

**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.**

**RESPONDING MOTION RECORD
(Returnable May 13, 2021)**

March 12, 2020

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

I N D E X

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| A. | Order and Endorsement of Justice Hailey dated March 22, 2019 |
| B. | Order and Endorsement of the Honourable Mr. Justice Hailey dated April 15, 2019 |
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| D. | Minutes of Settlement |
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| F. | Statement of Adjustments |
| G. | Endorsement of Justice Hailey dated January 21, 2021 |
| H. | Supplemental Sixth Report of Miller Thomson LLP dated November 20, 2020, in its capacity as Court-Appointed Representative Counsel (“ Supplemental Sixth Report ”) |
| I. | Seventh Report of Miller Thomson LLP dated March 10, 2021 |
| J. | Website Update on Proposed Transaction dated July 4, 2019 |

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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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.**

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

March 12, 2021

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

I. INTRODUCTION

1. Pursuant to the Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 21, 2019 (the “**Appointment Order**”) Miller Thomson LLP was appointed as Representative Counsel to represent all individuals and/or entities (“**Investors**”) that hold an interest in a syndicated mortgage administered by Hi-Rise Capital Ltd. (“**Hi-Rise**”) in respect of the proposed development known as the “Adelaide Street Lofts” (the “**Project**”) at the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the “**Property**”) and owned by Adelaide Street Lofts Inc. (“**Adelaide**”), in connection with the negotiation and implementation of a settlement with respect to such investments, except for those Investors who opted out of representation by Representative Counsel in accordance with the terms of the Appointment Order (the “**Opt Out Investors**”). Copies of the Appointment Order and Endorsement of Justice Hainey dated March 22, 2019 are attached hereto as **Appendix “A”**.

2. 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.

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

4. Pursuant to the Endorsement of Justice Hailey 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.

II. PURPOSE OF REPORT

A. Judicial Mediation & Minutes of Settlement

5. On November 27, 2019, Representative Counsel, members of the Official Committee, Hi-Rise, Adelaide, Meridian Credit Union Limited, 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**”).

6. The Judicial Mediation was successful insofar as the parties agreed upon a settlement (the “**Settlement**”) memorialized in the Minutes of Settlement, as amended by the First Amendment to the Minutes of Settlement (the “**Minutes**”, a copy of which is attached hereto as **Appendix “D”**). The Minutes and the Settlement contemplated, among other things, a sale of the Property to Lanterra for a purchase price of \$69,000,000 (the “**Lanterra Transaction**”), and were

subsequently approved by the Investors (by way of an Investor vote). Thereafter, Hi-Rise sought approval of the Settlement and Minutes by the Court (the “**Approval Motion**”).

7. On April 27, 2020, Justice Hainey granted the Approval Motion and issued an Approval and Vesting Order (the “**Approval and Vesting Order**”) which, *inter alia*, approved the Lanterra Transaction and the Minutes (including the First Amendment), declared that Adelaide’s right, title and interest in and to the Purchased Assets (as defined in the Approval and Vesting Order) shall vest absolutely in Lanterra upon certain conditions being met, and directed that the Distribution of the Purchase Price in accordance with the Minutes be approved. Pursuant to the First Amendment to the Minutes of Settlement, the Closing Date was extended to November 16, 2020. A copy of the Approval and Vesting Order is attached hereto as **Appendix “E”**.

8. Prior to the closing of the Lanterra Transaction, Adelaide was the registered owner of the Property. Adelaide is wholly owned by 263 Holdings Inc. (“**263 Holdings**”). Mr. Jim Neilas (“**Neilas**” together with Adelaide and 263 Holdings, the “**Neilas Parties**”) executed the Minutes on behalf of each of the Neilas Parties.

9. In accordance with the Minutes, the Lanterra Transaction closed on November 16, 2020, and the amount of \$46,074,666.27 of the proceeds (the “**Net Sale Proceeds**”) was delivered to Representative Counsel, representing the balance of the purchase price after certain payments contemplated in the Minutes were made.

