee has taken its mandate seriously and has attempted to ensure that the Investors are not effectively forced into voting on a transaction based on selective information.

The overarching position of the Official Committee is that any assurances of "transparency" have been undermined by inappropriate and relentless attempts by Adelaide to control access to information and stage manage the review process. We have repeatedly advised you that the Official Committee will not voluntarily accept any course that places Mr. Neilas as the information "gatekeeper". We remind you that Mr. Neilas personally stands to make millions of dollars if the Project is successful, while seeking Investor approval to compromise claims of millions of dollars in lost investment funds.

In such circumstances we do not view the Official Committee's requirements for a truly independent and court-empowered financial advisor as unreasonable. We acknowledge that Hi-Rise and Adelaide have encouraged the Official Committee to retain a financial advisor. However, Adelaide and Hi-Rise have at all times attempted to limit the scope of the financial advisor's authority and mandate to a level unacceptable to the Official Committee and inconsistent with the required transparency. We are of the view that Representative Counsel and the Official Committee should be directing the financial advisor's role, given that they are the financial advisor to us and ultimately to the Investors as a whole. To date, the Official Committee's attempts to retain a financial advisor on its own terms have been rejected.

Second, we have repeatedly confirmed that, based upon the information available to us thus far, the marketing and sales process undertaken by BMO Capital Markets Real Estate Inc. ("BMO") was thorough, and we concede that it was run by experienced personnel. However, we do not agree that it is thus rendered "unimpeachable". It is our view that the marketing and sales process – and the related facts and circumstances – should not be immune from further independent, unfettered scrutiny in the manner determined by the Official Committee. The Official Committee's skepticism has also been heightened by BMO's confirmation that Mr. Neilas met with Lanterra's CEO alone (*ie*, without BMO's supervision) at the onset of the joint venture discussions. Specifically, BMO advised Representative Counsel that Mr. Neilas and Lanterra's CEO met over "casual beers". The Official Committee views this as fundamentally inconsistent with a sales process purportedly intended to mimic an ordinary-course court-supervised sales process. It may be that BMO's process did lead to the best possible transaction. However, given the massive investment losses that you expect Investors to sustain, we are of the view that the Official Committee is entitled to make its own inquiries, without regard for Mr. Neilas' preferences in that regard.

Third, Representative Counsel has advised on numerous occasions that it agrees Hi-Rise should be permitted to conduct an Investor vote with respect to any final settlement offer. However, we remind you that our agreement to an Investor vote on September 25 2019 was predicated on consensual court approval of the proposed financial advisor and its mandate. As noted above, H-Rise and Adelaide subsequently refused to consent to same. Accordingly, in response to the draft notice of the meeting forwarded by Mr. Brinn Norman of Hi-Rise on September 27 2019, Representative Counsel advised Hi-Rise not to send the notice to Investors as our instructions were to bring a motion seeking court appointment of the financial advisor and a stay of the vote. While Hi-Rise is free to put any proposed settlement offer to an Investor vote, our view is that such vote cannot reasonably occur before the Lanterra Transaction and the circumstances leading to it have been thoroughly and independently reviewed, without the restrictions for which Hi-Rise and Adelaide advocate.



Despite repeated requests, Mr. Neilas still refuses to provide a copy of the joint venture agreement with Lanterra to Representative Counsel, the Official Committee and the larger body of Investors, yet is seeking to ask Investors to effectively vote blindly on a settlement arising from that very same agreement. We note that Adelaide has thus far only permitted Representative Counsel and the Official Committee to attend the offices of its counsel and review the documents under the supervision of counsel. Such restrictive conditions prohibit Representative Counsel and the Official Committee from having meaningful discussions with documents in front of us, and therefore, from being able to fully formulate a recommendation to Investors in respect of the vote.

Fourth, with respect to your contention that further delay will have a negative financial effect on Investors, unfortunately that is another conclusion that we cannot accept in the absence of true transparency. Furthermore, it must be noted that the continued resistance to an independent, unfettered, court-sanctioned inquiry into the Company's proposed transaction in respect of the Property and related circumstances does not bolster the Official Committee's confidence in that conclusion. Further, the appointment of a financial advisor and the Order that the Official Committee is seeking is not coercive by any means, but rather seeks to obtain information the Official Committee needs in order to effectively represent the interests of Investors.

We have been trying to put in place a court-empowered financial advisor for months, but all such efforts have been rejected by Adelaide and Hi-Rise. We have throughout the course of this process advised you that such access is a necessary precondition to any endorsement of the BMO process and negotiation toward a settlement. As such, we view Adelaide and Hi-Rise as entirely at fault for any lack of progress toward a settlement and any threat to the Lanterra Transaction.

Finally, we wish to comment on the Final Offer attached to your email. It overstates the benefits of the Final Offer to Investors, as it seems to characterize interest payments previously received by Investors as recoveries, when they are not. It fails to highlight that non-registered Investors will receive nothing on closing, with all other recoveries being highly contingent. It also fails to highlight the highly speculative nature of the "Remaining Mortgage Payment from holdings guarantee". We view the Final Offer as providing little incentive for support among non-registered Investors. In short, the Official Committee is of the view that a cash sale of the Property at a substantially lower valuation than that attributed to the Lanterra Transaction would be preferable to non-registered Investors.

In summary, we are of the view that neither Representative Counsel nor the Official Committee can fulfil their respective Court-prescribed mandates and duties under the constraints that you seek to impose. As such, we intend to bring a motion for an Order, among other things, staying the vote and appointing a financial advisor on terms acceptable to the Official Committee, not those dictated by parties that would reap massive profits from the proposed Lanterra Transaction.



We trust that the foregoing is sufficiently clear.

Yours truly,

MILLER THOMSON LLP

Per:

Greg Azelf
Partner
GA/sg

40778490.1



APPENDIX V

September 3, 2019

Via Regular Mail

Re: Investment in mortgage registered against title to the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the "Adelaide Mortgage")

Dear Investor,

In anticipation of the September 25, 2019 investor meeting where your voice will be heard and your vote will count, Hi-Rise Capital Ltd. ("Hi-Rise") has been diligently working with Grant Thornton Limited to review the process that the borrower and Hi-Rise have undertaken since June 2017 to exit the syndicated mortgage market including the sale of the 263 Adelaide Street Property (the "Property").

As indicated in recent correspondence, attached herein is the report (the "Report") of the financial advisor, Grant Thornton Limited, on behalf of Hi-Rise. Grant Thornton was engaged to report on the sales process undertaken to market the property and the investor settlement proposal that was put forward by the developer of the Property.

Highlights of the Report are as follows:

1. Schedule I Banks have been reluctant to provide construction financing to projects with a syndicated mortgage in place leading Hi-Rise to begin an exit process from the syndicated mortgage industry;
2. A review of two construction reports from Ellis Don and Ledcor that detail the construction challenges of the Property;
3. Based on detailed discussions and review of documentation with BMO, the sales process was thorough and yielded the true value of the property;
4. The alternatives scenarios if the settlement is not agreed to are less favorable to investors.

INVESTOR RECOVERY

We are also pleased that the report confirms substantial recoveries for investors.

THE NUMBERS AND PERCENTAGES WILL BE ADJUSTED DEPENDING ON THE DATE OF CLOSING AND ANY OTHER CHANGES THAT COULD EFFECT PRINCIPAL AND/OR INTEREST

The following is the reports' conclusions on recovery for a registered Investor and a non-registered Investor who has invested \$100,000 in the Hi-Rise Mortgage:

Address:
130 King St. W., Suite 1800
Toronto, ON, M5X 1E3

Phone/Fax:
416-865-3398
416-865-3399

Email:
info@hirisecapital.com
www.hirisecapital.com

Registered Investor:

Initial Investment	\$100,000	100%
Interest Paid to Date to Investors ⁽¹⁾ :	\$17,776	18%
Initial Repayment of Principal ⁽²⁾ :	\$100,000	100%
Partial Interest Payment on Closing ⁽³⁾ :	\$542	1%
Remaining Interest Payment converted to Second Mortgage paid on Mortgage Maturity ⁽⁴⁾ :	\$26,770	27%
Total Repayment on \$100,000 Investment:	\$145,079	145%

Notes:

- (1) Interest Paid to date to investors varies from one investor to the other depending on how much interest has been received to date.
(2) Payment is expected on October 16, 2019.
(3) Payment is expected on October 16, 2019.
(4) Payment is expected on or before October 16, 2022.

Non-Registered Investor:

Initial Investment	\$100,000	100%
Interest Paid to Date to Investors ⁽¹⁾ :	\$21,339	21%
Initial Repayment of Principal ⁽²⁾ :	\$0	0%
Remaining Mortgage paid on Mortgage Maturity ⁽³⁾ :	\$39,074	39%
Remaining Mortgage paid from holdings guarantee paid on project completion ⁽⁴⁾ :	\$22,973	23%
Total Repayment on \$100,000 Investment:	\$83,387	83%

Notes:

- (1) Interest Paid to date to investors varies from one investor to the other depending on how much interest has been received to date.
(2) Due to priority of registered investors, non-registered investors will not be paid any amount on closing, October 16, 2019.
(3) Payment is expected on or before October 16, 2022.
(4) Payment is expected on project completion for October 16, 2025.

In subsequent correspondence, to follow shortly, you will be asked to vote for or against this settlement proposal.

The management and board of Hi-Rise are recommending that investors vote in favour of this settlement. The Report supports this recommendation for the reasons outlined in the report.

Sincerely,
Hi-Rise Capital Ltd.



Noor Al-Awqati
Chief Operating Officer and Principal Broker

Address:
130 King St. W., Suite 1800
Toronto, ON, M5X 1E3

Phone/Fax:
416-865-3398
416-865-3399

Email:
info@hirisecapital.com
www.hirisecapital.com



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:



Dan Wootton, CIRP, LIT



Rob Stelzer, CPA, CA, CIRP, LIT

<u>Contents</u>	
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 November 13, 2018
Breakeven	Estimated sale price in receivership needed to obtain comparable cash proceeds to the Transaction	Ledcor Report	Construction cost report by the Ledcor 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 Conservatory Group
Hi-Rise	Hi-Rise Capital Ltd.	LOI	Letter of Intent
Cassels	Cassels Brock & Blackwell LLP	LP	Limited Partnership between Lanterra and Holdings
CIM	Confidential Information Memorandum	LPA	Loan Participation Agreement between Investors and Hi-Rise
Colliers Appraisal	Colliers International appraisal of the Project dated July 16, 2018	Management	Jim Neilas and Peter Neilas
Community Trust	Community Trust Company	Meridian	Meridian Credit Union
Conservatory LOI	JV structure bid of the Conservatory Group dated October 10, 2018	Meridian Demand Letter	Demand letter of Meridian dated June 14, 2019
CW Appraisal	Cushman & Wakefield appraisal of the Project dated February 27, 2018	Permitted Alterations	The approved alterations to the Heritage Wall pursuant to the HEA
EDR	Electronic Data Room	Priority	Amounts asserted by Management to be payable in priority to Investors in a receivership
EllisDon Report	Construction cost report by EllisDon dated June 19, 2018	Proforma	Proforma financial forecast as at May 8, 2019 prepared by Lanterra
Financial Advisor	Grant Thornton Limited	Project	47-storey condominium to be constructed on the Property
FSRA	Financial Services Regulatory Authority	Property	263 Adelaide Street West, Toronto, ON
FSCO	Financial Services Commission of Ontario	Sale Process	The process to sell the Property which was conducted by BMO
HEA	Heritage Easement Agreement		
Heritage Wall	The north façade of the Property, a designated heritage site per the <i>Ontario Heritage Act</i>		
High	High recovery liquidation scenario		
Holdings or Vendor	263 Holdings Inc.		
Institutional Investor	BRE Fund L.P., 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 O – Estimate of Recovery in Receivership

Appendix A – Engagement Letter

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 – Ledor 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 – CW Appraisal

Appendix K – Colliers Appraisal

Appendix L – Tricon LOI

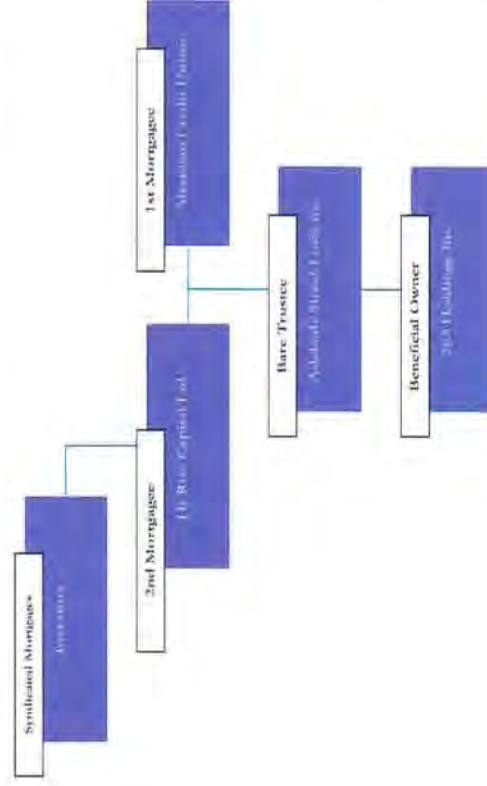
Appendix M - Investor Recovery Analysis

Appendix N – Proforma

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-façade 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 Ledor Report and EllisDon Report are attached hereto as **Appendix “E”** and **Appendix “F”**, respectively.



Based on our review of the Ledor 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 48-storey 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 Ledor 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 ten first round bids – there were three offers for the Widmer Property alone and zero 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 three bidders were then asked to make second round submissions. Only two 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 to 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 two out of the four 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 37 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, zero 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:

1. 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:

- 1) 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)
- 2) 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

(CAD\$)

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

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**” scenario) and the breakeven purchase price after accounting for the Priority (the “**Breakeven With Priority**”).

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:

1. **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.
4. **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\$)

	Notes	Low	Break-even without Priority	Break-even 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	1,280,000
Property Taxes	4)	900,709	776,855	776,855	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	891,179
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)				
Professional 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 Priority)					
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%

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 Break-even 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 Break-even 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.

APPENDIX "M" - ESTIMATED TRANSACTION RECOVERY TO INVESTORS

Hi-Rise Capital Ltd.

August 30, 2019



(CDN\$)

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

Notes

- 1) Analysis based on assumed closing date of 16-Oct-19. Senior Mortgage amount shown here is the maximum amount per the Term Sheet. Management expects that the maximum amount will be drawn upon.
- 2) Estimate based on amount per demand letter sent by Meridian's counsel on June 14, 2019 plus 4 months of accrued interest of \$83,000 per month.
- 3) Per BMO E-mail provided by Management.
- 4) Property tax bill shows \$156,382.38 owing as at July 11, 2019. Three months of estimated accrued taxes added.
- 5) Partial reimbursement for Hi-Rise legal fees.
- 6) Partial reimbursement of Stikeman fees for zoning.
- 7) Partial reimbursement of McCarthy fees for Adelaide.
- 8) Reimbursement of Miller Thomson legal fees as representative counsel. Accounting system report showed \$109,750 incurred, but estimate per Management includes provision for future costs.
- 9) Per Management.
- 10) Holdings is asking for a payment of \$1 million of proceeds. Holdings has indicated that it is requesting these funds because:
 - a) Advances from Holdings of \$3.0 million as evidenced by financial statements of Adelaide Street Lofts. Per Company records, approximately \$952 thousand of this relates to after September of 2017 when Hi-Rise was no longer able to raise SMI funding.
 - b) Uncollected developer fees of \$2.54 million from Adelaide Street Lofts Inc. per accounting system records.
- 11) Per Term Sheet.
- 12) We understand that VTB Mortgage will be paid upfront to Investors.
- 13) Assuming VTB Mortgage paid at end of year 2. If the VTB Mortgage exists in year 3 then a further 8% interest would be paid to Investors (approximately \$1.5 million).
- 14) The Company has supplied interest and principal amounts as at June 30, 2019. The Financial Advisor has added 3.5 months to estimate as at October 16, 2019 (the expected closing date). The Financial Advisor has not accounted for any interest accruing after October 16, 2019. We understand from the Company that their position is that no further interest would accrue to Registered Investors after that date since the payment to them would be considered full payment of their principal, but interest would certainly accrue to Non-Registered Investors.

APPENDIX "O" - ESTIMATED RECEIVERSHIP RECOVERY TO INVESTORS

Hi-Rise Capital Ltd.

August 30, 2019



(CDN\$)

	Notes	Low	Breakeven without Priority	Breakeven 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)				
Professional 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 Priority)					
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%

Notes

- 1) Please see the Report for full explanation of the sales prices used. Scenarios assume 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) Low scenario assumes no zoning work done and cash offer received for the land for \$44 million. High and Mid scenarios assume further zoning changes, including an amendment to the HEA would be required in order to cost effectively build the Project and related gross sale values. Management has estimated the estimated legal, architectural and structural engineering professional fees in order to prepare revised drawings, submit to the city counsel and seek heritage approval, including possible appeals and public notice to be between \$450,000 to \$750,000.
- 3) Sales commissions and selling costs have assumed to be 1.75% of the gross sale price.
- 4) \$156,000 arrears plus accrued property taxes to October 16, 2019 plus monthly taxes of \$496,000 per year for the requisite number of months. Property taxes have been obtained from the Adelaide tax bills.
- 5) Amount owing under the mortgage.
- 6) Mortgage carrying costs of \$83,000 a month until October 16, 2019 plus an additional 6, 9 or 12 months. Note that these projections assume that the mortgagee provides financing for zoning and other costs to maximize recoveries - this may not be the case.
- 7) Low scenario assumes all staff let go and property sold 'as is'. Mid and high scenarios assumes access to the premises and the engagement of certain Hi-Rise staff to assist the receiver at a cost of \$76,798/month (see supporting schedule) for the requisite number of months.
- 8) Legal fees have been estimated in order to address the anticipated enforcement action to request the appointment of a Receiver.
- 9) Receiver's fees have been estimated based on the creation of a liquidation work plan, assumed time commitments and based on estimated rates. See Receiver Budget for further detail. Breakeven estimate is midpoint of Low and High estimates.
- 10) Receiver's Counsel fees have been estimated based on expected time commitments and rates see Receiver's Counsel Budget for further detail. Breakeven estimate is midpoint of Low and High estimates.
- 11) Management has indicated that they assert a priority for these costs 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". According to Management, the above represents a preliminary estimate but there are further costs, in addition to those above, which would be

APPENDIX "O" - MONTHLY OFFICE COSTS IN RECEIVERSHIP**Hi-Rise Capital Ltd.****August 30, 2019****One Month of Office Related Costs**

Consulting/Payroll	\$ 50,000
Rent	13,769
Insurance (Office)	1,189
Telephones, Internet & IT support	4,640
Bank fees	450
Security	750
Storage	3,500
Moving	2,500
	<u>\$ 76,798</u>

Note: The above costs were obtained from Hi-Rise and adjusted based on the elimination of payroll, office supplies, miscellaneous expenses, fees and reduced insurance coverage.



Taking Possession

	Rate	Hours		Cost (\$)	
		Low	High	Low	High
Managing Director	575	10	15	5,750	8,625
Manager	375	10	15	3,750	5,625
Associate	175	50	80	8,750	14,000
Totals		70	110	18,250	28,250

Operational

	Rate	Hours		Cost (\$)	
		Low	High	Low	High
Managing Director	575	10	40	5,750	23,000
Manager	375	40	60	15,000	22,500
Associate	175	100	200	17,500	35,000
Totals		150	300	38,250	80,500

Financial

	Rate	Hours		Cost (\$)	
		Low	High	Low	High
Managing Director	575	5	10	2,875	5,750
Manager	375	5	10	1,875	3,750
Associate	175	30	60	5,250	10,500
Totals		40	80	10,000	20,000

Realization of Assets

	Rate	Hours		Cost (\$)	
		Low	High	Low	High
Managing Director	575	150	250	86,250	143,750
Manager	375	175	250	65,625	93,750
Associate	175	200	300	35,000	52,500
Totals		525	800	186,875	290,000

Reporting

	Rate	Hours		Cost (\$)	
		Low	High	Low	High
Managing Director	575	150	250	86,250	143,750
Manager	375	150	250	56,250	93,750
Associate	175	200	300	35,000	52,500
Totals		500	800	177,500	290,000

Estimated Disbursements (5%)

21,544 35,438

Total

452,419 744,188

HST

58,814 96,744

Grand Total

\$ 511,233 \$ 840,932

APPENDIX "O" - RECEIVER'S COUNSEL'S COSTS

Hi-Rise Capital Ltd.

August 30, 2019



(CDN\$)

Realizations

	Rate*	Hours		Cost (\$)	
		Low	High	Low	High
Sr. Partner	750	50	100	37,500	75,000
Partner	400	150	250	60,000	100,000
Associate	250	200	300	50,000	75,000
Totals		400	650	147,500	250,000

Reporting

	Rate	Hours		Cost (\$)	
		Low	High	Low	High
Sr. Partner	750	15	25	11,250	18,750
Partner	400	35	60	14,000	24,000
Associate	250	50	75	12,500	18,750
Totals		100	160	37,750	61,500

Compliance Review

	Rate	Hours		Cost (\$)	
		Low	High	Low	High
Sr. Partner	750	20	15	15,000	11,250
Partner	400	50	100	20,000	40,000
Associate	250	150	250	37,500	62,500
Totals		220	365	72,500	113,750

Estimated Disbursements (5%)

12,888 21,263

Grand Total
\$ 270,638 \$ 446,513

*Rates inclusive of HST

APPENDIX W

Garrafa, Shallon

From: Andrew Joyner <ajoyner@triconcapital.com>
Sent: Saturday, September 07, 2019 6:36 AM
To: Azeff, Gregory; Alan Leela
Cc: De Caria, Stephanie
Subject: **[**EXT**]** Re: Status

This should also be shared with the court:

As I reflect on the conversation, perhaps there was room for a misunderstanding as our discussion on the advanced nature of the court process and site complexity related to Tricon's pursuit. Regardless, Tricon did not formally withdraw its APS.

On Sep 5, 2019, at 12:26 PM, Andrew Joyner <ajoyner@triconcapital.com> wrote:

This is not correct, we remain interested, and would have told you if we were pencils down. Our discussion centered on the advanced nature of the process and site complexity.

From: Azeff, Gregory <gazeff@millerthomson.com>
Sent: Thursday, September 5, 2019 10:37 AM
To: Alan Leela <aleela@triconcapital.com>; Andrew Joyner <ajoyner@triconcapital.com>
Cc: De Caria, Stephanie <sdecaria@millerthomson.com>; Parth Taneja <parth@parhtaneja.com>
Subject: Status

Gentlemen: We have been provided with a copy of a report from Grant Thornton regarding the proposed sale of the Adelaide property. The report states that BMO advised GT that Tricon has withdrawn its APS and is no longer interested in pursuing the property. Is this correct? As you know, we are continuing to try to open a path through the court for Tricon to move forward but will cease such attempts if Tricon is no longer interested.

Thanks,
Greg

GREGORY AZEFF
Partner

Miller Thomson LLP
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, Ontario M5H 3S1
Direct Line: +1 416.595.2660
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APPENDIX X

AIRD BERLIS

Steven L. Graff
Direct: 416.865.7726
E-mail: sgraff@airdberlis.com

September 6, 2019

BY EMAIL

Mr. John N. Birch
Ms. Stephanie Voudouris
CASSELS BROCK & BLACKWELL LLP
2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

Mr. John L. Finnigan
THORNTON GROUT FINNIGAN LLP
Suite 3200, 100 Wellington St. W.
Toronto-Dominion Centre
Toronto, ON M5K 1K7

Mr. Gregory Azeff
Ms. Stephanie De Caria
MILLER THOMSON LLP
Suite 5800, 40 King Street West
Scotia Plaza
Toronto, ON M5H 3S1

Dear Sir/Madam:

Re: Meridian Credit Union Limited loan to Adelaide Street Lofts Inc.

We have been retained as counsel for Meridian Credit Union Limited ("**MCU**"), a secured lender of Adelaide Street Lofts Inc., ("**Adelaide**") pursuant to a Credit Agreement between MCU and Adelaide dated April 2, 2018, as accepted by Adelaide on April 12, 2018 (and as may be amended from time to time). As you are likely aware, MCU is the senior secured lender of Adelaide and has a first mortgage position registered against the property at 263 Adelaide Street West, Toronto, Ontario (the "**Property**") to secure Adelaide's outstanding indebtedness owed to it, the principal amount of which is \$16,414,000.00, plus interest, fees, penalties and other costs that have accrued on this principal sum.

The credit facility between MCU and Adelaide is in default and demand for repayment was made by MCU's former counsel on June 14, 2019. Accompanying the demand for repayment was a Notice of Intention to Enforce Security delivered pursuant to s.244(1) of the Bankruptcy and Insolvency Act (Canada) (the "**BIA**"). Copies of the June 14, 2019 letter and notice of intention to enforce are enclosed.

It was only in the last week of August 2019 that MCU became aware of the proceedings that have been taking place before Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List), which proceedings were commenced on March 19, 2019 (the

"Representative Counsel Proceedings") and which resulted in an Order made on March 21, 2019 and multiple endorsements thereafter. Clearly, based upon the endorsements made, there have been many attendances in connection with this matter, yet, despite the fact that it all relates to the Property on which MCU has a first mortgage, MCU has never been provided with notice of said proceedings. This is not acceptable. MCU is the first secured creditor of Adelaide and the Property and ought to have been provided with notice of these proceedings, even if relief was not sought specifically against MCU.

We have written to Adelaide and have advised that absent repayment by October 31, 2019, and, in the interim, committing to a satisfactory Forbearance Agreement (the date for finalization of which we have set as the end of business on September 12, 2019), MCU will be bringing an application to appoint a receiver of its choice to engage in a sale process in connection with the Property.

At this point in time, we do not wish to deliver a Notice of Appearance in connection with the ongoing Representative Counsel Proceedings. We do expect that you will provide us with copies of any materials relating to any court attendances in the Representative Counsel Proceedings.

Yours truly,

AIRD & BERLIS LLP



Steven L. Graff
/SLGmam

c.c. McCarthy Tetrault LLP – Geoff R. Hall, Junior Sirivar and Jonathan D. See

c.c. Neilas Inc., Demetrios Neilas and Ioannis Neilas

c.c. Meridian Credit Union Limited

APPENDIX Y

September 10, 2019

Via Regular Mail

Re: Investment in mortgage registered against title to the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the "Adelaide Mortgage")

Dear Investor,

We regret to inform you that since our most recent correspondence relating to the proposed settlement presented to Hi-Rise from the Borrower (the "**Settlement**"), we have received correspondence from the first mortgage lender, Meridian Credit Union (hereafter referred to as "Meridian") that it will be enforcing its security. We have reviewed the Rep Counsel web site and it appears that Miller Thompson has not disclosed this material information to you (as of 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. Meridian is ready to take control of the property and ultimately your investment recovery.

As you are aware, Meridian holds the first mortgage on the property. Earlier this year, the term of this loan matured, and the loan was not renewed. Meridian was willing to hold off on enforcing its rights to take over the property, knowing that a sale of the property was imminent.

Meridian is no longer willing to wait for a payout of their first mortgage. Meridian has notified the borrower they will be putting the property into receivership on October 31, 2019.

What does this mean for you as an investor? Once Meridian puts the Borrower into receivership, Meridian will control the sale of the property which will end the possibility of the proposed transaction with Lanterra.

If this receivership occurs, your vote on the Settlement will no longer be required nor will it have any effect. The vote will be cancelled and Meridian will control the asset, and the recovery to investors.

It is likely that Meridian would not proceed with the receivership, if they can be convinced that the Borrower has a transaction that is certain, and that will close immediately following the vote. The Lanterra transaction is the only transaction that will achieve this certainty given the time constraints imposed by Meridian. At the same time, Miller Thompson is proceeding with a court motion to stop the September 25th vote.

We want to make it clear to you, in no uncertain terms, that if Miller Thompson is successful in delaying the September 25th vote, there will never be a vote. You, along with all the other

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416-865-3399

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www.hirisecapital.com

investors, will not have a say on the outcome of your investment. Meridian will dictate the outcome of a sale, and they are not obligated to take your financial interests into account. They are only obligated to show that they went through a thorough sales process (which the Borrower has already done).

Hi-Rise believes that should a distress sale of the property take place, on an "as-is" basis by Meridian, the losses to investors will be substantial. According to reports commissioned by Hi-Rise, we expect non-registered investors to lose as much as 90% to 100% of their principal in a liquidation scenario.

If you want to have a voice in the outcome of your investment, we urge you to communicate with Miller Thompson immediately, and let them know that you want to decide the outcome of what happens to your investment through a vote on the proposed Settlement. Greg Azeff can be contacted directly by telephone at (416)-595-2660 or by email at gazeff@millerthomson.com

Sincerely,
Hi-Rise Capital Ltd.



Noor Al-Awqati
Chief Operating Officer and Principal Broker

Address:
130 King St. W., Suite 1800
Toronto, ON, M5X 1E3

Phone/Fax:
416-865-3398
416-865-3399

Email:
info@hirisecapital.com
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APPENDIX Z



MILLER THOMSON
AVOCATS | LAWYERS

MILLER THOMSON LLP
SCOTIA PLAZA
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P.O. BOX 1011
TORONTO, ON M5H 3S1
CANADA

T 416 595.8500
F 416 595.8695

MILLERTHOMSON.COM

September 11, 2019

Important Update on Proposed Transaction and Meridian Credit Union

TAKE NOTICE THAT THE OFFICIAL COMMITTEE DOES NOT SUPPORT THE SETTLEMENT PROPOSED BY HI-RISE AND ADELAIDE

Introduction

Pursuant to the Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated March 21, 2019 (the "**Order**") Miller Thomson LLP ("**Representative Counsel**") was appointed to represent all individuals and/or entities ("**Investors**") that hold an interest in a syndicated mortgage, administered by Hi-Rise Capital Ltd. ("**Hi-Rise**"), in respect of the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the "**Property**") owned by Adelaide Street Lofts Inc. ("**Adelaide**") and the proposed development known as the "Adelaide Street Lofts" (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 <https://www.millerthomson.com/en/hirise/>.

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.

Lanterra Transaction and Vote

As you know, the main holding company and owner of Adelaide entered into a joint venture agreement ("**JV Agreement**") with Lanterra Developments Limited (in trust) or its designee ("**Lanterra**") to complete the development of the Property (the "**Lanterra Transaction**"). Certain details on the Lanterra Transaction are set out in our Communication dated July 4, 2019, a copy of which is posted on the 'Communications' section of the Website.

As you also know, Hi-Rise has scheduled a meeting on Wednesday September 25, 2019, at which Investors will vote on a proposed settlement of the Investors' investments in the mortgage on the Property (the "**Vote**"), which proposed settlement arises from the JV Agreement.

Update to Investors regarding Vote and Meridian Credit Union

We have been provided with a copy of the communication from Hi-Rise to Investors dated September 10, 2019 regarding enforcement by Meridian Credit Union ("**Meridian**"). Please be advised as follows:

1. By letter dated September 6, 2019, Meridian advised that it only became aware of these proceedings and the Order in the last week of August 2019.
2. In its letter, Meridian advised that it would be bringing a Court application to appoint a receiver if it did not receive repayment by October 31, 2019 and in the interim, enter into a satisfactory forbearance agreement with Adelaide.

3. Since receiving this letter, Representative Counsel has been in discussions with the lawyers for Meridian regarding its potential enforcement, the Property, and the outcome for Investors.
4. As set out in our last communication dated August 30, 2019, Representative Counsel and the Official Committee **STILL** have not been provided with access to the information it has requested in order to assess the Lanterra Transaction or the circumstances around the proposed sale of the Property, or to make a recommendation to Investors on the Vote scheduled for September 25, 2019. The Official Committee requires that it be empowered obtain information independently, and without interference from Hi-Rise or Adelaide, which the companies object to.
5. In particular, and despite repeated requests, Adelaide still has not provided Representative Counsel with a copy of the JV Agreement. However, Hi-Rise is asking Investors on September 25, 2019 to effectively vote blindly on a proposed settlement that arises from this JV Agreement.
6. Adelaide and/or its principal, Mr. Jim Neilas, stand to make millions of dollars through the Lanterra Transaction if the Project is successful, while seeking Investor approval to compromise their claims in lost investment funds.
7. Without the necessary information, Representative Counsel and the Official Committee are not in a position to advise Investors whether the Lanterra Transaction truly represents the only available option or the best possible outcome for Investors.
8. Accordingly, at this time, Representative Counsel and the Official Committee still object to the Vote being held on September 25, 2019.
9. Approximately two-thirds of Investors do not hold their investments through a registered retirement saving plan (RRSP), which means that these Investors are "non-registered Investors". Under the terms of Hi-Rise's proposed settlement (on which Hi-Rise is asking all Investors to Vote), "non-registered Investors" will not receive repayment on their principal for at least 2 to 3 years.
10. The parties are attending at Court on Monday September 16, 2019 to provide the Court with an update in respect of this proceeding. Representative Counsel intends to advise the Court on the correspondence from Meridian.
11. Representative Counsel will be seeking the Court's advice and direction on whether the Vote should proceed on September 25, 2019 in light of the current circumstances.
12. Representative Counsel is still in continued discussions with the lawyers for Meridian, and will provide an update with respect to Meridian's position as soon as one becomes available.

Communicating with Representative Counsel

We sincerely apologize if the communications issued by Hi-Rise are causing confusion or concern to Investors. Such communications are being issued by Hi-Rise without notice to Representative Counsel. We note that Hi-Rise has invited Investors to communicate with Mr. Greg Azeff of Miller Thomson LLP directly, resulting in a flood of communications and questions from Investors that are clearly based upon incorrect and/or incomplete information provided by Hi-Rise.

We understand that you have questions regarding the communications you have received, and your inquiries are important to us. In order for Representative Counsel to effectively track and address all inquiries, we ask that Investors direct their inquiries to Representative Counsel's email at HiRiseCapital@millertthomson.com.

Please be advised that Representative Counsel will not be providing individual responses to emails. This means that you will not be receiving a direct response from Representative Counsel through this email account. 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

APPENDIX AA

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/>.

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.

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-Awqati"

**Noor Al-Awqati
Chief Operating Officer**

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:

1. 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
3. 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 <https://www.millerthomson.com/en/hirise/> 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.

Table of Contents

Overview	7
How to Fill Out the Form of Proxy	7
How to Vote	8
Background to the Meeting	8
Classes of Investors	9
Offer to Settle	9
Representative Counsel and the Investor Committee	11
Timing of Settlement Implementation	13
Anticipated Return of Capital upon Implementation of the Settlement	14
Initial Investment and Disclosure	15
Hi-Rise Waives Recovery of Administrative Costs	15
Alternatives to the Settlement	15
Disposition of the Property	16
Key Items to Highlight in the Property Transaction	19
Key Terms of the Hi-Rise Mortgage	19
Key terms of the Remaining Mortgage	20
Other Material Factors Affecting Recovery of the Original First Mortgage	21
Recommendation of Hi-Rise Capital Board of Directors	22
Support of Grant Thornton as Financial Advisors To Hi-Rise Capital	22
Classification of Investors:	24
First and Second Priority	24
Meeting	24
Entitlement to Vote	25
Weight of Voting	25
Appointment of Proxyholders and Voting	25
Approval of Settlement	26
Court Approval of Settlement	26

**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 <https://www.millerthomson.com/en/hi-rise/> by Representative Counsel are specifically incorporated by reference into, and form an integral part of this Information Statement.

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.

OVERVIEW	<p>You are receiving this Information Statement as you hold an interest in a syndicated mortgage, administered by Hi-Rise Capital Ltd. (“Hi-Rise Capital”) in respect of the property municipally known as 263 Adelaide Street West, Toronto Ontario (the “Property”) and the proposed development known as the “Adelaide Street Lofts” (the “Project”).</p> <p>As set out in the notice of meeting enclosed herein, a meeting of the investors of the syndicated mortgage (the “Investors”) will be held on September 25, 2019 to consider and vote on a settlement proposal proposed by 263 Adelaide Street Lofts (the “Borrower”) in respect of the amounts owing to Investors under the syndicated mortgage.</p> <p>This Information Statement includes background information to the Settlement and a description of your rights as an Investor for the upcoming Meeting.</p>
HOW TO FILL OUT THE FORM OF PROXY	<p>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</p>

	<p>vote in accordance with your instructions. <u>They do not have the 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.</p>
HOW TO VOTE	<p>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.</p> <p>Voting can be completed as follows:</p> <p>In Person: Attend the Meeting in person on September 25, 2019 and vote by ballot.</p> <p>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:</p> <p style="text-align: center;">TSX Trust Company 301-100 Adelaide Street West Toronto, Ontario, M5H 4H1</p> <p>Internet: Go to www.voteproxyonline.com. Enter the 12-digit control number printed on the form of proxy and follow the instructions.</p> <p>Fax: 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.</p> <p>IMPORTANT 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 not be counted.</u> If you appoint a Management Proxyholder, <u>your vote for or against the Settlement will be voted according to the instructions you have provided.</u> Management Proxyholders cannot change your vote.</p>
BACKGROUND TO THE MEETING	<p>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 "Hi-Rise Mortgage").</p>

	<p>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.</p> <p>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.</p> <p>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 “Required Majorities”).</p> <p>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.</p> <p>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 Settlement</i>”.</p>
CLASSES OF INVESTORS	<p>There are two types of Investors, registered and non-registered. Those Investors who invested their cash investment directly through Hi-Rise are considered “Non Registered Investors”. Investors who invested via a Registered Savings Plan or Tax Free Savings Account through Community Trust Company are considered “Registered Investors”.</p>
OFFER TO SETTLE	<p>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:</p>

	<ul style="list-style-type: none">• an immediate repayment to all Investors of least \$17,513,000 on closing (the “Initial Settlement Payment”);• Investors holding back a second mortgage (the “Remaining Mortgage”) for the balance of their principal investment totalling an estimated \$18,270,000.• 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. <p>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.</p> <p>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.</p> <p>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).</p> <p>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.</p> <p>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.</p> <p>The total payments expected to be paid to Investors pursuant to the Settlement are as follows:</p> <ul style="list-style-type: none">• Interest Paid to Date Investors:<ul style="list-style-type: none">○ Registered Accounts: \$3,094,770○ Non-registered Accounts: \$7,430,963
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	<ul style="list-style-type: none"> • Initial Settlement Payment: \$17,513,989 • Remaining Mortgage: \$18,270,000 <p>If the Settlement is approved, the total payments to Investors is estimated to be \$43,783,989 (approximately \$22.2 million for Registered Investors and \$21.6 million for Non-Registered Investors), which is \$8,458,511¹ less than the current amount outstanding under the Loan Agreement, being \$ 52,242,500.²</p> <p>The Settlement sets out that Hi-Rise must use commercially reasonable efforts to seek the approval of the Settlement by way of a court order issued by the Ontario Superior Court of Justice (Commercial List) (the “Final Order”). Until such time as a Final Order is received, the Settlement as described above will not be binding.</p> <p>As noted above, in order to obtain the Final Order, Hi-Rise is required to obtain the approval of the Settlement by a majority of Investors representing two thirds in value of the Hi-Rise Mortgage.</p>
<p>REPRESENTATIVE COUNSEL AND THE INVESTOR COMMITTEE</p>	<p>On March 21, 2019, pursuant to the Order, Miller Thompson LLP was appointed as representative counsel of the Investors (“Representative Counsel”). The role of Representative Counsel is to negotiate an early exit of the Hi-Rise Mortgage with the Borrower and to present the Settlement to Investors for their approval.</p> <p>However as of the date of this Information Statement, Hi-Rise has not been able to come to a resolution on a Settlement with Representative Counsel.</p> <p>With input and direction from a committee of Investors consisting of Marco Arquilla, Nikolas Tsakonacos, Vipin K. Kery and Michael Singh (the “Investor Committee”), Representative Counsel informed the Borrower of the following decisions:</p> <ol style="list-style-type: none"> 1. Declined to retain a financial advisor to assist in determining the fairness of the transaction and the Settlement as Representative Counsel advised that Nikolas Tsakonacos, a member of the Investor Committee and a chartered accountant had taken the position that he could provide the

¹ 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.

² 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.

	<p>review and analysis of the Settlement to the Investors without retaining an advisor.</p> <ol style="list-style-type: none">2. 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.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.4. Applied to the Court to cancel the Trustee Application and stop the vote.5. Threatened to apply to the Court for a receivership over the Borrower. <p>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.</p> <p>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.</p> <p>Upon reviewing and considering the Settlement, the Investor Committee and Representative Counsel have decided to recommend AGAINST the Settlement.</p>
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	<p>The Investor Committee cited the following reasons for recommending against the Settlement:</p> <ol style="list-style-type: none"> 1. They do not believe that the Property yielded no all cash offers during the sales process; 2. 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 3. They believe that the cash payable on closing should be higher for Non-Registered Investors. <p>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.</p> <p>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 Tsakonakos, 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:</p> <p>https://www.iiroc.ca/Documents/2002/096BD07D-5B7B-46D1-9C23-0C971C4256B5_en.pdf.</p>
TIMING OF SETTLEMENT IMPLEMENTATION	<p>It is currently anticipated that the Settlement will be implemented in accordance with the following timetable:</p> <p>September 25 2019 Meeting to vote on the Settlement</p>

	<div>October 2019Final Order</div> <div>December 2019Initial Repayment to Investors</div> <div>December 2021 (or December, 2022)Remaining Mortgage Repayment (this payment may be delayed by one year at the option of the Purchaser)</div> <div>December, 2024 (estimated)Remaining Mortgage Repayment from the Holdings Guarantee after the project is complete</div> <div>Note that the dates above assume a closing in December 2019. These dates will be adjusted accordingly if the closing date is amended.</div>																																				
ANTICIPATED RETURN OF CAPITAL UPON IMPLEMENTATION OF THE SETTLEMENT	<div>For illustrative purposes upon the implementation of the Settlement, Registered Investors could receive a payment of an estimated \$142,127 on an initial investment of \$100,000 and a Non-Registered Investor could receive a payment of \$84,853.</div> <div>The below table sets out the estimated payments to be made to Registered and Non-Registered Investors under the Settlement:</div> <div><div>Registered Investor:</div><table><tr><td>Initial Investment</td><td>\$100,000</td><td>100%</td></tr><tr><td>Interest Paid to Date to Investors⁽¹⁾:</td><td>\$17,766</td><td>18%</td></tr><tr><td>Initial Repayment of Principal⁽²⁾:</td><td>\$100,000</td><td>100%</td></tr><tr><td>Partial Interest Payment on Closing⁽³⁾:</td><td>\$542</td><td>1%</td></tr><tr><td>Remaining Interest Payment converted to Second Mortgage paid on Mortgage Maturity⁽⁴⁾:</td><td>\$26,770</td><td>27%</td></tr><tr><td>Total Repayment on \$100,000 Investment:</td><td>\$145,079</td><td>145%</td></tr></table><div>Non-Registered Investor:</div><table><tr><td>Initial Investment</td><td>\$100,000</td><td>100%</td></tr><tr><td>Interest Paid to Date to Investors⁽¹⁾:</td><td>\$21,339</td><td>21%</td></tr><tr><td>Initial Repayment of Principal⁽²⁾:</td><td>\$0</td><td>0%</td></tr><tr><td>Remaining Mortgage paid on Mortgage Maturity⁽³⁾:</td><td>\$40,551</td><td>39%</td></tr><tr><td>Remaining Mortgage paid from holdings guarantee paid on project completion⁽⁴⁾:</td><td>\$22,973</td><td>23%</td></tr><tr><td>Total Repayment on \$100,000 Investment:</td><td>\$84,863</td><td>83%</td></tr></table><div>Notes:</div><div>(1) Interest paid to date to Investors varies from one investor to the other depending on how much interest has been received to date.</div><div>(2) There is no payment made to Non-Registered Investors in October 2019.</div></div>	Initial Investment	\$100,000	100%	Interest Paid to Date to Investors ⁽¹⁾ :	\$17,766	18%	Initial Repayment of Principal ⁽²⁾ :	\$100,000	100%	Partial Interest Payment on Closing ⁽³⁾ :	\$542	1%	Remaining Interest Payment converted to Second Mortgage paid on Mortgage Maturity ⁽⁴⁾ :	\$26,770	27%	Total Repayment on \$100,000 Investment:	\$145,079	145%	Initial Investment	\$100,000	100%	Interest Paid to Date to Investors ⁽¹⁾ :	\$21,339	21%	Initial Repayment of Principal ⁽²⁾ :	\$0	0%	Remaining Mortgage paid on Mortgage Maturity ⁽³⁾ :	\$40,551	39%	Remaining Mortgage paid from holdings guarantee paid on project completion ⁽⁴⁾ :	\$22,973	23%	Total Repayment on \$100,000 Investment:	\$84,863	83%
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	<p>(3) Payment is expected on or before October 2022.</p> <p>(4) Payment is expected on project completion for October 2025.</p>
INITIAL INVESTMENT AND DISCLOSURE	<p>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.</p> <p>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 Investors relied on disclosed a potential recovery as low as 0% to 21% of principal invested.</p>
HI-RISE WAIVES RECOVERY OF ADMINISTRATIVE COSTS	<p>Following the syndicated mortgage market "freeze" in 2017, Hi-Rise, and its principals have carried the cost of administering the Hi-Rise Mortgage. As at the date of this Information Statement, Hi-Rise and its principals have incurred costs of approximately \$9,000,000. Hi-Rise has waived its right to recover this cost and has limited its application for costs to the legal fees associated with the Settlement.</p>
ALTERNATIVES TO THE SETTLEMENT	<p>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:</p> <ul style="list-style-type: none"> • Commence litigation with the Borrower; • Initiate bankruptcy proceedings under the <i>Bankruptcy and Insolvency Act</i>;

	<ul style="list-style-type: none"> • Complete a court ordered sale by first mortgagee; • Initiate an insolvency proceeding under the <i>Companies and Creditors Arrangement Act</i>; or • Leave the Hi-Rise Mortgage in place indefinitely and seek alternatives to constructing the building. <p>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.</p> <p>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.</p>
<p>DISPOSITION OF THE PROPERTY</p>	<p><i>The Exit Process</i></p> <p>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.</p> <p>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.</p> <p><i>Engagement of BMO</i></p> <p>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.</p>

	<p>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.</p> <p><i>Sale Process</i></p> <p>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.</p> <p>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.</p> <p>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.</p> <p><i>Joint Venture Agreement</i></p> <p>On April 10, 2019, the purchaser, being Lanterra Developments Limited (the "Purchaser") entered into a binding term sheet ("Term Sheet") with 263 Holdings Inc. (the "Vendor") 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 "Property Transaction").</p> <p>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</p>
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	<p>of the Remaining Mortgage, the terms of which are set out below under the section "<i>Key Terms of the Remaining Mortgage</i>".</p> <p>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:</p> <ul style="list-style-type: none">• 0.75% of the gross sales value as a developer fee; and• \$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). <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>Under the terms of an amending agreement entered into between the Vendor and the Purchaser on June 28th, 2019, the Term Sheet will</p>
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	<p>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.</p>
<p>KEY ITEMS TO HIGHLIGHT IN THE PROPERTY TRANSACTION</p>	<p>The Property Transaction was specifically negotiated with the interests of the Investors and Hi-Rise in mind, as evidenced by the following:</p> <ul style="list-style-type: none"> • 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; • 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. • 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. • the Purchaser has agreed to provide a full corporate guarantee on the Remaining Mortgage. The Purchaser’s corporate guarantee is considered strong by BMO.
<p>KEY TERMS OF THE HI-RISE MORTGAGE</p>	<p>Under the terms of the Hi-Rise Mortgage, the Borrower is entitled to renew the mortgage annually, and is permitted to accrue interest until completion of the Project. There is no restriction on how long the Borrower may accrue interest and the Borrower is under no obligation to pay the mortgage out until the completion and sale of the Project.</p>

	<p>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.</p> <p>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.</p>
<p>KEY TERMS OF THE REMAINING MORTGAGE</p>	<p>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.</p> <ul style="list-style-type: none"> • The Remaining Mortgage will have the following terms and conditions: <ul style="list-style-type: none"> ○ 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. ○ 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. ○ Interest on the Remaining Mortgage will be payable at five percent per annum during the first two years

	<p>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.</p> <ul style="list-style-type: none">○ 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.○ 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. <ul style="list-style-type: none">• 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.• 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.
OTHER MATERIAL FACTORS AFFECTING RECOVERY OF THE ORIGINAL FIRST MORTGAGE	<p>The following is a list of factors supporting Hi-Rise's decision to complete the Property Transaction and move forward with the Settlement:</p> <p><i>First Mortgage Loan Non-Renewal:</i></p> <p>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.</p> <p><i>Dramatic Increase in Construction Costs:</i></p> <p>Construction costs have increased dramatically. The current zoning for the Property has rendered construction cost prohibitive and changes to the zoning are required.</p>

	<p><i>Sale Process:</i></p> <p>The sale process yielded no all cash offers that offered an acceptable recovery for the Hi-Rise Mortgage (only joint venture offers).</p>
<p>RECOMMENDATION OF HI-RISE CAPITAL BOARD OF DIRECTORS</p>	<p>The boards of directors of Hi-Rise Capital Ltd. recommend that the Investors vote FOR or YES to the resolution to approve the Settlement.</p> <p>In reaching its decision to support and recommend the Settlement, the board concluded that the Settlement would:</p> <ul style="list-style-type: none"> • provide Investors with an efficient process to achieve an early exit of the Hi-Rise Mortgage; • provide Investors with more control over the process than if recovery of the investment was completed through litigation or sold under court order by Meridian as a distressed asset; • provide Investors with direct independent legal representation ensuring that Investor's interests are strongly advocated; • provide for a settlement of, and consideration for, all claims by Investors; • add certainty to the ultimate outcome of the Hi-Rise Mortgage; and • avoid a distress sale which would likely result in a significantly lower price for the Property and a worse recovery for Investors.
<p>SUPPORT OF GRANT THORNTON AS FINANCIAL ADVISORS TO HI-RISE CAPITAL</p>	<p>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:</p> <p>Report on Hi-Rise Operations</p> <ul style="list-style-type: none"> • Hi-Rise's bank statements;

	<ul style="list-style-type: none">• Project appraisals and valuations;• Sample of Investor loan participation agreements, Investor disclosure packages and mortgage loan documents;• Sample Hi-Rise marketing materials; and• Correspondence from Investors. <p>Based on their review of the above, Grant Thornton concluded:</p> <ul style="list-style-type: none">• The actions taken by Hi-Rise have been well documented and supported;• Hi-Rise completed an adequate credit analysis prior to making amendments to the mortgage commitment;• 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);• Hi-Rise did consider project viability and recovery when setting mortgage lending limits and subsequent amendments;• Investor payments were paid in accordance with the respective loan agreements and Investors were provided with adequate disclosure in respect of the risk of their investment;• There was no co-mingling of Investor proceeds;• The marketing materials did not contain information that was inconsistent with Investor disclosure;• The financial data provided to Investors was consistent with the <i>pro forma</i> financials statements and claims regarding the status of the Project; and• The Investors received consistent updates regarding any material changes to the Project <p>Report on the Settlement</p> <ul style="list-style-type: none">• 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.• The sales process undertaken by BMO was thorough and yielded the best price
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	<ul style="list-style-type: none"> • 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 • Complexity of construction due to Heritage aspect of property is primary reason no cash offers have been received for the Property <p>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.</p> <p>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.</p>
CLASSIFICATION OF INVESTORS: FIRST AND SECOND PRIORITY	<p>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.</p> <p>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.</p>
MEETING	<p>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.</p> <p>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.</p> <p>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.</p>

	<p>A representative of Hi-Rise will preside as the chair of the Meeting (the “Chair”) 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 “Settlement Resolution”).</p> <p>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.</p>
ENTITLEMENT TO VOTE	<p>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.</p>
WEIGHT OF VOTING	<p>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.</p>
APPOINTMENT OF PROXYHOLDERS AND VOTING	<p>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.</p> <p>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.</p> <p>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</p>

	<p>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.</p>
APPROVAL OF SETTLEMENT	<p>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.</p>
COURT APPROVAL OF SETTLEMENT	<p>If the Settlement is accepted by the Required Majorities, Hi-Rise will bring a motion to the Court for:</p> <ul style="list-style-type: none"> (a) Final approval of the Settlement; (b) Further direction pursuant to section 60 of the <i>Trustee Act</i> as is appropriate to permit it to carry out its role in a manner consistent with the loan participation agreement and mortgage participation agreements; and (c) Approval of the conduct and fees of Representatives Counsel.

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:

1. 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:

1. Closing (net funds from the \$20 million in excess of the first mortgage loan of \$36,575,000);
2. New 2nd mortgage in the amount of \$18,270,000
3. 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;
2. 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;
3. 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.

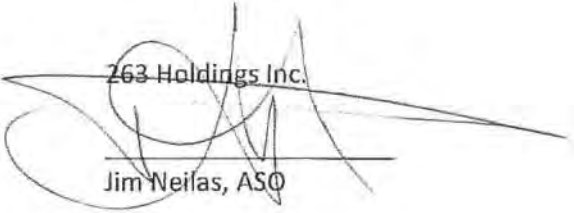
We are willing to provide a corporate guarantee of the main company holding assets (263 Holdings Inc.). We are also willing to provide a personal guarantee for the debt instrument.

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 Neilas, ASO

SCHEDULE "C"

ORDER

See attached.

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

THE HONOURABLE

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THURSDAY, THE 21st

MR. JUSTICE HAINEY

DAY OF MARCH, 2019

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



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

ORDER

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

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

SERVICE

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

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

APPOINTMENT OF REPRESENTATIVE COUNSEL

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

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

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

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

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

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

TERMINATION OF EXISTING ADVISORY COMMITTEE

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

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

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

APPOINTMENT OF OFFICIAL COMMITTEE

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

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

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

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

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

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

INVESTOR INFORMATION

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

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

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


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

FEES OF COUNSEL

which amount shall exclude disbursements incurred by Representative Counsel

17. **THIS COURT ORDERS** that the Representative Counsel shall be paid by the Borrower its reasonable fees ~~and disbursements~~ 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~~ ^{its} *Post-Appointment Fees* on a monthly basis, forthwith upon rendering its accounts to the Borrower for fulfilling its mandate in accordance with this Order, and subject to such redactions to the invoices as are necessary to maintain solicitor-client privilege between the Representative Counsel and the Official Committee and/or Investors. In the event of any disagreement with respect to such fees and disbursements, such disagreement may be remitted to this Court for determination. Representative Counsel shall also obtain approval of its fees and disbursements from the Court on notice to the Official Committee.

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

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

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

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

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

GENERAL

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

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

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

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

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

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

Attention: Gregory Azeff & Stephanie De Caria

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

POWERS OF HI-RISE CAPITAL LTD.

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

INVESTOR AND COURT APPROVAL

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

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

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

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

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

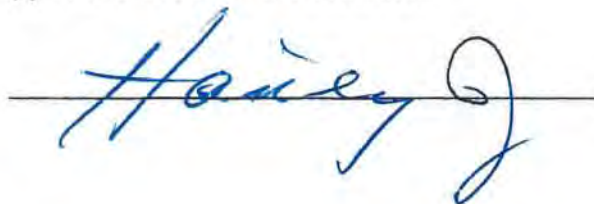
31. **THIS COURT ORDERS** that if at the Meeting a majority in number of the investors representing two-thirds in value present and voting either in person or by proxy cast votes in favour of the proposed Transaction and Distribution, Hi-Rise may proceed to bring a motion to this court, on a date to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

- (a) final approval of the Transaction and Distribution;
- (b) further directions 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.

A handwritten signature in blue ink, appearing to read "Haley", is written over a horizontal line. The signature is stylized with a large initial 'H' and a long, sweeping tail that loops around.

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:

$$\begin{pmatrix}) \\) \\) \\) \\) \\) \\) \end{pmatrix}$$

[insert corporation name above]

Per:

Name: Name

Title: Title

I/We have the authority to bind the corporation

Schedule "B"

Official Committee Establishment Process

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


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

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

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

Establishment of the Official Committee

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

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

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

4. An Official Committee Applicant must not have a conflict of interest with the interests of other investors.
5. Representative Counsel will review applications submitted by the Applications Deadline and will create a short list (the "**Short List**") of no more than 20 candidates who should be extended invitations for an interview. As soon as reasonably practicable, the interviews will be conducted by teleconference by Representative Counsel (the "**Interviews**"). For consistency in evaluating each Official Committee Applicant,
 - (a) all of the interviews will follow the same structure and will be approximately the same length (about half an hour); and
 - (b) substantially similar questions will be posed to each interviewee.
6. Following the Interviews, Representative Counsel will select seven Official Committee Applicants (the "**Short List Candidates**") who, in Representative Counsel's judgment, are the best candidates to serve as either (i) a member of the Official Committee (a "**Member**") or (ii) an alternate Member should any of the Members resign or be removed from the Official Committee (an "**Alternate**"). From the Short List Candidates, Representative Counsel will select five Members and two Alternates. In determining the Short List Candidates, Representative Counsel reserves the right to consider, among other factors: (i) experience with governance or the mortgage industry; (ii) education; (iii) answers to interview questions; (iv) the amount of the Official Committee Applicant's SMI.
7. As soon as reasonably practicable, Representative Counsel will submit the Short List Candidates to the Court for approval, along with each of their applications. A summary of each Member and Alternate and their respective qualifications will also be submitted to the Court.

Schedule "C"

Official Committee Protocol

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

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

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

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

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

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

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

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

HI-RISE CAPITAL LTD.
Applicant

SUPERINTENDENT OF FINANCIAL SERVICES *et. al.*
Respondents

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

ORDER

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

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

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 **HIGHLIGHTED** TEXT ABOVE THE BOXES

1. Proposed Transaction

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

FOR

AGAINST

☐☐

PLEASE PRINT NAME

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

Signature of registered owner(s)

Date (MM/DD/YYYY)

Proxy Voting – Guidelines and Conditions

1. THIS PROXY SHOULD BE READ IN CONJUNCTION WITH THE MEETING MATERIALS PRIOR TO VOTING.
2. 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.
3. 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.
4. 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.
7. Guidelines for proper execution of the proxy are available at www.stac.ca. Please refer to the Proxy Protocol.

APPENDIX BB

12:30



John >

	Amount	Balance
073	0.03	650.68
73	-87.50	563.18
073	0.02	563.20
073	0.02	563.22
073	0.02	563.24
73	-87.50	475.74
073	0.02	475.76
C	1,005.97	1,481.73
C	1,098.04	2,579.77
073	0.15	2,579.92
073	0.21	2,580.13
73	-91.88	2,488.25
073	0.21	2,488.46
C	2,104.11	4,592.57
073	0.35	4,592.92

119

Delivered

Today 12:10 PM

We have to talk ASAP

Judge said he is stopping
the vote on Monday so you
should call me.



iMessage



APPENDIX CC

Garrafa, Shallon

From: De Caria, Stephanie
Sent: Thursday, September 12, 2019 8:26 PM
To: Birch, John
Cc: Azeff, Gregory; Voudouris, Stephanie; Hall, Geoff R.; Novek, Mira
Subject: Re: **[**EXT**]** RE: Hi-Rise Capital Ltd. [MTDMS-Legal.FID7573766]

Hi John: We will address your concerns regarding privilege in a revised draft, which we will circulate either tonight or tomorrow morning. With respect to third parties, we do not agree. We consider this to be analogous to a receivership order which typically contains similar language.

We do not agree that this goes beyond what A&M needs to carry out its mandate. First, you are not in a position to restrict the A&M mandate that the Committee requires be fulfilled if it is to properly consider the merits of the Lanterra deal. Second, this is the level of disclosure that the Committee require in connection with such consideration.

With respect to previous discussions, we had been prepared to consider a staged approach as there was time to go back to court if we were not receiving an appropriate level of cooperation. If the [September 25](#) vote is to proceed, we no longer have time for that staged approach. In addition, the Committee's skepticism with respect to the Lanterra deal has only grown as a result of the company's objections to the level of disclosure requested, and its recent attempts to undermine the credibility of the Committee members and Representative Counsel.

In any event, this Order is very similar to the draft I forwarded you a few weeks ago after one of our conference calls. In our view, the level of disclosure we require has been clear for quite a while.

With respect to the relief that we intend to seek if we cannot agree upon a form of order by [mid-afternoon tomorrow](#), we intend to serve motion materials over the weekend. The specific relief to be sought remains an open question that we are determining in consultation with other parties. It is imperative to us that A&M be appointed by the court by the end of the day tomorrow - with powers satisfactory to us - so that it can commence fulfilling its mandate immediately. If the motion cannot be heard by the 25th, then so be it.

If it remains important to the company that the vote be held on the 25th, then we strongly suggest that its objections to the level of disclosure that is satisfactory to the Committee be dropped immediately. It is our view that there is simply no way forward without the Committee being satisfied that it is receiving full disclosure, unrestricted by and independent from the company's influence.

Thank you,
Steph

STEPHANIE DE CARIA
Associate

Miller Thomson LLP
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, Ontario M5H 3S1
Direct Line: +1 416.595.2652
Fax: +1 416.595.8695
Email: sdecaria@millerthomson.com
millerthomson.com



Please consider the environment before printing this email.

On Sep 12, 2019, at 7:06 PM, Birch, John <jbirch@casselsbrock.com> wrote:

Stephanie,


I will obviously have to review this further and obtain final instructions.

However, it appears based on a preliminary review that you have written the financial advisor appointment order as an order that grants investigatory receiver-type powers. Further, the scope of the order is so broad that it goes beyond the Adelaide project and covers other projects (see para. 6 in particular). The order also contains *Mareva* injunction provisions and grants relief against third parties that are not served with the motion and have no opportunity to appear or oppose it. The order also breaches solicitor-client privilege, something that a court does not have the power to do. (In that regard, I refer you to numerous Supreme Court decisions that state that privilege is nearly absolute and only the legislature can abrogate privilege using clear language and only in extreme circumstances.)

Please provide your justification for each aspect of the relief sought in these orders, since this goes far beyond what we previously discussed with you and far beyond what A&M would require to properly carry out its mandate.

In the event that Hi-Rise and the Borrower do not consent to this relief, what are your intentions? This is the kind of relief that could only be granted at a motion, brought on notice to all affected parties and with a full evidentiary record. I cannot see how such a motion could be heard before the September 25 meeting date especially given that no motion has yet been served by Rep Counsel.

I look forward to hearing from you about all of the important matters noted herein.

	<p>John Birch Direct: +1 416 860 5225 • Fax: +1 416 640 3057 • jbirch@casselsbrock.com 2100 Scotia Plaza, 40 King Street West, Toronto, Ontario, M5H 3C2 www.casselsbrock.com Services provided through a Professional Corporation</p>
---	--

From: De Caria, Stephanie <sdecaria@millerthomson.com>
Sent: Thursday, September 12, 2019 5:17 PM
To: jfinnigan@tgf.ca; tmarkovic@tgf.ca; Birch, John <jbirch@casselsbrock.com>; Voudouris, Stephanie <svoudouris@casselsbrock.com>; ghall@mccarthy.ca; jsirivar@mccarthy.ca; pulat@lawto.ca; rory@rorymcgovernpc.com; rshastri@ksllp.ca; Ellis, Larry <LEllis@casselsbrock.com>; Kathryn Esaw <kesaw@airdberlis.com>; Steve Graff <sgraff@airdberlis.com>

Cc: Azeff, Gregory <gazeff@millerthomson.com>; Garrafa, Shallon
<sgarrafa@millerthomson.com>
Subject: Hi-Rise Capital Ltd. [MTDMS-Legal.FID7573766]

Dear Service List:

Further to our attendance before Justice Hainey this morning, please see attached Order that Representative Counsel is seeking in respect of A&M's appointment. At this time, the preamble includes language re: the consent of the Company, Hi-Rise and FSRA. You will notice that the proposed Order does not include a stay of the vote at this time. We will be in a better position to determine whether a stay is necessary once A&M is engaged, and has commenced its mandate under the Order. If a stay of the vote becomes necessary, we will seek further relief from the Court.

Please confirm that the Order is acceptable, and we will email a copy to Justice Hainey for his approval. Upon the Court's approval, we will have A&M engaged immediately so that they may commence their mandate.

Please also see attached Order that Rep Counsel is seeking in order to increase the Rep Counsel Charge. Please advise if all parties consent to this Order, and we will also send it to Justice Hainey for his approval.

Regards,
Steph

STEPHANIE DE CARIA
Associate

Miller Thomson LLP
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
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Garrafa, Shallon

From: Azeff, Gregory
Sent: Friday, September 13, 2019 4:15 PM
To: Birch, John; De Caria, Stephanie
Cc: Garrafa, Shallon; Voudouris, Stephanie; ghall@mccarthy.ca; Novek, Mira; Ellis, Larry; John Finnigan
Subject: RE: Hi-Rise Capital Ltd. [MTDMS-Legal.FID7573766]

John: Aside from your comments regarding the scope of the privilege carve out – which we are prepared to accommodate – it is apparent from the balance of your email that there is no agreement with respect the appointment terms and mandate of the financial advisor. As such, we will advise Justice Hainey on Monday that the issue has not been resolved. We will be serving our Second Report today and will provide a copy to Justice Hainey in advance by email. The Report will include, among other things, a copy of the draft Order that we have proposed, amended only to deal with the privilege issue.

We do not agree with the agree with the balance of your email.

GREGORY AZEFF

Partner

Miller Thomson LLP

Scotia Plaza

40 King Street West, Suite 5800

P.O. Box 1011

Toronto, Ontario M5H 3S1

Direct Line: +1 416.595.2660

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Email: gazeff@millerthomson.com

millerthomson.com



MILLER THOMSON
AVOCATS | LAWYERS

Please consider the environment before printing this email.

From: Birch, John [mailto:jbirch@casselsbrock.com]
Sent: Friday, September 13, 2019 1:27 PM
To: De Caria, Stephanie <sdecaria@millerthomson.com>
Cc: Azeff, Gregory <gazeff@millerthomson.com>; Garrafa, Shallon <sgarrafa@millerthomson.com>; Voudouris, Stephanie <svoudouris@casselsbrock.com>; ghall@mccarthy.ca; Novek, Mira <MNOVEK@mccarthy.ca>; Ellis, Larry <LEllis@casselsbrock.com>
Subject: [**EXT**] RE: Hi-Rise Capital Ltd. [MTDMS-Legal.FID7573766]

Stephanie,

Without addressing all other issues with this order, including its effect on third parties, this proposed version does not even properly address the comments that I made last night.

For example, the various privilege carve-outs do not address my concerns because they completely ignore other categories of privilege such as litigation privilege and common interest privilege. Thus, even the revised order would compel our firm to provide to A&M things like our firm's drafts of court materials, notes taken at meetings with third parties, and litigation-strategy-related memos.

Paragraph 4 and 5 continue to be too broad because they require the production of information that does not even relate to the Adelaide property. For example, the order and the definition of Records are so broad that it would require Hi-Rise to produce information about other projects apart from Adelaide, internal financial statements, Hi-Rise payroll and HR records, Hi-Rise's general bank account statements (as opposed to its trust accounts used to hold project-related funds). These are all concerns that I raised with you weeks ago, including after you sent the August 21 version of the order.

You apparently fail to appreciate two major issues: first, Hi-Rise's work in relation to Adelaide is in a representative capacity as administrator. Thus, A&M should not have access to any Hi-Rise information or property that does not relate to Adelaide. Second, there is no power under the *Trustee Act* or otherwise for Justice Hainey to give this relief on a contested motion. Remember that this is not an insolvency proceeding under the CCAA or the BIA and thus orders along these lines that have been granted in other matters have been granted based on the language in these statutes. Hi-Rise brought this application based on its right to seek directions under section 60 of the *Trustee Act*. That section does not give Rep Counsel any power to come to court for relief like that being proposed.

Numerous other parties of the order are "over the top" and completely unnecessary in relation to what A&M's role is. These unnecessary provisions include the following:

Paragraph 8: the prohibition on proceedings against A&M

para. 9: the limitation of liability

para. 11: the Mareva provision

para 12: this is completely new territory for a PIPEDA provision like this and it is being sought without giving notice to those whose interests may be affected

para. 15: it seems ridiculous that A&M would be retaining counsel and then priming other creditors in relation to the fees of such counsel

I also hasten to add that by seeking relief against the law firms representing Hi-Rise and the Borrower, you are creating very significant ethical issues for Cassels Brock and McCarthy Tetrault and we could be forced to hire our own counsel to represent us. (Are investors going to take up a collection to pay for that?)

Hi-Rise remains ready to discuss with you reasonable ways of getting information to A&M (and we have already offered access, which you have refused) but what you propose goes well beyond what we discussed. I thought that your firm had a good call with Geoff Hall and me on August 20 and I remain open to cooperating with Rep Counsel along the lines discussed then. You appeared to be on the same page as us then, which is why the draft orders sent to us on and after August 21 (which are inconsistent with our discussion) are so troubling.

As Justice Hainey said in chambers yesterday, if the Committee and FSRA had better be careful lest they torpedo the Lanterra deal. In the event that they torpedo the deal and a receivership results in lower recoveries, investors will be justifiably angry. Any torpedoing of the deal would be, at best, gross negligence and if the Committee members have a vendetta, it could rise to the level of wilful misconduct.

To be clear, these comments are made on behalf of Hi-Rise only and I am sure that Geoff Hall will take his own position on behalf of the Borrower.



John Birch

Direct: +1 416 860 5225 • Fax: +1 416 640 3057 • jbirch@casselsbrock.com
2100 Scotia Plaza, 40 King Street West, Toronto, Ontario, M5H 3C2

From: De Caria, Stephanie <sdecaria@millerthomson.com>
Sent: Friday, September 13, 2019 10:45 AM
To: jfinnigan@tgf.ca; tmarkovic@tgf.ca; Birch, John <jbirch@casselsbrock.com>; Voudouris, Stephanie <svoudouris@casselsbrock.com>; ghall@mccarthy.ca; jsirivar@mccarthy.ca; pulat@lawto.ca; rory@rorymcgovernpc.com; rshastri@ksllp.ca; Ellis, Larry <LEllis@casselsbrock.com>; Kathryn Esaw <kesaw@airdberlis.com>; Steve Graff <sgraff@airdberlis.com>
Cc: Azeff, Gregory <gazeff@millerthomson.com>; Garrafa, Shallon <sgarrafa@millerthomson.com>
Subject: RE: Hi-Rise Capital Ltd. [MTDMS-Legal.FID7573766]

Dear Service List:

We revised the draft Order circulated yesterday in order to address some comments re: privilege. Please see attached revised draft Order and blackline to yesterday's version.

Please advise if we have your consent to the attached Order, as well as the Order re: increase to the Rep Counsel Charge (circulated yesterday).

Thank you.
Steph

STEPHANIE DE CARIA
Associate

Miller Thomson LLP
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, Ontario M5H 3S1
Direct Line: +1 416.595.2652
Fax: +1 416.595.8695
Email: sdecaria@millerthomson.com
millerthomson.com



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Please consider the environment before printing this email.

From: De Caria, Stephanie
Sent: Thursday, September 12, 2019 5:16 PM
To: 'jfinnigan@tgf.ca' <jfinnigan@tgf.ca>; 'tmarkovic@tgf.ca' <tmarkovic@tgf.ca>; 'jbirch@casselsbrock.com' <jbirch@casselsbrock.com>; 'svoudouris@casselsbrock.com' <svoudouris@casselsbrock.com>; 'ghall@mccarthy.ca' <ghall@mccarthy.ca>; 'jsirivar@mccarthy.ca' <jsirivar@mccarthy.ca>; 'pulat@lawto.ca' <pulat@lawto.ca>; 'rory@rorymcgovernpc.com' <rory@rorymcgovernpc.com>; 'rshastri@ksllp.ca' <rshastri@ksllp.ca>; 'LEllis@casselsbrock.com' <LEllis@casselsbrock.com>; Kathryn Esaw <kesaw@airdberlis.com>; Steve Graff <sgraff@airdberlis.com>
Cc: Azeff, Gregory <gazeff@millerthomson.com>; Garrafa, Shallon <sgarrafa@millerthomson.com>
Subject: Hi-Rise Capital Ltd. [MTDMS-Legal.FID7573766]

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Please confirm that the Order is acceptable, and we will email a copy to Justice Hainey for his approval. Upon the Court's approval, we will have A&M engaged immediately so that they may commence their mandate.

Please also see attached Order that Rep Counsel is seeking in order to increase the Rep Counsel Charge. Please advise if all parties consent to this Order, and we will also send it to Justice Hainey for his approval.

Regards,
Steph

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APPENDIX DD

AIRD BERLIS

Steven L. Graff
Direct: 416.865.7726
E-mail: sgraff@airdberlis.com

September 13, 2019

BY EMAIL

TO THE SERVICE LIST

Re: Hi-Rise Capital Ltd. and Adelaide Street Lofts Inc.
Court File No.: CV-19-616261-00CL

We are counsel to Meridian Credit Union Limited ("**Meridian**"). Further to our notice of appearance filed today in respect of the above-noted proceedings (the "**Proceedings**") in the Ontario Superior Court of Justice (Commercial List) (the "**Court**"), we are writing in respect of the proposed process to address the sale of the property subject to the Proceedings, as well as to address some general matters.

As a preliminary matter, we note that by serving a notice of appearance, Meridian in no respect cedes any of its rights or remedies either under the credit agreement or related documents between Meridian and Adelaide Street Lofts Inc. ("**Adelaide**") or under law, including its ability to bring an application to appoint a receiver under the *Bankruptcy and Insolvency Act* or otherwise. To be clear, Meridian is not agreeable to the rights of Meridian becoming subject to, or adjudicated upon, in this Proceeding. Meridian does not wish to be dragged into a dispute between the subordinated lenders and Adelaide.

In respect of the form of order (the "**Financial Advisor Order**") regarding the appointment of Alvarez & Marsal Canada Inc. as financial advisor (the "**Financial Advisor**") for the limited purpose of advising Miller Thomson LLP, in its capacity as Court-appointed Representative Counsel in the Proceeding ("**Representative Counsel**"), we have reviewed the draft. We do not take a position on the granting of the Financial Advisor Order but to the extent such relief is being sought, the changes made in the attached mark-up must be made.

We have two substantive concerns with respect to the order which are addressed in our mark-up. First, the Financial Advisor Order in its current form does not provide for any timeline for the Financial Advisor to conduct its review of the sales process and report to Representative Counsel and the Court, and as we have noted previously, the timely resolution of this process is critically important to Meridian. Second, the Financial Advisor Order further does not provide for information to be shared with Meridian. Our client should be kept apprised of the Financial Advisor's process, findings and results in the same manner as Representative Counsel. These and other issues are addressed in our mark-up.

Finally, please advise who at Alvarez & Marsal Canada Inc. will be leading this mandate and who is proposed to act as counsel to the Financial Advisor.

We look forward to your response.

September 13, 2019
Page 2

Yours truly,

AIRD & BERLIS LLP

A handwritten signature in black ink, appearing to be 'SLG', with a large, stylized loop at the end.

Steven L. Graff
SLG/mam

c.c. Meridian Credit Union Limited

37241721.1

AIRD BERLIS

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) ~~FRIDAY~~ MONDAY, THE ~~13~~ 16TH
)
)
JUSTICE HAINEY) DAY OF SEPTEMBER, 2019

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

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

ORDER

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

ON HEARING the submissions of Representative Counsel and Meridian Credit Union Limited ("**Meridian**"), and upon being advised of the consent of Hi-Rise, the Company, and the Financial Services Regulatory Authority of Ontario,

APPOINTMENT

1. **THIS COURT ORDERS** that, pursuant to section 5 of the Appointment Order, Alvarez & Marsal Canada Inc. is hereby appointed as financial advisor (in such capacity, the “**Financial Advisor**”), without security, to Representative Counsel to provide financial advisory and strategic services to support Representative Counsel with the fulfillment of its mandate and duties as specified in the Appointment Order.

2. **THIS COURT ORDERS** that the Financial Advisor 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 the Company, including, without limitation, the Property.

FINANCIAL ADVISOR'S POWERS

3. **THIS COURT ORDERS** that the Financial Advisor is hereby empowered and authorized to provide services to Representative Counsel at once in respect of the Property and the Company's proposed sale of the Property and, without in any way limiting the generality of the foregoing, the Financial Advisor is hereby expressly empowered and authorized to do any of the following where the Financial Advisor 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, subject to the prior approval of Representative Counsel, to assist with the exercise of the Financial Advisor's powers and duties, including, without limitation, those conferred by this Order;
- (b) to review and report to Representative Counsel and the Court in respect of all matters relating to 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 the financial implications of such proposed transactions;
- (c) to meet with and discuss with such affected Persons (as defined below) as the Financial Advisor deems appropriate on all matters relating to the Property and the Company's proposed sale of the Property, and the Financial Advisor's

mandate, and to share information, subject to such confidentiality terms as the Financial Advisor deems advisable; and

- (d) to take any steps reasonably incidental to the exercise of these powers or the duties and the mandate of Representative Counsel pursuant to the Appointment Order.

REPORTING TO MERIDIAN

4. THIS COURT ORDERS that concurrently with its reporting to Representative Counsel regarding the services being provided in this Order, or more frequently if so requested by Meridian, the Financial Advisor shall provide the same reporting to Meridian.

FINANCIAL ADVISOR'S REPORT

5. THIS COURT ORDERS that on or before September 20, 2019, the Financial Advisor shall file a report with the Court opining on the Company's proposed sale of the Property and the marketing and sales process undertaken in respect of the Property, including whether sufficient effort has been made to obtain the best price and that the Company has not acted improvidently, 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.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE FINANCIAL ADVISOR

6. ~~4-~~ **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 Financial Advisor of the existence of any information in respect of Hi-Rise, the Company and/or the Property in such Person's possession or control, shall grant immediate and continued access to such information to the Financial Advisor, and shall deliver all such information to the Financial Advisor upon the Financial Advisor's request, provided that nothing contained in this paragraph 4 shall oblige any Person to disclose information that is subject to privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. ~~5.~~ **THIS COURT ORDERS** that all Persons shall forthwith advise the Financial Advisor of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Company, Hi-Rise and/or the Property, 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 Financial Advisor or permit the Financial Advisor to make, retain and take away copies thereof and grant to the Financial Advisor unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Financial Advisor due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

8. ~~6.~~ **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 Financial Advisor for the purpose of allowing the Financial Advisor 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 Financial Advisor in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Financial Advisor. Further, for the purposes of this paragraph, all Persons shall provide the Financial Advisor with all such assistance in gaining immediate access to the information in the Records as the Financial Advisor may in its discretion require including providing the Financial Advisor with instructions on the use of any computer or other system and providing the Financial Advisor with any and all access codes, account names and account numbers that may be required to gain access to the information.

DUTY ~~OF~~ TO FACILITATE INFORMATION DISCLOSURE

9. ~~7.~~ **THIS COURT ORDERS** that upon request by the Financial Advisor, the Company and/or Hi-Rise shall immediately provide consent or authorization for any Person to release and disclose Records to the Financial Advisor, which Records may be requested by the Financial Advisor in connection with its mandate hereunder, provided that nothing contained herein shall oblige any Person to disclose information that is subject to privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

NO PROCEEDINGS AGAINST THE FINANCIAL ADVISOR

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

LIMITATION ON THE FINANCIAL ADVISOR'S LIABILITY

11. ~~9.~~ **THIS COURT ORDERS** that the Financial Advisor 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.

COMMUNICATION RESTRICTION

12. ~~10.~~ **THIS COURT ORDERS** that Hi-Rise and the Company, all of their directors, officers, employees, agents, advisors, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, are hereby restricted from communicating with Investors, either directly or indirectly, which restriction shall remain in effect until September 16, 2019, and which restriction may be extended by further Order of the Court.

ENCUMBRANCES IN RESPECT OF THE PROPERTY

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

PIPEDA

14. ~~12.~~ **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 Financial Advisor 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.

FINANCIAL ADVISOR'S ACCOUNTS

15. ~~13.~~ **THIS COURT ORDERS** that the Financial Advisor and counsel to the Financial Advisor shall be paid by the Company their reasonable fees and disbursements, both before and after the making of this Order. For greater certainty, Representative Counsel shall not be liable for the fees and disbursements of the Financial Advisor or its counsel.

16. ~~14.~~ **THIS COURT ORDERS** that the Financial Advisor and counsel to the Financial Advisor shall be entitled to and are hereby granted a charge (the “**Financial Advisor's 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 Financial Advisor's 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, and, for greater certainty, the Financial Advisor's 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 and encumbrances, statutory or otherwise, in favour of Meridian.

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

SERVICE AND NOTICE

18. ~~16.~~ **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of

documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (the “Rules”), this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission.

19. ~~17.~~ **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Financial Advisor 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

20. ~~18.~~ **THIS COURT ORDERS** that the Financial Advisor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

21. ~~19.~~ **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 Financial Advisor 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 Financial Advisor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Financial Advisor and its agents in carrying out the terms of this Order.