B. Tax Arrears & Disputed Funds

10. Immediately after the closing of the Lanterra Transaction, a dispute arose between Representative Counsel and the Neilas Parties with respect to liability for payment of unpaid municipal tax arrears owing in respect of the Property in the amount of \$914,793.40 as at

November 16, 2020 (the “**Tax Arrears**”). Details with respect to the Tax Arrears are set out in the Statement of Adjustments related to the closing of the Lanterra Transaction and the Tax Statement issued to Adelaide, a copy of which is attached hereto as **Appendix “F”**.

11. In light of the dispute, the amount of the Tax Arrears was held back from the amounts distributed to 263 Holdings, and the funds in the amount of the Tax Arrears (the “**Disputed Funds**”) are now being held in trust by counsel to the Neilas Parties pending a judicial determination of this issue.

12. On January 21, 2021, the parties attended a case conference before Justice Hainey to determine a schedule for the hearing of a motion with respect to liability for payment of the Tax Arrears, or in other words, the entitlement to the Disputed Funds (the “**Municipal Tax Motion**”). Pursuant to the Endorsement of Justice Hainey dated January 21, 2021, a copy of which is attached as **Appendix “G”**, the Municipal Tax Motion is scheduled to be heard on May 13, 2021.

13. Details with respect to the Municipal Tax Motion have been previously reported by Representative Counsel in its Supplemental Sixth Report dated November 20, 2020 and its Seventh Report dated March 10, 2021¹. This Eighth Report is filed to respond to certain of the issues raised in the motion record of 263 Holdings dated February 12, 2021 and Affidavit of Jim Neilas sworn February 12, 2021 (the “**Neilas Affidavit**”), filed in respect of the Municipal Tax Motion.

¹ Supplemental Sixth Report dated November 20, 2020, a copy of which is attached as **Appendix “H”** (without appendices) at paras. 9 to 13; Seventh Report dated March 10, 2021, a copy of which is attached as **Appendix “I”** (without appendices), at paras. 41 to 44.

III. TERMS OF REFERENCE

14. In preparing this Eighth 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 Eighth Report may refer to, or is based on, the Information. As the Information has been provided by third parties or has been obtained from documents filed with the Court in this matter, Representative Counsel has relied on the Information and, to the extent possible, has reviewed the Information for reasonableness. However, Representative Counsel has neither audited nor otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook and accordingly, Representative Counsel expresses no opinion or other form of assurance in respect of the Information.

15. All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Appointment Order and the Minutes.

IV. POSITION OF THE PARTIES

16. Although the Tax Arrears were paid from the closing funds (thereby reducing the amount ultimately available for Investors), Representative Counsel takes the position that such liability ought to have been paid by Adelaide, and that the Disputed Funds should therefore be deducted from the amount otherwise payable to 263 Holdings under the Minutes and remitted to Representative Counsel for Distribution to the Investors.

17. The Neilas Parties' position is that because Adelaide had decided to stop paying municipal taxes in respect of the Property prior to the date of the execution of the Minutes, it is not liable for same. The Neilas Parties seek to instead shift the burden for payment of the Tax Arrears to the Investors, some of whom are already suffering a significant shortfall on their recoveries.

18. In support of its position, 263 Holding relies on information and documents that were circulated with respect to the first proposed settlement by Adelaide/263 Holdings (prior to the Judicial Mediation and the Settlement), which contemplated a joint venture with Lanterra and 263 Holding's continued interest and involvement in the Property (the "**First Settlement**"). This First Settlement was not supported by Representative Counsel or the Official Committee², and was ultimately turned down by vote of the Investors.³

19. In Representative Counsel's view, the Neilas Parties' argument that Representative Counsel knew of the Tax Arrears prior to execution of the Minutes is not relevant to whether it should effectively be borne by the Investors.

V. REPRESENTATIVE COUNSEL'S RESPONSE TO THE NEILAS AFFIDAVIT

20. Representative Counsel wishes to respond to the following points raised in the Neilas Affidavit.

² Details with respect to the recommendation against the First Settlement is set out in the Third Report of Representative Counsel dated October 18, 2021 at paras. 10 to 17, filed, and attached as Exhibit "J" to the Neilas Affidavit.

³ Details with respect to the outcome of the First Settlement and corresponding vote is set out in the Fourth Report of Representative Counsel dated January 9, 2020 at paras. 20 to 26, filed, and attached as Exhibit "L" to the Neilas Affidavit.