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	

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**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

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MONDAY, THE 16TH

JUSTICE HAINEY

DAY OF SEPTEMBER, 2019

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

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

ORDER

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

ON HEARING the submissions of Representative Counsel and Meridian Credit Union Limited (**"Meridian"**), and upon being advised of the consent of Hi-Rise, the Company, and the Financial Services Regulatory Authority of Ontario,

APPOINTMENT

1. **THIS COURT ORDERS** that, pursuant to section 5 of the Appointment Order, Alvarez & Marsal Canada Inc. is hereby appointed as financial advisor (in such capacity, the “**Financial Advisor**”), without security, to Representative Counsel to provide financial advisory and strategic services to support Representative Counsel with the fulfillment of its mandate and duties as specified in the Appointment Order.

2. **THIS COURT ORDERS** that the Financial Advisor 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 the Company, including, without limitation, the Property.

FINANCIAL ADVISOR’S POWERS

3. **THIS COURT ORDERS** that the Financial Advisor is hereby empowered and authorized to provide services to Representative Counsel at once in respect of the Property and the Company’s proposed sale of the Property and, without in any way limiting the generality of the foregoing, the Financial Advisor is hereby expressly empowered and authorized to do any of the following where the Financial Advisor 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, subject to the prior approval of Representative Counsel, to assist with the exercise of the Financial Advisor's powers and duties, including, without limitation, those conferred by this Order;
- (b) to review and report to Representative Counsel and the Court in respect of all matters relating to 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 the financial implications of such proposed transactions;
- (c) to meet with and discuss with such affected Persons (as defined below) as the Financial Advisor deems appropriate on all matters relating to the Property and

the Company's proposed sale of the Property, and the Financial Advisor's mandate, and to share information, subject to such confidentiality terms as the Financial Advisor deems advisable; and

- (d) to take any steps reasonably incidental to the exercise of these powers or the duties and the mandate of Representative Counsel pursuant to the Appointment Order.

REPORTING TO MERIDIAN

4. **THIS COURT ORDERS** that concurrently with its reporting to Representative Counsel regarding the services being provided in this Order, or more frequently if so requested by Meridian, the Financial Advisor shall provide the same reporting to Meridian.

FINANCIAL ADVISOR'S REPORT

5. **THIS COURT ORDERS** that on or before September 20, 2019, the Financial Advisor shall file a report with the Court opining on the Company's proposed sale of the Property and the marketing and sales process undertaken in respect of the Property, including whether sufficient effort has been made to obtain the best price and that the Company has not acted improvidently, 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.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE FINANCIAL ADVISOR

6. **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 Financial Advisor of the existence of any information in respect of Hi-Rise, the Company and/or the Property in such Person's possession or control, shall grant immediate and continued access to such information to the Financial Advisor, and shall deliver all such information to the Financial Advisor upon the Financial Advisor's request, provided that nothing contained in this paragraph 4 shall oblige any Person to

disclose information that is subject to privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. **THIS COURT ORDERS** that all Persons shall forthwith advise the Financial Advisor of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Company, Hi-Rise and/or the Property, 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 Financial Advisor or permit the Financial Advisor to make, retain and take away copies thereof and grant to the Financial Advisor unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Financial Advisor due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

8. **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 Financial Advisor for the purpose of allowing the Financial Advisor 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 Financial Advisor in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Financial Advisor. Further, for the purposes of this paragraph, all Persons shall provide the Financial Advisor with all such assistance in gaining immediate access to the information in the Records as the Financial Advisor may in its discretion require including providing the Financial Advisor with instructions on the use of any computer or other system and providing the Financial Advisor 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

9. **THIS COURT ORDERS** that upon request by the Financial Advisor, the Company and/or Hi-Rise shall immediately provide consent or authorization for any Person to release and disclose Records to the Financial Advisor, which Records may be requested by the Financial Advisor in connection with its mandate hereunder, provided that nothing contained herein shall oblige any Person to disclose information that is subject to privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

NO PROCEEDINGS AGAINST THE FINANCIAL ADVISOR

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 Financial Advisor except with the written consent of the Financial Advisor or with leave of this Court.

LIMITATION ON THE FINANCIAL ADVISOR’S LIABILITY

11. **THIS COURT ORDERS** that the Financial Advisor 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.

COMMUNICATION RESTRICTION

12. **THIS COURT ORDERS** that Hi-Rise and the Company, all of their directors, officers, employees, agents, advisors, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, are hereby restricted from communicating with Investors, either directly or indirectly, which restriction shall remain in effect until September 16, 2019, and which restriction may be extended by further Order of the Court.

ENCUMBRANCES IN RESPECT OF THE PROPERTY

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

PIPEDA

14. **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 Financial Advisor 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.

FINANCIAL ADVISOR'S ACCOUNTS

15. **THIS COURT ORDERS** that the Financial Advisor and counsel to the Financial Advisor shall be paid by the Company their reasonable fees and disbursements, both before and after the making of this Order. For greater certainty, Representative Counsel shall not be liable for the fees and disbursements of the Financial Advisor or its counsel.

16. **THIS COURT ORDERS** that the Financial Advisor and counsel to the Financial Advisor shall be entitled to and are hereby granted a charge (the “**Financial Advisor's 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 Financial Advisor's 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, and, for greater certainty, the Financial Advisor's 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 and encumbrances, statutory or otherwise, in favour of Meridian.

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

SERVICE AND NOTICE

18. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (the “**Rules**”), this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission.

19. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Financial Advisor 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

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

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

HI-RISE CAPITAL LTD.

and

SUPERINTENDENT OF
FINANCIAL SERVICES et. al.
Respondents

Applicant

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

ONTARIO

**SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

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Court-appointed Representative Counsel

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

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

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Court-appointed Representative Counsel

APPENDIX E

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

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

October 18, 2019

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Court-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**”)¹ set out in a term sheet executed April 10, 2019 (the “**JV Agreement**”) with Lanterra Developments Limited (“**Lanterra**”) and result in the distributions contemplated in the Proposed Settlement.

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

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

ESTABLISHMENT OF OFFICIAL COMMITTEE

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

APPOINTMENT OF INFORMATION OFFICER

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

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

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

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

RECOMMENDATION OF THE OFFICIAL COMMITTEE

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

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

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

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

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

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

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

³ IO Report at paras 59-61, 109.

⁴ IO Report at para 103(a).

⁵ IO Report at para 73.

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

⁷ IO Report at para 113.

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

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

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

CONCERNS WITH SINGLE INVESTOR CLASS

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

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

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

⁹ At para 105.

¹⁰ IO Report at paras 87-88.

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

¹² IO Report at para 73.

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

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

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

CONCLUSION

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

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

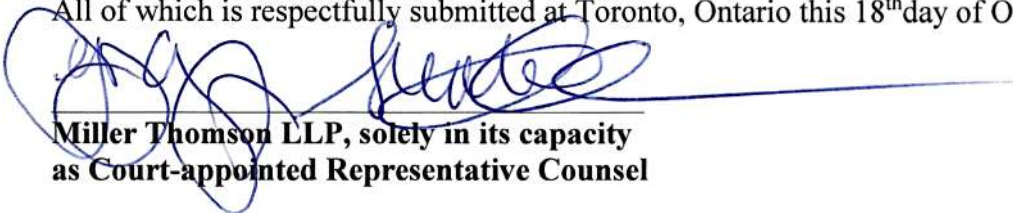
20. If Hi-Rise seeks to secure the support of Non-Registered Investors without abandoning the Lanterra Transaction, Representative Counsel recommends the following amendments to the Proposed Settlement:

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

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

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

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



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

APPENDIX A

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

THE HONOURABLE

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)
)

THURSDAY, THE 21st

MR. JUSTICE HAINEY

DAY OF MARCH, 2019

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



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

ORDER

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

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

SERVICE

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

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

APPOINTMENT OF REPRESENTATIVE COUNSEL

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

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

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

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

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

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

TERMINATION OF EXISTING ADVISORY COMMITTEE

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

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

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

APPOINTMENT OF OFFICIAL COMMITTEE

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

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

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

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

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

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

INVESTOR INFORMATION

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

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

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


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

FEES OF COUNSEL

which amount shall exclude disbursements incurred by Representative Counsel

17. **THIS COURT ORDERS** that the Representative Counsel shall be paid by the Borrower its reasonable fees ~~and disbursements~~ 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~~ ^{its} *Post-Appointment Fees* on a monthly basis, forthwith upon rendering its accounts to the Borrower for fulfilling its mandate in accordance with this Order, and subject to such redactions to the invoices as are necessary to maintain solicitor-client privilege between the Representative Counsel and the Official Committee and/or Investors. In the event of any disagreement with respect to such fees and disbursements, such disagreement may be remitted to this Court for determination. Representative Counsel shall also obtain approval of its fees and disbursements from the Court on notice to the Official Committee.

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

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

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

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

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

GENERAL

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

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

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

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

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

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

- Attention: Gregory Azeff & Stephanie De Caria

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

POWERS OF HI-RISE CAPITAL LTD.

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

INVESTOR AND COURT APPROVAL

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

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

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

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

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

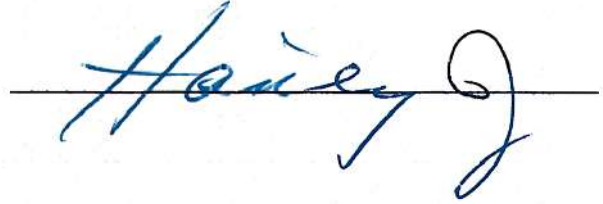
31. **THIS COURT ORDERS** that if at the Meeting a majority in number of the investors representing two-thirds in value present and voting either in person or by proxy cast votes in favour of the proposed Transaction and Distribution, Hi-Rise may proceed to bring a motion to this court, on a date to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

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

NOTICE TO INVESTORS

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

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

A handwritten signature in blue ink, appearing to read "Haley", is written over a horizontal line. The signature is stylized with a large, looping initial 'H' and a trailing flourish.

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 Hailey 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 ^{April 1} ~~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.

HI-RISE CAPITAL LTD.
Applicant

SUPERINTENDENT OF FINANCIAL SERVICES *et. al.*
Respondents

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

ORDER

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svoudouris@casselsbrock.com

Lawyers for the Applicant, Hi-Rise Capital Ltd.

APPENDIX B

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

)

MONDAY THE 15th

)

)

JUSTICE HAINEY

)

DAY OF APRIL, 2019

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

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

ORDER

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

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

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

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

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

ENTERED AT CLERK'S OFFICE TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

APR 15 2019

PER / PAR: 

HI-RISE CAPITAL LTD.

Applicant

and

SUPERINTENDENT OF FINANCIAL
SERVICES et. al.
Respondents

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

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

Proceeding commenced at Toronto

**ORDER
(April 15, 2019)**

MILLER THOMSON LLP

Scotia Plaza
40 King Street West, Suite 5800
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Toronto, ON Canada M5H 3S1

Greg Azeff LSO#: 45324C

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sdecaria@millerthomson.com

Tel: 416.595.2652/Fax: 416.595.8695

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

TABLE OF CONTENTS

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

APPENDICES

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

INTRODUCTION

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

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

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

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

TERMS OF REFERENCE AND DISCLAIMER

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

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

PURPOSE OF REPORT

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

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

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

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

THE INFORMATION OFFICER'S REVIEW

Case Background

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

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

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

BMO's Engagement by the Company

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

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

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

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

- (b) during the second phase (“**Phase 2**”), Qualified Parties are given additional time to perform due diligence and are encouraged to enhance their purchase price and limit conditions. Qualified Parties are provided a standard form of agreement of purchase and sale (“**APS**”) and are requested to submit final bids by marking-up and submitting an APS by the bid deadline.

- 26. The Information Officer is of the view that: (a) BMO is an experienced and qualified broker and advisor capable of running a robust and competitive marketing and sale process; (b) BMO’s engagement letter is consistent with industry standards and provided appropriate incentive to achieve the maximum sale price possible in the circumstances; and (c) the marketing and sale process was of a typical structure and consistent with similar real estate processes designed to achieve the maximum sale price possible in the circumstances.

The 2017 Sale Process

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

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

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

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

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

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

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

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

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

The 2018 Sale Process

38. In an effort to address the Construction Challenges and other issues raised during the 2017 Sale Process, the Company took steps and incurred expenditures to mitigate certain issues and assist Interested Parties with diligence. These steps included:

- (a) commissioning two construction methodology reports⁶;
- (b) executing a Heritage Easement Agreement (October 16, 2017) with the City in order to allow the Heritage Wall to be altered for future development under certain conditions; and
- (c) obtaining certain additional approvals from the City related to rental replacement, community contribution (Section 37), and storm water management agreements.

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

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

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

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

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

Joint Venture Proposals

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

- (a) the Lanterra JV Proposal provided for the highest purchase price and greatest potential profit at completion of development. As noted earlier in this Report, it has become more common for downtown Toronto land transactions to include certain structures that increase purchase price but decrease cash consideration on closing. The Information Officer understands from discussions with Lanterra that its purchase price was premised on a joint venture structure as it allows for the sharing of risks and a lower initial cash investment that is needed to achieve its required rate of return;
- (b) Lanterra had performed extensive diligence and investigation on the Property and spent considerable time and effort developing approaches to address the Construction Challenges; and
- (c) Lanterra is a reputable developer with extensive experience building in downtown Toronto on sites that contained construction challenges similar to those at the Property.

- 54. Throughout January and February 2019, the Company and Lanterra worked towards settlement of the Lanterra JV Proposal. The parties reached an agreement on a letter of intent with Lanterra on February 13, 2019.
- 55. In March and April 2019, the Company and Lanterra continued to negotiate a term sheet which was ultimately executed on April 10, 2019 (the “**Term Sheet**”).

ASSESSMENT OF THE SALE PROCESS

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

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

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

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

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

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

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

LANTERRA TRANSACTION

Lanterra Offer

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

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

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

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

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

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

The Company's Projected Returns

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

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

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

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

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

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

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

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

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

PROPOSAL TO INVESTORS

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

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

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

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

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

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

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

Summary of Notes & Key Assumptions

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

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

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

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

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

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

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

OTHER INDICATIONS OF POTENTIAL VALUE

84. The Information Officer has considered other indications of value and whether there may be viable alternatives to the Proposed Settlement, in particular the following:
- (a) the Tricon offer;
 - (b) Third Party Appraisals; and
 - (c) re-opening the marketing and sale process / Receivership.

Tricon Offer

85. The Information Officer understands that Tricon¹³ first expressed interest in the Property in or around August of 2016. The Information Officer has been provided with and reviewed email correspondence between Tricon and the Company and understands that Tricon performed diligence on the Property and several meetings between Tricon and the Company were held. Ultimately, Tricon and the Company were unable to come to any type of arrangement prior to commencement of the 2017 Sale Process.
86. The Information Officer understands that Tricon participated in the 2017 Sale Process. Tricon submitted a Phase 1 bid but due to its relative value, was not invited to participate in Phase 2. Tricon was invited by BMO to participate in the 2018 Sale Process but declined to participate.
87. As described in the Second Report of Counsel, Representative Counsel received an unsolicited expression of interest in respect of a cash purchase of the Property from Tricon. The offer was initially in the form of a non-binding letter of interest dated July 9, 2019.

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

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

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

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

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

- (b) Tricon did not participate in the 2018 Sale Process primarily because it believed its proposal would not be sufficient to meet the pricing expectations set by BMO at that time¹⁴;
- (c) by not participating in the 2018 Sale Process, Tricon did not have access to certain of the additional materials made available to Interested Parties in the electronic data room during such process;
- (d) Tricon appears to be familiar with each of the Construction Challenges and the Construction Challenges have been considered in the Tricon Offer however Tricon noted that it would need to engage third party experts and incur additional costs during diligence; and
- (e) Tricon explained that the increase in consideration offered compared to its offer in the 2017 Sale Process is reflective of a change in market dynamics, including increased market rents and a reduction in their cost of capital.

91. Based on discussions with BMO in connection with the Tricon Offer, the Information Officer understands:

- (a) notwithstanding BMO's efforts to solicit its participation, Tricon declined to participate in the 2018 Sale Process. However, if the Tricon Offer had been submitted in accordance with the 2018 Sale Process guidelines, it would have been explored and advanced through the process;
- (b) BMO held discussions with Tricon to better understand the Tricon Offer. Following these discussions, BMO concluded the Tricon Offer was not executable in its current form as Tricon would not waive its conditions; and

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

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

Third Party Appraisals

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

Re-opening the Sale Process / Receivership

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

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

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

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

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

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

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

Comparison of Values

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

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

Summary of Notes & Key Assumptions

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

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

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

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

CONCLUSIONS & OTHER FINDINGS

Sale Process

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

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

Consultations Held

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

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

Lanterra Transaction & Proposed Settlement

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

Alternatives

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

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

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

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

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

Per: _____



Name: Stephen Ferguson

Title: Senior Vice-President

HI-RISE CAPITAL LTD.

and

SUPERINTENDENT OF FINANCIAL
SERVICES et. al.
Respondents

Applicant

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**

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Court-appointed Representative Counsel

APPENDIX F

**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

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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
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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.

TERMS OF REFERENCE

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

BACKGROUND TO PROCEEDING

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

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

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

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

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

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

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

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

ESTABLISHMENT OF OFFICIAL COMMITTEE

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

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

APPOINTMENT OF INFORMATION OFFICER

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

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

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

THE 1ST MEETING & VOTE

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

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

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

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

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

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

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

EVENTS FOLLOWING THE MEETING & VOTE

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

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

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

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

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

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

JUDICIAL MEDIATION

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

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

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

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

TERMS OF THE SETTLEMENT

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

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

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

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

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

IMPACT OF THE SETTLEMENT ON INVESTORS

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

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

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

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

VOTE

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

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

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

CUBE INVESTORS

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

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

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

RECOMMENDATION REGARDING SETTLEMENT

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

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

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

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

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

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

PROFESSIONAL FEES

Representative Counsel

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

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

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

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

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

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

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

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

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

Information Officer

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

Counsel to Hi-Rise

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

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

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

Distribution of Proceeds

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

CONCLUSION

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

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



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

APPENDIX A

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

THE HONOURABLE

)

THURSDAY, THE 21st

)

MR. JUSTICE HAINEY

)

DAY OF MARCH, 2019

)

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

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

ORDER

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

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

SERVICE

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

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

APPOINTMENT OF REPRESENTATIVE COUNSEL

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

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

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

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

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

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

TERMINATION OF EXISTING ADVISORY COMMITTEE

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

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

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

APPOINTMENT OF OFFICIAL COMMITTEE

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

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

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

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

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

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

INVESTOR INFORMATION

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

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

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

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

FEES OF COUNSEL

which amount shall exclude disbursements incurred by Representative Counsel

17. **THIS COURT ORDERS** that the Representative Counsel shall be paid by the Borrower its reasonable fees ~~and disbursements~~ 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~~ ^{its} ~~and disbursements~~ ^{Post-Appointment Fees} on a monthly basis, forthwith upon rendering its accounts to the Borrower for fulfilling its mandate in accordance with this Order, and subject to such redactions to the invoices as are necessary to maintain solicitor-client privilege between the Representative Counsel and the Official Committee and/or Investors. In the event of any disagreement with respect to such fees and disbursements, such disagreement may be remitted to this Court for determination. Representative Counsel shall also obtain approval of its fees and disbursements from the Court on notice to the Official Committee.

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

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

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

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

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

GENERAL

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

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

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

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

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

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

Attention: Gregory Azeff & Stephanie De Caria

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

POWERS OF HI-RISE CAPITAL LTD.

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

INVESTOR AND COURT APPROVAL

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

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

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

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

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

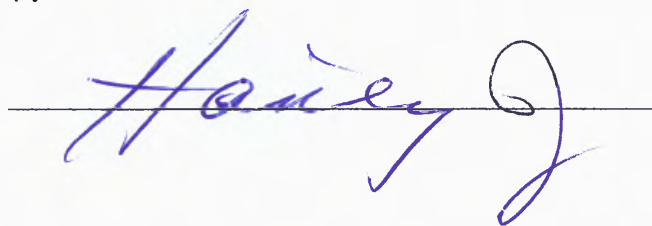
31. **THIS COURT ORDERS** that if at the Meeting a majority in number of the investors representing two-thirds in value present and voting either in person or by proxy cast votes in favour of the proposed Transaction and Distribution, Hi-Rise may proceed to bring a motion to this court, on a date to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

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

NOTICE TO INVESTORS

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

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

A handwritten signature in blue ink, appearing to read "Honey", is written over a horizontal line. The signature is stylized and cursive.

Schedule "A"

OPT-OUT NOTICE

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

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

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

Attention: Stephanie De Caria

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

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

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

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

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

Date

Signature

Date

Signature

If the Investor is a corporation, please execute below:

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

Schedule "B"

Official Committee Establishment Process

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

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

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

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

Establishment of the Official Committee

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

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

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

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

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

(a) all of the interviews will follow the same structure and will be approximately the same length (about half an hour); and

(b) substantially similar questions will be posed to each interviewee.

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

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

Schedule "C"

Official Committee Protocol

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

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

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

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

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

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

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

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

HI-RISE CAPITAL LTD.
Applicant

SUPERINTENDENT OF FINANCIAL SERVICES *et. al.*
Respondents

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**PROCEEDING COMMENCED AT
TORONTO**

ORDER

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2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

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Fax: 416.642.7145
svoudouris@casselsbrock.com

Lawyers for the Applicant, Hi-Rise Capital Ltd.

APPENDIX B

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

MINUTES OF SETTLEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DATED AT this _____ day of _____, 2019.

LANTERRA DEVELOPMENTS LTD.

Per: 

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

DATED AT this _____ day of _____, 2019.

Witness: _____

JIM NEILAS

:

DATED AT this _____ day of _____, 2019.

263 HOLDINGS INC.

Per: _____

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

DATED AT this _____ day of _____, 2019.

ADELAIDE STREET LOFTS INC.

Per: _____

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

DATED AT _____ this _____ day of _____, 2019.

LANTERRA DEVELOPMENTS LTD.

Per: _____

Name: _____

Title: _____

(I have authority to bind the corporation)

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

Witness: _____

Goeff L. Hall

JIM NEILAS

:

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

263 HOLDINGS INC.

Per: _____

Name: _____

Title: _____

(I have authority to bind the corporation)

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

ADELAIDE STREET LOFTS INC.

Per: _____

Name: _____

Title: _____

(I have authority to bind the corporation)

DATED AT this _____ day of _____, 2019.

HI-RISE CAPITAL LTD.

Per: _____

Name: MOOR AL-RWQATI

Title: COO

(I have authority to bind the corporation)

DATED AT this _____ day of _____, 2019.

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

Per: _____

Name: _____

Title: _____

(I have authority to bind the limited liability partnership)

DATED AT this _____ day of _____, 2019.

Witness: _____

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

DATED AT this _____ day of _____, 2019.

HI-RISE CAPITAL LTD.

Per: _____

Name:

Title:

(I have authority to bind the corporation)

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

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



Per: _____

Name: Gregory R. Azeff

Title: Partner

(I have authority to bind the limited liability partnership)

DATED AT this _____ day of _____, 2019.

Witness: _____

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

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

DATED AT this _____ day of _____, 2019.

HI-RISE CAPITAL LTD.

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

DATED AT this _____ day of _____, 2019.

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

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

DATED AT

this 23rd day of December, 2019.

Witness:

[Signature]

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

[Signature: Vipin Berry]

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

Witness: Nima Dgharian



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



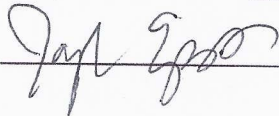
DATED AT _____ this _____ day of _____, 2019.

Witness: _____

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

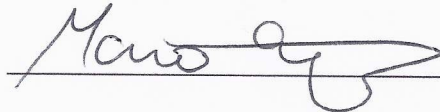
DATED AT Ottawa, ON this 23 day of Dec, 2019.

Witness: Jay Goss



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

Per:



DATED AT _____ this _____ day of _____, 2019.

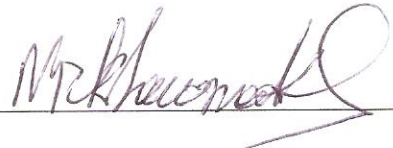
Witness: _____

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

DATED AT TORONTO this 20th day of December 2019.

Witness: 

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



DATED AT _____ this _____ day of _____, 2019.

Witness: _____

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

Per: _____

APPENDIX "A"

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

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

ORDER

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

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

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

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

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

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

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

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

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

Proceeding commenced at Toronto

ORDER

MILLER THOMSON LLP

Scotia Plaza
40 King Street West, Suite 5800
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Toronto, ON Canada M5H 3S1

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Stephanie De Caria LSO#: 68055L

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

Court-appointed Representative Counsel

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

MINUTES OF SETTLEMENT

MILLER THOMSON LLP

Scotia Plaza

40 King Street West, Suite 5800

P.O. Box 1011

Toronto, ON Canada M5H 3S1

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Tel: 416.595.2652/Fax: 416.595.8695

Court-appointed Representative Counsel

APPENDIX C

CV-19-616261-00CL

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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



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

TO THE RESPONDENT(S)

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

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

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

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

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

Date March 14, 2019

Issued by



C. Irwin
Local Registrar
Registrar

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

TO: **THORNTON GROUT FINNIGAN LLP**
Suite 3200, 100 Wellington St. W.
Toronto-Dominion Centre
Toronto, ON M5K 1K7

John L. Finnigan LSO #: 24040L
Tel: 416.304.0558
Fax: 416.304.1313
jfinningan@tgf.ca

Lawyers for the Respondent, Superintendent of Financial Services

AND TO: **MILLER THOMSON LLP**
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Stephanie De Caria LSO #: 68055L
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sdecaria@millerthomson.com

Lawyers for the Advisory Committee (defined below) and Prospective
Representative Counsel

AND TO: **TERESA SIMONELLI**
c/o Miller Thomson LLP
Suite 5800, 40 King Street West
Scotia Plaza
Toronto, ON
M5H 3S1

Member of the Advisory Committee (defined below)

AND TO: **ANTONIO SIMONELLI**
c/o Miller Thomson LLP
Suite 5800, 40 King Street West
Scotia Plaza
Toronto, ON
M5H 3S1

Member of the Advisory Committee (defined below)

AND TO: **JANSALL INVESTMENTS LTD. c/o Morty Horowitz**
c/o Miller Thomson LLP
Suite 5800, 40 King Street West
Scotia Plaza
Toronto, ON
M5H 3S1

Member of the Advisory Committee (defined below)

AND TO: **NICOLAS VERNI**
c/o Miller Thomson LLP
Suite 5800, 40 King Street West
Scotia Plaza
Toronto, ON
M5H 3S1

Member of the Advisory Committee (defined below)

AND TO: **EDWARD RINTOUL**
c/o Miller Thomson LLP
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Scotia Plaza
Toronto, ON
M5H 3S1

Member of the Advisory Committee (defined below)

AND TO: **SHAWN THOMAS**
c/o Miller Thomson LLP
Suite 5800, 40 King Street West
Scotia Plaza
Toronto, ON
M5H 3S1

Member of the Advisory Committee (defined below)

AND TO: **JACQUELINE THOMAS**
c/o Miller Thomson LLP
Suite 5800, 40 King Street West
Scotia Plaza
Toronto, ON
M5H 3S1

Member of the Advisory Committee (defined below)

AND TO: **MCCARTHY TÉTRAULT LLP**
Suite 5300, 66 Wellington Street West
TD Bank Tower
Toronto, ON
M5K 1E6

Geoff R. Hall LSO # : 34701O
Tel: 416.601.7856
Fax: 416.868.0673
ghall@mccarthy.ca

Lawyers for Adelaide Street Lofts Inc.

APPLICATION

1. The applicant, Hi-Rise Capital Ltd. ("**Hi-Rise**"), makes application for the following relief:

(a) upon the initial return of this application before the court on March 21, 2019,

a. if necessary, an Order abridging the time for service and filing of this notice of application and the application record and dispensing with further service thereof;

b. an Order substantially in the form contained in the application record (the "**Representative Counsel Order**") that

i. appoints Miller Thomson LLP as representative counsel ("**Rep Counsel**") to represent the interests of all persons (collectively, the "**Investors**") that have invested funds in the syndicated mortgage advanced as a loan to Adelaide Street Lofts Inc. ("**Adelaide**") which is administered by Hi-Rise;

ii. terminates the Engagement Letter between Miller Thomson LLP and certain individuals dated September 6, 2018, as amended thereafter to add additional individuals;

iii. authorizes the establishment of the Consultative Committee substantially in accordance with the process and procedure

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

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

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

vii. permits Hi-Rise to call, hold and conduct a meeting (the "**Meeting**") of the Investors to be held at a location, date and time to be determined by Hi-Rise, in order for the Investors to consider and, if determined advisable, pass a resolution approving the Transaction and the distribution of proceeds therefrom (the "**Distribution**"), and authorizes the conduct of such Meeting;

viii. schedules a further hearing of this Application to approve the Distribution if, at the Meeting a majority in number of the Investors representing two-thirds in value present and voting either in person or by proxy cast votes in favour of the proposed Transaction and Distribution;

(b) upon the subsequent return of this application at a later date, such orders as are necessary to

a. provide final approval of the Transaction and the Distribution if the court determines that the Transaction is fair and reasonable;

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

2. The grounds for the application are as follows:

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

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

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

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

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

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

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

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

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

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

March 14, 2019

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Lawyers for the Applicant, Hi-Rise Capital Ltd.

HI-RISE CAPITAL LTD.
Applicant

SUPERINTENDENT OF FINANCIAL SERVICES et. al.
Respondents

CV-19-616261-0004
Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF APPLICATION

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APPENDIX D

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

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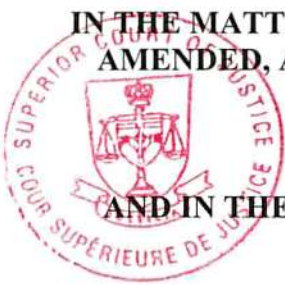
MONDAY THE 15th

JUSTICE HAINEY

DAY OF APRIL, 2019

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

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



ORDER

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

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

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

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



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

APR 15 2019

PER / PAR:



HI-RISE CAPITAL LTD.

Applicant

and

SUPERINTENDENT OF FINANCIAL
SERVICES et. al.
Respondents

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

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

Proceeding commenced at Toronto

**ORDER
(April 15, 2019)**

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Court-appointed Representative Counsel

APPENDIX E

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

TUESDAY, THE 17TH

JUSTICE HAINEY

DAY OF SEPTEMBER, 2019

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



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

ORDER

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

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

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

APPOINTMENT

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

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

NO EFFECT ON RIGHTS AND REMEDIES OF MERIDIAN

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

INFORMATION OFFICER’S POWERS

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

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

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

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

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

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

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

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

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

DUTY TO FACILITATE INFORMATION DISCLOSURE

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

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

INFORMATION OFFICER'S REPORT

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



NO PROCEEDINGS AGAINST THE INFORMATION OFFICER

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

LIMITATION ON THE INFORMATION OFFICER'S LIABILITY

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

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

12. **THIS COURT ORDERS** that:

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

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

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

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

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

PAYMENT OF FEES TO MERIDIAN

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

ENCUMBRANCES IN RESPECT OF THE PROPERTY

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

PIPEDA

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

INFORMATION OFFICER'S ACCOUNTS

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



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

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

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

SERVICE AND NOTICE

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

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

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

GENERAL


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

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

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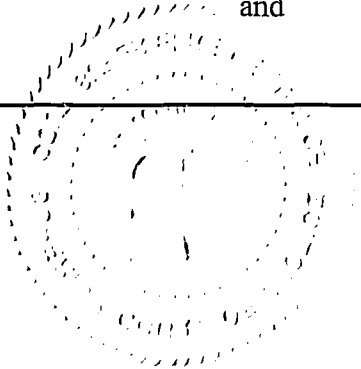
HI-RISE CAPITAL LTD.

Applicant

and

SUPERINTENDENT OF
FINANCIAL SERVICES et. al.
Respondents

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



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

Proceeding commenced at Toronto

ORDER

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Court-appointed Representative Counsel

APPENDIX F

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

REPORT OF THE INFORMATION OFFICER

ALVAREZ & MARSAL CANADA INC.

October 7, 2019

TABLE OF CONTENTS

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

APPENDICES

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

INTRODUCTION

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

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

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

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

TERMS OF REFERENCE AND DISCLAIMER

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

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

PURPOSE OF REPORT

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

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

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

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

THE INFORMATION OFFICER'S REVIEW

Case Background

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

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

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

BMO's Engagement by the Company

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

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

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

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

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

The 2017 Sale Process

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

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

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

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

33. Concord was the leading Qualified Party in respect of both the Property and Widmer and was granted a period of exclusivity to complete its diligence and execute an APS on each of the properties.
34. The Information Officer understands that during its due diligence period, Concord communicated to BMO that primarily due to a number of construction challenges relating to the Property it would not proceed with its contemplated transaction⁵.
35. Concord completed its diligence and the closing of its purchase transaction in respect of Widmer occurred in December of 2017.
36. The construction challenges identified by Concord, as well as the other Interested Parties participating in the 2017 Sale Process, included, but were not limited to, the following:
- (a) *Heritage Wall*: The north-façade of the Property (the “**Heritage Wall**”) has been designated by the City of Toronto (the “**City**”) as a “heritage site” and may not be removed, demolished, or altered without approval from the City;
 - (b) *Site Issues*: The Property is situated on a site that is currently land-locked by surrounding properties, including sites currently under construction, with the only access available on Adelaide Street. Adelaide Street is a one-way street that is heavily trafficked by pedestrians, cyclists and vehicles. Access to the Property is also located directly across from a fire station;
 - (c) *Rental Replacement*: Prior to developing the Property, the City imposes certain conditions that must be satisfied in connection with any residential tenants currently on the site; and

⁵ As of the date of this report, the Information Officer has not been able to schedule a meeting with Concord to discuss its participation in the 2017 Sale Process.

- (d) *Easements*: The Property and surrounding area are subject to a number of easements. It is unclear whether or not such existing easements would be sufficient for construction purposes.

(collectively referred to as the “**Construction Challenges**”).

37. Based on discussions with the Interested Parties, the Information Officer understands that the Construction Challenges created a high level of uncertainty in relation to the costs and the time required to demolish and develop on the site of the Property, hindering their ability to participate in the 2017 Sale Process and/or submit a firm and executable bid for the Property.

The 2018 Sale Process

38. In an effort to address the Construction Challenges and other issues raised during the 2017 Sale Process, the Company took steps and incurred expenditures to mitigate certain issues and assist Interested Parties with diligence. These steps included:
- (a) commissioning two construction methodology reports⁶;
 - (b) executing a Heritage Easement Agreement (October 16, 2017) with the City in order to allow the Heritage Wall to be altered for future development under certain conditions; and
 - (c) obtaining certain additional approvals from the City related to rental replacement, community contribution (Section 37), and storm water management agreements.

⁶ The two reports include: (i) 263 Adelaide St. West Methodology Report (dated February 12, 2018) prepared by Ledcor Group (the “**Ledcor Report**”); and (ii) 263 Adelaide St Preconstruction Report No. 1 (dated June 19, 2018) prepared by EllisDon Corporation (the “**EllisDon Report**”).

39. The Company has indicated that it incurred in excess of \$2.7 million in third party costs to continue to improve the marketability of the Property, and that such costs were funded directly by Holdings. This amount excludes any costs that may be owing by Adelaide to Holdings for ongoing management fees, which are estimated by Holdings to be an additional \$2.5 million.
40. Following the steps taken above, the Company re-engaged with BMO and a second sale process was commenced in August of 2018 (the “**2018 Sale Process**” and together with the 2017 Sale Process, the “**Sale Process**”).
41. The Information Officer understands that BMO contacted over 2,500 parties to solicit interest in the 2018 Sale Process. BMO received 37 executed NDAs of which, four bidders submitted LOIs on or before the 2018 Phase 1 bid deadline of September 18, 2018.
42. The 2018 Phase 1 LOIs ranged in value from \$59.1 million to \$75.0 million. The Information Officer understands that the 2018 Phase 1 bids were presented to the Company on a “no-names” basis in order to preserve the integrity and competitive nature of the Sale Process.
43. The Information Officer reviewed each of the LOIs and noted that each were subject to various diligence and other closing conditions, including further construction and development related investigations, satisfaction with the viability, feasibility and costs associated with development, satisfaction that the Property meets investment and development criteria, receiving certain approval from the City including amendments to the existing Heritage Easement Agreement, receiving a court order to extinguish/amend easements, executing construction agreements with adjacent property owners and obtaining approval from boards of directors or investment committees.

44. Two bidders were advanced by BMO to participate in Phase 2, including: (a) Lanterra Developments Limited (“**Lanterra**”) which submitted an LOI valued at \$75.0 million; and (b) a second bidder (the “**Second Bidder**”) which submitted an LOI valued at \$70.0 million. The Information Officer understands that Lanterra and the Second Bidder were selected based on the quantum of their purchase price and the quality of diligence performed⁷.
45. Lanterra and the Second Bidder (the “**2018 Qualified Bidders**”) were each sent a process letter requesting they submit final bids by October 5, 2018 (the “**2018 Phase 2 Bid Deadline**”) in the form of a marked-up APS. The Information Officer understands that neither party submitted a final offer prior to the 2018 Phase 2 Bid Deadline. Following discussions with Lanterra and the Second Bidder, BMO determined the parties were not prepared to submit definitive offers at the purchase prices offered in their LOIs due to continued concern and uncertainty with the Construction Challenges.
46. Following the 2018 Phase 2 Bid Deadline, BMO began exploring alternate transaction structures with the two bidders executable at the purchase prices offered in their LOIs. Based on these discussions, BMO determined that in order to effect a transaction while maximizing the purchase price, the 2018 Phase 2 Bid Deadline should be extended and the 2018 Qualified Bidders should be invited to submit joint venture proposals.
47. The Information Officer understands that joint venture structures typically allow for higher purchase prices for various reasons, including, without limitation, the sharing of risk and

⁷ The Information Officer notes that a third party submitted a 2018 Phase 1 bid comparable in value to that of the Second Bidder. The Information Officer understands from BMO that in its view, this party had not performed a significant amount of diligence, was not prepared to increase its purchase price and would not remove significant conditions included in its bid and accordingly was not invited to participate in Phase 2. Based on discussions with this party, the Information Officer is of the view that BMO’s rationale to not advance this party to Phase 2 was reasonable in the circumstances.

the lower initial cash outlay required by the prospective purchaser, thereby increasing their rate of return.

Joint Venture Proposals

48. During October of 2018, the 2018 Qualified Bidders were invited to meetings with BMO and the Company to discuss and explore their intentions for the Property, including how they intended to deal with the Construction Challenges.
49. Following these meetings, the 2018 Qualified Bidders were requested to submit a joint venture proposal (“**JV Proposal**”) that would provide for their final and best offer.
50. Lanterra submitted a JV Proposal on November 13, 2018 (the “**Lanterra JV Proposal**”). The Second Bidder submitted formal correspondence to BMO regarding continued interest in the Property but did not submit a formal JV Proposal by the requested date.
51. The Information Officer understands from BMO that after numerous meetings with the Second Bidder, it settled on a joint venture structure in a form that could be presented to the Company.
52. The Information Officer understands that two additional parties expressed interest to BMO in participating in a joint venture and submitted a JV Proposal. One of these JV Proposals was in an acceptable form, while the other was not and accordingly was not considered to be qualified.
53. In December of 2018, the three JV Proposals were presented to the Company on a “no-names” basis. Following additional meetings and review, the Information Officer understands that the Company selected the Lanterra JV Proposal based primarily on the following factors:

- (a) the Lanterra JV Proposal provided for the highest purchase price and greatest potential profit at completion of development. As noted earlier in this Report, it has become more common for downtown Toronto land transactions to include certain structures that increase purchase price but decrease cash consideration on closing. The Information Officer understands from discussions with Lanterra that its purchase price was premised on a joint venture structure as it allows for the sharing of risks and a lower initial cash investment that is needed to achieve its required rate of return;
 - (b) Lanterra had performed extensive diligence and investigation on the Property and spent considerable time and effort developing approaches to address the Construction Challenges; and
 - (c) Lanterra is a reputable developer with extensive experience building in downtown Toronto on sites that contained construction challenges similar to those at the Property.
54. Throughout January and February 2019, the Company and Lanterra worked towards settlement of the Lanterra JV Proposal. The parties reached an agreement on a letter of intent with Lanterra on February 13, 2019.
55. In March and April 2019, the Company and Lanterra continued to negotiate a term sheet which was ultimately executed on April 10, 2019 (the “**Term Sheet**”).

ASSESSMENT OF THE SALE PROCESS

56. The Information Officer reviewed the design and implementation of the Sale Process, a short list of the parties contacted⁸ and each of the bids submitted during all phases of the Sale Process. A summary of the Information Officer's conclusions is as follows:

- (a) the design of the Sale Process was typical of such marketing and sale processes in the real estate industry;
- (b) the materials utilized, including the investment summary, CIM and documents uploaded to the electronic data room were robust;
- (c) the list of potentially interested parties compiled by BMO was extensive, thorough, and provided for wide market coverage;
- (d) the Sale Process allowed interested parties adequate opportunity to conduct due diligence and the timelines provided for were reasonable;
- (e) the activities undertaken by BMO were thorough and professional, and consistent with the activities that a competent advisor or broker would be expected to undertake;
- (f) BMO was appropriately incentivized to achieve the highest value available for the Property;
- (g) the steps taken by BMO, including the selection of bidders to advance into further rounds, were consistent with the activities that other brokers or sale advisors would be expected to perform; and

⁸ The Information Officer understands BMO contacted over 2,500 parties in connection with each of the marketing and sale processes. The Information Officer determined it was not feasible to review all of the parties and instead reviewed a short list of Interested Parties.

- (h) BMO sought to maximize transaction value by adjusting the Sale Process to include joint venture proposals when no cash offers materialized.
57. To gain a better understanding of the Sale Process and results thereof, the Information Officer held a number of discussions with Interested Parties to discuss matters including, but not limited to, the following:
- (a) was there any concern or issue with respect to the Sale Process and how it was run?
 - (b) was BMO attentive and responsive in conducting the Sale Process?
 - (c) what were the primary reasons why Interested Parties did not further pursue a transaction?
58. The Information Officer's findings from discussions with the Interested Parties are summarized as follows:
- (a) no concerns were identified with respect to the Sale Process or how it was conducted;
 - (b) the Interested Parties were complimentary of the work undertaken by BMO, noted BMO was helpful and responsive in all instances and no concerns were identified with respect to their conduct;
 - (c) despite the steps taken by the Company to address the Construction Challenges, the Interested Parties raised significant concern regarding the uncertainty of the costs and timing of construction, in particular that changes may be required to the design and zoning of the Property and the uncertainty in connection with the Heritage Wall and other constructability issues with the site. Interested Parties commented that given the high level of uncertainty, initial purchase prices submitted in LOIs would need to be materially discounted or an alternate structure would be required (i.e. a

joint venture or vendor takeback structure) in order to transact at such purchase prices; and

- (d) certain Interested Parties informed the Information Officer that based on market trends at the time and comparable transactions, including Widmer, they did not participate in the Sale Process or submit formal offers because they did not wish to transact at such values.

- 59. Based on its review, the Information Officer is of the view that the Sale Process was a thorough market test, that sufficient effort had been made to obtain the best price in respect of the Property and that the process was executed with proper efficacy and integrity.
- 60. In particular, the Information Officer concludes that the design and implementation of the Sale Process was consistent with industry standards and was carried out by BMO in a thorough and professional manner.
- 61. The Information Officer notes that the Sale Process was not specifically designed with the goal to maximize the cash proceeds on closing but to maximize the consideration and ultimate proceeds thereof, even if portions of proceeds may be deferred until a later date. In that regard, the Sale Process was consistent with BMO's mandate to maximize transaction value.

LANTERRA TRANSACTION

Lanterra Offer

- 62. As previously discussed, on April 10, 2019, Lanterra and the Company entered into the Term Sheet setting out the key terms of the joint venture agreement. On June 28, 2019, following further negotiations and refinement of deal points, Lanterra and the Company

entered into a Waiver and Amending Agreement dated June 28, 2019 (the “**JV Agreement**”) and together with the Term Sheet, the “**Lanterra Transaction**”).

63. The Information Officer was provided with copies of the Term Sheet, the JV Agreement and all related schedules. The Information Officer understands that the Company and Lanterra consider these documents to be confidential and has not appended them hereto but has instead included a summary of key terms:

Lanterra Transaction	
JV Transaction	<ul style="list-style-type: none"> ▪ Lanterra and the Company to form a single purpose limited partnership (“LP”) in which Lanterra would acquire an interest in 75% of the Property and the assets, books and records related to the redevelopment of the Property (the “Lanterra Project”). The Company would retain a 25% interest in the Lanterra Project; ▪ BRE Fund LP, being part of the Bank of Montreal’s private equity group, will have the option to purchase 15% of Lanterra’s interest (the “Investor Option”) in the Lanterra Project.
Transaction Value and Initial Capitalization	<ul style="list-style-type: none"> ▪ Transaction value of \$73.15 million, capitalized as follows: <ul style="list-style-type: none"> i. LP will grant a first mortgage on the Property in the amount of \$36.58 million (the “First Mortgage”); ii. The Company will be granted a vendor takeback mortgage of approximately \$18.29 million (the “VTB”); and iii. The Company will contribute equity-in-kind of approximately \$18.29 million in exchange for its 25% share of the Lanterra Project.
First Mortgage Terms	<ul style="list-style-type: none"> ▪ The LP will immediately distribute the mortgage proceeds as follows: <ul style="list-style-type: none"> i. to discharge the Meridian Mortgage; and ii. to be used as a return of capital to allow it to retire the Syndicated Mortgage.
VTB Mortgage Terms	<ul style="list-style-type: none"> ▪ Secured against title to the Property, ranking behind the First Mortgage and any surety financing. Will not be subordinate to construction financing; ▪ Expires on the earlier of (a) receipt of certain construction permits; and (b) three years from the closing date of the Lanterra Transaction; ▪ Bears interest at 5% per annum during the first two years and 8% per annum for the final year; ▪ Entirety of the VTB to be guaranteed by Lanterra; and ▪ Lanterra to repay principal and interest then due on the VTB out of Lanterra’s own resources.

Interest Reserve	<ul style="list-style-type: none"> ▪ Lanterra will fund approximately \$1.85 million to an interest reserve account to prefund the first two years of interest obligations under the VTB.
Company's Fees	<ul style="list-style-type: none"> ▪ The Company is entitled to the following fees: <ul style="list-style-type: none"> i. Development Fee: 0.25% of revenues from the Lanterra Project⁹; and ii. Property Management Fee: \$5,000 per month during the term of the Lanterra Project (5-6 years).
The Company Guarantee	<ul style="list-style-type: none"> ▪ The Company is required to jointly and severally guarantee 25% of all obligations of the LP in respect of any project debt.

64. The Information Officer understands that Lanterra has completed all diligence and provided the deposits contemplated in the Term Sheet. Closing of the Lanterra Transaction is subject to: (a) approval of the Investors (as described further below); and (b) execution of certain documents including definitive agreements governing the LP, the Investor Option, and agreements for development, construction and property management (the “**Transaction Agreements**”). The Information Officer has been provided with current drafts of the Transaction Agreements and understands they have been substantially negotiated.
65. The Information Officer notes that definitive documents related to the VTB have not yet been drafted.

The Company's Projected Returns

66. The Information Officer has been provided with a copy of a financial forecast in respect of the Lanterra Project (the “**Proforma**”), which is attached as **Appendix “B”**. The Proforma estimates the development will take up to six years and projects a total profit of

⁹ Should BRE Fund LP exercise its option, and achieve a baseline internal rate of return, the Company could be eligible for an additional Deferred Development Fee of 0.5% of Project Revenues.

approximately \$66.0 million to the LP, based on Lanterra's estimate of revenues and expenses.

67. Based on the Information Officer's review of the Proforma and the Lanterra Transaction, the Company's projected return at the completion of the Lanterra Project is estimated to be approximately \$34.8 million, comprised of:

- (a) a return of capital of approximately \$18.3 million (i.e. the Company's initial contribution for 25% interest in the LP); and
- (b) the Company's share of the potential profit of approximately \$16.5 million (i.e. 25% of \$66.0 million).

68. In addition to the above proceeds, the Company is projected to earn approximately \$3.0 million over the term of the Project (up to 6 years) in connection with development and property management fees.

69. As described in the following section, the Information Officer understands that the Company is proposing to provide a \$15 million debenture to Investors as additional compensation in connection with the Proposed Settlement. Should the Proforma be representative of actual Lanterra Project economics, the Company's potential profit and fees, net of the obligations owing under the debenture, would equal approximately \$22.8 million, excluding any tax considerations (i.e. \$34.8 million plus \$3.0 million less \$15.0 million). The Company has indicated that the remaining share of potential profit is to compensate Holdings: (a) for time and effort to assist Lanterra in completion of the Lanterra Project; and (b) to recoup funds advanced by Holdings to Hi-Rise and Adelaide to fund both operations and additional costs incurred to improve the Property subsequent to the syndicated mortgage freeze. Should the Lanterra Project fail in its entirety, Holdings

could be liable for up to 25% of the outstanding Lanterra Project debt pursuant to certain loan guarantees.

70. Future success and profit of the Lanterra Project is dependent upon many factors, including market conditions, timing of completion and ultimate construction costs. While the development and property management fees would be earned over the life of the Lanterra Project, the return of capital and profit share would not be earned by the Company until project completion which is currently estimated at approximately five to six years. Actual results may differ significantly from that of the Proforma.
71. The Information Officer notes that the Bank of Montreal may continue to participate in the joint venture after closing through advancement of the First Mortgage and potential participation in the Investor Option. It is the understanding of the Information Officer that the First Mortgage is being arranged directly by Lanterra (with no Company involvement) and the Investor Option was negotiated at the direction of the Company after Lanterra was selected as the preferred party.
72. Based on its review of the Information and discussions with the parties noted in paragraph 16 of this Report, nothing has led the Information Officer to conclude that the Lanterra Transaction would be considered to be an improvident transaction.

PROPOSAL TO INVESTORS

73. A fundamental condition in the Lanterra Transaction is for the Company to discharge the SMI registered against title to the Property. On September 6, 2019, Hi-Rise provided an Information Statement (the “**Information Statement**”) to Investors which, among other things, calls for a meeting of Investors in order for the Investors to conduct a vote on the Proposed Settlement. The Information Officer understands the Meeting is currently

contemplated to be held on October 23, 2019. The Information Statement was attached to the Second Report of Counsel as Appendix “AA”, and has been attached to this report as **Appendix “C”**. A summary of the key financial terms is as follows:

Information Statement	
Classes of Investors	<ul style="list-style-type: none"> Two types of Investors, those who hold their beneficial interest in the Syndicated Mortgage via a registered investment plan (the “Registered Investors”) and those who hold their beneficial interest in the Syndicate Mortgage directly with Hi-Rise (the “Non-Registered Investors”). Registered Investors are provided a priority in the waterfall; and Approval will require Investors representing two thirds in value and majority in number to vote in favour of the Proposed Settlement.
Offer to Settle	<ul style="list-style-type: none"> Repayment to Investors of approximately \$17,036,000 on closing (the “Initial Settlement”); Investors to have the benefit of the VTB of \$18,270,000. The terms of the VTB are described in the overview of the Lanterra Transaction. Purchaser has agreed to provide a full corporate guarantee on the VTB¹⁰; and A debenture from Holdings in the amount of \$15,000,000 (the “Debenture”)¹¹, unsecured and non-interest bearing, payable six years from the date of closing.
Guarantees in Respect of Debenture	<ul style="list-style-type: none"> Corporate guarantee of Holdings; and Personal guarantee by Jim Neilas limited to 25% of the total debenture.
Implementation	<ul style="list-style-type: none"> October 23, 2019 – Meeting to vote on the Proposed Settlement November 2019 – Final Court Order December 2019 – Closing & Initial Repayment to Investors December 2021 or December 2022 – Repayment of VTB December 2025 (estimate) – Debenture paid

¹⁰ The Information Officer understands that specific documentation related to the structure of the VTB and the Debenture has not yet been prepared.

¹¹ The Information Statement includes an \$8,000,000 Debenture, however, the information Officer is advised by the Company that the current Proposed Settlement now contemplates a \$15,000,000 Debenture.

74. The Information Officer understands from Hi-Rise that the Registered Investors rank in priority to the Non-Registered Investors for principal, interest accrued to date and interest continuing to accrue. The Information Officer has not performed a legal review of these priorities but understands that Representative Counsel will be setting out its analysis of priorities in a report, to be filed with the Court.
75. The Information Officer understands that upon approval of the Proposed Settlement, no further interest will accrue to Investors and rights to any further interest payments, if any, are waived.
76. Based on the information contained in the Information Statement, together with additional information provided by the Company, Hi-Rise and GT, the Information Officer projected potential Investor recoveries from the Proposed Settlement, including timing of receipt of funds, which can be found in detail in **Appendix “D”** and is provided in summary form below.

Projected Return to Investors (in '000s)			
	Notes	Undiscounted	Present Value as at Dec. 2019 ^[10]
<u>Proceeds from Lanterra Transaction</u>			
First Mortgage (December 2019)	1	36,575	36,575
VTB Mortgage Interest Reserve (December 2019)	2	1,850	1,850
VTB Mortgage (December 2021)	3	18,270	15,099
Proceeds from Lanterra Transaction		56,695	53,524
Less: Retirement of Meridian Mortgage	4	(17,218)	(17,218)
Less: BMO Sale Fee	5	(1,615)	(1,615)
Less: Hi-Rise Cost Recovery	6	(2,214)	(2,214)
Less: Property Taxes	7	(343)	(343)
Proceeds from Lanterra Transaction available to Investors		35,306	32,135
Add: Debenture (December 2025)	8	15,000	8,467
Total Proceeds available to Investors		50,306	40,602
<u>Proposed Distributions to Registered Investors</u>			
On Closing (December 2019)		17,036	17,036
On Repayment of VTB Mortgage (December 2021)		5,280	4,364
Total Distribution to Registered Investors		22,316	21,399
<i>Return to Investors Excluding Interest Paid to Date</i>	9	100%	96%
<u>Proposed Distributions to Non-Registered Investors</u>			
On Closing (December 2019)		-	-
On Repayment of VTB Mortgage (December 2021)		12,990	10,736
On Completion Date (December 2025)		15,000	8,467
Total Distribution to Non-Registered Investors		27,990	19,203
<i>Return to Investors Excluding Interest</i>	9	60%	41%
Total Proposed Distribution to Investors		50,306	40,602

Summary of Notes & Key Assumptions

1. The Information Officer understands that proceeds from the First Mortgage and VTB Interest Reserve will be distributed to Investors on, or shortly after, closing of the Lanterra Transaction.
2. Notwithstanding the provisions of the Term Sheet, it is anticipated that the full amount of the VTB Interest Reserve will be paid to Investors at close (December 2019).
3. Repayment of the VTB is anticipated to be after two or three years. The Information Officer understands that the VTB may be extended for a third year with Investors receiving additional cash interest at 8% of the principal amount.
4. Amounts owing in respect of the First Mortgage will be paid to Meridian on closing of the Lanterra Transaction. Hi-Rise has estimated the balance above based on accrued interest to December 11, 2019 and including a provision for legal fees.
5. The BMO Sale Fee is estimated by Hi-Rise based on the terms of the BMO engagement letter and a transaction value of \$75.0 million (transaction value of \$73.15 million plus prefunding of VTB interest of \$1.85 million). The Information Officer reviewed the calculation of this fee and notes that the balance presented above includes HST, which, if recoverable by the Company may slightly increase amounts distributed to Investors.
6. As further discussed below, the Information Officer understands that Hi-Rise asserts that pursuant to agreements with Investors, Hi-Rise has the ability to recover certain costs. The costs included above by Hi-Rise include the legal and professional fees related to this process, including Hi-Rise's counsel, the Company's counsel, Representative Counsel, the Information Officer and a provision for other consultants and costs incurred by Holdings.

7. Property taxes were estimated by Hi-Rise based on amounts outstanding as at October 1, 2019 plus two months' accrued interest on the property taxes.
 8. The Information Officer understands from the Company that the Proposed Settlement now contemplates a \$15 million Debenture that would be paid to Investors upon the completion of the Lanterra Project (i.e. approximately 6 years).
 9. Total projected return to investors are calculated as follows: (total return / (principal plus accrued interest to December 2019)). This excludes return from interest previously paid to Investors.
 10. For presentation purposes only, the Information Officer has included the present value of distributions based on the current anticipated timing of certain payments and a 10% discount factor.
77. Included in the table above, the Information Officer has estimated the present value of contemplated payments to illustrate the impact of the deferred distributions to Investors (i.e. the VTB and Debenture). The present value of deferred distributions was calculated using a discount rate of 10% which the Information Officer understands from Hi-Rise is the indicative interest rate they pay to Investors (interest rates vary depending on the time of the investment). The distributions from the repayment of the VTB are assumed to be collected two years from closing (December 2021) and the proceeds from the Debenture are assumed to be collected six years from closing (December 2025).
78. The Information Officer understands that in development of the Proposed Settlement, Hi-Rise and/or the Company is seeking reimbursement of certain costs related to the Lanterra Transaction and the Proposed Settlement (legal and other fees totaling \$1.2 million) and Holdings' own costs of \$1.0 million, for a total of \$2.2 million. While Hi-Rise/the Company have asserted that actual costs are higher than \$2.2 million, the Information Officer understands that the Company is proposing a \$2.2 million cap.
79. As further detailed in the GT Report dated August 30, 2019 (the "**GT Report**"), and confirmed through communication with Cassels, the Information Officer understands that Hi-Rise and/or the Company are taking the position that they are actually entitled to a priority of up to \$9.0 million pursuant to the participation/administration agreements with

Investors for costs incurred to enhance the value of the Property and would be seeking same in the event that the Property becomes subject to receivership proceedings (the “**Potential Priority Costs**”). The Information Officer understands that \$5.1 million of the Potential Priority Costs were incurred by Hi-Rise (the “**Hi-Rise Potential Priority Costs**”) and \$4.2 million of costs were incurred by Adelaide. Neither the Information Officer or GT have undertaken a legal review of the Potential Priority Costs. The Information Officer notes that of the \$5.1 million in Hi-Rise Potential Priority Costs, approximately \$0.4 million relate to Representative Counsel’s legal fees which form a priority charge on the Property. The Information Officer understands that litigation risk in relation to the Potential Priority Costs should be considered by the Investors in their evaluation of the Proposed Settlement.

80. The following table further summarizes the projected distributions and overall recoveries to Investors. Recoveries have been estimated based on total amounts owing to Investors, including interest and principal¹² per the books and records of Hi-Rise, including interest accrued to December 11, 2019 and are presented below on an undiscounted basis:

¹² The Information Officer understands that the recovery calculations included in the Information Statement provided to Investors are based only on principal outstanding.

Recovery Analysis (Undiscounted)		('000s)	
	Registered	Non-Registered	Total
Principal Invested	17,305	34,802	52,108
Estimated Accrued Interest as at December 2019	5,010	11,766	16,776
Total Principal and Interest Owed	22,316	46,568	68,884
On Closing (December 2019)	17,036	-	17,036
On Repayment of VTB (December 2021)	5,280	12,990	18,270
On Completion Date (December 2025)	-	15,000	15,000
Total Projected Recoveries	22,316	27,990	50,306
Total Projected Recoveries (%)	100%	60%	73%
Add: Cash Interest Received to Date	3,095	7,431	10,526
Total Projected Recoveries and Interest	25,410	35,421	60,832
Total Projected Recoveries and Interest (%)	114%	76%	88%

81. Based on the Proposed Settlement, Registered Investors are projected to receive a 100% recovery:

- (a) approximately \$17.0 million at close (December 2019) from the proceeds of the new First Mortgage and the payment of the VTB Interest Reserve; and
- (b) approximately \$5.3 million two years from close (December 2021) from the repayment of the VTB.

82. Non-Registered Investors are projected to receive a 60% recovery:

- (a) approximately \$13.0 million two years from close (December 2021) from the repayment of the VTB; and
- (b) approximately \$15.0 million six years from close (December 2025) from the payment of the Debenture.

83. The Information Officer notes that these recoveries have not been discounted and certain of the distributions (i.e. the Debenture) could be contingent on the success of the Lanterra Project, however the Information Officer also notes that the Debenture is to be wholly guaranteed by Holdings and 25% is guaranteed by Jim Neilas personally.

OTHER INDICATIONS OF POTENTIAL VALUE

84. The Information Officer has considered other indications of value and whether there may be viable alternatives to the Proposed Settlement, in particular the following:
- (a) the Tricon offer;
 - (b) Third Party Appraisals; and
 - (c) re-opening the marketing and sale process / Receivership.

Tricon Offer

85. The Information Officer understands that Tricon¹³ first expressed interest in the Property in or around August of 2016. The Information Officer has been provided with and reviewed email correspondence between Tricon and the Company and understands that Tricon performed diligence on the Property and several meetings between Tricon and the Company were held. Ultimately, Tricon and the Company were unable to come to any type of arrangement prior to commencement of the 2017 Sale Process.
86. The Information Officer understands that Tricon participated in the 2017 Sale Process. Tricon submitted a Phase 1 bid but due to its relative value, was not invited to participate in Phase 2. Tricon was invited by BMO to participate in the 2018 Sale Process but declined to participate.
87. As described in the Second Report of Counsel, Representative Counsel received an unsolicited expression of interest in respect of a cash purchase of the Property from Tricon. The offer was initially in the form of a non-binding letter of interest dated July 9, 2019.

¹³ Tricon is a subsidiary of the Tricon Capital Group Inc. a residential real estate company primarily focused on rental housing in North America, with approximately \$7.2 billion (C\$9.7 billion) of assets under management. Tricon invests in a portfolio of single-family rental homes, multi-family rental apartments and for-sale housing assets, and manages third-party capital in connection with its investments. More information about Tricon is available at: www.triconcapital.com.

On July 19, 2019, Tricon submitted a refined offer in the form of a marked-up APS (the “**Tricon Offer**”).

88. The Information Officer understands the Tricon Offer was provided to both Representative Counsel and to BMO. Key terms and components of the Tricon Offer include the following:

Tricon Offer	
Purchaser	<ul style="list-style-type: none"> Tricon Lifestyle Rentals Investment LP
Purchase Price	<ul style="list-style-type: none"> \$72.0 million; Payment of the Purchase Price: <ul style="list-style-type: none"> \$2.0 million deposit on the third business day following execution of the APS (“First Deposit”); \$3.0 million deposit on the third business day following the Due Diligence Date (“Second Deposit”); and Balance of the of the Purchase Price on the Closing Date (“Final Payment”). The First Deposit and Second Deposit shall be returned to the Purchaser if the transaction is not completed for any reason except as a result of a default of the Purchaser under the APS; The Final Payment is subject to customary real estate transaction closing adjustments.
Due Diligence Conditions	<ul style="list-style-type: none"> The Purchaser has requested a number of additional diligence materials (the “Deliveries”) from the Vendor; Following the receipt of all of the Deliveries, the Purchaser shall have 45 days to review the Deliveries and perform any additional due diligence that may be required; The APS includes the following due diligence condition for the benefit of the Purchaser: <p><i>“by the Due Diligence Date (i.e. 45 days), the Purchaser shall have examined and been satisfied, in the Purchaser’s sole, absolute and unfettered discretion, <u>which may be exercised arbitrarily for any reason or for no reason at all</u>, with the results of the its due diligence enquiries, tests and investigations in respect of the Purchase Assets, including the Purchaser’s review of the Deliveries”</i>; [emphasis added]</p>
Closing Date	<ul style="list-style-type: none"> 45 days after the Due Diligence Date. The Due Diligence Date (45 days) and the Closing Date (45 days) provide the Purchaser with 90 days to close the transaction following receipt of all of the Deliveries; Purchaser to be granted exclusivity.

89. Based on its review of the Tricon Offer, the Information Officer notes the following:
- (a) the Tricon Offer of \$72.0 million is materially higher than the \$55.9 million offer Tricon submitted during Phase 1 of the 2017 Sale Process;
 - (b) compared to the Lanterra Transaction, the Tricon Offer provides for slightly lower consideration, however would provide a better return to Investors, assuming a similar distribution waterfall as the Proposed Settlement, because greater cash distributions would take place on closing, or shortly thereafter;
 - (c) in its current form the Tricon Offer remains subject to the due diligence condition described above, as well as approval from Tricon's Board of Directors and Investment Committee;
 - (d) if the due diligence condition is not waived by Tricon, Tricon could walk from the proposed transaction and receive a full refund of the First Deposit and Second Deposit, without penalty;
 - (e) the Tricon Offer was not submitted in accordance with the Sale Process guidelines and bid deadlines; and
 - (f) if the Company was to pursue the Tricon Offer, the exclusivity requirement would require the Company to terminate the Lanterra Transaction.
90. Based on discussions with Tricon, the Information Officer understands:
- (a) Tricon has performed diligence on the Property, including prior to and during the 2017 Sale Process, and has recently updated its diligence by working with one of its trusted construction partners;

- (b) Tricon did not participate in the 2018 Sale Process primarily because it believed its proposal would not be sufficient to meet the pricing expectations set by BMO at that time¹⁴;
- (c) by not participating in the 2018 Sale Process, Tricon did not have access to certain of the additional materials made available to Interested Parties in the electronic data room during such process;
- (d) Tricon appears to be familiar with each of the Construction Challenges and the Construction Challenges have been considered in the Tricon Offer however Tricon noted that it would need to engage third party experts and incur additional costs during diligence; and
- (e) Tricon explained that the increase in consideration offered compared to its offer in the 2017 Sale Process is reflective of a change in market dynamics, including increased market rents and a reduction in their cost of capital.

91. Based on discussions with BMO in connection with the Tricon Offer, the Information Officer understands:

- (a) notwithstanding BMO's efforts to solicit its participation, Tricon declined to participate in the 2018 Sale Process. However, if the Tricon Offer had been submitted in accordance with the 2018 Sale Process guidelines, it would have been explored and advanced through the process;
- (b) BMO held discussions with Tricon to better understand the Tricon Offer. Following these discussions, BMO concluded the Tricon Offer was not executable in its current form as Tricon would not waive its conditions; and

¹⁴ BMO has indicated to the Information Officer that no prior guidance was given.

- (c) BMO acknowledged that Tricon performed extensive due diligence in the 2017 Sale Process, however indicated that, in its view Tricon did not provide a satisfactory explanation as to why their purchase price increased substantially from their original offer during Phase 1 of the 2017 Sale Process.

Third Party Appraisals

- 92. In connection with the Sale Process, the Company engaged for two real estate appraisals:
 - (a) Cushman & Wakefield ULC prepared an appraisal dated February 27, 2018 (the “**Cushman Appraisal**”). The Cushman Appraisal values the Property at \$81.8 million (approximately \$235 per buildable square foot); and
 - (b) Colliers International prepared an appraisal dated July 16, 2018 (the “**Colliers Appraisal**”). The Colliers Appraisal values the Property at \$82.1 million (also approximately \$235 per buildable square foot).
- 93. As noted in the Cushman Appraisal, one of the factors considered in its appraisal included comparable land sales in the subject market area, including five comparable sites that transacted during the period December 2017 to January 2018, ranging in value from \$49.5 million to \$300 million, or approximately \$182 to \$284 per buildable square foot (average of \$251 per buildable square foot).
- 94. The Information Officer notes that these are comparable data points, however site-specific details would cause variations in valuation and ultimately the best judge of value would be a comprehensive market test through a robust marketing and sale process.

Re-opening the Sale Process / Receivership

95. The Information Officer has considered whether reopening the sale process might reasonably be expected to generate a result that would provide greater recovery for the Investors compared to the Lanterra Offer and the Proposed Settlement.
96. As previously noted, the Information Officer is of the view that BMO's Sale Process was a thorough canvassing of the market and fairly demonstrated the market value of the Property.
97. Furthermore, the accrual of interest and other potential costs in respect of the Meridian Mortgage and the SMI will continue to deteriorate potential recoveries for the Non-Registered Investors. There is no certainty that Meridian will continue to provide a standstill and not proceed to take further actions¹⁵.
98. There is no certainty whether a new marketing and sale process may generate a purchase price in excess of the Lanterra Transaction. The Information Officer notes however that re-opening the sale process would take additional time and costs would continue to accrue during this period.
99. The Information Officer reviewed the "Receivership Scenarios" presented in the GT Report which is attached as Appendix V to the Second Report of Counsel. The Information Officer is of the view the scenarios are appropriately presented for the purpose of which they were created and has included GT's analysis in its comparison of values below. In addition to the GT Report scenarios, the Information Officer has presented an alternate receivership scenario (the "**Truncated Receivership**").

¹⁵ Should Meridian seek Court appointment of a receiver, the receiver would have a duty to all stakeholders, not just Meridian.

100. The Truncated Receivership is based on an accelerated timeline of four months, compared to nine to 15 months in the GT Report, to reflect the possibility of an expedited receivership process by relying on the Sale Process already performed by BMO. Accordingly, the costs and disbursements associated with the receivership proceedings have been adjusted downward.
101. The table below includes a summary of recoveries to Investors in the Truncated Receivership scenario in comparison to the Proposed Settlement and two scenarios as presented in the GT Report. A detailed summary of the Truncated Receivership scenario is included as **Appendix “E”**. Based on the assumptions included, the Information Officer notes the following:
- (a) if Hi-Rise is unsuccessful in asserting its claim to the Hi-Rise Potential Priority Costs in the amount of \$4.7 million¹⁶, the Property would need to be sold for approximately \$71.2 million for Investors to receive the same (or similar) nominal recovery as they would in the Proposed Settlement. Accounting for the time value of delayed payments included in the Proposed Settlement at a 10% discount rate (i.e. the VTB and the Debenture), on a present value basis, the Property would need to be sold for approximately \$62.0 million¹⁷;
 - (b) if Hi-Rise is successful in asserting its claim to the Hi-Rise Potential Priority Costs, the Property would need to be sold for approximately \$76.1 million for Non-Registered Investors to receive the same (or similar) nominal recovery as they

¹⁶ The Hi-Rise Potential Priority Costs were estimated to be \$5.1 million less Representative Counsel’s legal fee priority charge of \$0.4 million. The \$5.1 million of Hi-Rise Potential Priority Costs was used to be consistent with the GT Report. However, the Information Officer understands that Hi-Rise will assert its full Potential Priority Costs.

¹⁷ Actual calculation of present value equivalents would be depended upon timing of closing of any sale transaction.

would in the Proposed Settlement. Accounting for the time value of delayed payments included in the Proposed Settlement at a 10% discount rate (i.e. the VTB and the Debenture), on a present value basis, the Property would need to be sold for approximately \$66.9 million;

- (c) proceeds realized through a receivership proceeding are likely to be distributed to Investors faster compared to the Proposed Settlement. The balances noted herein are in nominal dollars and the time value of money has not been considered; and
- (d) the Information Officer understands from Hi-Rise that in a receivership scenario, Hi-Rise and/or the Company may seek to recover all the Potential Priority Costs which, if successful, would have a material impact on distributions to Investors and further increase the selling price required to achieve the same result as the Proposed Settlement.

Comparison of Values

102. For information purposes only, the Information Officer has prepared the following table to summarize the potential values that may be available to the Investors under various alternatives.

Summary of Investor Recoveries (nominal dollars)				('000s)	
	Proposed Settlement ¹	Truncated Receivership Low ²	Truncated Receivership High ²	GT Receivership Low ³	GT Receivership High ³
Estimated Sale Price	73,150	71,170	76,071	44,000	72,000
Without Hi-Rise Potential Priority Costs					
<i>Registered Investors</i>					
Investor Recovery (\$)	22,316	22,605	22,605	22,171	22,171
Investor Recovery (%)	100%	100%	100%	100%	100%
<i>Non-Registered Investors</i>					
Investor Recovery (\$)	27,990	27,990	32,694	424	28,194
Investor Recovery (%)	60%	59%	69%	1%	61%
Total Recovery	50,306	50,595	55,300	22,595	50,366
With Hi-Rise Potential Priority Costs					
<i>Registered Investors</i>					
Investor Recovery (\$)	n/a	22,605	22,605	17,541	22,171
Investor Recovery (%)	n/a	100%	100%	79%	100%
<i>Non-Registered Investors</i>					
Investor Recovery (\$)	n/a	23,286	27,990	-	23,140
Investor Recovery (%)	n/a	49%	59%	0%	50%
Total Recovery	n/a	45,891	50,595	17,541	45,311

Summary of Notes & Key Assumptions

1. Hi-Rise is only asserting certain Potential Priority Costs under the Proposed Settlement.
2. See full summary of Truncated Receivership scenario in **Appendix "E"**.
3. Per GT Report.

103. Based on its review of the Proposed Settlement and the alternatives presented above, the Information Officer notes the following:

- (a) as detailed in this Report, the Proposed Settlement is premised on the Lanterra Transaction. While the Lanterra Transaction provides a high level of certainty in terms of purchase price, significant parts of the distributions associated with the Proposed Settlement are deferred into the future and may be subject to the ultimate success of the Lanterra Project (i.e. the Debenture);
- (b) compared to the Proposed Settlement, the alternatives each have a materially higher level of conditionality and uncertainty, all of which could significantly impact the

- quantum and timing of proceeds and there is no guarantee that an all cash offer can be obtained for the values indicated in the Truncated Receivership scenario; and
- (c) in developing the Truncated Receivership scenario, to maintain consistency with the GT Report, the Information Officer only sensitized for the Hi-Rise Potential Priority Costs. If Hi-Rise is successful in asserting the full Potential Priority Costs in priority to Investors, distributions to Investors could be materially altered. Further, if the Potential Priority Costs are litigated between Hi-Rise and the Investors, additional time and cost may be incurred impacting ultimate recovery.

CONCLUSIONS & OTHER FINDINGS

Sale Process

104. It is clear that Schedule I and institutional construction lenders are hesitant to provide construction financing in situations where syndicated mortgages are registered on title. To realize maximum value for the Property (as a development site), a sale transaction and related discharge of the SMI is required. Absent additional financing, the Property would remain an undeveloped low-rise rental property.
105. Based on the Information reviewed to date and results of the Sale Process, the Information Officer does not believe that there is any reasonable prospect of a sale process generating sufficient funds to repay both the Meridian Mortgage and the SMI.
106. After the 2017 Sale Process failed to generate any transaction in respect of the Property, the Company and BMO took positive steps and incurred considerable cost to address certain Construction Challenges.
107. The Information Officer is of the view that the Sale Process conducted was a thorough market test, that sufficient effort was made to obtain the best price in respect of the Property and that the process was executed with proper efficacy and integrity.

108. While no specific asking price was provided for the Property, the Information Officer found that certain Interested Parties were guided by recent comparable transactions, including Widmer, and considering the Construction Challenges, these market trends discouraged certain Interested Parties from participating in the Sale Process.
109. As discussed herein, no Interested Party was willing to submit an all cash offer by the applicable Sale Process bid deadlines. The Sale Process was designed and executed to maximize the ultimate proceeds from the transaction, not necessarily cash consideration on closing. In that regard, the Information Officer is of the view that the Lanterra Transaction provides for the best price in respect of the Property.

Consultations Held

110. The Information Officer held a number of meetings and requested significant information from the parties mentioned in this Report. During its review, the Information Officer found the conduct of all parties to be cooperative and supportive, was granted unfettered access to the individuals and groups it requested meetings with and was provided with requested information on a timely basis.
111. Nothing in its review of the Information provided to it and in discussions with the parties noted herein has led the Information Officer to conclude that the Lanterra Transaction would be considered to be an improvident transaction.
112. Each of the Interested Parties agreed that the Property's value is impacted by the Construction Challenges and other constructability issues which create significant uncertainty around the cost and time it may take to complete development on the site. Considering these issues, together with recent trends in the market, the Interested Parties confirmed that the best way to maximize purchase price would be through a transaction

including a joint venture and/or vendor takeback structure. The Information Officer found no indication that management of the Company influenced the creation of the joint venture structure proposed in the Lanterra Transaction.

Lanterra Transaction & Proposed Settlement

113. Based on the Information reviewed by the Information Officer, at the completion of the project, the Company's undiscounted potential proceeds, net of the \$15.0 million Debenture, are projected to equal approximately \$22.8 million. In the Information Officer's view, it is appropriate for the members of the Official Committee, and the Investors, to express concern over the Company's continued interest (i.e. its 25% share of the JV) in the Property.
114. If Investors vote to approve the Proposed Settlement, Registered Investors are projected to receive \$22.3 million (100% return) and Non-Registered Investors are projected to receive \$28.0 million (60% return), however as described previously, certain of these proceeds will only be distributed years in the future.

Alternatives

115. The Information Officer is of the view the Sale Process was a robust and thorough market test and the results thereof should be given more weight than: (a) alternate transactions that could be pursued that include a higher level of conditionality and would require time to execute; and (b) other indications of value, including the third party appraisals, which are subject to a number of conditions and restrictions.
116. The Information Officer noted that several key items in the Information Statement (and therefore the Proposed Settlement) may need to be refreshed and/or further developed. For example, the ultimate structure of the VTB and the structure and amount of the Debenture

are not accurately reflected in the Information Statement. The Information Officer recommends that, prior to any vote, an updated Information Statement be provided to the Investors.

117. If the Investors do wish to pursue an alternate transaction, based on communications reviewed by the Information Officer, it is likely that Meridian would commence enforcement proceedings resulting in a receivership. Within receivership proceedings, the Information Officer estimates that to generate a nominal return to Investors that would be the same or similar to the Proposed Transaction, the Property would need to be sold for an amount in excess of \$71.2 million, or \$76.1 million if Hi-Rise successfully asserts the \$4.7 million Hi-Rise Potential Priority Costs or approximately \$62.0 million to \$66.9 million when considering the estimated present value of distributions contained in the Proposed Settlement.
118. As requested by this Court, the Information Officer reviewed and explored the Tricon Offer. Although Tricon appears to be very familiar with the Property and its cash offer of \$72.0 million would provide a better and immediate return to Investors, the Tricon offer remains subject to an open-ended diligence condition that requires a minimum of 45 days to satisfy and has not yet been approved by its investment committee or board of directors. The Information Officer also notes that Tricon had an opportunity to participate in the 2018 Sale Process and declined to do so. The Information Officer supports BMO's assertion that maintaining the integrity of the marketing and sale process, including its timelines and bid deadlines, is of high importance, and especially so when presented with a conditional offer.

All of which is respectfully submitted this 7th day of October, 2019.

**ALVAREZ & MARSAL CANADA INC.,
in its capacity as Information Officer**

Per:



Name: Stephen Ferguson
Title: Senior Vice-President

HI-RISE CAPITAL LTD.

- and -

SUPERINTENDENT OF FINANCIAL SERVICES *et al.*

Applicant

Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

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APPENDIX G

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF SECTION 60 OF THE TRUSTEE ACT, R.S.O. 1990, C. T.23, AS
AMENDED, AND RULE 10 OF THE ONTARIO RULES OF CIVIL PROCEDURE,
R.R.O. 1990, REG. 194, AS AMENDED**

**AND IN THE MATTER OF HI-RISE CAPITAL LTD. AND IN THE MATTER OF
ADELAIDE STREET LOFTS INC.**

**THIRD REPORT OF MILLER THOMSON LLP, IN ITS CAPACITY
AS COURT-APPOINTED REPRESENTATIVE COUNSEL**

October 18, 2019

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Court-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**”)¹ set out in a term sheet executed April 10, 2019 (the “**JV Agreement**”) with Lanterra Developments Limited (“**Lanterra**”) and result in the distributions contemplated in the Proposed Settlement.

4. Representative Counsel has filed this Third Report for the purpose of advising the Court and the Investors as to:

- (a) the recommendation of the Official Committee of Investors (the “**Official Committee**”) regarding the Proposed Settlement; and
- (b) Representative Counsel’s concerns with Hi-Rise’s proposal that Investors vote in a single class.

ESTABLISHMENT OF OFFICIAL COMMITTEE

5. Pursuant to the Appointment Order, Representative Counsel was directed to establish an Official Committee in accordance with the process and procedure described in Schedule “B” attached to the Appointment Order. Pursuant to the Order of the Honourable Mr. Justice Hainey dated April 15, 2019, the Official Committee was approved and constituted (the “**Official Committee Approval Order**”, a copy of which is attached as **Appendix “B”**).

APPOINTMENT OF INFORMATION OFFICER

6. Pursuant to the Order of the Honourable Mr. Justice Hainey dated September 17, 2019 (the “**IO Order**”), Alvarez & Marsal Canada Inc. was appointed as Information Officer (in such capacity, the “**Information Officer**”).

7. Pursuant to the IO Order, the Information Officer was authorized and empowered to, among other things, review and report to the Court and to all stakeholders, including but not limited to the Representative Counsel, Hi-Rise, the Company, the Financial Services Regulatory Authority of Ontario and Meridian Credit Union Limited, in respect of all matters relating to the Property, Hi-Rise's mortgage over the Property, and the Company's proposed sale of the Property, including, but not limited to, the marketing and sales process undertaken in respect of the Property, all aspects of any and all proposed transactions in respect of the Property (and in this regard, the Information Officer may engage in discussions with Tricon Lifestyle Rentals Investment LP to ascertain its interest in the Property), and the financial implications of such proposed transactions (the "**Mandate**").

8. In accordance with the IO Order, on October 7, 2019, the Information Officer delivered a report in respect of its Mandate (the "**IO Report**"). For ease of reference, a copy of the IO Report is attached hereto as **Appendix "C"** (without appendices).