A. Communication Issued to Investors

21. At paragraph 17 of the Neilas Affidavit, the affiant cites a Communication to Investors dated July 4, 2019 (the “**July Communication**”), a copy of which is attached hereto as **Appendix “J”**, in support of the proposition that Representative Counsel advised Investors that any distribution to Investors would be net of municipal taxes. This is simply not true.

22. Notwithstanding that the July Communication was issued prior to the Judicial Mediation and the Settlement, the July Communication states that “the balance (net of professional fees, commissions, taxes and certain other disbursements) will be distributed to Investors.”

23. Communications issued by Representative Counsel are intended to provide Investors with information on the status of the within proceeding in clear and certain terms. This July Communication relates to the First Settlement, which as noted above, was recommended against and voted down by Investors. In any event, the context makes clear that Representative Counsel is referring to “taxes” on professional fees and the like, and it also refers to “other disbursements”, such as those associated with discharging professional obligations.

24. Further and importantly, nowhere in any Court Report or Communication issued by Representative Counsel to Investors has Representative Counsel advised that Distributions would be net of municipal taxes owing on the Property.

B. Information Officer Report

25. At paragraphs 20 to 29, the Neilas Parties rely on the report dated October 7, 2019 (the “**IO Report**”)⁴ of Alvarez & Marsal Canada Inc., in its capacity as Court-appointed Information Officer

⁴ Attached as Exhibit “I” to the Neilas Affidavit.

in these proceedings (the “**Information Officer**”) appointed pursuant to the Order of Justice Hainey dated September 17, 2019 (the “**IO Appointment Order**”).⁵ Pursuant to the IO Appointment Order, the Information Officer’s mandate included reviewing and reporting to the Court and all stakeholders in respect of, *inter alia*, the “Company’s proposed sale of the Property”.

26. The Neilas Affidavit takes the contents of the IO Report and Representative Counsel’s views on the IO Report out of context.

27. The IO Report, and the projected returns to Investors set out therein, was prepared in connection with the First Settlement. Again, the Official Committee recommended against the First Settlement and it was ultimately turned down by Investor vote.⁶

28. In any event, paragraph 9 of the Information Officer’s Report states that “...Readers are cautioned that since projections are based upon assumptions about future events that are not ascertainable, the actual results will vary from the projections, and the variations could be significant.” Accordingly, the projections contained in the IO Report (and which are reproduced in the Neilas Affidavit) were not intended to be binding or determinative.

29. Further, Paragraph 10 of the IO Report states that “This Report should be read in conjunction with the Initial Application, the Information Officer Appointment Order and Representative Counsel’s Reports.”

30. Representative Counsel agrees that the Information Officer completed its mandate and that it stated this in its Third Report, but the Third Report was dedicated to recommending against

⁵ Attached as Exhibit “H” to the Neilas Affidavit.

⁶ *Supra*, 2 and 3, above.

Investors casting their vote in favour of the First Settlement. This recommendation was made with knowledge of the IO Report, and the projections contained therein.⁷

VI. CONCLUSION

31. Representative Counsel's opposes the relief sought in the Motion Record of 263 Holdings. In Representative Counsel's view, Adelaide's decision to stop paying municipal taxes does not mean that it should now be permitted to shift Adelaide's liability for the Tax Arrears to the Investors.

32. For the foregoing reasons, Representative Counsel respectfully requests that the Court deny the relief sought by 263 Holdings, and instead, order that the Disputed Funds be released to Representative Counsel and for Distribution to the Investors.

All of which is respectfully submitted at Toronto, Ontario this 12 day of March, 2021.



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

⁷ *Supra*, footnote 2, above.

APPENDIX A



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

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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
@ 10 AM.

Haring

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

THE HONOURABLE

MR. JUSTICE HAINEY

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THURSDAY, THE 21st

DAY OF MARCH, 2019

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

**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~~ 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.

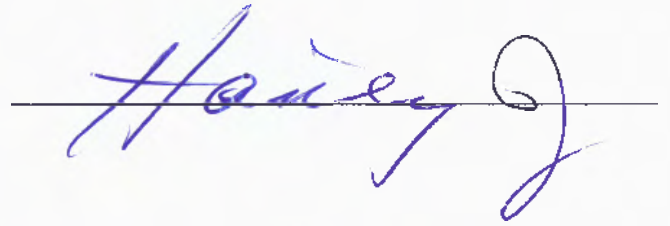
31. **THIS COURT ORDERS** that if at the Meeting a majority in number of the investors representing two-thirds in value present and voting either in person or by proxy cast votes in favour of the proposed Transaction and Distribution, Hi-Rise may proceed to bring a motion to this court, on a date to 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 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 Hainey dated March 21, 2019 (the "**Order**"), Investors who do not wish Miller Thomson LLP to act as their representative counsel may opt out.

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

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

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

Date

Signature

Date

Signature

If the Investor is a corporation, please execute below:

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

Schedule "B"

Official Committee Establishment Process

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

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

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

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

Establishment of the Official Committee

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

2. The deadline to submit an application pursuant to the Call for Official Committee Applications will be 5:00 p.m. EST on ~~March 29~~ ^{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
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Tel: 416.860.6617
Fax: 416.642.7145
svoudouris@casselsbrock.com

Lawyers for the Applicant, Hi-Rise Capital Ltd.

APPENDIX B



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

COUNSEL FOR:

Plaintiff(s)

Applicant(s)

Petitioner(s)

Stephanie De Caria
Attorney Representative Counsel
(T) 416-595-2652
(F) 416-595-8695
(e) sdecaria@miller-thompson.com

Phone & Fax No

Email: rory@rorymccowanpc.com

COUNSEL FOR:

Defendant(s)

Respondent(s)

Nadeem Ghori and Uzma Ghori

Phone & Fax No

ph 416-938-7679

fax 647-559-9694

Email: rory@rorymccowanpc.com

PULAT YUNUSOV FOR DAVID POZO

PULAT@LAWTO.ZA

416-628-5521

647-933-1171 (fax)

Respondent: Superintendent of
Financial Services

Tamara Markovic

twmarkovic@tsgf.ca

416-304-0601

416-304-1313 (fax)

April 15, 2019

I am satisfied that
the attached order
should remain 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 seeking
ordered on the terms of
para 7 of the order

Hairy J

**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 AT REGISTRY OF TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

APR 15 2019

PER / PAR:

A small, handwritten signature in blue ink, possibly initials, is written next to the "PER / PAR:" label.

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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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 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.

COUNSEL FOR:

Plaintiff (s)

Applicant (s)

Petitioner (s)

John N. Birch

Stephanie Voudouris

Phone & Fax No

T 416 860 5225

F 416 640 3057

JBIRCH@CASSELSBROCK
C

COUNSEL FOR:

Defendant (s)

Respondent (s)

JOHN FINNIGAN

TAMARA MARKOVIC

For Financial Services Commission
(FSCO)

Phone & Fax No

416-304-0558 (P)

416-304-1313

JUNIOR STRIVAR

PUL ADELAIDE STREET LOFTS

416 601 7750 (P)

416 868 0673 (F)

PULAT YUNUSOV

FOR DAVID POZO

416-628-5521

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PULAT@LAWTO.CA

Greg Azel

Rep Counsel

T 416-595-2660

F 416 595 8695

Daniel Perlman

For

Antonio

Torres

Rosa

Nadeem

Kuma

Jinselli

Jinselli

Johnson

Chareen

Chareen

WILLIAMS 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-attend before the on April 17/19 at 9:30 AM to provide status update and further details;
 - ⑤ Any inventories 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.**

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.

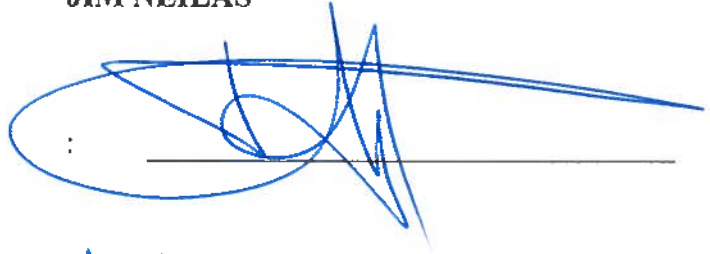
LANTERRA DEVELOPMENTS LTD.

Per: _____
Name: _____
Title: _____
(I have authority to bind the corporation)

DATED AT Toronto this 20th day of December, 2019.