9. Both Representative Counsel and the Official Committee accept the facts and conclusions set out in the IO Report, and are of the view that the Information Officer fulfilled its mandate.

RECOMMENDATION OF THE OFFICIAL COMMITTEE

10. The Official Committee does not support the Proposed Settlement and is unable to recommend that Investors approve it.

11. In reaching its conclusion, the Official Committee has relied upon the IO Report as well as certain clarifications made by the Information Officer directly to the Official Committee.² In particular, the Official Committee relies upon the following statements made by the Information Officer:

- (a) Although the design and implementation of the Sale Process was consistent with industry standards and was carried out by BMO in a thorough and professional

¹ While Adelaide has refused to provide Investors with a copy of the JV Agreement, a copy was provided to the Information Officer for review and the IO Report contains a description of the relevant provisions. See IO Report at para 63.

² Paragraph 11 of this Third Report was reviewed by the Information Officer to confirm its accuracy.

manner, BMO's mandate was to maximize transaction value, not to maximize Investor recoveries. The Sale Process was not specifically designed with the goal to maximize the cash proceeds on closing but to maximize the consideration and ultimate proceeds thereof, even if portions of proceeds may be deferred until a later date.³

- (b) Significant components of the distributions to Non-Registered Investors (as defined below) contemplated under the Proposed Settlement are contingent insofar as they are dependent upon the ultimate success of the Lanterra Project.⁴ Taking this into account, the Official Committee notes that there is a high degree of risk to Investors with respect to full payment of the unsecured debenture in the amount of \$15,000,000 should the project not be successful. Only \$2,000,000 of the debenture is personally guaranteed by Jim Neilas.⁵
- (c) The Non-Registered Investors will not receive any payment on closing of the Lanterra Transaction. Non-Registered Investors will not receive any payments until December 2021 or December 2022, depending upon when the vendor takeback mortgage is repaid. The balance of payments to Non-Registered Investors is not expected to occur until December 2025.⁶
- (d) If the Project is successfully completed, the Company's undiscounted potential net proceeds are projected to equal approximately \$22.8 million arising from the Company's continued interest (*ie*, its 25% share in the joint venture) in the Property (after accounting for the \$15 million debenture). The Official Committee believes this continued interest and amount of profit to the Company are unfair to Investors who will sustain a significant shortfall.⁷ This also appears inconsistent

³ IO Report at paras 59-61, 109.

⁴ IO Report at para 103(a).

⁵ IO Report at para 73.

⁶ IO Report at para 73. Note that Schedule "A" to the Updated Information Statement dated October 9, 2019 confirms the amount to be guaranteed by Mr. Neilas.

⁷ IO Report at para 113.

with certain fundamental principles of insolvency law, including the *Bankruptcy and Insolvency Act* (Canada) (the “BIA”), which prohibits payments to equity holders in priority to payment in full of creditor claims.⁸

12. The Official Committee recognizes the considerable uncertainty with respect to the outcome of any alternative to implementation of the Proposed Settlement, including a receivership proceeding. As noted in the IO Report, the Information Officer does not believe that there is any reasonable prospect of a sale process generating sufficient funds to repay the Investors in full.⁹ While there are indications that a superior result may be achievable through a new sale process (*eg*, the agreement of purchase and sale submitted by Tricon Lifestyle Rentals Investment LP),¹⁰ it is also possible that a sale process would result in an inferior result than the Lanterra Transaction and Proposed Settlement.¹¹

13. As such, there does appear to be some merit to the Proposed Settlement. Nevertheless, in light of the concerns referenced herein including at paragraph 11, the Official Committee is unable to support or recommend approval of the Proposed Settlement.

CONCERNS WITH SINGLE INVESTOR CLASS

14. Representative Counsel understands that all Investors will be included in a single class for the purpose of voting on the Proposed Settlement, and that approval will require Investors representing two-thirds in value and a majority in number to vote in favour of the Proposed Settlement.¹² These approval thresholds are consistent with those prescribed in the BIA.

15. As noted below, the structure of the Proposed Settlement is premised on Hi-Rise’s position that Investors who hold their beneficial interest in the Syndicated Mortgage through a

⁸ While Representative Counsel recognizes that this proceeding is not being conducted under the BIA, the adoption of certain provisions of the BIA by analogy (*ie*, the voting thresholds) makes the comparison appropriate.

⁹ At para 105.

¹⁰ IO Report at paras 87-88.

¹¹ IO Report at para 99-102. Note that the Official Committee does not accept the validity of the Potential Priority Costs set out in Note 1 of the chart at para 102.

¹² IO Report at para 73.

registered investment plan (the “**Registered Investors**”) rank in priority to Investors who hold their beneficial interest in the Syndicate Mortgage directly through Hi-Rise (the “**Non-Registered Investors**”) for principal, interest accrued to date and interest continuing to accrue. If Registered Investors do have priority over Non-Registered Investors then the Proposed Settlement will have vastly different outcomes for the two groups.

16. Consequently, Representative Counsel is of the view that it is inappropriate and unfair to Non-Registered Investors to be included in the same class as Registered Investors for the purpose of voting on the Proposed Settlement.

17. Representative Counsel recommends that Investors vote in two separate classes (*ie*, Registered Investors and Non-Registered Investors) for the purpose of voting on the Proposed Settlement, and that approval require that Investors representing two-thirds in value and a majority in number of each such class vote in favour of the Proposed Settlement.

CONCLUSION

18. As noted above, the Official Committee does not recommend that Investors vote in favour of the Proposed Settlement.

19. Both Representative Counsel and the Official Committee acknowledge that Registered Investors will likely support it as it provides for a substantial portion of their claims to be paid on closing, based on the feedback received from Non-Registered Investors it appears there is little prospect of support among members of this group. Given the proportionate weight of the group of Non-Registered Investors, a lack of support among them will likely be fatal to the prospect of the Lanterra Transaction and the Proposed Settlement.

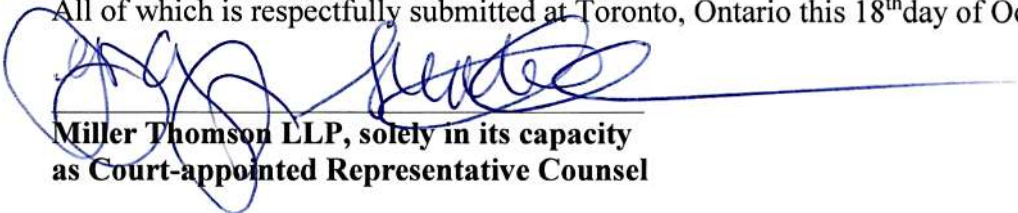
20. If Hi-Rise seeks to secure the support of Non-Registered Investors without abandoning the Lanterra Transaction, Representative Counsel recommends the following amendments to the Proposed Settlement:

- (a) Non-Registered Investors should receive a substantial portion (*eg*, 50%) of the \$15 million contemplated under the debenture at closing;

- (b) the amount of the \$15 million debenture guaranteed by Jim Neilas should be increased from \$2 million to \$5 million, and should be secured; and
- (c) a meaningful amount of the forecasted \$22.8 million net profit to the Company should be diverted to the Investors, possibly through a share of ownership in the joint venture or through a royalty arrangement.

21. While these amendments will not guarantee the support of the Official Committee or individual Non-Registered Investors, in the opinion of Representative Counsel and the Official Committee they would collectively constitute a display of goodwill toward the Investors and would address certain of the most common objections to the Proposed Settlement in its current incarnation.

All of which is respectfully submitted at Toronto, Ontario this 18th day of October, 2019.



**Miller Thomson LLP, solely in its capacity
as Court-appointed Representative Counsel**

HI-RISE CAPITAL LTD.

and

SUPERINTENDENT OF FINANCIAL
SERVICES et. al.
Respondents

Applicant

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**

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Court-appointed Representative Counsel

APPENDIX H



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NOTICE OF MEETING OF INVESTORS HOSTED BY REPRESENTATIVE COUNSEL

TO: Investors in Hi-Rise Capital Ltd.

FROM: Miller Thomson LLP, in its capacity as court-appointed Representative Counsel

MEETING DATE: Sunday October 20, 2019

MEETING TIME: 2:00 p.m. EST (Please arrive at 1:30 p.m. EST in order to sign-in).

LOCATION: Offices of Miller Thomson LLP
Scotia Plaza
40 King Street West, Suite 5800
Toronto, Ontario

Introduction

You are receiving this Notice of Meeting of Investors from Miller Thomson LLP ("**Representative Counsel**") because you are an individual and/or entity (an "**Investor**") that holds an interest in a syndicated mortgage, administered by Hi-Rise Capital Ltd. ("**Hi-Rise**"), in respect of the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the "**Property**") owned by Adelaide Street Lofts Inc. ("**Adelaide**").

As you know, Representative Counsel represents the interest of all Investors, except Investors who do not wish to be represented by Representative Counsel and have completed and delivered an Opt-Out Notice.

Representative Counsel established an Official Committee of Investors (the "**Official Committee**"), with which Representative Counsel consults regularly and from which it takes instruction in respect of this matter.

Purpose of the Meeting with Representative Counsel

As you may know, Hi-Rise is hosting a meeting of Investors on Wednesday October 23, 2019, at which Investors will vote on a proposed settlement put to Investors by Hi-Rise regarding their investments in the mortgage on the Property (the "**Vote**").

In advance of the Vote, Representative Counsel and the Official Committee invite you to a Meeting of Investors at the Offices of Miller Thomson LLP on Sunday October 20, 2019 at 2:00 p.m. (the "**Town Hall Meeting**").

The purpose of the Town Hall Meeting is to discuss the upcoming Vote and the proposed settlement of your investment and what it means for you. At the Town Hall Meeting:

- The Official Committee will provide its position on Hi-Rise's proposed settlement and its recommendation on the Vote;
- Representative Counsel will provide legal advice on the implications of the proposed settlement and the Vote, including the risks and the outcome for Investors if the Vote passes or if the Vote fails; and
- All Investors present will have the opportunity to ask questions of Representative Counsel and the Official Committee.

In-Person Attendance Only

In order to protect confidentiality and privileged legal advice, Representative Counsel is only hosting the Town Hall Meeting in person and only Investors are invited to attend. This means that the only way to participate in the Town Hall Meeting is to attend in person. There will not be a conference call line available for Investors to dial-in.

The Town Hall Meeting is very important. It is the only time that Investors will be able to meet with the Official Committee and Representative Counsel before the Vote. Representative Counsel strongly encourages ALL Investors to attend.

Who Will be at the Town Hall Meeting?

Representative Counsel and the Official Committee will be present at the meeting.

External counsel to the Financial Services Regulatory Authority of Ontario ("**FSRA**") may be present at the Town Hall Meeting as an observer. In order to protect privilege, FSRA's external counsel will be asked to step out of the Town Hall Meeting when Representative Counsel is providing legal advice.

Hi-Rise and/or Adelaide are not invited to the Town Hall Meeting.

Only Investors are invited to attend at the Town Hall Meeting. This means that you must be an Investor in Hi-Rise in order to enter the Town Hall Meeting. All Investors will be asked to sign in with Representative Counsel before they are permitted to enter the Town Hall Meeting room.

Friends, family members or financial advisors of Investors are **NOT permitted to attend** the Town Hall Meeting and will be asked to leave.



What to Bring With You

In order to be permitted to attend at the Town Hall Meeting, you **MUST** be an Investor. In order to protect confidentiality and privileged legal advice, Representative Counsel will verify your identity and confirm that you are an Investor in Hi-Rise.

All Investors will sign be asked to sign-in. Please arrive at 1:30 p.m. in order to sign-in.

You MUST bring the following documentation with you in order to sign in and attend the Town Hall Meeting:

1. One piece of government issued photo identification (*i.e.* a passport or a driver's license);
2. A copy of your investment documents; and
3. If your investment is held through a corporation (*i.e.* the name on your investment document is a company as opposed to your individual name), copies of the articles of incorporation and supporting documentation indicating that you are the director of the company.

The name on your investment documents (or corporate documents) must match your photo identification. If you do not bring the required documents, Representative Counsel may choose to deny your access to the Town Hall Meeting.

A copy of this Notice of Meeting will be posted on Representative Counsel's website at the following URL: <https://www.millerthomson.com/en/hirise/>

Thank you for your attention to this matter. We look forward to meeting all Investors at the Town Hall Meeting.

Miller Thomson LLP,
in its capacity as court-appointed Representative Counsel

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APPENDIX I



October 21, 2019

Important Update on the Court Report of the Information Officer

Representative Counsel provides this summary at the request of Investors that attended in person at the Meeting of Investors at the offices of Miller Thomson LLP on Sunday October 20, 2019.

This summary sets out certain clarification points regarding the proposed settlement offered to Investors by Hi-Rise Capital Ltd. (the “**Proposed Settlement**”) in respect of the 263 Adelaide Street West (the “**Property**”). This summary also sets out the Official Committee’s recommendation on should vote on October 23, 2019 on the Proposed Settlement.

For the reasons set out below, the Official Committee recommends voting against the Proposed Settlement on October 23, 2019.

This summary provides a simple overview and summary only, and is not intended to be read in isolation. For full information and details, this summary should be read in conjunction with the following documents:

1. Third Report of Representative Counsel dated October 18, 2019 (the “**Third Report**”), which is posted under the ‘Documents’ section of Representative Counsel’s website; and
2. The Report of the Information Officer dated October 7, 2019, which is posted under the ‘Documents’ section of Representative Counsel’s website.

Mortgages on the Property and Priority:

1. There is a first mortgage registered on title to the Property in favour of Meridian Credit Union (the “**First Mortgage**”).
2. There is a second mortgage registered on title to the Property in favour of both Hi-Rise Capital Ltd. and Community Trust Company (originally Canadian Western Trust) (the “**Second Mortgage**”).
3. Community Trust Company’s interest in the Second Mortgage ranks ahead of Hi-Rise Capital Ltd.’s interest.
4. Investors participate through this Second Mortgage in two different ways:
 - a. Registered Investors – these are Investors that participate in the Second Mortgage through Community Trust Company and hold their investments through a registered retirement savings plan; or
 - b. Non-Registered Investors – these are Investors that participate in the in the Second Mortgage through Hi-Rise Capital Ltd.
5. The priorities in terms of any repayment are as follows:
 - a. First, Meridian Credit Union under the First Mortgage;

- b. Second, Registered Investors under Community Trust Company's interest in the Second Mortgage; and
 - c. Third, Non-Registered Investors under Hi-Rise Capital Ltd.'s interest in the Second Mortgage.
6. Please check the first page of your Loan Participation Agreement with Hi-Rise Capital Ltd. to determine whether you are a Registered Investor or Non-Registered Investor

Summary of the Lanterra Transaction

7. The Company and Lanterra Developments Limited (in Trust) or its designee ("**Lanterra**") are looking to move forward with a joint venture transaction (the "**Lanterra Transaction**") in accordance with a term sheet executed April 10, 2019 (the "**JV Agreement**").
8. The purpose of the Lanterra Transaction is to complete the development of the Property (the "**Lanterra Project**")
9. The Company and Lanterra will form a limited partnership ("**LP**") to hold their interest in the Property and the Lanterra Project, as follows:
- a. Lanterra will acquire a 75% indirect interest in the Property and Lanterra Project; and
 - b. The Company will retain a 25% equity interest in the Property and Lanterra Project.
10. The transaction value of the Lanterra Project is \$73.15 million, as follows:
- a. The LP will grant a first mortgage on the Property in the amount of \$36.8 million;
 - b. The Company will be granted a vendor take back mortgage of approximately \$18.29 million; and
 - c. The Company will contribute equity-in-kind of approximately \$18.29 million in exchange for its 25% interest
11. The development of the Property is estimated to take up to 6 years and projects a total profit of \$66 million upon completion.
12. The Company's projected return at the completion of the Lanterra Project is \$34.8 million, comprised of the following:
- a. A return of capital of approximately \$18.3 million; and
 - b. The Company's share of the potential profit of the Lanterra Project of approximately \$16.5 million (being 25% of \$66 million).
13. In addition, the Company is projected to earn approximately \$3 million over the term of the Project (up to 6 years) in connection with the development and property management fees.

Terms of the Proposed Settlement

You are being asked to vote on a Proposed Settlement regarding your investment on October 23, 2019. The Proposed Settlement arises from the above-noted Lanterra Transaction.

Non-Registered Investors and Registered Investors are to vote in the same voting class. Approval of the Proposed Settlement will require Investors representing two-third in value (i.e. value of your investment) and a majority in number to vote in favour.

If approved by the Investors and then by the Court, the Proposed Settlement will allow the Company to move forward with the Lanterra Transaction and will result in the distributions to Investors.

The terms of the Proposed Settlement and distributions are as follows:

1. Repayment to Investors of approximately \$17,036,000 on closing;
2. Investors to have the benefit of the vendor take back mortgage in the amount of \$18,270,000;
3. The Company is proposing to provide a \$15 million debenture to Investors, unsecured and non-interest bearing payable 6 years from the closing date; and
4. Jim Neilas will personally guarantee \$2 million of the \$15 million debenture.

What does this mean for Investors and the Company:

1. What does this mean if you are a Registered Investor?
 - You **will** receive payment of your principal and interest in full;
 - You will receive a majority of the repayment on closing of the Lanterra Transaction; and
 - You will receive the balance in December 2021 or 2022, depending on when the vendor take back mortgage is repaid.
2. What does this mean if you are a Non-Registered Investor?
 - You **will not** receive repayment of your principal and interest in full. The return to Investors, excluding interest, is expected to be 60% of your investment;
 - You will not receive any payment on closing of the Lanterra Transaction;
 - You will not receive any payments until December 2021 or 2022, depending on when the vendor take back mortgage is repaid; and
 - You will receive the remaining repayment if and when the Lanterra Project is complete, which is expected to be in 6 years from now.
3. What does this mean for the Company?

- The Company has a continuing interest in the Lanterra Project and the Property; and
- If the Lanterra Project is successful (after 6 years), the Company's potential profit and fees are projected to be \$22.8 million (after accounting for repayment of the \$15 million debenture).

Official Committee & Representative Counsel's Recommendation:

The Official Committee does not recommend voting in favour of the Proposed Settlement for the following reasons:

1. The sale and solicitation process for interest in the Property was designed to maximize transaction value for the Property, and **not** to maximize Investor recoveries;
2. Significant components of repayment to the Non-Registered Investors are contingent as they depend on the success of the Lanterra Project. Non-Registered Investors are not repaid in full and they do not receive any money on closing. They may start receiving payments in December 2021 or 2022, and will not receive the balance until completion of the Lanterra Project (expected to be December 2025);
3. There is a high degree of risk to Investors with respect to full repayment of \$15 million debenture should the Lanterra Project not be successful. Only 25% of it is personally guaranteed by Jim Neilas;
4. If the Lanterra Project is successful, the Company receives a potential net profit of \$22.8 million. This continued interest and amount of profit is unfair to Investors who receive a significant shortfall; and
5. As noted above, Non-Registered Investors and Registered Investors are to vote in the same voting class. Given that their investment returns and timing of those returns are different due to certain priorities (noted above), the Proposed Settlement has vastly different outcomes for each group. Accordingly, it is inappropriate and unfair to Non-Registered Investors to be included in the same voting class as Registered Investors for the purposes of voting on the Proposed Settlement.

Yours Truly,

Miller Thomson LLP,
solely in its capacity as
Representative Counsel

APPENDIX J

COUNSEL SLIP

COURT FILE NO.: CV-19-00628145-00CL

DATE: November 1st, 2019

TITLE OF
PROCEEDING

NO. ON LIST 7

MERIDIAN CREDIT UNION LIMITED v. ADELAIDE STREET LOFTS INC.

COUNSEL FOR:

- ☐ PLAINTIFF(S)
- ☐ APPLICANT(S)
- ☐ PETITIONER(S)

☒ Proposed Court-Appointed Receiver - B. SARSH
msi spersel inc.

COUNSEL FOR:

- ☐ DEFENDANT(S)
- ☐ RESPONDENT(S)

PHONE _____

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EMAIL _____

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1 Nov 19

I granted the contested adj. Mr. Hall is currently on trial and the Applicants materials (or some of them at least) were later served / filed.

I will conduct a judicial mediation on Nov 27/19 @ 2:15 p.m. If it is necessary the Application will proceed on Dec 12/19 - 2 hours confirmed, any judge but myself.

Timetable will go as per schedule A attached.

Melet

~Schedule A TM. judicial med. - briefs ~~passed~~ filed Nov 25 1pm

- judicial
mediation on November 27,
2:15pm

- responding materials by December
2nd, 5pm

- crosses the week of the 2nd
- Investors vote, if any, by Dec 6th
- applicants' factum & other
factums in support of the
application by December 9th 5pm

- responding factums, 10th 5pm
by December

- reply factum by December 11th 5:00 pm
- application returnable on the
12th

TM.

APPENDIX K



TOP STORIES

Ontario working toward goal of open market for cannabis, Ford says

NOVEMBER 21



THE LISTING

Small investors face losses on Toronto developer's debt woes

SHANE DINGMAN > REAL ESTATE REPORTER
TORONTO
PUBLISHED NOVEMBER 6, 2019

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Project renderings of Hi-Rise Capital's proposed lofts at 263 Adelaide St. in downtown Toronto.

HI-RISE CAPITAL LTD.

A real estate developer who raised tens of millions of dollars from dozens of individual investors bundled into syndicated mortgages to fund Toronto-area condominium buildings is facing an investor revolt on one project and insolvency on another.

Dimitrios (Jim) Neilas, chief executive officer of Storey Living Inc., is facing legal fights on two fronts as projects he has pushed – known as the Adelaide Lofts in downtown Toronto and the OpArt condos in Oakville – are now subject to court actions from creditors seeking to sell land parcels that he had hoped to make into condominium or rental properties. At stake are millions of dollars for small investors whose loans are not registered and not protected in an insolvency process, or in the settlement deals proposed by the debtors.

A review of court documents related to the projects shows that while Mr. Neilas and the syndicated mortgage lender controlled by him – Hi-Rise Capital Ltd. – for years purchased land and bundled small investors into syndicated loans, starting in 2017 his lending business underwent a “freeze” and the funds for his stalled projects dried up.

The cause of the freeze is not outlined, but in 2017 the syndicated mortgage business was attracting more and more scrutiny from regulators as project failures and financial losses related to Fortress Investment Group transixed markets. In April, 2017, regulatory control of syndicated mortgages was transferred to the Ontario Securities Commission. In 2011, Mr. Neilas received a lifetime ban for dealing securities from the OSC related to real estate investment activities.

Amid the court documents is a scathing report filed by Ontario's Superintendent of Financial Services: “The Neilas entities have apparently received in excess of \$13-million in fees from the funds entrusted to them on a failed project on which construction has not even started,” reads a factum document written by John Finnigan, the lawyer for the Superintendent. “The Adelaide Project and a number of other similar projects were devised, promoted, developed, and administered by a vertically integrated series of companies owned and controlled by Jim Neilas and his family.”

Noor Al-Awqati, the chief operating officer of Hi-Rise Capital Ltd. and principal mortgage broker for the company, denied some of those claims in an April 3, 2019 affidavit, saying Hi-Rise has received no fees from the Adelaide project since at least September, 2017. He admits to the 14 per cent commission paid on the initial investments, but said Hi-Rise transferred 10

or 12 per cent of each commission to third-parties who referred the investors. He also said that after 2017 Hi-Rise was no longer taking in new syndicated investor money.



Rendering of the proposed OpArt Condos project in Oakville, which is caught in a legal battle between the builder and creditors.

HI-RISE CAPITAL LTD.

The Adelaide project began in in 2012, when Mr. Neilas submitted a rezoning application for 263 Adelaide St. W., Toronto, to put a condo tower on top of a heritage warehouse built in 1915.

On Feb. 18, 2014, a holding company controlled by Mr. Neilas registered a \$40-million syndicated mortgage against the property. The syndicated mortgage was amended on July 10, 2015, to increase the authorized principal amount to \$60-million. In 2017, the Adelaide Street Lofts proposal was revised to feature a 47-storey tower.

Following the “freeze,” Mr. Neilas engaged the Bank of Montreal in 2017 to find a way out of its various loans, and while he was able to sell a nearby property, Adelaide languished and was removed from the market.

In February, 2018, the trust agreement (or syndicated mortgage) on Adelaide matured, but the 642 individual lenders – who had contributed between \$25,000 to \$893,000 each – did not receive their principal back, and since that time interest payments have ceased, according to affidavits from the lenders.

Late in 2018, Mr. Neilas and Hi-Rise engaged in a deal to finish the condos in joint-venture agreement with prominent Toronto builder Lanterra Developments that would offer about \$73-million for the transaction.

Because the terms of the deal would require substantial losses to the syndicate investors that Hi-Rise's loan documents do not appear to have foreseen, it needed to obtain permission from the lenders.

In March, Hi-Rise Capital made an application to the Ontario Superior Court of Justice under the Trustee Act, to appoint legal counsel from Miller Thomson LLP for the syndicated lenders in hopes of finding a restructuring deal investors could live with. According to filings, Hi-Rise has loan participation agreements (LPA) and mortgage administration agreements (MAA) with the syndicated investors that are hazy on the subject of how to write-off a chunk of that debt. "The terms of the LPA do not appear to contemplate situations like this where Hi-Rise wishes to discharge the syndicated mortgage even though the proceeds being realized may not be sufficient to repay Investors in full," the filing from the court-appointed lawyers says.

By early 2019, Hi-Rise claimed the principal on the mortgage stood at \$52-million and the unpaid interest owed to investors was \$12.9-million. It had also taken out a second mortgage from Meridian Credit Union for \$16.4-million. The joint venture deal would fully pay off Meridian, but the non-registered syndicated investors would get only about 60 per cent of their principal back – and none of the interest owed – and even then, not right away (a \$15-million no-interest debenture was offered to investors, payable in six years).

The deal preserves a 25-per-cent interest in the site for Mr. Neilas's company (giving 75 per cent to Lanterra) and could see it receive \$22.8-million if the project is finished. Lanterra's projected profit on a finished building was \$66-million.





Excavation on the site for proposed OpArt condos in Oakville has begun, but it has not been placed on the market for sale.

HI-RISE CAPITAL LTD.

Miller Thomson recommended the lenders vote against this deal: “The sale and solicitation process for interest in the property was designed to maximize transaction value for the property, and not to maximize Investor recoveries.”

On Oct. 23, 404 of the investors (61 per cent of the lending pool) were able to cast a vote to accept or decline the deal. Only 29 per cent (representing \$10,202,272 in value) voted in favour; 70 per cent (representing \$24,542,125 in value) voted against.

Neither Mr. Neilas nor any of the parties in the court documents who The Globe and Mail attempted to contact responded by press time.

In the case of the Oakville project, the failure to make interest payments on a small \$2.5-million loan from credit union FirstOntario has resulted in the appointment of MSI Spergel as a receiver on the property.

Insolvency papers filed by Spergel show that in February, 2013, Mr. Neilas's companies 54 Shepherd Road Inc. and 60 Shepherd Road Inc. borrowed \$15-million from Hi-Rise Capital Ltd., and then on May 16 of the same year added a second mortgage of \$8-million.

Court records show that the \$15-million loan ballooned to \$35-million, and the \$8-million loan now has a balance of \$3.5-million.

The FirstOntario loan came later, but was registered as the primary lender, which means the far larger syndicated mortgage – and the individual investors – are second-in-line for any repayment. That could mean that a sales process may not fully protect the investments of those individual lenders.

So far, excavation on only the Oakville site has begun. That pit is all Mr. Neilas has to show for the millions in loans from small investors, and his hopes of building about 200 condo apartments. Thus far, the Oakville site has not been placed on the market for sale.

Your house is your most valuable asset. We have a weekly Real Estate newsletter to help you stay on top of news on the housing market, mortgages, the latest closings and more. Sign up today.

More From The Globe and Mail

Firing of Alberta elections watchdog borders on an abuse of power by the Kenney government

EDITORIAL



Rachel Notley asks Lieutenant-Governor to block removal of election commissioner

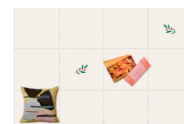


In Bolivia, democracy has been thrown to the lions

EDITORIAL



Sustainable gift guide: 100 stylish gifts you'll feel good about giving – or receiving



OPINION

The Liberals make strides, but there's a long road ahead to bridging the Western divide 🔑

KELLY CRYDERMAN



Picking apples is a fall tradition, but what happens when you end up with 20 pounds of them? 🔑



APPENDIX L

Stikeman Elliott

Stikeman Elliott LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, ON Canada M5L 1B9

Main: 416 869 5500
Fax: 416 947 0866
www.stikeman.com

November 14, 2019

Miller Thomson LLP
40 King Street West, Suite 5800
Scotia Plaza
Toronto, ON M5H 3S1

Attention: Mr. Gregory R. Azeff

McCarthy Tétrault LLP
66 Wellington Street West
Suite 5300, TD Bank Tower Box 48
Toronto ON M5K 1E6

**Attention: Mr. Jonathan D. See
Ms. Charlene Schafer**

Aird & Berlis LLP
Brookfield Place
Suite 1800, Box 754
181 Bay Street
Toronto ON M5J 2T9

**Attention: Mr. Steven L. Graff
Ms. Kathryn Esaw**

Cassels Brock & Blackwell LLP
40 King Street West, Suite 2100
Scotia Plaza
Toronto, ON M5H 3C2

Attention: Mr. David Ward

Re: 263 Adelaide Street West, Toronto

As you may know, our client is presently party to a binding term sheet (as amended from time to time, the "**Prior Term Sheet**") made between Lanterra Developments Ltd. (in trust) and 263 Holdings Inc. ("**Holdings**") in respect of the proposed acquisition of the lands and premises municipally known as 263 Adelaide Street West, Toronto, Ontario (the "**Property**"). As you may also know, our client was the successful proponent in a formal and transparent auction process conducted by BMO Capital Markets Real Estate Inc. in respect of the Property. Unfortunately, our client's position is presently being compromised by negative publicity, unsolicited offers from other developers and, most importantly, a delay relative to the achievement of a binding transaction. The offer herein set forth is a without prejudice attempt on the part of our client to stabilize the situation and present a clear and commercial avenue by which the Property may be acquired by it to the collective benefit of each of your respective clients. Until accepted, this offer does not in any way relieve Holdings of its obligations pursuant to the Prior Term Sheet nor prejudice the rights of Lanterra Developments Ltd. therein.

Stikeman Elliott

This offer sets forth the terms and conditions under which Lanterra Developments Ltd. or a designee (the “**Purchaser**”) would be prepared to acquire a 100% freehold interest in the Property together with all entitlements associated therewith, as well as all leases, development plans, permits, approvals, studies, reports and other documentation material to the zoning and the proposed redevelopment of the Property (together with the Property, the “**Purchased Assets**”). Subject to the terms and conditions set forth below, the Purchaser is prepared to acquire the Purchased Assets from your respective clients, as applicable, as their interests may exist as at the Closing Date (defined below). For the purposes of this offer (and insofar as it is presently unknown), the ultimate transferor of the Purchased Assets (and for greater clarity, the transferor on the transfer/deed of land) is herein referred to as the “**Vendor**”.

1. Purchase Price:

The purchase price for the Purchased Assets shall be the sum of \$66,000,000 (the “**Purchase Price**”). The Purchase Price shall be payable in immediately available funds at Closing (defined below), subject to customary adjustments and payment of applicable taxes. The Purchase Price shall be paid to such parties or parties as are set forth on a written direction to be provided by the Vendor to the Purchaser on or before Closing, and the Purchaser shall be entitled to rely thereon without inquiry.

2. Deposit:

The Purchase Price shall be satisfied in part by application of the sum of \$3,000,000 (the “**Deposit**”) presently held by McCarthy Tétrault LLP, in trust, pursuant to the terms of the Prior Term Sheet. The Deposit shall be released to the party having carriage of the subject sale transaction upon receipt by the Purchaser of satisfactory responses to its title requisitions (the “**Title Requisitions**”) which shall be submitted on or before December 31, 2019; provided, however, that in the event the subject transaction is not completed through no fault of the Purchaser, the Deposit and all accrued interest thereon shall be returned forthwith to the Purchaser.

In the event of a default by the Purchaser, the Vendor shall be entitled to retain the Deposit (together with any accrued interest thereon) as liquidated damages, and the Vendor hereby acknowledges and agrees that (i) receipt of such funds shall be in full satisfaction of any damages, claims or losses the Vendor may have suffered as a result of the Purchaser’s default, and (ii) neither party shall thereafter have any rights or recourse against the other.

3. Title Requisitions:

The Purchaser shall have until December 31, 2019 to submit the Title Requisitions with a view to satisfying itself in respect of access, development and other title matters which may have arisen from and after the date of the Prior Term Sheet. The Purchaser acknowledges that it has satisfied itself with respect to all other due diligence matters and that there are no conditions to Closing save as set forth herein.

4. Closing:

Subject to the fulfillment of typical conditions to closing, the closing of the subject transaction shall take place on May 29, 2020 or as otherwise mutually agreed to by Vendor and Purchaser (the “**Closing Date**”).

Stikeman Elliott

5. Title/Representations and Warranties:

On Closing, the Purchaser shall have good and marketable title to the Purchased Assets, free and clear of all encumbrances save for permitted encumbrances to be negotiated as part of the Title Requisitions process. The Purchaser shall be entitled to receive customary representations and warranties on Closing, having regard to nature of the Vendor, which shall survive Closing for a period of one (1) year.

6. Assignment or Direction:

The Purchaser may assign its interest (all or part) in this offer without the consent of any party hereto, provided that the Purchaser shall not be released from its obligations hereunder until after Closing.

7. Releases:

It shall be a condition of Closing that the Purchaser receives releases and indemnities from each of your respective clients, satisfactory to it in its sole discretion, with respect to the subject transaction and the transaction contemplated by the Prior Term Sheet.

8. Public Announcements and Confidentiality:

Subject to the requirements of any applicable laws, no party other than the Purchaser shall make any public announcement or statement with respect to this offer or the transaction contemplated herein without the consent of the Purchaser.

9. Notice:

Any notice under this offer shall be in writing and shall be delivered either personally or by e-mail transmission to the party to whom it is addressed at the address set forth above and shall be deemed received upon personal delivery or e-mail.

10. Exclusivity and Break Fee:

Each of the parties hereby acknowledges that the Purchaser currently enjoys certain exclusivity rights under the Prior Terms Sheet which are in effect until December 4, 2019. In addition, the Purchaser remains entitled to a break fee from Holdings if approval is not obtained by such date as further set out in section 15 of the Prior Term Sheet.

11. Governing Law:

This offer and any transaction resulting herefrom shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein.

12. Counterparts:

This offer may be executed in counterparts, each of which shall be deemed an original and which, taken together, shall constitute one and the same instrument. This offer may be delivered by facsimile or other electronic transmission and the parties adopt any signature received by a receiving fax machine or other electronic means as original signatures of the parties. In the case of facsimile or other electronic transmission, the transmitting party shall forthwith deliver an originally executed copy of this offer to the other parties.

Stikeman Elliott

13. Acceptance:

This offer shall be open for acceptance until 5:00 p.m. on December 4, 2019 after which time this offer shall become null and void.

Upon the receipt of an affirmative response and the appropriate instructions from each of your respective clients, we would ask that you please sign and return the enclosed copy of this offer letter to evidence your client's confirmation of its terms whereupon we will expeditiously proceed to further document the above agreements (to the extent necessary) as between our respective clients.

Yours very truly,

STIKEMAN ELLIOTT LLP,
for and on behalf of Lanterra Developments Ltd.



Eric M. Carmona

ACKNOWLEDGED AND AGREED this _____ day of _____, 2019.

MILLER THOMSON LLP,
in its capacity as court-appointed representative
counsel of the Investors

Gregory R. Azeff

MCCARTHY TÉTRAULT LLP,
for and on behalf of 263 Holdings Inc.
and Adelaide Street Lofts Inc.

Charlene Schafer

AIRD & BERLIS LLP,
for and on behalf of Meridian Credit Union Limited

Steven L. Graff

CASSELS BROCK & BLACKWELL LLP,
for and on behalf of Hi-Rise Capital Ltd.

David Ward

APPENDIX M



McCarthy Tétrault LLP
PO Box 48, Suite 5300
Toronto-Dominion Bank Tower
Toronto ON M5K 1E6
Canada
Tel: 416-362-1812
Fax: 416-868-0673

Geoff R. Hall
Partner
Direct Line: (416) 601-7856
Email: ghall@mccarthy.ca

Assistant: Galluzzo, Michelle
Direct Line: (416) 601-8200 x542605
Email: mgalluzzo@mccarthy.ca

November 21, 2019

Via Email

Without Prejudice

Mr. Gregory R. Azeff
Miller Thomson LLP
40 King Street West, Suite 5800
Toronto ON M5H 3S1

Dear Mr. Azeff:

Re: 263 Adelaide Street West, Toronto, Ontario

We are enclosing a proposal for your committee to consider.

As you are aware, Lanterra submitted a new offer of \$66 million in cash with a closing of May 2020. We were not aware that this was forthcoming and based on our discussion with you, you were not aware either. We are not sure what your position is regarding this revised offer, but our position is that it is not acceptable.

We believe that a cash offer of \$66 million will result in severe losses to the non-registered investors if expenses incurred to recover the loan for investors are claimed by Hi-Rise.

We believe there is still an opportunity to have a value added transaction where non-registered investors recover 100% of their investment (albeit some of it over time).

The following proposal makes it clear that if agreed to, non-registered investors will recover close to the same amount on closing of a newly structured JV as they would on a \$66 million cash sale, with added benefit of future value that would recover the balance of principal owed.

We look forward to hearing from you on this revised proposal. We would like to work through as much as possible prior to mediation so hopefully we only have some minor issues to work through.

Yours truly,

A handwritten signature in blue ink, appearing to read 'G. Hall'.

Geoff R. Hall
GRH/mg
Encl.

cc: James D. Gage
Mira Novek
Charlene Schafer

Proposal

New JV Proposal vs. Lanterra Cash Offer

New JV Agreement

The new proposal involves a JV structure between Lanterra and Holdings similar to the prior JV proposal, but with more cash upfront instead of a second mortgage.

1. Revised Purchase Price:	The purchase price will be \$72 million through the new JV proposal
2. Lanterra and Holdings Equity:	Holdings new equity stake to remain at 25% and will be valued at \$17,137,500 and Lanterra equity stake (75%) will be valued at \$54,862,500, based on the revised purchase price above and the requirement to inject additional equity and cover cost overruns
3. No VTB:	Lanterra to provide or arrange \$54,862,500 in cash (a combination of debt and equity); no second mortgage
4. Closing Cash Distributions:	Meridian to be paid in full on closing Registered investors to be paid in full on closing Non Registered investors to receive estimated distribution of \$11,600,000 (subject to adjustments on closing)
5. Holdings Debenture to Investor Group:	Holdings will provide a debenture to investor group in the amount of \$17,137,500, for the benefit of non-registered holders
6. Interest Rate:	Interest will accrue on the principal amount of the debenture at 6% per annum for 6 years (estimated maximum completion time), resulting in a minimum pay out on completion of \$6.7 million of interest in addition to the principal amount of the debenture, to ensure complete recovery for non-registered investors on the principal amount of their original investment
7. Minimum Coupon Rate:	The above debenture with the interest rate will be a 100% recovery for non-registered investors
8. Risk Position:	This proposal leaves investors in a better position than they are now and compared to the \$66m cash offer. At present they are, in effect, in an equity position (albeit in the form of debt) with a potential cash purchase price that will result in a loss on the

	<p>principal amount of their investment. With the new proposal, they will have crystalized an exit price of no less than \$72 million, and with potential returns (which they required in the original debt agreement) they will be made whole. They will receive an estimated \$11,600,000 cash on closing and a debenture for \$17,137,500 with interest at 6%. As well, Holdings' equity from the new JV would be first funds to come out, ahead of Lanterra. So Lanterra is motivated to ensure this recovery because their equity ranks behind Holdings.</p>

ESTIMATED TRANSACTION RECOVERY TO INVESTORS
Hi-Rise Capital Ltd.
August 30, 2019

(CDN\$)

	<u>Cost Detail</u>	<u>Proceeds after Closing</u>	<u>Holdings Debenture</u>		
Senior Mortgage		54,862,500		Land Value	72,000,000
Meridian Balance Owing	16,919,828			Debt	54,862,500
Meridian Accrued Interest	<u>332,000</u>			Equity	17,137,500
Total Bank Loan		(17,251,828)			
BMO Commission	1,614,588			Closing	
City of Toronto (outstanding taxes)	<u>280,437</u>			Total	33,255,647
Total Paid via Direction from Legal Counsel		(1,895,025)		Registered	21,663,052
Cassels Brock & Blackwell LLP	160,000			Non-Reg	11,592,595
Legal Cost Reimbursement of Hi-Rise		(160,000)			
Transaction Costs	1,700,000				
Miller Thomson LLP	<u>600,000</u>				
Total transaction costs		(2,300,000)			
Holdings Debenture			17,137,500		
Int on Debenture			<u>6,169,500</u>		
Total Proceeds for Investors		33,255,647	23,307,000		
Proceeds for Registered Investors		21,663,052			
Proceeds for Non-Registered Investors		<u>34,899,595</u>			
Total Proceeds for Investors		56,562,647			
Recovery Percentage	<u>Principal + Interest</u>	<u>Principal Only</u>		Princ & Int Owing	Princ Only Owing
Recovery for Registered Investors	100%	124%		21,663,052	17,419,500
Recovery for Non-Registered Investors	78%	100%		45,024,972	34,823,000

ESTIMATED RECEIVERSHIP RECOVERY TO INVESTORS

Hi-Rise Capital Ltd.

August 30, 2019

(CDN\$)

	Notes	Lanterra Cash Offer of \$66 million
Sale Price		66,000,000
Months		6
Less Receivership Transaction Costs:	1)	
Sale Commission/Selling Costs		1,614,588
Property Taxes		404,491
First Mortgage		16,919,828
Mortgage Carrying Costs		498,000
Gross Sale Proceeds		46,563,092
Hi-Rise/Consultants		460,786
Legal Fees of Appointing Creditor		250,000
Receiver's Fees		676,083
Receiver's Legal Fees		358,575
Total Costs		1,745,444
Hi-Rise Recoverable Expenses as per LPA		
Professional Fees & Consultants		5,454,442
Hi-Rise Mortg Admin		1,749,651
Miller Thomson LLP		500,000
Total		7,704,093
Investor Recovery		37,113,556

Investor Recovery	
Proceeds for Registered Investors	21,663,052
% for Registered Investors	100%
Proceeds for Non-Registered Investors	15,450,504
% for Non Registered Investors	34%

1) Figures taken from GT Report

APPENDIX N

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE

JUSTICE *Conway*


)
)
)
)

Friday THE
December
2019 DAY OF , 2019

**IN THE MATTER OF SECTION 60 OF THE TRUSTEE ACT, R.S.O. 1990, C. T.23, AS
AMENDED, AND RULE 10 OF THE ONTARIO RULES OF CIVIL PROCEDURE,
R.R.O. 1990, REG. 194, AS AMENDED**

**AND IN THE MATTER OF HI-RISE CAPITAL LTD. AND IN THE MATTER OF
ADELAIDE STREET LOFTS INC.**

ORDER



THIS MOTION, made by Miller Thomson LLP, in its capacity as Court-appointed Representative Counsel in this proceeding (in such capacity, “**Representative Counsel**”), appointed pursuant to the Order of the Honourable Mr. Justice Hainey dated March 21, 2019 (the “**Appointment Order**”) to represent the interests of all individuals and/or entities (“**Investors**”, which term does not include persons who have opted out of such representation in accordance with the Appointment Order) that have invested funds in a syndicated mortgage investment administered by Hi-Rise Capital Ltd. (“**Hi-Rise**”), in respect of the proposed development known as the “Adelaide Street Lofts” (the “**Project**”) at the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the “**Property**”) and owned by Adelaide Street Lofts Inc. (the “**Adelaide**”), a corporation wholly owned by 263 Holdings Inc. (“**263 Holdings**”) was heard this day at the Court House, 330 University Avenue, Toronto, Ontario,

UPON READING the Affidavit of Gregory R. Azeff sworn December 19, 2019, and upon hearing the submissions of Representative Counsel,

1. **THIS COURT ORDERS** that, Representative Counsel on behalf of only the Investors as defined in the Appointment Order, is hereby authorized to instruct Community Trust Company to consent to the subordination of its mortgage registered on title to the Property as instrument number AT3522463, as amended by instrument number AT4420428, as amended, only in connection with the settlement to be entered into in these proceedings.

2. **THIS COURT ORDERS** that Representative Counsel is hereby authorized to instruct Community Trust Company to execute any and all documents as may be necessary or required to give effect paragraph 1 of this Order.

3. **THIS COURT ORDERS** that Community Trust Company, in its capacity as a registered account trustee for Investors (as such term is defined in the Appointment Order), is hereby authorized to rely on instructions given to it by the Representative Counsel in accordance with paragraphs 1 and 2 of this Order.





JA

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
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40 King Street West, Suite 5800
P.O. Box 1011
Toronto, ON Canada M5H 3S1

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Stephanie De Caria LSO#: 68055L
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Tel: 416.595.2652/Fax: 416.595.8695

Court-appointed Representative Counsel

APPENDIX O

Distribution Summary

Purchase Price	<u>\$69,000,000.00</u>	
Total Lanterra Contribution		\$69,000,000.00
Less:		
Meridian Mortgage	\$16,921,274.67	
Lanterra Interest Loan Payment	\$1,588,427.00	
Lanterra Forbearance Fee Payment	\$18,500.00	
263 Holdings Settlement Amount*	\$3,784,000.00	
Contribution to BMO Commission	\$216,500.00	
Estimated Professional Fees	<u>\$976,000.00</u>	
Total Deductions		<u>\$23,504,701.67</u>
Funds Available for Distribution to Investors		\$45,495,298.33

* \$4 million less \$216,000 contribution to BMO Commission

Investor Recoveries

Registered Investors		
Principal	17,133,872.86	
Interest	<u>5,676,844.98</u>	
Total Owed to Registered Investors		22,810,717.84
Non-Registered Investors		
Principal	34,973,891.58	
Interest	<u>13,261,140.48</u>	
Total Owed to Non-Registered Investors		<u>48,235,032.06</u>
Total Investor Claims		71,045,749.90
Net Proceeds Available for Distribution	45,495,298.33	
Less: Distribution to Registered Investors	<u>22,810,717.84</u>	
Amount Available for Non-Registered Investors		22,684,580.49
Percentage Recovery for Registered Investors		100.00%
Percentage Recovery for Non-Registered Investors (Principal Only)		64.86%
Percentage Recovery for Non-Registered Investors (Principal & Interest)		47.03%

IN THE MATTER OF HI-RISE CAPITAL LTD. AND IN THE MATTER OF ADELAIDE
STREET LOFTS INC.

Court File No.: CV-19-616261-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

**FOURTH REPORT OF REPRESENTATIVE
COUNSEL
(January 9, 2020)**

MILLER THOMSON LLP

Scotia Plaza
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Court-appointed Representative Counsel

APPENDIX G

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF SECTION 60 OF THE TRUSTEE ACT, R.S.O. 1990, C. T.23, AS
AMENDED, AND RULE 10 OF THE ONTARIO RULES OF CIVIL PROCEDURE,
R.R.O. 1990, REG. 194, AS AMENDED**

**AND IN THE MATTER OF HI-RISE CAPITAL LTD. AND IN THE MATTER OF
ADELAIDE STREET LOFTS INC.**

MINUTES OF SETTLEMENT

WHEREAS on March 21, 2019, Hi-Rise Capital Ltd. ("**Hi-Rise**") brought an application to the Court in Court File No. CV-19-616261-00CL under section 60 of the *Trustee Act* (Canada) for, *inter alia*, the appointment of Representative Counsel (as hereinafter defined), and a declaration that Hi-Rise has the power under the loan participation agreements and mortgage participation agreements with the Investors (as hereinafter defined) to grant a discharge of the syndicated mortgage (the "**Syndicated Mortgage**") held for the benefit of the Investors over the Property (as hereinafter defined) in the event the net proceeds received from the completion of a contemplated sale transaction relating to the Property (the "**Transaction**") are insufficient to pay the full indebtedness under the Syndicated Mortgage (the "**Trustee Application**");

AND WHEREAS pursuant to the Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated March 21, 2019 (the "**Appointment Order**"), Miller Thomson LLP was appointed as Representative Counsel (in such capacity, "**Representative Counsel**") to represent all individuals and/or entities (collectively, the "**Investors**") holding an interest in the Syndicated Mortgage (each, a "**SMI**"), administered by Hi-Rise in respect of the proposed development known as the "Adelaide Street Lofts" (the "**Project**") at the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the "**Property**") and owned by Adelaide Street Lofts Inc. ("**Adelaide**"), in connection with the negotiation and implementation of a settlement with respect to such investments, except for those Investors who opted out of representation by Representative Counsel in accordance with the terms of the Appointment Order (collectively, the "**Opt-Out Investors**");

AND WHEREAS Adelaide is wholly owned by 263 Holdings Inc. ("**263 Holdings**");

AND WHEREAS BMO Capital Markets Real Estate Inc. ("**BMO**") was retained by 263 Holdings to market and sell the Property (the "**Sale Engagement**");

AND WHEREAS BMO has agreed to a reduced payment in the amount of \$649,000, inclusive of harmonized sales tax, on account of the commission payable to it in respect of the Sale Engagement (the "**BMO Commission**");

AND WHEREAS pursuant to paragraph 27 of the Appointment Order, Hi-Rise is permitted to call, hold and conduct a meeting of all Investors in the Project, including the Opt-Out Investors, in order for such parties to consider and, if determined advisable, pass a resolution approving the Transaction and the net sale proceeds arising therefrom (the "**Vote**"). Paragraphs 28 to 31 of the Appointment Order set out a mechanism and rules for the Vote;

AND WHEREAS pursuant to the Appointment Order, Representative Counsel was directed to establish an Official Committee in accordance with the process and procedure described in Schedule "B" to the Appointment Order (the "**Official Committee**");

AND WHEREAS pursuant to the Order of Justice Hainey dated April 15, 2019, the Official Committee was approved and constituted. There are currently four members of the Official Committee;

AND WHEREAS Meridian Credit Union Limited ("**Meridian**") commenced an application against Adelaide in Court File No. CV-19-00628145-00CL for the appointment of a receiver, without security, in respect of all of the assets, undertakings and properties of Adelaide (the "**Receivership Application**");

AND WHEREAS pursuant to the Endorsement of Justice McEwen dated November 1, 2019, the Receivership Application was adjourned to December 12, 2019 and a Judicial Mediation was scheduled for November 27, 2019 before Justice McEwen (the "**Judicial Mediation**");

AND WHEREAS the Parties (as defined below), together with Lanterra Developments Ltd. ("**Lanterra**"), being the proposed purchaser of the Property pursuant to the Transaction, and Meridian (though not a party to these Minutes of Settlement) attended at the Judicial Mediation;

AND WHEREAS the Receivership Application has now been adjourned sine die;

AND WHEREAS pursuant to the Order of Madam Justice Conway dated December 20, 2019, Representative Counsel is authorized on behalf of only the Investors as defined in the Appointment Order to instruct Community Trust Company to consent to the subordination of its mortgage registered on title to the Property, only in connection with this settlement, and is authorized to instruct Community Trust Company to execute any and all documents as may be necessary or required to give effect to same.

IN CONSIDERATION of the promises and the mutual covenants, agreements, representations and warranties expressed herein and other good and valuable consideration, the receipt and sufficiency of which are hereby irrevocably acknowledged by Lanterra and each of Jim Neilas, 263 Holdings, Hi-Rise, Adelaide and Representative Counsel and the Official Committee (collectively, the "**Parties**"), the Parties hereby agree to settle all matters raised in the Trustee Application on the following terms:

1. The Parties agree that the above-noted recitals are true and accurate.
2. Lanterra, or a designee, agrees to pay on the closing of the Transaction the amount of \$69,000,000 (the "**Purchase Price**") in respect of its purchase of a 100% legal and beneficial interest in the Property. A portion of the Purchase Price shall be satisfied by way of the Deposit (as hereinafter defined) to be paid, in trust, to the lawyers for Adelaide, namely, McCarthy Tétrault LLP, with the balance to be distributed on the terms hereinafter set forth.
3. Upon the execution of these Minutes of Settlement by the Parties and Lanterra, the following shall occur forthwith:
 - (a) Lanterra and Adelaide shall enter into an agreement of purchase and sale in respect of the Transaction (the "**APS**") which shall provide for, *inter alia*, (i) the Purchase Price, (ii) a deposit paid to McCarthy Tétrault LLP, in trust, in the

amount of \$10,000 (the “**Deposit**”), (iii) a closing date of no later than May 14, 2020 (the “**Closing Date**”), (iv) limited representations and warranties customary in receivership sales, (v) closing conditions customary in receivership sales, and (vi) the issuance by the Court of an Approval and Vesting Order vesting the Property in Lanterra or its designee on closing free and clear of all encumbrances, in form satisfactory to Lanterra, acting reasonably;

- (b) Lanterra will lend \$18,000 to Adelaide, which loan shall accrue interest at the rate of prime plus 2% (the “**Forbearance Fee Loan**”), and Adelaide shall direct Lanterra to pay the \$18,000 to Meridian on account of the forbearance fee owing by Adelaide to Meridian;
- (c) Lanterra will lend \$1,550,000 to Adelaide, which loan shall accrue interest at the rate of prime plus 2% (the “**Interest Payment Loan**”), and Adelaide shall direct Lanterra to pay the amount of \$1,550,000 to Meridian on account of outstanding interest due and owing by Adelaide to Meridian;
- (d) As security for the Interest Payment Loan, Adelaide shall grant in favour of Lanterra a second-ranking mortgage (the “**Lanterra Mortgage**”) secured against title to the Property, which mortgage shall be on the same terms as and shall rank subordinate to the mortgage held by Meridian, but in priority to the mortgage held by Hi-Rise (the “**Hi-Rise Mortgage**”) (and in such regard Hi-Rise agrees to subordinate the existing mortgage held by it). The costs associated with registering the Lanterra Mortgage on title to the Property shall be added to the amount of, and shall be secured by, the Lanterra Mortgage;
- (e) Each of Lanterra and the Parties, or any of one of them, shall execute any and all documents as may be necessary to give effect to paragraphs 3(a) to 3(d), above.

4. Until the Closing Date, Adelaide shall (a) continue to operate the Property on the same basis as at the date of execution of these Minutes of Settlement; (b) continue to pay the operating expenses in respect of the Property that it is paying as at the date of execution of these Minutes

of Settlement, and will not be liable or responsible for any other expenses in respect of the Property; and (c) pay all remittances on account of harmonized sales tax or HST.

5. These Minutes of Settlement, including the Transaction and the terms noted in paragraph 9 below, shall be subject to approval of the Investors and the Court. Upon execution of these Minutes of Settlement by Lanterra and the Parties, Hi-Rise shall hold the Vote as soon as reasonably practicable in accordance with paragraphs 27 to 30 of the Appointment Order. Thereafter, and provided that the Vote passes by the margin provided for in paragraph 31 of the Appointment Order, Hi-Rise shall forthwith bring a motion to the Court in the Trustee Application in accordance with paragraph 31 of the Appointment Order:

- (a) For approval of the Transaction and the Investor Settlement Amount;
- (b) To permit and direct Hi-Rise to grant a discharge of the Hi-Rise Mortgage; and
- (c) To issue an Approval and Vesting Order in form satisfactory to Lanterra and Representative Counsel, acting reasonably.

6. Upon execution of these Minutes of Settlement by Lanterra and the Parties, Representative Counsel shall be entitled to bring a motion within the Trustee Application for an order, substantially in the form attached as Appendix "A" to these Minutes of Settlement, and Lanterra and the Parties shall provide their written consent to same.

7. On the closing of the Transaction, each of Lanterra, 263 Holdings and the Investors (from the proceeds of the Investor Settlement Amount, as hereinafter defined) agrees to contribute one-third of the BMO Commission; provided, however, that the liability of 263 Holdings in respect of same shall be limited to the sum of \$216,000.

8. On the closing of the Transaction, 263 Holdings agrees to pay to Lanterra the amount of \$50,000 in respect of the breakage fee payable under a joint venture transaction contemplated between Adelaide and Lanterra pursuant to a term sheet made as of April 10, 2019, as amended from time to time.

9. On closing of the Transaction, Lanterra shall pay:

- (a) To Aird & Berlis LLP in trust (on behalf of Meridian), the amounts owing as of the date of repayment (the “**Meridian Repayment Amount**”) under the loan agreement between Meridian and Adelaide dated April 2, 2018 (as may be or have been subsequently amended, replaced, restated or supplemented from time to time, the “**Credit Agreement**”) and/or the forbearance agreement between Meridian and Adelaide dated December 20, 2019, which amounts shall include principal, interest and amounts which may be or become owing for Meridian’s fees, agent costs, reasonable professional fees and accrued interest at the rates set out in the Credit Agreement, which amounts shall be reviewed by Representative Counsel prior to such payment;
- (b) To Stikeman Elliott LLP in trust (on behalf of Lanterra):
 - (i) the amounts owing to Lanterra as of the date of repayment under the Forbearance Fee Loan, which amounts shall be reviewed by Representative Counsel prior to payment;
 - (ii) the amounts owing to Lanterra as of the date of repayment under the Interest Payment Loan, which amounts shall be reviewed by Representative Counsel prior to payment, less \$216,500 on account of Lanterra’s contribution to the BMO Commission;
 - (iii) the sum of \$50,000 on behalf of 263 Holdings in respect of the breakage fee payable under a joint venture transaction contemplated between Adelaide and Lanterra pursuant to a term sheet made as of April 10, 2019, as amended from time to time;
- (c) To McCarthy Tétrault LLP in trust (on behalf of 263 Holdings), the sum of \$3,734,000, representing the amount payable to 263 Holdings (\$4,000,000 less 263 Holdings’ contribution to the BMO Commission and the \$50,000 breakage fee); and
- (d) To Miller Thomson LLP in trust (to be distributed in accordance with paragraph 10), the balance of the Purchase Price remaining after payment of the amounts

required to be made to Aird & Berlis LLP in trust, Stikeman Elliott LLP in trust, and McCarthy Tétrault LLP in trust pursuant to paragraphs 9(a) to 9(c).

10. The amount paid to Miller Thomson LLP in trust pursuant to paragraph 9(d) shall be distributed by Miller Thomson LLP in the following order of priority:

- (a) First, to professionals with charges on the Property in full satisfaction of the amounts secured by such charges registered on title to the Property as of the date of repayment, and to Representative Counsel (Miller Thomson LLP, in trust) a reasonable reserve amount to be held back in order to pay fees and disbursements of professionals with charges on the Property in respect of the implementation and completion of these Minutes of Settlement;
- (b) Second, to BMO in full satisfaction of the BMO Commission;
- (c) Third, to Cassels Brock & Blackwell LLP ("**Cassels**"),
 - (i) the sum of \$146,223.00 (a discounted sum) to pay Cassels's legal fees, disbursements, and taxes for work done for Hi-Rise in regard to the Trustee Application, these Minutes of Settlement, and the Transaction (collectively, the "**Cassels Services**") over the period up to and including December 8, 2019, plus
 - (ii) the actual legal fees, disbursements, and taxes incurred by Hi-Rise for the period from and after December 9, 2019 to the date of closing of the Transaction in connection with Cassels Services, as evidenced by redacted invoices provided to Representative Counsel that set out details of numbers of hours billed by timekeepers on each date but with narrative details of activities redacted;
- (d) Fourth, to set aside and pay over to Cassels a reasonable reserve for legal fees, disbursements, and taxes of Cassels in connection with Cassels Services required after the closing of the Transaction, such as services associated with the distribution of proceeds to Investors and any motion required to terminate the

Trustee Application (the “**Cassels Reserve**”), with the amount of the Cassels Reserve to be agreed upon by Cassels and Representative Counsel, acting reasonably, or, failing agreement, to be determined by the Court; and

- (e) Fifth, to the Investors (the “**Distribution**”) in full satisfaction of all claims each Investor may have in relation to the Property and the Project (in aggregate, the “**Investor Settlement Amount**”), and, for greater certainty, the amounts payable to Investors holding their investment through a registered plan shall be paid to Community Trust Company as trustee of the registered plans.

11. Upon payment of funds in accordance with paragraph 9, and for greater certainty, prior to any of the distributions in accordance with paragraph 10, Aird & Berlis LLP, Stikeman Elliott LLP, McCarthy Tétrault LLP and Miller Thomson LLP shall each execute a certificate in the form attached to the Approval and Vesting Order (the “**Certificate**”) confirming receipt of the funds paid pursuant to paragraph 9 and deliver same to Lanterra. Upon delivery of the Certificate, the Property shall vest in Lanterra in accordance with the terms set out in the Approval and Vesting Order.

12. In the event there is a dispute in respect of the distributions set out in paragraph 10, Representative Counsel shall seek directions from the Court prior to such distributions being made.

13. Hi-Rise shall be responsible for preparing a list of the Investors, corresponding distribution entitlements and priorities of each of the Investors (together with appropriate documentation establishing same) from the Investor Settlement Amount (the “**Investor Distribution List**”). Solely for the purposes of ensuring that the Investor Settlement Amount is distributed in accordance with the respective entitlements of Investors, Representative Counsel shall be entitled to review the Investor Distribution List prior to any distribution of the Investor Settlement Amount. If there are disputes over Investors’ entitlements or any part of the Investor Distribution List, Representative Counsel shall seek directions from the Court prior to its Distribution of the Investor Settlement Amount set out in paragraph 10(e). For greater certainty, Representative Counsel shall be entitled, in consultation with Hi-Rise, to delegate the task of Distribution of the Investor Settlement Amount as set out in paragraph 10(e).

14. Prior to effecting any Distribution of the Investor Settlement Amount, Representative Counsel shall obtain Court approval of the Investor Distribution List and the proposed mechanism for Distribution.

15. For greater certainty, the Investors as defined in these Minutes of Settlement shall include all Investors in the Project, including but not limited to those Investors whose investments were originally in the Cube Lofts Project at the property municipally known as 799 College Street, Toronto, but the Distribution shall be made in accordance with the relative priority that each of the Investors has (i.e., registered, non-registered, and subordinated), which priority information shall be provided by Hi-Rise and included in the Investor Distribution List in accordance with paragraph 13, above.

16. Notwithstanding that 263 Holdings is an Investor, 263 Holdings shall be excluded from the distribution to Investors from the Investor Settlement Amount. For greater certainty, 263 Holdings shall not receive a distribution or return on its SMI from the Investor Settlement Amount.

17. Hi-Rise shall have no liability for any failure by Representative Counsel or its agents or delegates to effect the Distribution in accordance with the Investor Distribution List.

18. Upon distribution of the amounts set out in paragraph 10 above, Representative Counsel and the Official Committee shall obtain a discharge order in the Trustee Application, and the Parties shall provide their written consent to same.

19. If on or prior to the Closing Date Adelaide, without lawful justification, refuses to perform its obligations under the APS or takes any action to frustrate the closing:

- (a) Lanterra may make the payments otherwise required to be made by Lanterra under paragraph 9;
- (b) If Lanterra makes the payments pursuant to paragraph 9, Representative Counsel shall execute a certificate substantially in the form attached to the Approval and Vesting Order upon receipt of written confirmation by Stikeman Elliott LLP that

the distribution amounts set out in paragraph 9, above, have been delivered (the **“Representative Counsel Certificate”**) and deliver same to Lanterra; and

- (c) Upon delivery of the Representative Counsel Certificate by Representative Counsel to Lanterra, the Property shall vest in Lanterra in accordance with the terms set out in the Approval and Vesting Order.

20. Each of Lanterra and the Parties shall each execute full and final mutual releases (the **“Releases”**), including full and final releases of all directors, officers and affiliates of Lanterra and the Parties (including their legal counsel), where applicable, in a form to be mutually agreed upon between counsel, which Releases shall include a carve out in respect of the activities and conduct of Representative Counsel and Hi-Rise solely in respect of the Distribution of the Investor Settlement Amount. Upon completion of the Distribution, each of Lanterra and the Parties shall execute a further full and final release in a form substantially similar to the Releases.

21. These Minutes of Settlement shall be construed in accordance with the laws of the Province of Ontario. Any dispute arising from these Minutes of Settlement shall be adjudicated by the Ontario Superior Court of Justice, Commercial List, and the Parties hereby attorn to the exclusive jurisdiction of this Court for this purpose.

22. These Minutes of Settlement and every covenant, provision and term herein contained shall enure to the benefit of and be binding upon each of Lanterra and the Parties and their respective heirs, executors, administrators, assigns, agents, advisors, consultants and other representatives.

23. Lanterra and each of the Parties agree to do and execute such further acts and documents as may be reasonably necessary or desirable to give effect to the covenants, provisions and terms of these Minutes of Settlement.

24. Any amendments to these Minutes of Settlement must be agreed to as between Lanterra and the Parties and must be in writing.

25. Each of Lanterra and the Parties acknowledges and agrees that:

- (a) It has obtained independent legal advice or the opportunity to obtain legal advice;
- (b) It has read these Minutes of Settlement in its entirety and has knowledge of the contents;
- (c) It understands its respective rights and obligations under these Minutes of Settlement, the nature of these Minutes of Settlement, and the consequences of these Minutes of Settlement;
- (d) It acknowledges that the terms of these Minutes of Settlement are fair and reasonable;
- (e) It is entering into these Minutes of Settlement without any undue influence or coercion whatsoever; and
- (f) It is signing these Minutes of Settlement voluntarily.

26. These Minutes of Settlement may be executed in counterparts, and by facsimile or electronic mail, each of which shall be deemed to be an original, all such separate counterparts shall together constitute one and the same instrument.

27. These Minutes of Settlement and the documents attached hereto, together with the executed Full and Final Mutual Release, represent the entire agreement among each of Lanterra and the Parties.

***[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
– SIGNATURE PAGE TO FOLLOW]***

DATED AT this _____ day of _____, 2019.

LANTERRA DEVELOPMENTS LTD.

Per: 

Name: Christopher S. Wern
Title: Chief Operating Officer
(I have authority to bind the corporation)

DATED AT this _____ day of _____, 2019.

Witness: _____

JIM NEILAS

:

DATED AT this _____ day of _____, 2019.

263 HOLDINGS INC.

Per: _____

Name: _____
Title: _____
(I have authority to bind the corporation)

DATED AT this _____ day of _____, 2019.

ADELAIDE STREET LOFTS INC.

Per: _____

Name: _____
Title: _____
(I have authority to bind the corporation)

DATED AT _____ this _____ day of _____, 2019.

LANTERRA DEVELOPMENTS LTD.

Per: _____

Name: _____

Title: _____

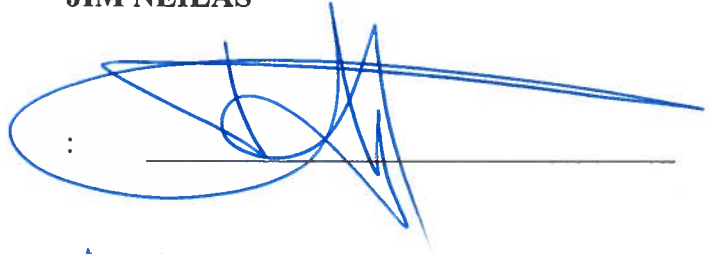
(I have authority to bind the corporation)

DATED AT Toronto this 20th day of December, 2019.

Witness: _____

Goeff L. Hall

JIM NEILAS



DATED AT Toronto this 20th day of December, 2019.

263 HOLDINGS INC.

Per: _____

Name: _____

Title: _____

(I have authority to bind the corporation)

DATED AT Toronto this 20th day of December, 2019.

ADELAIDE STREET LOFTS INC.

Per: _____

Name: _____

Title: _____

(I have authority to bind the corporation)

DATED AT this _____ day of _____, 2019.

HI-RISE CAPITAL LTD.

Per: _____

Name: MOOR AL-RWQATI

Title: COO

(I have authority to bind the corporation)

DATED AT this _____ day of _____, 2019.

MILLER THOMSON LLP, solely in its capacity as court-appointed Representative Counsel

Per: _____

Name: _____

Title: _____

(I have authority to bind the limited liability partnership)

DATED AT this _____ day of _____, 2019.

Witness: _____

VIPIN BERRY, in his capacity as court-appointed member of the Official Committee

DATED AT this _____ day of _____, 2019.

HI-RISE CAPITAL LTD.

Per: _____

Name:

Title:

(I have authority to bind the corporation)

DATED AT the City of Toronto this 23rd day of December, 2019.

MILLER THOMSON LLP, solely in its capacity as court-appointed Representative Counsel



Per: _____

Name: Gregory R. Azeff

Title: Partner

(I have authority to bind the limited liability partnership)

DATED AT this _____ day of _____, 2019.

Witness: _____

VIPIN BERRY, in his capacity as court-appointed member of the Official Committee

Per: _____
Name: _____
Title: _____
(I have authority to bind the
corporation)

DATED AT this _____ day of _____, 2019.

HI-RISE CAPITAL LTD.

Per: _____
Name: _____
Title: _____
(I have authority to bind the
corporation)

DATED AT this _____ day of _____, 2019.

**MILLER THOMSON LLP, solely in its
capacity as court-appointed Representative
Counsel**

Per: _____
Name: _____
Title: _____
(I have authority to bind the limited
liability partnership)

DATED AT

this 23rd day of December, 2019.

Witness: _____

[Signature]

**VIPIN BERRY, in his capacity as
court-appointed member of the Official
Committee**


[Signature: Vipin Berry]

DATED AT Toronto, ON this 20th day of Dec, 2019.

Witness: Nima Dgharian



MICHAEL SINGH, in his capacity as
court-appointed member of the Official
Committee



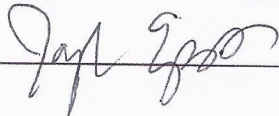
DATED AT _____ this _____ day of _____, 2019.

Witness: _____

NICK TSAKONACOS, in his capacity as
court-appointed member of the Official
Committee

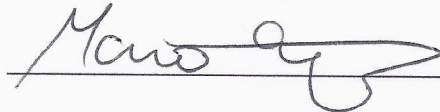
DATED AT Ottawa, ON this 23 day of Dec, 2019.

Witness: Jay Goss



MARCO ARQUILLA, solely in his
capacity as court-appointed member of the
Official Committee

Per:



DATED AT _____ this _____ day of _____, 2019.

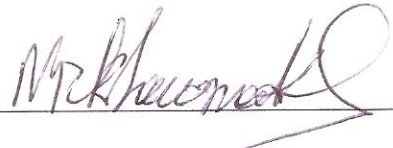
Witness: _____

**MICHAEL SINGH, in his capacity as
court-appointed member of the Official
Committee**

DATED AT TORONTO this 20th day of December 2019.

Witness: 

**NICK TSAKONACOS, in his capacity as
court-appointed member of the Official
Committee**



DATED AT _____ this _____ day of _____, 2019.

Witness: _____

**MARCO ARQUILLA, solely in his
capacity as court-appointed member of the
Official Committee**

Per: _____

APPENDIX "A"

Court File No.: CV-19-616261-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) THE
)
)
JUSTICE) DAY OF , 2019

**IN THE MATTER OF SECTION 60 OF THE TRUSTEE ACT, R.S.O. 1990, C. T.23, AS
AMENDED, AND RULE 10 OF THE ONTARIO RULES OF CIVIL PROCEDURE,
R.R.O. 1990, REG. 194, AS AMENDED**

**AND IN THE MATTER OF HI-RISE CAPITAL LTD. AND IN THE MATTER OF
ADELAIDE STREET LOFTS INC.**

ORDER

THIS MOTION, made by Miller Thomson LLP, in its capacity as Court-appointed Representative Counsel in this proceeding (in such capacity, "**Representative Counsel**"), appointed pursuant to the Order of the Honourable Mr. Justice Hailey dated March 21, 2019 (the "**Appointment Order**") to represent the interests of all individuals and/or entities ("**Investors**", which term does not include persons who have opted out of such representation in accordance with the Appointment Order) that have invested funds in a syndicated mortgage investment administered by Hi-Rise Capital Ltd. ("**Hi-Rise**"), in respect of the proposed development known as the "Adelaide Street Lofts" (the "**Project**") at the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the "**Property**") and owned by Adelaide Street Lofts Inc. (the "**Adelaide**"), a corporation wholly owned by 263 Holdings Inc. ("**263 Holdings**") was heard this day at the Court House, 330 University Avenue, Toronto, Ontario,

UPON READING the Minutes of Settlement dated December 20, 2019 entered into in connection with this proceeding (the "**Minutes of Settlement**") and the consent of the parties, Hi-Rise, Adelaide, 263 Holdings, Representative Counsel, Meridian Credit Union Limited

(“**Meridian**”), and Lanterra Developments Ltd., and upon hearing the submissions of Representative Counsel,

1. **THIS COURT ORDERS** that, subject to the encumbrances permitted by the Minutes of Settlement, title to the Property shall not be further encumbered by any person or entity pending further order of the Court, and any registration made on title to the Property shall be of no force or effect.

2. **THIS COURT ORDERS** that Adelaide shall not execute any lease or lease amendment in respect of the Property which specifies an expiration date later than May 14, 2020.

3. **THIS COURT ORDERS** that nothing in paragraph 1 of this Order shall prejudice the exercise of Meridian’s rights against the Property, including with respect to its application bearing Court File No. CV-19-00628145-00CL, on seven (7) days’ notice to each of the parties to the Minutes of Settlement.

HI-RISE CAPITAL LTD. and SUPERINTENDENT OF FINANCIAL
Applicant SERVICES Respondents et. al.

Court File No.: CV-19-616261-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

MILLER THOMSON LLP

Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, ON Canada M5H 3S1

Greg Azeff LSO#: 45324C

gazeff@millerthomson.com
Tel: 416.595.2660/Fax: 416.595.8695

Stephanie De Caria LSO#: 68055L

sdecaria@millerthomson.com
Tel: 416.595.2652/Fax: 416.595.8695

Court-appointed Representative Counsel

HI-RISE CAPITAL LTD.

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

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

APPENDIX H



MILLER THOMSON
AVOCATS | LAWYERS

MILLER THOMSON LLP
SCOTIA PLAZA
40 KING STREET WEST, SUITE 5800
P.O. BOX 1011
TORONTO, ON M5H 3S1
CANADA

T 416.595.8500
F 416.595.8695

MILLERTHOMSON.COM

January 9, 2020

PRIVATE AND CONFIDENTIAL

TO: ALL INVESTORS IN THE ADELAIDE LOFTS PROJECT

RE: Recommendation Regarding Settlement

Enclosed please find the Fourth Report (the "**Report**") of Miller Thomson LLP in its capacity as Representative Counsel ("**Representative Counsel**").


The Report includes the terms of a proposed settlement (the "**Settlement**") of claims of 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" at the property municipally known as 263 Adelaide Street West, Toronto, Ontario.

Hi-Rise intends to conduct a vote on the Settlement. As set out in the Report, Representative Counsel recommends that Investors vote in favour of the Settlement. The bases for this recommendation are set out in the Report.

The impact of the Settlement on Investors (including the estimated distribution amounts) is set out at paragraphs 37 through 39 of the Report.

We trust that the foregoing is satisfactory.

Thank you.



**Miller Thomson LLP, solely in its capacity
as Court-appointed Representative Counsel**

44174210.1

APPENDIX I

Garrafa, Shallon

From: Representative Counsel for HiRise Capital Investors
Sent: Thursday, January 9, 2020 5:19 PM
Subject: Recommendation Regarding Settlement Update [MTDMS-Legal.FID7573766]
Attachments: 44174574_1_Letter to Investors January 9, 2020.PDF; 44172358_1_Fourth Report of Miller Thomson LLP, January 9, 2020.PDF

Dear Investors,

Attached please find correspondence and a copy of the Fourth Report of Miller Thomson LLP. A copy of same has been posted in the "Documents" section of our website at: <https://www.millerthomson.com/en/hirise/>.

Regards,

Miller Thomson LLP,
In its Capacity as Court-Appointed Representative Counsel

APPENDIX J



Hi-Rise Capital Ltd.

Appointment of Representative Counsel

Pursuant to the Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 21, 2019 (the “**Order**”) Miller Thomson LLP (“**Representative Counsel**”) was appointed to represent all individuals and/or entities (“**Investors**”) that hold an interest in a syndicated mortgage (“**SMI**”), administered by Hi-Rise Capital Ltd. (“**Hi-Rise**”), in respect of the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the “**Property**”) and the proposed development known as the “Adelaide Street Lofts” (the “**Project**”). A copy of the Order can be found in the ‘Documents’ section of this webpage.

Pursuant to the Order, Representative Counsel represents the interests of all Investors, except Investors who do not wish to be represented by Representative Counsel and have completed and delivered an Opt-Out Notice.

Communications with Representative Counsel

Representative Counsel has established this webpage to facilitate communications with Investors. This webpage will include information and documents relevant to Investors. Please regularly consult the ‘Communications’ section of this webpage for updates from Representative Counsel on this proceeding.

Questions regarding the proceeding should be directed to Representative Counsel at HiRiseCapital@millerthomson.com. Responses will be provided on an anonymous basis through the ‘Question & Answers Section’ on this webpage.

Official Committee

Pursuant to the Order, Representative Counsel was directed to appoint an Official Committee of Investors (the “**Official Committee**”) in accordance with the Official Committee Establishment Process, which can be found [here](#). 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 alternate members to the Official Committee.

Pursuant to the Order of the Court dated April 15, 2019 the (“**Approval Order**”), the Official Committee was approved and constituted. A copy of Representative Counsel’s motion materials and the Approval Order can be found in the ‘Documents’ section of this webpage.

Representative Counsel will, among other things, consult with and take instructions from the Official Committee in respect of the SMI and the Project. Members of the Official Committee are required to follow the Official Committee Protocol, which can be found [here](#).

Appointment of Information Officer

Pursuant to the Order of the Court dated September 17, 2019, Alvarez & Marsal Canada Inc. was appointed as information officer (in such capacity, the “**Information Officer**”) in these proceedings. The Information Officer’s mandate includes reviewing and reporting to the Court and stakeholders on all matters relating to the Property, Hi-Rise’s mortgage over the Property and Adelaide’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 the financial implications of such proposed transactions.

The Information Officer has filed its report on October 7, 2019. A copy of the report is posted in the ‘Documents’ section of this webpage. Further details regarding the Information Officer can be found in the ‘Communications’ section of this webpage.

Communications

- [Information Package Delivered to Investors – 22/3/2019](#)
- [Notice of Hearing on April 4, 2019 – 26/3/2019](#)
- [Representative Counsel Update – 30/3/2019](#)
- [Update on Court Hearings – 4/4/2019](#)
- [Update on Status of Proceeding – 25/4/2019](#)
- [Update on Status of Proceeding – 8/5/2019](#)
- [Update on Status of Proceeding – 20/6/2019](#)
- [Important Update on Proposed Transaction – 4/7/2019](#)

- [Important Update on Proposed Transaction – 26/7/2019](#)
- [Important Update on Proposed Transaction and Proposed Vote – 30/8/2019](#)
- [Important Update on Proposed Transaction – 11/9/2019](#)
- [Important Update on Status of Proceeding and Appointment of Information Officer – 17/9/2019](#)
- [Important Update on the Court Report of the Information Officer – 8/10/2019](#)
- [Notice of Meeting of Investors Hosted by Representative Counsel – 16/10/2019](#)
- [Summary of Proposed Settlement/Vote Recommendation – 21/10/2019](#)
- [Update on Vote Results from the Meeting Called by Hi-Rise Capital Ltd. on October 23, 2019 – 28/10/2019](#)
- [Update regarding Communication on Meeting – 6/11/2019](#)
- [Important Update on Status of Proceeding – 7/11/2019](#)
- [Important Update on Judicial Mediation and Settlement – 2/12/2019](#)
- [Important Update on Recommendation regarding Settlement – 12/1/2020](#)
- [Important Update on Vote Results – 31/1/2020](#)
- [Important Update on Status of Proceeding – 12/2/2020](#)
- [Important Update on Status of Proceeding and Implications of COVID-19 – 17/3/2020](#)

Questions & Answers

- [Questions & Answers](#)
- [Questions & Answers regarding Vote & Proxies in respect of Proposed Settlement – 22/10/2019](#)

Documents

- [Application Record – Hi-Rise – 19/3/2019](#)
- [Factum of the Applicant – Hi-Rise – 19/3/2019](#)
- [Book of Authorities of the Applicant – Hi-Rise – 19/3/2019](#)
- [Order of Justice Hainey \(re: Appointment of Representative Counsel\) – 21/3/2019](#)
- [Endorsement of Justice Hainey – 22/3/2019](#)
- [Responding Application Record of the Respondent – Superintendent of Financial Services – 28/3/2019](#)
- [Factum of the Respondent – Superintendent of Financial Services – 2/4/2019](#)
- [Supplementary Affidavit of Noor Al-Awqati – 3/4/2019](#)
- [Endorsement of Justice Hainey – 4/4/2019](#)
- [Motion Record of Representative Counsel \(returnable April 15, 2019\) – 9/4/2019](#)
- [Responding Application Record of Respondents, Nadeem & Uzma Ghorl – 11/4/2019](#)
- [Order of Justice Hainey \(re: Approval of Official Committee\) – 15/4/2019](#)
- [Endorsement of Justice Hainey – 15/4/2019](#)
- [Endorsement of Justice Hainey – 17/4/2019](#)
- [Endorsement of Justice Hainey – 7/5/2019](#)
- [Endorsement of Justice Hainey – 6/8/2019](#)
- [Endorsement of Justice Hainey – 12/9/2019](#)
- [Second Report of Representative Counsel – 13/9/2019](#)
- [Endorsement of Justice Hainey – 16/9/2019](#)
- [Endorsement of Justice Hainey – 17/9/2019](#)
- [Order of Justice Hainey \(re: Appointment of Information Officer\) – 17/9/2019](#)
- [Order of Justice Hainey \(re: Increase of Representative Counsel Charge\) – 17/9/2019](#)
- [Court Report of the Information Officer – 7/10/2019](#)
- [Third Report of Miller Thomson LLP, in its Capacity as Court-appointed Representative Counsel – 18/10/2019](#)
- [Application Record of Meridian Credit Union Limited – 28/10/2019](#)
- [Factum of the Applicant – 31/10/2019](#)
- [Endorsement of Justice McEwan – 1/11/2019](#)
- [Fourth Report of Miller Thomson LLP, in its Capacity as Court-appointed Representative Counsel – 9/1/2020](#)
- [Endorsement of Justice Hainey – 20/1/2020](#)
- [Order of Justice Hainey – 20/1/2020](#)
- [Order of Justice Hainey \(signed per Justice McEwan\) – 16/3/2020](#)

APPENDIX K



January 13, 2020

Important Update on Recommendation Regarding Settlement

Pursuant to the Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated March 21, 2019 (the "**Order**") Miller Thomson LLP ("**Representative Counsel**") was appointed to represent all individuals and/or entities ("**Investors**") that hold an interest in a syndicated mortgage, administered by Hi-Rise Capital Ltd. ("**Hi-Rise**"), in respect of the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the "**Property**") owned by Adelaide Street Lofts Inc. ("**Adelaide**") and the proposed development known as the "Adelaide Street Lofts", in connection with the negotiation and implementation of a settlement with respect to such investments. A copy of the Order can be found on the 'Documents' section of Representative Counsel's website (the "**Website**"), available at <https://www.millerthomson.com/en/hirise/>.