Witness: 
Geoff 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**

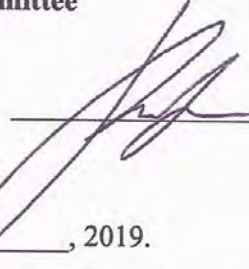
[Signature: Vipin Berry]

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



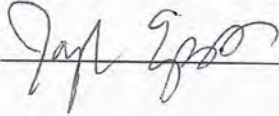
DATED AT _____ this _____ day of _____, 2019.

Witness: _____

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

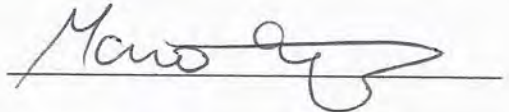
DATED AT Ottawa, ON this 23 day of Dec, 2019.

Witness: Jay Goo



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

Per:



DATED AT _____ this _____ day of _____, 2019.

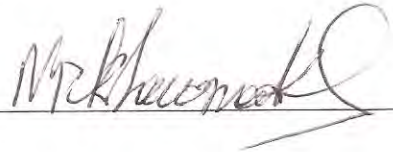
Witness: _____

**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 Hainey dated March 21, 2019 (the "**Appointment Order**") to represent the interests of all individuals and/or entities ("**Investors**", which term does not include persons who have opted out of such representation in accordance with the Appointment Order) that have invested funds in a syndicated mortgage investment administered by Hi-Rise Capital Ltd. ("**Hi-Rise**"), in respect of the proposed development known as the "Adelaide Street Lofts" (the "**Project**") at the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the "**Property**") and owned by Adelaide Street Lofts Inc. (the "**Adelaide**"), a corporation wholly owned by 263 Holdings Inc. ("**263 Holdings**") was heard this day at the Court House, 330 University Avenue, Toronto, Ontario,

UPON READING the Minutes of Settlement dated December 20, 2019 entered into in connection with this proceeding (the "**Minutes of Settlement**") and the consent of the parties, Hi-Rise, Adelaide, 263 Holdings, Representative Counsel, Meridian Credit Union Limited

("Meridian"), and Lanterra Developments Ltd., and upon hearing the submissions of Representative Counsel,

1. **THIS COURT ORDERS** that, subject to the encumbrances permitted by the Minutes of Settlement, title to the Property shall not be further encumbered by any person or entity pending further order of the Court, and any registration made on title to the Property shall be of no force or effect.

2. **THIS COURT ORDERS** that Adelaide shall not execute any lease or lease amendment in respect of the Property which specifies an expiration date later than May 14, 2020.

3. **THIS COURT ORDERS** that nothing in paragraph 1 of this Order shall prejudice the exercise of Meridian's rights against the Property, including with respect to its application bearing Court File No. CV-19-00628145-00CL, on seven (7) days' notice to each of the parties to the Minutes of Settlement.

HI-RISE 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 E

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

| | | |
|--------------------|---|--------------------|
| THE HONOURABLE MR. |) | MONDAY, THE 27th |
| |) | |
| JUSTICE HAINEY |) | DAY OF APRIL, 2020 |

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

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

APPROVAL AND VESTING ORDER

THIS MOTION, made by Hi-Rise Capital Ltd. ("**Hi-Rise**") in its capacity as administrator and trustee in respect of a syndicated mortgage (the "**Syndicated Mortgage**") involving approximately 700 investors (the "**Investors**") that advanced funds to Adelaide Street Lofts Inc. ("**Adelaide**") and obtained security over the property known municipally as 263 Adelaide Street West, Toronto, Ontario and legally described in **Schedule H** attached hereto (the "**Property**"), for an order:

- (a) Approving a sale transaction (the "**Transaction**") contemplated by (i) the Minutes of Settlement dated December 20, 2019 as amended by Amending Agreement dated April 27, 2020 (collectively, the "**Minutes of Settlement**"), a copy of which is attached hereto as **Schedule A**, among Hi-Rise, Adelaide, 263 Holdings Inc. ("**263 Holdings**"), Jim Neilas, Miller Thomson LLP in its capacity as the Court-appointed representative counsel on behalf of Investors ("**Representative Counsel**"), and the members of the Official Committee constituted pursuant to the Order of the Honourable Mr. Justice Hainey dated