In accordance with the Order, Representative Counsel established an Official Committee of Investors (the "**Official Committee**"), with which Representative Counsel consults regularly and from which it takes instruction in respect of this matter.

Representative Counsel writes this update further to our communication dated December 2, 2019 entitled "Important Update on Judicial Mediation and Settlement" (the "**Last Update**"), a copy of which is posted on the 'Communications' section of the Website, and to provide Investors with the following status update on this proceeding.

Delivery of Representative Counsel's Fourth Report

1. As you may know, Representative Counsel delivered its Fourth Report dated January 9, 2019 (the "**Fourth Report**") to all Investors.
2. A copy of the Fourth Report is posted under the 'Documents' section of the Website.
3. A hard copy of the Fourth Report will also be delivered to all Investors by regular mail. You can expect to receive a hard copy of the Fourth Report in the week of January 13, 2020.
4. Please read the Fourth Report for full details regarding the Settlement, Lanterra Transaction and the Minutes (as such terms are defined in the Fourth Report).

Hi-Rise Vote on the Settlement

1. Since delivering the Fourth Report, we have received numerous inquiries from Investors regarding the next vote to be conducted by Hi-Rise in respect of the Settlement described in the Fourth Report.

2. Please be advised as follows:

- (a) Hi-Rise expects to circulate an information package and details regarding the vote (the "**Voting Package**") to all Investors in the week of January 20, 2020. This means that you can expect to receive the Voting Package from Hi-Rise during the week of January 20, 2020.
- (b) The Voting Package will provide you with details of the Settlement and details/instructions on how to submit your vote.
- (c) At this time, Hi-Rise expects to set the voting deadline for January 31, 2020. Details regarding the deadline will also be set out in the Voting Package delivered to Investors by Hi-Rise.
- (d) Once Representative Counsel receives a copy of the Voting Package, we will post a copy of same on our Website. We will also address any questions you may have regarding the voting procedure.

Registered vs. Non-Registered Investors

Since delivering the Fourth Report, we have received numerous inquiries from Investors regarding the difference between Registered vs. Non-Registered Investors, and inquiries as to why Registered Investors will be paid in full where as Non-Registered Investors will not be receiving full repayment on closing of the Lanterra Transaction. The reasons for this are as follows.

- 1. There is a second mortgage registered on title to the Property in favour of both Hi-Rise and Community Trust Company (originally Canadian Western Trust) (the "**Second Mortgage**").
- 2. Community Trust Company's interest in the Second Mortgage ranks ahead of Hi-Rise Capital Ltd.'s interest.
- 3. At the time that you entered into this investment, there were two ways in which you could have invested. In other words, Investors participate through this Second Mortgage in two different ways, as follows:

Registered Investors

- (a) Registered Investors – these are Investors that participate in the Second Mortgage through Community Trust Company and hold their investments through a registered plan such as an RRSP. If you are a Registered Investor, your Loan Participation Agreement with Hi-Rise will indicate as follows, among other things:

"As a registered investor, you participate in this second mortgage through Canadian Western Trust. As between the second mortgagees, Hi-Rise Capital Ltd. is subordinated to Canadian Western Trust. In the event of an insolvency

or liquidation of the borrower, the claims of Canadian Western Trust will rank senior to the claims of Hi-Rise Capital Ltd.”

- (b) An example of a Loan Participation Agreement in respect of a Registered Investor is attached as **Appendix “A”** to this Communication, with the relevant excerpts highlighted.
- (c) This means that at the time of entering into the Loan Participation Agreement and investing in Hi-Rise, you agreed that your claim in Hi-Rise, and specifically, the return of your investment in a liquidation/insolvency scenario would receive priority treatment over Non-Registered Investors (described below).
- (d) In light of these proceedings and the current liquidation scenario, Registered Investors will be paid first from the Settlement proceeds. Given that there are sufficient Settlement proceeds to pay all of the Registered Investors’ claims, Registered Investors will be repaid in full on account of their investments.

Non-Registered Investors

- (e) Non-Registered Investors – these are Investors that participate in the Second Mortgage through Hi-Rise Capital Ltd. If you are a Non-Registered Investor, your Loan Participation Agreement with Hi-Rise will indicate that you are a “Subordinated Investor”, and specifically states, among other things:

“As a non-registered investor, you participate in this second mortgage through Hi-Rise Capital Ltd. As between the second mortgagees, Hi-Rise Capital Ltd. is subordinated to Canadian Western Trust. In the event of an insolvency or liquidation of the borrower, the claims of Hi-Rise Capital Ltd. will rank junior to the claims of Canadian Western Trust.”

- (f) An example of a Loan Participation Agreement in respect of a Non-Registered Investor is attached as **Appendix “B”** to this Communication, with the relevant excerpts highlighted.
- (g) This means that at the time of entering into the Loan Participation Agreement and investing in Hi-Rise, you did not invest in Hi-Rise through a registered plan such as a RRSP. As a Non-registered Investor, you agreed to subordinate your claim in Hi-Rise, and specifically, the return of your investment in a liquidation/insolvency scenario, to the claims of Registered Investors. In other words, you agreed to rank behind (or receive payment after) Registered Investors in a liquidation scenario.
- (h) In light of these proceedings and the current liquidation scenario, Non-Registered Investors will be paid after Registered Investors from the Settlement proceeds. After Registered Investors are paid, there are not enough Settlement proceeds left to pay all of the Non-Registered Investors in full. Accordingly, Non-Registered

Investors will share from the balance of the Settlement proceeds equally on closing, but, will not receive full payment.

Recommendation of Representative Counsel

Notwithstanding that Non-Registered Investors will not be paid in full, Representative Counsel still recommends that all Investors (both Registered and Non-Registered) vote in favour of the Settlement for the reasons set out in the Fourth Report.

All Investors will receive payment after closing of the transaction. This means that there will not be a long waiting period for Investors to receive payment.

Communications to Representative Counsel

We understand that since receiving the Fourth Report, many Investors will have questions regarding the Settlement and the Vote. Representative Counsel has been receiving many emails and telephone calls from Investors directly, and many Investors have the same questions.

In order to manage the volume of inquiries and to effectively respond to all Investors, we ask that all Investors submit inquiries to Representative Counsel through email at HiRiseCapital@millerthomson.com.

Representative Counsel reviews all emails received through this email address, and will respond to inquiries through further communications to Investors (which will be emailed to all Investors and posted on the Website). Thank you.

Yours Truly,

Miller Thomson LLP,
solely in its capacity as
Representative Counsel

APPENDIX “A”

LOAN PARTICIPATION AGREEMENT

Participation Agreement #10-1010

THIS PARTICIPATION AGREEMENT MADE

BETWEEN

HI-RISE CAPITAL LTD.
(hereinafter called "HRC")

OF THE FIRST PART

-AND-

PERSON(S) AND/OR ENTITY AS PER THE MORTGAGE ADMINISTRATION AGREEMENT
TO WHICH THIS AGREEMENT IS ATTACHED
(hereinafter called the "Participant")

OF THE SECOND PART

WHEREAS HRC has given to the Participant the opportunity to participate in a certain loan which is a participating loan, (hereinafter called the "Loan") made or to be made to the borrower hereinafter set out (hereinafter called the "Borrower") upon the terms set out in the Participant's Participation documentation between the Borrower and HRC;

AND WHEREAS HRC and the Participant agree that the relationship between HRC and the Participant shall be governed by the following terms and conditions:

Name of Borrower: Adelaide Street Lofts Inc.

Participant's Participation: Amount set out in the Mortgage Administration Agreement

Participating Lender: Hi-Rise Capital Ltd.

Priority in Mortgage Loan: *There is a second mortgage registered against the subject property in the name of both Hi-Rise Capital Ltd. and Canadian Western Trust. Canadian Western Trust will hold an interest of \$9,500,000.00 ahead of Hi-Rise Capital Ltd. As a registered investor, you participate in this second mortgage through Canadian Western Trust. As between the second mortgagees, Hi-Rise Capital Ltd. is subordinated to Canadian Western Trust. In the event of an insolvency or liquidation of the borrower, the claims of Canadian West Trust, will rank senior to the claims of Hi-Rise Capital Ltd..*

Project Name: Adelaide Street Lofts (the "Project")

Security: *2nd Mortgage*
I understand that during the course of this investment, the Borrower anticipates obtaining additional construction financing for the Property which is expected to take priority. I hereby understand, consent, and agree that other charges/ mortgages and/or development agreement may be registered in priority to the charge of the Property.

Prior Mortgages: 1st Mortgage (Refer to Disclosure Documents)

Amount of Loan: \$40,000,000
(I understand that the mortgage shall be initially registered indicating a face value of \$40,000,000 and from time to time, the loan amount will increase upon the completion of certain development and construction milestones on the Property by the Borrower, eventually replaced by construction/project financing).

Term of the Mortgage/Investment: 4 Years
Maturity Date: (February 1, 2018) - At the Borrower's option (to be exercised in writing not less than one (1) month prior to Maturity Date); the Borrower may extend the Maturity Date for twenty-four (24) additional months.

Initial



APPENDIX “B”

LOAN PARTICIPATION AGREEMENT

Participation Agreement #10-1010

THIS PARTICIPATION AGREEMENT MADE

BETWEEN

HI-RISE CAPITAL LTD.
(hereinafter called "HRC")

OF THE FIRST PART

-AND-

PERSON(S) AND/OR ENTITY AS PER THE MORTGAGE ADMINISTRATION AGREEMENT
TO WHICH THIS AGREEMENT IS ATTACHED
(hereinafter called the "Participant")

OF THE SECOND PART

WHEREAS HRC has given to the Participant the opportunity to participate in a certain loan which is a participating loan, (hereinafter called the "Loan") made or to be made to the borrower hereinafter set out (hereinafter called the "Borrower") upon the terms set out in the Participant's Participation documentation between the Borrower and HRC;

AND WHEREAS HRC and the Participant agree that the relationship between HRC and the Participant shall be governed by the following terms and conditions:

Name of Borrower: Adelaide Street Lofts Inc.

Participant's Participation: Amount set out in the Mortgage Administration Agreement

Participating Lender: Hi-Rise Capital Ltd.

Priority in Mortgage Loan: Subordinated Investor
There is a second mortgage registered against the subject property in the name of both Hi-Rise Capital Ltd. and Canadian Western Trust. Canadian Western Trust will hold an interest of \$9,500,000.00 ahead of Hi-Rise Capital Ltd.
As a non-registered investor, you participate in this second mortgage through Hi-Rise Capital Ltd. As between the second mortgagees, Hi-Rise Capital Ltd. is subordinated to Canadian Western Trust. In the event of an insolvency or liquidation of the borrower, the claims of Hi-Rise Capital Ltd. will rank junior to the claims of Canadian Western Trust.

Project Name: Adelaide Street Lofts (the "Project")

Security: 2nd Mortgage
I understand that during the course of this investment, the Borrower anticipates obtaining additional construction financing for the Property which is expected to take priority. I hereby understand, consent, and agree that other charges/ mortgages and/or development agreement may be registered in priority to the charge of the Property.

Prior Mortgages: 1st Mortgage (Refer to Disclosure Documents)

Amount of Loan: \$40,000,000
(I understand that the mortgage shall be initially registered indicating a face value of \$40,000,000 and from time to time, the loan amount will increase upon the completion of certain development and construction milestones on the Property by the Borrower, eventually replaced by construction/project financing).

Term of the Mortgage/Investment: 4 Years
Maturity Date: (February 1, 2018) - At the Borrower's option (to be exercised in writing not less than one (1) month prior to Maturity Date); the Borrower may extend the Maturity Date for twenty-four (24) additional months.

Initial



APPENDIX L

Garrafa, Shallon

From: Representative Counsel for HiRise Capital Investors
Sent: Monday, January 13, 2020 1:28 PM
Subject: Important Update on Recommendation regarding Settlement
Attachments: 44220268_1_Important Update on Recommendation regarding Settlement (January 13, 2020).PDF

Dear Investors,

Further to our email dated January 9, 2020 enclosing our Fourth Report, please find attached an important update regarding our recommendation on the Settlement. A copy of same has been posted in the "Communication" section of our website at: <https://www.millerthomson.com/en/hirise/>.

Regards,

Miller Thomson LLP,
In its Capacity as Court-appointed Representative Counsel

APPENDIX M

INFORMATION STATEMENT OF HI-RISE CAPITAL LTD.

January 13, 2020

Syndicated Mortgage Advanced to Adelaide Street Lofts Inc.

You are receiving this disclosure statement because you are an Investor (“Investor”) in a subordinated syndicated mortgage (the “Mortgage”) advanced to Adelaide Street Lofts Inc. (the “Borrower”), which is administered by Hi-Rise Capital Ltd. (“Hi-Rise”). Please read this disclosure statement carefully. The proposed transaction described in this statement (the “Transaction”) may affect your legal rights because any Investor that invested in the Mortgage directly (each a “Non-Registered Investor”), and not through a registered plan, will have his or her rights compromised and will receive proceeds that are less than the full amount of principal and accrued interest owing to such Non-Registered Investor. You may wish to consult your financial or legal advisors (including Miller Thomson LLP in its capacity as court-appointed representative counsel (“Representative Counsel”) to answer any questions that you may have. Representative Counsel has already prepared and sent its Fourth Report dated January 9, 2020 (the “Fourth Report”) to Investors, which provides substantial additional information about the Transaction in addition to the summary found below. We urge you to review the Fourth Report in detail. If you have not received a copy of the Fourth Report, it is available on the Representative Counsel’s website, details of which are set out at the end of this statement.

Introduction

You are receiving this Information Statement because you are an Investor in the Mortgage. You may be a Non-Registered Investor in the Mortgage or you may have invested through a registered plan (a “Registered Investor”) such as a registered retirement savings plan. Some Investors are both Registered Investors and Non-Registered Investors because they made both types of investments.

You have likely already received the Fourth Report, which Representative Counsel sent on January 9, 2020. The Fourth Report summarizes the Transaction whereby the property at 263 Adelaide Street West, Toronto, ON (the “Property”) will be sold to Lanterra Development Ltd. or its designee (“Lanterra”).

The purpose of this Information statement is to provide a summary of the Transaction and to outline why Hi-Rise recommends that Investors vote in favour of the Transaction.

Representative Counsel also recommends that Investors vote in favour of the Transaction.

This information Statement is intended to provide you with details of the Transaction and details on how you can vote on the Transaction. Hi-Rise will not be calling an in-person meeting or in-person vote. Instead, you can submit your vote by mail, online or by fax. The voting window will commence on Wednesday, January 22, 2020 and will close on Tuesday, January 28, 2020 at 5 p.m. Eastern Time. Full details and instructions with respect to how to cast your vote is further set out below.

Details of the Transaction

Investors were previously provided with details of an earlier joint venture proposal by Lanterra Developments Ltd. (“Lanterra”) to acquire the Property through a joint venture structure that also involved the Borrower (the “Lanterra JV Transaction”). Subsequently, Investors voted on the Lanterra JV Transaction, but the required majority approval was not received. As such, Hi-Rise did not continue to pursue the Lanterra JV Transaction.

On November 27, 2019, Hi-Rise participated in a mediation presided over by an Ontario Superior Court judge. Lanterra, the Borrower, Hi-Rise, Meridian Credit Union ("**Meridian**"), the first mortgagee over the Property, and Hi-Rise (collectively, the "**Parties**") were present at the mediation. The mediation was successful, and the Parties were able to agree to business terms of the Transaction.

The terms of the Transaction are set out in the Minutes of Settlement, which are Appendix "B" to the Fourth Report. However, a summary of the terms is as follows:

- a) Lanterra will purchase a 100% interest in the Property from the Borrower for \$69,000,000 with a closing date on or before May 14, 2020;
- b) Neither Jim Neilas nor his corporations will enter into any joint venture to develop the Property and they will not retain any interest in the Property;
- c) Out of the purchase price, 263 Holdings Inc. ("**263 Holdings**"), the parent company of the Borrower, shall receive a gross payment of \$4,000,000 (the "**Settlement Amount**") to settle claims or interests it may have in relation to the Property, including a claim for expenses;
- d) Bank of Montreal has agreed to accept a reduced marketing fee of \$649,000 in relation to its work to run a sales process for the Property and this amount will be paid for equally by Lanterra, 263 Holdings, and Investors;
- e) Meridian has agreed to forbear from enforcing its rights under the first mortgage on certain terms, including payment of outstanding interest on such mortgage (which amount has now been paid by Lanterra and which is secured by a new mortgage on the Property (the "**Lanterra Mortgage**"));
- f) On the date that the Transaction closes (the "**Closing Date**"), the proceeds of sale provided by Lanterra will be paid as follows:
 - i) first to Meridian to fully repay the first mortgage;
 - ii) second to counsel for Lanterra to repay the Lanterra Mortgage and other fees owing to Lanterra;
 - iii) third, to counsel for the 263 Holdings in respect of the Settlement Amount;
 - iv) fourth, to pay the fees of Representative Counsel and the other professional advisors that have obtained court-ordered charges over the Property;
 - v) fifth, to pay the legal fees of Hi-Rise incurred in connection with these proceedings and the additional work that Hi-Rise's counsel will need to perform to complete the Transaction and assist with the distribution of funds; and
 - vi) sixth, to distribute the remainder of the funds to Investors in accordance with their priorities.

Upon completion of the Transaction and the distribution of proceeds, the Parties (including Hi-Rise and Representative Counsel) will be released from liability.

Recovery by Investors

Please find enclosed a copy of Appendix "O" of the Fourth Report for the use of funds and estimated

distributions under the Transaction.

As this estimate of distributions indicates, Registered Investors are anticipated to receive full payment of all principal and interest owing to them. Non-Registered Investors will receive a portion—but not all—of the amount owing to them.

Recommendation of Hi-Rise:

Hi-Rise Capital Ltd. supports Representative Counsel's and the Official Committee's recommendation that investors approve the Transaction.

Next Steps after the Investor Vote

The Transaction contemplates that Hi-Rise will execute a full discharge and release of the Mortgage, even though the net proceeds that will be paid to Investors will be less than the total principal and interest owing under the Mortgage. (However, as noted above, it is expected that Registered Investors will receive payment in full.) Hi-Rise does not wish to grant a discharge of the Mortgage without specific authorization from the court.

Court approval will be obtained in the following manner: Hi-Rise will hold a vote of Investors. After the votes are tabulated, if a majority of Investors by number and two-thirds of Investors by value vote in favour of the Transaction, Hi-Rise will bring a motion before the court to obtain an order authorizing Hi-Rise to complete the Transaction. At that same time, Hi-Rise will seek additional court orders relating to the Transaction, including a "vesting order" that transfers ownership of the Property to Lanterra on the Closing Date free of all mortgages and other encumbrances (after Lanterra pays the purchase price).

We expect that court approval will be sought sometime in February or March 2020.

Voting Procedure

Hi-Rise will not call an in-person meeting prior to the vote. Voting can be completed by any of the following methods:

By Mail: Enter voting instructions, sign the form ("**Voting Ballot**") and send your completed Voting Ballot to:

TSX Trust Company
301-100 Adelaide Street West Toronto, Ontario, M5H 4H1

Online: Go to www.voteproxyonline.com. Enter the 12-digit control number printed on the form and follow the instructions.

By Fax: Enter voting instructions, sign the Voting Ballot and fax a completed copy of the enclosed proxy form to 416-595-9593.

Conclusion

These materials require your immediate attention. You should consult your legal, financial, tax and other professional advisors in connection with the contents of these documents. If you have any questions regarding voting procedures or other matters or if you wish to obtain additional copies of these materials, you may contact the investors representative counsel, Miller Thomson LLP, by telephone to Stephanie De Caria at (416) 595-2652 (Toronto local) or by email at HighRiseCapital@millerthomson.com. Copies of these materials and other materials in the within proceedings are also posted on the following website: <https://www.millerthomson.com/en/hirise/>.

Distribution Summary

Purchase Price	<u>\$69,000,000.00</u>	
Total Lanterra Contribution		\$69,000,000.00
Less:		
Meridian Mortgage	\$16,921,274.67	
Lanterra Interest Loan Payment	\$1,588,427.00	
Lanterra Forbearance Fee Payment	\$18,500.00	
263 Holdings Settlement Amount*	\$3,784,000.00	
Contribution to BMO Commission	\$216,500.00	
Estimated Professional Fees	<u>\$976,000.00</u>	
Total Deductions		<u>\$23,504,701.67</u>
Funds Available for Distribution to Investors		\$45,495,298.33

* \$4 million less \$216,000 contribution to BMO Commission

Investor Recoveries

Registered Investors		
Principal	17,133,872.86	
Interest	<u>5,676,844.98</u>	
Total Owed to Registered Investors		22,810,717.84
Non-Registered Investors		
Principal	34,973,891.58	
Interest	13,261,140.48	
Total Owed to Non-Registered Investors		<u>48,235,032.06</u>
Total Investor Claims		71,045,749.90
Net Proceeds Available for Distribution	45,495,298.33	
Less: Distribution to Registered Investors	<u>22,810,717.84</u>	
Amount Available for Non-Registered Investors		22,684,580.49
Percentage Recovery for Registered Investors		100.00%
Percentage Recovery for Non-Registered Investors (Principal Only)		64.86%
Percentage Recovery for Non-Registered Investors (Principal & Interest)		47.03%

APPENDIX N

Investor Vote

The voting window will commence on Wednesday, January 22, 2020 and will close on Tuesday, January 28, 2020 at 5 pm Eastern Time.

CONTROL NUMBER: «CONTROL_NUMBER»
SEQUENCE #: «SEQUENCE_NUMBER» - «CUSIP» - «PartAcct_No»
FILING DEADLINE: January 28, 2020 at 5:00 PM (EST)

VOTING METHOD	
INTERNET	Go to www.voteproxyonline.com and enter the 12 digit control number above
FACSIMILE	416-595-9593
MAIL or HAND DELIVERY	TSX Trust Company 301 - 100 Adelaide Street West Toronto, Ontario, M5H 4H1

«MAIL_SEQUENCE»
«Name»
«Add1»
«Add2»
«Add3»
«City», «Province» «Postal_Code»
«Country»

«Shares»
«SEQUENCE_NUMBER»

- SEE VOTING GUIDELINES ON REVERSE -

VOTING INSTRUCTIONS
1. Proposed Transaction

FOR or AGAINST the terms of a transaction to sell the property known as 263 Adelaide Street West, Toronto, Ontario as described in Minutes of Settlement, which are attached as Appendix "B" to the Fourth Report of Miller Thomson LLP, dated January 9, 2020, in its capacity as Court-Appointed Representative Counsel.

FOR
☐

AGAINST
☐

PLEASE PRINT NAME

This proxy revokes and supersedes all earlier dated proxies and **MUST BE SIGNED**

Signature of registered owner(s)

Date (MM/DD/YYYY)

Voting – Guidelines and Conditions

1. **THESE GUIDELINES SHOULD BE READ IN CONJUNCTION WITH THE INFORMATION STATEMENT PRIOR TO VOTING.**
2. **If no instructions are given, the proxy will be considered “spoiled” and will not be voted.**
3. To be valid, this ballot must be signed. Please date the ballot. If the ballot is not dated, it is deemed to bear the date of its mailing to the Investors.
4. To be valid, this proxy must be filed using one of the ***Voting Methods*** and *must be received by TSX Trust Company* before the ***Filing Deadline***, noted on the reverse.
5. If the Investor is a corporation, the ballot must be executed by an officer or attorney thereof duly authorized, and the Investor may be required to provide documentation evidencing the signatory's power to sign the ballot.

APPENDIX O

Garrafa, Shallon

From: Representative Counsel for HiRise Capital Investors
Sent: Monday, January 27, 2020 2:14 PM
Subject: IMPORTANT INFORMATION REGARDING HI-RISE VOTE
Attachments: Hi-Rise Voting Ballot.pdf; Hi-Rise Information Statement.pdf

FilingDate: 3/10/2020 2:59:56 PM

Dear Investors:

As you know, Hi-Rise Capital Ltd. ("**Hi-Rise**") has delivered a Voting Ballot and an Information Statement to all Investors by mail. A copy of a SAMPLE Voting Ballot and the Information Statement is attached to this email.

Since Hi-Rise delivered this package, Representative Counsel has received inquiries from Investors regarding the voting package and voting procedures. Hi-Rise is administering the vote through the TMX, which is a company that is circulating the voting ballots and will be tabulating the vote. Many Investors have advised Representative Counsel that they have either not received a package from Hi-Rise or that they have not received a control number. Some Investors have general questions regarding the voting procedure.

Please address all of your inquiries regarding the vote to Mr. Oliver Keung of TMX. Before Mr. Keung can assist, you will need to provide him with the following information. Please have this information ready when you contact him. If you contact him by email, please include this information in your email to him:

1. Whether you are a registered or a non-registered Investor; and
2. Your mailing address.

Please contact Mr. Keung directly at:

Oliver Keung
Email: oliver.keung@tmx.com
Telephone: 1 416 607-7906

Reminder that the voting deadline is tomorrow January 28, 2020 at 5:00 p.m.

Regards,

Miller Thomson LLP,
In its Capacity as Court-appointed Representative Counsel

APPENDIX P

SUMMARY OF VOTES CAST

ALL INSTITUTIONS

Effective: 01/28/2020



*** BY PERCENTAGE VOTED ***

ISSUE: HI-RISE CAPITAL LTD. - CLASS 1

Record Date: 01/14/2020

PROXY: HI-RISE CAPITAL LTD. JAN 2020 - CLASS 1

Meeting Date: 01/29/2020

69.230%	Shares voted	11,861,862.47	of	17,133,872.86	Shares
62.300%	Accounts voted	195	of	313	Accounts

QUESTION	YES	NO	ABSTAIN
----------	-----	----	---------

1) PROPOSED TRANSACTION	100.000%	0.000%	0.000%
	11,861,862.47	0.00	0.00

SUMMARY OF VOTES CAST

ALL INSTITUTIONS

Effective: 01/29/2020



*** BY PERCENTAGE VOTED ***

ISSUE: HI-RISE CAPITAL LTD. - CLASS 2

Record Date: 01/14/2020

PROXY: HI-RISE CAPITAL LTD. JAN 2020 - CLASS 2

Meeting Date: 01/29/2020

61.248%	Shares voted	21,420,791.57	of	34,973,891.58	Shares
56.203%	Accounts voted	222	of	395	Accounts

QUESTION	YES	NO	ABSTAIN
----------	-----	----	---------

1) PROPOSED TRANSACTION	93.184%	6.816%	0.000%
	19,960,791.57	1,460,000.00	0.00

APPENDIX Q

Votes Cast Prior to Deadline (January 28, 2020 @ 5 pm EST)

Investor Type	Class 1 - Registered		Class 2 - Non-Registered		Combined	
	No. of Accounts	Total Dollar Value	No. of Accounts	Total Dollar Value	No. of Accounts	Total Dollar Value
Totals	313	\$17,133,872.86	395	\$34,973,891.58	708	\$52,107,764.44
Voters	195	\$11,861,862.47	222	\$21,420,791.57	417	\$33,282,654.04
Percentage	62.300%	69.230%	56.203%	61.248%	58.898%	63.873%

Investor Type	Class 1 - Registered		Class 2 - Non-Registered		Combined	
	Total Dollar Value		Total Dollar Value		Total Dollar Value	
Total Dollar Value Voting	\$11,861,862.47		\$21,420,791.57		\$33,282,654.04	
Positive	\$11,861,862.47		\$19,960,791.57		\$31,822,654.04	
Percentage	100.000%		93.184%		95.613%	

Votes Cast Post-Deadline (January 28, 2020 @ 5 pm EST)

Investor Type	Class 1 - Registered		Class 2 - Non-Registered		Combined	
	No. of Accounts	Total Dollar Value	No. of Accounts	Total Dollar Value	No. of Accounts	Total Dollar Value
Totals	313	\$17,133,872.86	395	\$34,973,891.58	708	\$52,107,764.44
Voters	5	\$296,968.13	13	\$1,535,007.46	18	\$1,831,975.59
Percentage	1.597%	1.733%	3.291%	4.389%	2.542%	3.516%

Voting Results - Combined (Prior to and Post-Deadline)

Investor Type	Class 1 - Registered		Class 2 - Non-Registered		Combined	
	Total Dollar Value		Total Dollar Value		Total Dollar Value	
Total Dollar Value Voting	\$12,158,830.60		\$22,955,799.03		\$35,114,629.63	
Positive	\$12,158,830.60		\$21,495,799.03		\$33,654,629.63	
Percentage	100.000%		93.640%		95.842%	

APPENDIX R



January 31, 2020

Important Update on Vote Results

Pursuant to the Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 21, 2019 (the “**Order**”) Miller Thomson LLP (“**Representative Counsel**”) was appointed to represent all individuals and/or entities (“**Investors**”) that hold an interest in a syndicated mortgage, administered by Hi-Rise Capital Ltd. (“**Hi-Rise**”), in respect of the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the “**Property**”) owned by Adelaide Street Lofts Inc. (“**Adelaide**”) and the proposed development known as the “Adelaide Street Lofts”, in connection with the negotiation and implementation of a settlement with respect to such investments. A copy of the Order can be found on the ‘Documents’ section of Representative Counsel’s website (the “**Website**”), available at <https://www.millerthomson.com/en/hirise/>.

Representative Counsel writes this update further to our communication dated January 13, 2020 entitled “Important Update on Recommendation Regarding Settlement” (the “**Last Update**”), a copy of which is posted on the ‘Communications’ section of the Website, and to provide Investors with the following update:

Settlement & Vote

As you know, pursuant to the Minutes of Settlement (attached as Appendix “B” to the Fourth Report of Representative Counsel dated January 9, 2020), the parties entered into a settlement pursuant to which Adelaide would move forward with a sale of 100% of the Property to Lanterra Developments Ltd. (the “**Lanterra Sale**”), among other things (the “**Settlement**”).

As you also know, the Settlement was subject to the approval of Investors and approval by the Court. Accordingly, Hi-Rise called a second vote in order to allow Investors to vote on the Minutes of Settlement and the terms of the Settlement (the “**Vote**”). The voting deadline was January 28, 2020 at 5:00 p.m.

Vote Results

The Vote results were delivered today, the details of which are as follows:

1. In total, 417 Investors voted, representing approximately 58.9% of Investors, broken down as follows:
 - (a) 195 Registered Investors voted, representing approximately 62% of Registered Investors; and
 - (b) 222 Non-Registered Investors voted, representing approximately 56% of Non-Registered Investors.

2. 100% of Registered Investors (representing \$11,861,862 in value) voted in favour of the Settlement.
3. Approximately 93% of Non-Registered Investors (representing \$19,960,791 in value) voted in favour of the Settlement.
4. **Accordingly, the Vote passed.**

Late Votes

Certain Investors advised Representative Counsel that they received their voting package late and were unable to cast their vote by the deadline. While these votes are not counted in the above-noted results, TMX tabulated all of the “late votes” submitted and provided same to Representative Counsel.

Only 1.6% of Registered Investors casted their vote after the deadline, and only 3.3% of Non-Registered Investors casted their vote after the deadline. All such “late votes” were in favour of the Settlement.

In light of the overwhelming support in favour of the Settlement, these “late votes” are not material to the outcome of the Vote. In any event, Representative Counsel has calculated the impact of the “late votes” on the results of the Vote. In other words, Representative Counsel has considered what the outcome of the Vote would be if the “late votes” are counted.

If all “late votes” are counted, the percentage of Non-Registered Investors that voted in favour of the Settlement increases to approximately 93.6%.

Next Steps

Now that the Vote is complete, the following is expected to occur:

1. Hi-Rise will bring a motion to the Court to have the Settlement approved by the Court. The Court date has not yet been set, but it is expected to take place in the near future. Representative Counsel will advise Investors of this Court date once it is scheduled, and will post all Court materials on the Website.
2. Representative Counsel will prepare a Fifth Report in respect of the Vote results, and will post a copy of same on the Website once it is available.
3. After the Settlement and the Vote results are approved by the Court, the parties will work towards the expected closing date of the Lanterra Sale, which is scheduled for May 14, 2020 (the “**Closing Date**”).
4. After the Settlement and the Vote results are approved by the Court, Representative Counsel will begin working on matters related to the distribution process (i.e., distribution of settlement proceeds to Investors).
5. At this time, Representative Counsel expects that distributions to Investors will be made within 4 to 6 weeks after Closing Date (i.e., by early July 2020).



In the meantime, there is nothing for you to do. Representative Counsel will deliver another update to all Investors as soon as one becomes available.

Communications to Representative Counsel

Representative Counsel continues to receive inquiries from Investors regarding the Settlement and the Vote. Representative Counsel has been receiving many emails and telephone calls from Investors directly, and many Investors have the same questions.

In order to manage the volume of inquiries and to effectively respond to all Investors, we ask that all Investors submit inquiries to Representative Counsel through email at HiRiseCapital@millerthomson.com.

Representative Counsel reviews all emails received through this email address, and will respond to inquiries through further communications to Investors (which will be emailed to all Investors and posted on the Website). Thank you.

Yours Truly,

Miller Thomson LLP,
solely in its capacity as
Representative Counsel



APPENDIX S

Garrafa, Shallon

From: Representative Counsel for HiRise Capital Investors
Sent: Friday, January 31, 2020 2:36 PM
Subject: Important Update on Vote Results
Attachments: 44614956_1_Important Update regarding Vote Results (January 31, 2020).PDF

Dear Investors:

Attached please find our latest update regarding the vote results. A copy of same has been posted in the "Communications" section of our website at: <https://www.millerthomson.com/en/hirise/>.

Regards,

Miller Thomson LLP,
In its Capacity as Court-Appointed Representative Counsel

APPENDIX T

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

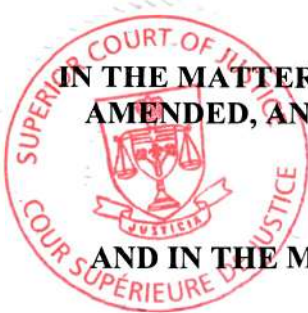
THE HONOURABLE

)
)
)
)

MONDAY THE

JUSTICE HAINEY

20TH DAY OF JANUARY, 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

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 will 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.

A handwritten signature in blue ink, appearing to read "Heidi J.", is written over a horizontal line.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

JAN 20 2020

PER / PAR: 

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

COUNSEL SLIP

COURT FILE

NO.: CV-19-00616261-00CL

DATE: JAN 20 2020

NO. ON LIST

(4)

TITLE OF
PROCEEDING

HI-RISE CAPITAL LTD V. SUPERINTENDENT OF FINANCIAL
SERVICES et al.

COUNSEL FOR:

☐ PLAINTIFF(S) Stephanie D. Carle
☐ APPLICANT(S) Miller Thomson LLP - Representative Counsel
☐ PETITIONER(S) 416-595-2652 (T)
416-595-8895 (F)

PHONE

FAX

EMAIL

COUNSEL FOR:

☐ DEFENDANT(S)
☐ RESPONDENT(S)

PHONE

FAX

EMAIL

JUDICIAL NOTES:

January 20, 2020
Ordered to go on the terms
of this attached order,

Hairy

APPENDIX U

Properties				
PIN	21411 - 0294	LT	Interest/Estate	Fee Simple
Description	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			
Address	263 ADELAIDE STREET WEST TORONTO			

Party From(s)	
Name	ONTARIO SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST
Address for Service	330 University Avenue Toronto, Ontario M5G 1R7

Applicant(s)	Capacity	Share
Name	LANTERRA DEVELOPMENTS LTD.	
Address for Service	2811 Dufferin Street Toronto, Ontario M6B 3R9	

Statements

The applicant applies to register the following order See Schedules. The order is still in full force and effect

The court order contains the following title related restriction: Subject to the encumbrances permitted by the minutes of settlement dated December 20, 2019, 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.

Signed By				
Eric Morris Carmona	199 Bay Street, Suite 5300 Toronto M5L 1B9	acting for Applicant(s)	Signed	2020 02 04
Tel	416-869-5500			
Fax	416-947-0866			
I have the authority to sign and register the document on behalf of the Applicant(s).				

Submitted By		
STIKEMAN ELLIOTT	199 Bay Street, Suite 5300 Toronto M5L 1B9	2020 02 04
Tel	416-869-5500	
Fax	416-947-0866	

Fees/Taxes/Payment	
Statutory Registration Fee	\$65.05
Total Paid	\$65.05

File Number	
Applicant Client File Number :	121941.1029

APPENDIX V

PROPERTY DESCRIPTION:

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

PROPERTY REMARKS:

"FOR THE PURPOSE OF THE QUALIFIER THE DATE OF REGISTRATION OF ABSOLUTE TITLE IS 2017/06/09".

ESTATE/QUALIFIER:

FEE SIMPLE
LT ABSOLUTE PLUS

RECENTLY:

RE-ENTRY FROM 21411-0162

PIN CREATION DATE:

2017/06/09

OWNERS' NAMES

ADELAIDE STREET LOFTS INC.

CAPACITY

SHARE

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2017/06/09 **						
**SUBJECT TO SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPHS 3 AND 14 AND *						
** PROVINCIAL SUCCESSION DUTIES AND EXCEPT PARAGRAPH 11 AND ESCHEATS OR FORFEITURE **						
** TO THE CROWN UP TO THE DATE OF REGISTRATION WITH AN ABSOLUTE TITLE. **						
NOTE: THE NO DEALINGS INDICATOR IS IN EFFECT ON THIS PROPERTY						
63BA1446	1979/02/02	PLAN BOUNDRIES ACT				C
REMARKS: PLD558, CT340669						
AT2730828	2011/06/24	TRANSFER	\$16,500,000	GUESTVILLE ENTERPRISES LIMITED	ADELAIDE STREET LOFTS INC.	C
REMARKS: PLANNING ACT STATEMENTS						
AT3522046	2014/02/18	CHARGE		*** DELETED AGAINST THIS PROPERTY *** ADELAIDE STREET LOFTS INC.	KINGSETT MORTGAGE CORPORATION	
AT3522047	2014/02/18	NO ASSGN RENT GEN		*** DELETED AGAINST THIS PROPERTY *** ADELAIDE STREET LOFTS INC.	KINGSETT MORTGAGE CORPORATION	
REMARKS: AT3522046.						
AT3522463	2014/02/18	CHARGE	\$40,000,000	ADELAIDE STREET LOFTS INC.	HI-RISE CAPITAL LTD.	C
AT3522464	2014/02/18	NO ASSGN RENT GEN		ADELAIDE STREET LOFTS INC.	HI-RISE CAPITAL LTD.	C
REMARKS: AT3522463.						
AT3522631	2014/02/18	POSTPONEMENT		*** DELETED AGAINST THIS PROPERTY *** HI-RISE CAPITAL LTD.	KINGSETT MORTGAGE CORPORATION	
REMARKS: AT3522463 TO AT3522046 & AT3522047						
AT3586925	2014/05/22	TRANSFER OF CHARGE		HI-RISE CAPITAL LTD.	CANADIAN WESTERN TRUST COMPANY	C
REMARKS: AT3522463.						

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.

NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT3591493	2014/05/28	POSTPONEMENT		*** DELETED AGAINST THIS PROPERTY *** HI-RISE CAPITAL LTD. CANADIAN WESTERN TRUST COMPANY	KINGSETT MORTGAGE CORPORATION	
REMARKS: AT3522463, AT3522464 AND AT3586925 TO AT3522046 AND AT3522047						
AT3946856	2015/07/15	NOTICE	\$2	ADELAIDE STREET LOFTS INC.	HI-RISE CAPITAL LTD. CANADIAN WESTERN TRUST COMPANY	C
REMARKS: AT3522463						
AT4420428	2016/12/01	TRANSFER OF CHARGE		HI-RISE CAPITAL LTD. CANADIAN WESTERN TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
REMARKS: AT3522463.						
AT4420442	2016/12/01	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. CANADIAN WESTERN TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
REMARKS: AT3522464						
AT4505545	2017/03/08	TRANSFER OF CHARGE		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
REMARKS: AT3522463						
AT4505546	2017/03/08	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
REMARKS: AT4420442						
AT4529978	2017/04/04	TRANSFER OF CHARGE		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
REMARKS: AT3522463. AT3522463						
AT4529979	2017/04/04	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
REMARKS: AT4420442 RENTS						
AT4572550	2017/05/18	TRANSFER OF CHARGE		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
REMARKS: AT4529978.						
AT4572551	2017/05/18	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
REMARKS: AT4529979						
66R29363	2017/06/09	PLAN REFERENCE				C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.

NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT4593553	2017/06/09	APL ABSOLUTE TITLE		ADELAIDE STREET LOFTS INC.		C
AT4627861	2017/07/14	TRANSFER OF CHARGE		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
REMARKS: AT4572550.						
AT4627862	2017/07/14	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
REMARKS: AT3522463, 4572551						
AT4664798	2017/08/25	TRANSFER OF CHARGE		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
REMARKS: AT4627861. AT4627861						
AT4664799	2017/08/25	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
REMARKS: AT4627862						
AT4773446	2018/01/04	BYLAW		CITY OF TORONTO		C
REMARKS: BY-LAW 1385-2017 TO DESIGNATE THE PROPERTY AT 263 ADELAIDE STREET WEST (PURMAN BUILDING) AS BEING OF CULTURAL HERITAGE VALUE OR INTEREST						
AT4862974	2018/05/14	CHARGE	\$16,414,000	ADELAIDE STREET LOFTS INC.	MERIDIAN CREDIT UNION LIMITED	C
AT4862975	2018/05/14	NO ASSGN RENT GEN		ADELAIDE STREET LOFTS INC.	MERIDIAN CREDIT UNION LIMITED	C
REMARKS: AT4862974.						
AT4863246	2018/05/14	POSTPONEMENT		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	MERIDIAN CREDIT UNION LIMITED	C
REMARKS: AT3522463 TO AT4862974						
AT4863247	2018/05/14	DISCH OF CHARGE		*** COMPLETELY DELETED *** KINGSETT MORTGAGE CORPORATION		
REMARKS: AT3522046.						
AT5329784	2019/12/24	NOTICE		ADELAIDE STREET LOFTS INC.	MERIDIAN CREDIT UNION LIMITED	C
REMARKS: AT4862974						
AT5329785	2019/12/24	CHARGE	\$1,550,000	ADELAIDE STREET LOFTS INC.	LANTERRA DEVELOPMENTS LTD.	C
AT5329786	2019/12/24	NO ASSGN RENT GEN		ADELAIDE STREET LOFTS INC.	LANTERRA DEVELOPMENTS LTD.	C
REMARKS: AT5329785						
AT5329787	2019/12/24	POSTPONEMENT		HI-RISE CAPITAL LTD.	LANTERRA DEVELOPMENTS LTD.	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.

NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT5330113	2019/12/27	POSTPONEMENT		COMMUNITY TRUST COMPANY COMMUNITY TRUST COMPANY HI-RISE CAPITAL LTD.	MERIDIAN CREDIT UNION LIMITED	C
AT5357503	2020/02/04	RESTRICTIONS ORDER		ONTARIO SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST	LANTERRA DEVELOPMENTS LTD.	

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.

NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

APPENDIX W



March 17, 2020

Update on Status of Proceedings and Implications of COVID-19

Pursuant to the Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 21, 2019 (the “**Order**”) Miller Thomson LLP (“**Representative Counsel**”) was appointed to represent all individuals and/or entities (“**Investors**”) that hold an interest in a syndicated mortgage, administered by Hi-Rise Capital Ltd. (“**Hi-Rise**”), in respect of the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the “**Property**”) owned by Adelaide Street Lofts Inc. (“**Adelaide**”) and the proposed development known as the “Adelaide Street Lofts”, in connection with the negotiation and implementation of a settlement with respect to such investments. A copy of the Order can be found on the ‘Documents’ section of Representative Counsel’s website (the “**Website**”), available at <https://www.millerthomson.com/en/hirise/>.

Representative Counsel writes this update further to our communication dated February 13, 2020 entitled “Important Update on Status of Proceedings” (the “**Last Update**”), a copy of which is posted on the ‘Communications’ section of the Website, and to provide Investors with the following update:

Settlement Approval Motion

1. As you know, pursuant to the Minutes of Settlement (attached as Appendix “B” to the Fourth Report of Representative Counsel dated January 9, 2020, a copy of which is posted on the Website), the parties entered into a settlement pursuant to which Adelaide would move forward with a sale of 100% of the Property to Lanterra Developments Ltd., among other things (the “**Settlement**”).
2. The Settlement was subject to the approval of Investors and approval by the Court. Accordingly, Hi-Rise called a second vote in order to allow Investors to vote on the Minutes of Settlement and the terms of the Settlement (the “**Vote**”).
3. As the Vote has passed, the next step is for Hi-Rise to bring a motion to the Court to have the Settlement approved by the Court (the “**Settlement Approval Motion**”). As set out in the Last Update, the Settlement Approval Motion was scheduled to take place at the Court on March 19, 2020.
4. As you may know, due to the spread of the 2019 novel coronavirus (“**COVID-19**”), the Ontario Superior Court of Justice (“**SCJ**”) is suspending all regular operations, effective Tuesday, March 17, 2020, and until further notice. More information in this regard is available on the SCJ’s website at the following URL: <https://www.ontariocourts.ca/scj/covid-19-suspension-fam/>

5. **At this time, the suspended Court services are not expected to disrupt this proceeding. The following is expected to occur:**
- (a) While counsel are not permitted to attend at Court in person, this matter will now proceed electronically and by telephone conference until further notice.
 - (b) This means that Hi-Rise will bring the Settlement Approval Motion to the Court “in writing” and will deliver its materials to the Court by electronic means.
 - (c) Representative Counsel will also deliver its materials to the Court by electronic means.
 - (d) Hi-Rise expects to deliver its materials within the next week, and Representative Counsel expects to deliver its materials shortly thereafter.
 - (e) To the extent that the Court requires submissions from Hi-Rise, Representative Counsel, or any other party in this proceeding upon it receiving the written motion materials, the Court will convene a telephone case conference.
 - (f) Otherwise, the Court will issue its decision to the parties in writing. We do not know the timeline for the Court to release its decision. However, please understand that given these new and unprecedented circumstances, there may be some delay and we ask that all Investors be patient.
 - (g) All materials will be made available to Investors on the Website. Please stay tuned for future emails from Representative Counsel and please consult the Website regularly.
6. **In short, Hi-Rise is still on the path to seeking Court approval of the Settlement and Vote results.**

Distribution Matters

7. As set out in the Last Update, after the Settlement and the Vote results are approved by the Court, Representative Counsel will begin working on matters related to the distribution process (*i.e.*, distribution of settlement proceeds to Investors).
8. At this time, the closing date under the Settlement is still May 14, 2020. Representative Counsel still expects that distributions to Investors will be made within 4 to 6 weeks after the scheduled closing date (*i.e.*, by early July 2020), although this timeline may change as all organizations continue to navigate the COVID-19 pandemic.
9. **In the meantime, there is nothing for you to do.** Representative Counsel will deliver another update to all Investors as soon as one becomes available or if any of the current circumstances materially change. As set out above, please continue to regularly consult the Website for updates and for copies of all Court materials filed in connection with the Settlement Approval Motion.



COVID-19, Miller Thomson LLP Offices and Communications to Representative Counsel

Please note that Miller Thomson LLP remains open for business. However due to COVID-19, and to ensure the health and safety of our firms members and the public, our firm is moving toward working remotely (*i.e.*, from our homes). For more information on Miller Thomson's preparedness, please visit our website at the following URL: <https://www.millerthomson.com/en/covid-19-resources/>

Notwithstanding this change in circumstances, Representative Counsel will continue to represent the interests of Investors and there will be no disruption in our legal services or representation.

Representative Counsel continues to receive inquiries from Investors regarding the Settlement and the Vote. Representative Counsel has been receiving many emails and telephone calls from Investors directly, and many Investors have the same questions.

In order to manage the volume of inquiries and to effectively respond to all Investors, we ask that all Investors submit inquiries to Representative Counsel through email at HiRiseCapital@millerthomson.com.

Representative Counsel reviews all emails received through this email address, and will respond to inquiries through further communications to Investors (which will be emailed to all Investors and posted on the Website).

It is crucial at this time that all Investors respect this request. Thank you all for your patience.

Yours Truly,

Miller Thomson LLP,
solely in its capacity as
Representative Counsel



APPENDIX X

Garrafa, Shallon

From: Representative Counsel for HiRise Capital Investors
Sent: Tuesday, March 17, 2020 12:25 PM
Subject: Important Update on Status of Proceeding and Implications of COVID-19
Attachments: 45510059_1_Important Update on Status of Proceeding (March 17 2020).pdf

Dear Investors,

Attached please find an update from Representative Counsel.
A copy of same is also posted in the "Communications" section of our website at:
<https://www.millerthomson.com/en/hirise/>.

Regards,

Miller Thomson LLP,
In its Capacity as Court-Appointed Representative Counsel

APPENDIX Y

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

JUSTICE HAINEY

)
)
)
)

TUESDAY THE 17th
~~MONDAY THE 16th~~

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.**

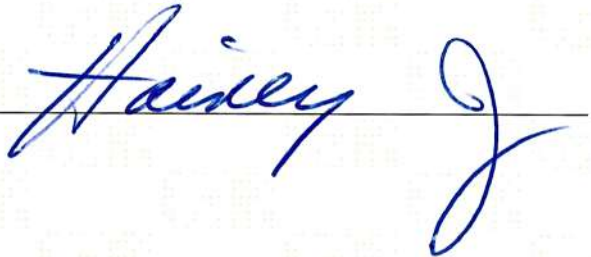
ORDER

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 Haineey 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,

UPON BEING ADVISED of the consent of Hi-Rise, the Company, and the Financial Services Regulatory Authority of Ontario, Meridian Credit Union Limited,

INCREASE IN REP COUNSEL CHARGE

1. **THIS COURT ORDERS** that the Rep Counsel Charge (as defined in the Appointment Order) in respect of its Post-Appointment Fees (as defined in the Appointment Order) be and is hereby increased up to a maximum amount of \$400,000.00 or as may be otherwise ordered by this Court.

A handwritten signature in blue ink, reading "Hainey J.", is written over a horizontal line.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

SEP 17 2019

PER / PAR:

A small, stylized handwritten signature in blue ink.

HIRISE CAPITAL LTD.

and

SUPERINTENDENT OF FINANCIAL
SERVICES et. al.
Respondents

Applicant

Court File No.: CV-19-616261-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

**ORDER
(RE: INCREASE TO REP COUNSEL CHARGE)**

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Court-appointed Representative Counsel

APPENDIX Z

CV-19-616261-00CL

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF SECTION 60 OF THE TRUSTEE ACT, R.S.O. 1990, C. T.23, AS
AMENDED, AND RULE 10 OF THE ONTARIO RULES OF CIVIL PROCEDURE,
R.R.O. 1990, REG. 194, AS AMENDED**

**AND IN THE MATTER OF HI-RISE CAPITAL LTD. AND IN THE MATTER OF
ADELAIDE STREET LOFTS INC.**



**NOTICE OF APPLICATION
(returnable March 21, 2019)**

TO THE RESPONDENT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing on Thursday, March 21, 2019, at 10:00am, before Mr. Justice Hainey presiding over the Commercial List at 330 University Avenue, 8th Floor, Toronto ON, M5G 1R7.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date March 14, 2019

Issued by



C. Irwin
Local Registrar
Registrar

Address of Superior Court of Justice
court office: 330 University Avenue, 7th Floor
Toronto ON
M5G 1R7

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Lawyers for the Respondent, Superintendent of Financial Services

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Lawyers for the Advisory Committee (defined below) and Prospective Representative Counsel

AND TO: **TERESA SIMONELLI**
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Toronto, ON
M5H 3S1

Member of the Advisory Committee (defined below)

AND TO: **ANTONIO SIMONELLI**
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Scotia Plaza
Toronto, ON
M5H 3S1

Member of the Advisory Committee (defined below)

AND TO: **JANSALL INVESTMENTS LTD. c/o Morty Horowitz**
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Toronto, ON
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Member of the Advisory Committee (defined below)

AND TO: **NICOLAS VERNI**
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Member of the Advisory Committee (defined below)

AND TO: **EDWARD RINTOUL**
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Member of the Advisory Committee (defined below)

AND TO: **SHAWN THOMAS**
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Member of the Advisory Committee (defined below)

AND TO: **JACQUELINE THOMAS**
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Member of the Advisory Committee (defined below)

AND TO: **MCCARTHY TÉTRAULT LLP**
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Geoff R. Hall LSO # : 34701O
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ghall@mccarthy.ca

Lawyers for Adelaide Street Lofts Inc.

APPLICATION

1. The applicant, Hi-Rise Capital Ltd. ("**Hi-Rise**"), makes application for the following relief:

(a) upon the initial return of this application before the court on March 21, 2019,

a. if necessary, an Order abridging the time for service and filing of this notice of application and the application record and dispensing with further service thereof;

b. an Order substantially in the form contained in the application record (the "**Representative Counsel Order**") that

i. appoints Miller Thomson LLP as representative counsel ("**Rep Counsel**") to represent the interests of all persons (collectively, the "**Investors**") that have invested funds in the syndicated mortgage advanced as a loan to Adelaide Street Lofts Inc. ("**Adelaide**") which is administered by Hi-Rise;

ii. terminates the Engagement Letter between Miller Thomson LLP and certain individuals dated September 6, 2018, as amended thereafter to add additional individuals;

iii. authorizes the establishment of the Consultative Committee substantially in accordance with the process and procedure

described in the Consultative Committee Establishment Process (as such terms are defined in the Representative Counsel Order); and

- iv. authorizes and approves the Consultative Committee Protocol (as such term is defined in the Representative Counsel Order);
- v. creates an Administration Charge securing the fees of Rep Counsel ("**Rep Counsel Charge**") and counsel for Hi-Rise Capital Ltd. ("**Company Charge**") in priority to all other charges except the existing first mortgage in favour of Meridian Credit Union Limited;
- vi. grants a declaration that Hi-Rise has the power under loan participation agreements (each, an "**LPA**") and mortgage administration agreements (each, a "**MAA**") that it entered into with Investors and at law to grant a discharge of the syndicated mortgage (the "**Syndicated Mortgage**") held by Investors over the property owned by Adelaide (the "**Property**") if the proceeds received from the completion of a contemplated transaction relating to the Property (the "**Transaction**") are insufficient to pay in full amounts owing under the Syndicated Mortgage, and if the court determines that Hi-Rise does have such power, a discharge shall only

be granted if the Transaction is approved by Investors in accordance with the voting procedure (described below) and by the court upon a subsequent return of this application (described below);

- vii. permits Hi-Rise to call, hold and conduct a meeting (the “**Meeting**”) of the Investors to be held at a location, date and time to be determined by Hi-Rise, in order for the Investors to consider and, if determined advisable, pass a resolution approving the Transaction and the distribution of proceeds therefrom (the “**Distribution**”), and authorizes the conduct of such Meeting;
 - viii. schedules a further hearing of this Application to approve the Distribution if, at the Meeting a majority in number of the Investors representing two-thirds in value present and voting either in person or by proxy cast votes in favour of the proposed Transaction and Distribution;
- (b) upon the subsequent return of this application at a later date, such orders as are necessary to
- a. provide final approval of the Transaction and the Distribution if the court determines that the Transaction is fair and reasonable;

- b. provide further directions to Hi-Rise pursuant to section 60 of the *Trustee Act* as are appropriate to permit it to carry out its role in a manner consistent with the LPA and MAA and its duties at law; and
- c. approve the conduct and fees of Rep Counsel.

2. The grounds for the application are as follows:

- (a) The Applicant, Hi-Rise, is a corporation incorporated pursuant to the laws of the Province of Ontario;
- (b) Hi-Rise is a mortgage broker and mortgage administrator licensed by the Superintendent of Financial Services of Ontario (the "**Superintendent**");
- (c) Hi-Rise receives and advances, on behalf of Investors, funds to a variety of companies (each a "**Borrower**" and collectively the "**Borrowers**"), such as Adelaide, that undertake real property developments;
- (d) Prior to seeking money from Investors, the Borrower typically purchases the land with proceeds from a first mortgage obtained from a commercial lender;
- (e) Investors obtain the Syndicated Mortgage as security for their loans, which is registered on title to the relevant property in the name of Hi-Rise as trustee on behalf of investors;
- (f) The proceeds of the Syndicated Mortgage are typically used to fund pre-development costs such as zoning, architect fees, consultants, and

interest (both on the Syndicated Mortgage and the first mortgage), and some initial construction costs;

- (g) The terms on which Investors advance their funds and Hi-Rise administers each Syndicated Mortgage are set out in the LPA and MAA (collectively, the "**Agreements**") with respect to a given investment;
- (h) In addition, each Investor is provided with, and signs an acknowledgement of, a prescribed disclosure statement about the Syndicated Mortgage, which disclosure is prescribed by the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29 (the "**Act**") and the Regulations thereunder;
- (i) The Agreements give Hi-Rise certain powers to administer the Syndicated Mortgage, including the power to subordinate that mortgage to other indebtedness, such as the construction financing that is obtained to fund the majority of construction costs;
- (j) In the case of default by the Borrower, Hi-Rise is empowered to make such decisions, to take such action, and exercise such rights and remedies as it may deem advisable in its absolute discretion;
- (k) Since it began operations, Hi-Rise has been involved in approximately 20 investments involving a syndicated mortgage and, in each case, the investors in each of these projects received full payment of their principal and interest;

- (l) Starting in early 2017, the market for syndicated mortgages in Ontario effectively “froze” because a number of other mortgage brokers and administrators became insolvent and were the subject of regulatory action by the Superintendent;
- (m) At that time, a number of Borrowers (including Adelaide) in respect of which Hi-Rise administered mortgages were unable to obtain construction financing because commercial lenders were scared off by the problems that other mortgage brokers and administrators had experienced and lenders have been very reluctant to finance construction of any project involving a syndicated mortgage;
- (n) Accordingly, lenders refused to provide construction financing to the few projects with syndicated mortgages administered by Hi-Rise (including the Adelaide Project) where construction had not started;
- (o) As a result, Hi-Rise worked with the relevant borrowers to wind-down development efforts and realize the maximum value for investors;
- (p) Hi-Rise is only administering two remaining material syndicated mortgages, one of which is given by Adelaide;
- (q) Adelaide has been attempting to undertake a transaction (“Transaction”, as defined above) to realize value for the Property for the benefit of Investors;

- (r) The Agreements do not contain an explicit process that would permit Hi-Rise to sell the Property and compromise and/or settle amounts owing to Investors under the Syndicated Mortgages and discharge the Syndicated Mortgage in a deficiency situation;
- (s) Hi-Rise supports the Transaction but requires the approval of the Investors and the Court in order to complete the Transaction and grant a discharge of the Syndicated Mortgage, especially in circumstances where the proceeds of the Transaction may be less than the total amount owing under the Syndicated Mortgage;
- (t) Hi-Rise brings this Application to initiate a transparent court process that will do several things:
 - (i) first, Hi-Rise seeks the court appointment of Rep Counsel for the Investors in Adelaide, which counsel will negotiate with Adelaide regarding the Transaction, report to Investors, and represent their interests, and report to the court, with the goal of assisting Investors with maximizing their recoveries;
 - (ii) second, Hi-Rise seeks various declarations that it has the power to take steps regarding the Transaction, including holding a vote of Investors, and, if the requisite "double majority" of Investors approves the Transaction, to complete the Transaction and give a discharge of the Syndicated Mortgage; and

- (iii) third, upon a subsequent return date of this application, and assuming that an appropriate proportion of Investors has approved the Transaction, if there is likely to be a deficiency Hi-Rise will seek an order approving and sanctioning the Transaction and allowing it to be completed, if the court determines that the Transaction is fair and reasonable;
- (u) The court appointment of Rep Counsel is necessary to ensure that Rep Counsel has a proper mandate and to correct the problems that exist concerning the current role of Miller Thomson LLP ("**MT**") as counsel to some Investors in respect of Adelaide;
- (v) In particular, pursuant to an Engagement Letter dated September 6, 2018 (the "**Engagement Letter**"), Miller Thomson LLP ("**MT**") was engaged (the "**Existing Engagement**") by a small group of Investors (collectively, the "**Advisory Committee**") to act on their behalf in seeking a resolution to matters related to Adelaide, including recovery of funds advanced under the Syndicated Mortgage;
- (w) As part of the Existing Engagement, MT's fees and disbursements are being paid by Hi-Rise;
- (x) Pursuant to the Terms of Reference attached as a Schedule to the Engagement Letter, Alexander Simonelli was designated as Communication Designate (in such capacity, the "**Communication Designate**") for the purpose of disseminating communications to the general body of Investors;

- (y) The Advisory Committee and Communication Designate structures were created in order to enable MT to comply with its professional obligations including managing potential conflicts of interest and CASL requirements;
- (z) Unfortunately, the Advisory Committee and Communications Designate structures have proved ineffective, for reasons which include the following:
 - (i) MT continues to receive direct communications from individual Investors who have bypassed the established procedures, necessitating countless conflict checks;
 - (ii) MT is unable to provide direct advice to individual Investors other than members of the Advisory Committee due to concerns regarding potential conflicts of interest;
 - (iii) MT does not have a mandate to act on behalf of Investors other than members of the Advisory Committee; and
 - (iv) the Communications Designate has recently resigned from such role;
- (aa) The Representative Counsel Order contemplates the establishment of a Consultative Committee in accordance with a Consultative Committee Establishment Process;

- (bb) The Consultative Committee Establishment Process represents a fair and robust procedure for appointing Investors to act as members of the Consultative Committee;
- (cc) The Representative Counsel Order also contemplates a Consultative Committee Protocol, which sets out the terms governing the role and mandate of the Consultative Committee, among other things;
- (dd) MT cannot effectively fulfill its mandate and duties in the current structure;
- (ee) The appointment of MT as representative counsel will be of substantial assistance to efforts to resolve the matters relating to Adelaide, and is in the best interests of the Investors;
- (ff) The balance of convenience favours the appointment of MT as representative counsel of the Investors and the granting of the Representative Counsel Order;
- (gg) Since the work to be done by Rep Counsel and by counsel for Hi-Rise will benefit Investors, it is appropriate that the Rep Counsel Charge and Company Charge be established to secure payment of these counsel's fees which charge shall rank subordinate to the first mortgage but in priority to the Syndicated Mortgage;
- (hh) Further, section 8(ii) of the LPA provides that, in the event of a default under the Syndicated Mortgage, Hi-Rise is entitled to retain the services of various professionals, including lawyers and, pursuant to section 4 of the

LPA, such charges are to be paid out of monies recovered from Adelaide prior to the distribution of net proceeds to Investors;

- (ii) Sections 10, 60, 64 of the *Trustee Act*, R.S.O. 1990, c. T.23, as amended;
 - (jj) Section 96, 97, and 100 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended;
 - (kk) Rules 1.04, 1.05, 2.01, 2.03, 3.02, 10, 16, 37, and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
 - (ll) Such further other grounds as counsel may advise and this Court may permit.
3. The following documentary evidence will be used at the hearing of the motion:
- (a) The Affidavit of Noor Al-Awqati, to be sworn and the exhibits attached thereto; and
 - (b) Such further and other material as counsel may advise and as this Honourable Court may permit.

March 14, 2019

CASSELS BROCK & BLACKWELL LLP

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Lawyers for the Applicant, Hi-Rise Capital Ltd.

HI-RISE CAPITAL LTD.
Applicant

SUPERINTENDENT OF FINANCIAL SERVICES et. al.
Respondents

CV-19-616261-0004
Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF APPLICATION

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Lawyers for the Applicant, Hi-Rise Capital Ltd.

APPENDIX

AA

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

TUESDAY, THE 17TH

JUSTICE HAINEY

DAY OF SEPTEMBER, 2019

**IN THE MATTER OF SECTION 60 OF THE TRUSTEE ACT, R.S.O. 1990, C. T.23, AS
AMENDED, AND RULE 10 OF THE ONTARIO RULES OF CIVIL PROCEDURE,
R.R.O. 1990, REG. 194, AS AMENDED**



**AND IN THE MATTER OF HI-RISE CAPITAL LTD. AND IN THE MATTER OF
ADELAIDE STREET LOFTS INC.**

ORDER

THIS MOTION, made by Miller Thomson LLP, in its capacity as Court-appointed Representative Counsel in this proceeding (in such capacity, "**Representative Counsel**"), appointed pursuant to the Order of the Honourable Mr. Justice Hainey dated March 21, 2019 (the "**Appointment Order**") to represent the interests of all individuals and/or entities ("**Investors**", which term does not include persons who have opted out of such representation in accordance with the Appointment Order) that have invested funds in a syndicated mortgage investment administered by Hi-Rise Capital Ltd. ("**Hi-Rise**"), in respect of the proposed development known as the "Adelaide Street Lofts" (the "**Project**") at the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the "**Property**") and owned by Adelaide Street Lofts Inc. (the "**Company**"), was heard this day at the Court House, 330 University Avenue, Toronto, Ontario,

ON HEARING the submissions of Representative Counsel, Hi-Rise, the Company, the Financial Services Regulatory Authority of Ontario ("**FSRA**"), Meridian Credit Union Limited

(“**Meridian**”) and such other counsel as appeared, and on being advised of the consent of the parties,

APPOINTMENT

1. **THIS COURT ORDERS** that Alvarez & Marsal Canada Inc. is hereby appointed as a Court officer to act as an information officer in respect of Hi-Rise and the Property (in such capacity, the “**Information Officer**”).

2. **THIS COURT ORDERS** that the Information Officer shall not take possession of or exercise control over, and shall not be deemed to have taken possession of or exercise control over the business or assets of Hi-Rise or the Company, including, without limitation, the Property.

NO EFFECT ON RIGHTS AND REMEDIES OF MERIDIAN

3. **THIS COURT ORDERS** that nothing in this Order in any way affects Meridian’s ability to exercise any or all of its rights or remedies under any one or more of any credit agreement, security agreement or other document between Meridian and the Company or any other party named in such documents, including the right to the appointment of a receiver under the *Bankruptcy and Insolvency Act*, the *Courts of Justice Act* or otherwise, and the right to apply to the Court for any other remedies.

INFORMATION OFFICER’S POWERS

4. **THIS COURT ORDERS** that the Information Officer is hereby empowered and authorized to do any of the following where the Information Officer considers it necessary or desirable:

- (a) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis to assist with the exercise of the Information Officer's powers and duties conferred by this Order;
- (b) to review and report to the Court and to all stakeholders, including but not limited to the Representative Counsel, Hi-Rise, the Company, FSRA and Meridian, in

respect of all matters relating to the Property, Hi-Rise's mortgage over the Property, and the Company's proposed sale of the Property, including, but not limited to, the marketing and sales process undertaken in respect of the Property, all aspects of any and all proposed transactions in respect of the Property (and in this regard, the Information Officer may engage in discussions with Tricon Lifestyle Rentals Investment LP to ascertain its interest in the Property), and the financial implications of such proposed transactions (the "**Mandate**");

- (c) to meet with and discuss with such affected Persons (as defined below) as the Information Officer deems appropriate on all matters relating to the Mandate, subject to such confidentiality terms as the Information Officer deems advisable; and
- (d) to take any steps reasonably incidental to the exercise of these powers or the fulfilment of the Mandate.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE INFORMATION OFFICER

5. **THIS COURT ORDERS** that (i) the Company and Hi-Rise, (ii) all of their current and former directors, officers, employees, agents, advisors, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms or corporations (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Information Officer of the existence of any information the Information Officer considers that it requires in order to fulfil the Mandate that is within such Person's possession or control, shall grant immediate and continued access to such information to the Information Officer, and shall deliver all such information to the Information Officer upon the Information Officer's request, provided that nothing contained in this paragraph 5 shall oblige any Person to disclose information that is subject to any privilege (including but not limited to solicitor-client privilege, litigation privilege, settlement privilege, or any common law or statutory privilege prohibiting such disclosure).

6. **THIS COURT ORDERS** that all Persons shall forthwith advise the Information Officer of the existence of any books, documents, securities, contracts, orders, corporate and accounting

records, and any other papers, records and information of any kind that the Information Officer considers that it requires in order to fulfil the Mandate, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the “**Records**”), including but not limited to Records in respect of any and all proposed transactions in respect of the Property, in that Person's possession or control, and shall provide to the Information Officer or permit the Information Officer to make, retain and take away copies thereof and grant to the Information Officer unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 6 or in paragraph 7 of this Order shall require the delivery of Records, or the granting of access to Records, that are subject to any privilege (including but not limited to solicitor-client privilege, litigation privilege, settlement privilege, or any common law or statutory privilege prohibiting such disclosure).

7. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Information Officer for the purpose of allowing the Information Officer to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Information Officer in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Information Officer. Further, for the purposes of this paragraph, all Persons shall provide the Information Officer with all such assistance in gaining immediate access to the information in the Records as the Information Officer may in its discretion require including providing the Information Officer with instructions on the use of any computer or other system and providing the Information Officer with any and all access codes, account names and account numbers that may be required to gain access to the information.

DUTY TO FACILITATE INFORMATION DISCLOSURE

8. **THIS COURT ORDERS** that upon request by the Information Officer, the Company and/or Hi-Rise shall immediately provide consent or authorization for any Person to release and disclose Records to the Information Officer, which Records may be requested by the Information

Officer in connection with the Mandate, provided that nothing contained herein shall oblige any Person to disclose information that are subject to any privilege (including but not limited to solicitor-client privilege, litigation privilege, settlement privilege, or any common law or statutory privilege prohibiting such disclosure).

INFORMATION OFFICER'S REPORT

9. **THIS COURT ORDERS** that on or before October 7, 2019, the Information Officer shall file a report with the Court in respect of the Mandate, including in particular whether sufficient effort has been made to obtain the best price in respect of the Company's proposed sale of the Property, that the proposed sale is not improvident, and in respect of the efficacy and integrity of the process by which offers had been obtained, ~~and whether there has been unfairness in the working out of the process.~~



NO PROCEEDINGS AGAINST THE INFORMATION OFFICER

10. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Information Officer except with the written consent of the Information Officer or with leave of this Court.

LIMITATION ON THE INFORMATION OFFICER'S LIABILITY

11. **THIS COURT ORDERS** that the Information Officer shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

RESETTING OF THE DATE OF THE INVESTORS' MEETING AND COMMUNICATION RESTRICTION

12. **THIS COURT ORDERS** that:

- (a) The meeting of Investors called by Hi-Rise for September 25, 2019 is adjourned to October 23, 2019 (the "**Adjournment**"), which date may be altered by further Order of this Court;
- (b) Hi-Rise and the Company, all of their directors, officers, employees, agents, advisors, accountants, legal counsel and shareholders, and all other

persons acting on its instructions or behalf, are hereby restricted from communicating with Investors, either directly or indirectly, without the consent of the Representative Counsel or Order of the Court, which restriction shall remain in effect until September 30, 2019 or such later date as may be imposed by further Order of the Court (the “**Restriction Expiry Date**”). Provided, however, that communication may be made to the Investors about the Adjournment, and such communication shall be subject to review and approval by Representative Counsel prior to being delivered to Investors, in accordance with paragraph 12(c), below;

- (c) All communications delivered by Hi-Rise or the Company to Investors, whether before the Restriction Expiry Date with the consent of Representative Counsel, or after the Restriction Expiry Date, shall be subject to review and approval of Representative Counsel prior to being delivered to Investors. Representative Counsel shall conduct its review and advise Hi-Rise or the Company of its position within 24 hours upon receipt of same, provided, however, that Representative Counsel shall only be entitled to object to the content of a proposed communication that is factually incorrect, and further, Representative Counsel acknowledges that Hi-Rise shall be permitted to express its opinion regarding the sales process and any proposed transaction and to recommend to Investors that they vote in favour or against any transaction or settlement;
- (d) In the event Representative Counsel asserts that part of any communication is factually incorrect, Hi-Rise or the Company shall not deliver said communication to Investors and, Hi-Rise, the Company or Representative Counsel shall be permitted to seek directions from the Court regarding the communication;
- (e) Hi-Rise and the Company are at liberty to communicate with syndicated mortgage investors in the OptArt Loft project at 54-60 Shepherd Road, Oakville (the “**Oakville Investors**”). Notwithstanding paragraph 12(c) of

this Order, communications to the Oakville Investors may refer to the Project and the Property even though some of the Oakville Investors are also Investors, provided that the Representative Counsel is provided with 24 hours to review the portion of any communication to Oakville Investors that references the Project or the Property. The Representative Counsel does not have the right to approve such communications, but is at liberty to seek directions from the Court if the Representative Counsel has any concerns about the proposed communication; and

- (f) Hi-Rise and the Company are restricted from negotiating any settlement or compromise with Investors on a private basis during the course of these proceedings.

PAYMENT OF FEES TO MERIDIAN

13. **THIS COURT ORDERS** that the Company shall pay an extension fee to Meridian in the amount of \$85,220.00.

ENCUMBRANCES IN RESPECT OF THE PROPERTY

14. **THIS COURT ORDERS** that subject to this Order, the Property shall not be further encumbered by any Person other than Meridian, pending further Order of this Court.

PIPEDA

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act* and any other applicable privacy legislation, the Information Officer may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable to fulfill its mandate pursuant to this Order.

INFORMATION OFFICER'S ACCOUNTS

16. **THIS COURT ORDERS** that the Information Officer and counsel to the Information Officer shall be paid by the Company their reasonable fees and disbursements, both before and after the making of this Order on a ~~bi-weekly~~ *monthly* basis forthwith after delivery of the Information



Officer's accounts to the Company. Any disputes regarding the Information Officer's accounts shall be determined by the Court. For greater certainty, Representative Counsel shall not be liable for the fees and disbursements of the Information Officer or its counsel.

17. **THIS COURT ORDERS** that the Information Officer and counsel to the Information Officer shall be entitled to and are hereby granted a charge (the "**Information Officer Charge**") on the Property, as security for their fees and disbursements, both before and after the making of this Order, up to the maximum amount of \$100,000 or as may otherwise be ordered by this Court. The Information Officer Charge shall form a charge on the Property, subordinate in priority only to: (i) the Rep Counsel Charge (as defined in the Appointment Order and as may be increased by further Orders of this Court); and (ii) any encumbrances ranking in priority to the Rep Counsel Charge (including, without limitation, the mortgage in favour of Meridian), and, for greater certainty, the Information Officer Charge shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, including, without limitation, the Hi-Rise Mortgage (as defined in the Appointment Order), and shall not rank in priority to any security interests, trusts, liens, charges, statutory or otherwise, in favour of Meridian.

18. **THIS COURT ORDERS** that in the event that the Information Officer and its counsel rely on the Information Officer Charge to seek payment of their fees and disbursements, the Information Officer and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Information Officer and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

SERVICE AND NOTICE

19. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (the "**Rules**"), this Order shall constitute an order for substituted service pursuant to

Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission.

20. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Information Officer is at liberty to serve or distribute this Order, any materials and other orders in this proceeding, and any notices or other correspondence in this proceeding, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Company's creditors or other interested parties at their respective addresses as last shown on the records of the Company and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL


21. **THIS COURT ORDERS** that the Information Officer may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

22. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Information Officer and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Information Officer, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Information Officer and its agents in carrying out the terms of this Order.

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ON / BOOK NO:
LE / DANS LE REGISTRE NO:

SEP 17 2019

PER / PAR:



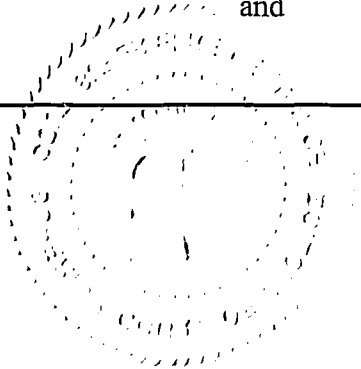
HI-RISE CAPITAL LTD.

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

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Court-appointed Representative Counsel

IN THE MATTER OF HI-RISE CAPITAL LTD. AND IN THE MATTER OF ADELAIDE
STREET LOFTS INC.

Court File No.: CV-19-616261-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

**FIFTH REPORT OF REPRESENTATIVE
COUNSEL
(March 12, 2020)**

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ONTARIO
**SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

**FIFTH REPORT OF REPRESENTATIVE
COUNSEL
(April 6, 2020)**

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Court-appointed Representative Counsel

TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)
JUSTICE HAINEY)
)
) DAY OF _____, 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

THIS MOTION IN WRITING, made by Miller Thomson LLP, in its capacity Court-appointed 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 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 read this day at the Court House, 330 University Avenue, Toronto, Ontario,

ON READING the Notice of Motion and the Second Report of Representative Counsel dated September 13, 2019, Third Report of Representative Counsel dated October 18, 2019, Fourth Report of Representative Counsel dated January 9, 2020, and the Fifth Report of Representative Counsel dated April 6, 2020 (the “**Fifth Report**”) (collectively, the “**Court**

Reports”), the Appointment Order attached at Appendix “A” to the Fifth Report, the Minutes of Settlement attached as Appendix “H” to the Fifth Report (the “**Minutes of Settlement**”), the Order of the Honourable Mr. Justice Hailey dated September 17, 2019 attached as Appendix “AA” to the Fifth Report (the “**IO Order**”), and the Affidavit of Service of ● sworn ●, 2020, 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 all capitalized terms not otherwise defined herein shall have the same meaning prescribed to them in the Appointment Order, the Minutes of Settlement or the IO Order.

3. **THIS COURT ORDERS** that the activities and conduct of Representative Counsel, as disclosed in the Court Reports, be and are hereby approved.

4. **THIS COURT ORDERS** that the maximum amount of the Post-Appointment Fees, to which Rep Counsel Charge relates, be and is hereby removed.

5. **THIS COURT ORDERS** that the Post-Appointment Fees and the Rep Counsel Charge be and hereby includes the disbursements incurred by Representative Counsel from and after the date of the Appointment Order.

6. **THIS COURT ORDERS** that the Rep Counsel Charge be and hereby includes all fees and disbursements incurred by Miller Thomson LLP prior to the date of the Appointment Order, and for greater certainty, all fees and disbursements incurred by Miller Thomson LLP in connection with the Engagement Letter.

7. **THIS COURT ORDERS** that the IO Charge be and is hereby increased to a maximum amount of \$125,000.00 (plus HST) or as may otherwise be ordered by this Court.

8. **THIS COURT ORDERS** that Representative Counsel be and is hereby authorized, but not obligated, to obtain the assistance of an accounting firm, consultant or other third party

professional as agent to Representative Counsel (the “**Distribution Agent**”) in connection with the Distribution of the Investor Settlement Amount.

9. **THIS COURT ORDERS** that the fees and disbursements of the Distribution Agent, if retained, shall be a disbursement to Representative Counsel and shall be included in the Rep Counsel Charge.

10. **THIS COURT ORDERS** that Representative Counsel shall be entitled to seek a further Court Order or direction from the Court on any matters related to the implementation of the Minutes of Settlement, including but not limited to, matters related to the Distribution of the Investor Settlement Amount.

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 -
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ONTARIO
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MOTION RECORD

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