April 15, 2019 (the “**Official Committee**”) and Lanterra Developments Ltd. (“**Lanterra**”) (Hi-Rise, Adelaide, 263 Holdings, Jim Neilas, Representative Counsel, the Official Committee and Lanterra shall be referred to collectively as the “**Parties**”), and (ii) the Agreement of Purchase and Sale made as of December 20, 2019, between Adelaide and Lanterra as amended by Amending Agreement dated April 27, 2020 (collectively, the “**APS**”), a copy of which is attached hereto as **Schedule B**;

(b) Providing certain authorizations and directions to Hi-Rise, Community Trust Company (“**CTC**”) and other parties regarding the completion of the Transaction, including the discharge of the Syndicated Mortgage (as defined in the Minutes of Settlement);

(c) Vesting in Lanterra Adelaide’s right, title and interest in and to the Purchased Assets (as defined in the APS); and

(d) Authorizing and directing the distribution of proceeds of the Transaction as set out in the Minutes of Settlement

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

ON READING the Affidavit of Noor Al-Awqati sworn April 1, 2020, the Affidavit of Service of Patricia Hoogenband sworn April 3, 2020, filed, the Fourth Report, Fifth Report, and the Supplemental Fifth Report of Representative Counsel dated, respectively, January 9, April 6, and April 21, 2020, and the Affidavit of Christopher J. Wein dated April 16, 2020, and on hearing the submissions of Representative Counsel and counsel for each of Hi-Rise, Adelaide, the Superintendent of Financial Services, Meridian Credit Union Limited (“**Meridian**”), Lanterra, David Pozo, and Nadeem and Uzma Ghorji, and other parties referred to on the counsel slip, no one else appearing for any other person on the service list,

1. **THIS COURT ORDERS** that all parties entitled to notice of this Motion have been served with the Motion Record of Hi-Rise, and that service of the Motion Record is

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

2. **THIS COURT ORDERS AND DECLARES** that the Minutes of Settlement are hereby approved, and execution of the Minutes of Settlement by Representative Counsel and the Official Committee are hereby authorized and approved, with such minor amendments as the Parties may deem necessary.

3. **THIS COURT ORDERS AND DECLARES** that the sales process undertaken by Bank of Montreal ("**BMO**") in respect of the Property was fair and reasonable.

4. **THIS COURT ORDERS AND DECLARES** that the Transaction is commercially reasonable and in the best interests of the Investors and is hereby approved, and the APS is hereby approved, with such minor amendments as the Parties may deem necessary. The Parties and CTC are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and the conveyance of the Purchased Assets to Lanterra or its designee.

5. **THIS COURT ORDERS** that, on the Closing Date (as defined in the APS), Lanterra shall pay to Miller Thomson LLP in trust the Extension Period Interest (as defined in the Minutes of Settlement) in accordance with the Minutes of Settlement.

6. **THIS COURT ORDERS AND DECLARES** that upon delivery to Lanterra of (a) the certificate contemplated by paragraph 11 of the Minutes of Settlement substantially in the form attached as **Schedule C** hereto (the "**Certificate**"), or (b) the Representative Counsel's certificate substantially in the form attached as **Schedule D** hereto (the "**Representative Counsel Certificate**"), all of Adelaide's right, title and interest in and to the Purchased Assets (as defined in the APS) (and listed on **Schedule E** hereto) shall vest absolutely in Lanterra or its designee free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, encumbrances, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether

secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Orders of the Honourable Mr. Justice Hainey dated March 21, 2019 and September 17, 2019; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule F** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule G) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

7. **THIS COURT ORDERS AND DIRECTS** Lanterra to file a copy of the Certificate or the Representative Counsel Certificate, as applicable, with the Court forthwith after receipt thereof.

8. **THIS COURT ORDERS** that, upon registration in the Land Registry Office No. 66 of an Application for Vesting Order in the form prescribed by the *Land Titles Act*, the Land Registrar is hereby directed to enter Lanterra or its designee as the owner of the Property in fee simple, and is hereby directed to delete and expunge from title to the Property all of the Claims listed in **Schedule F** hereto.

9. **THIS COURT ORDERS AND DECLARES** that Hi-Rise has the power, at law and under loan participation agreements (each, an "**LPA**") and mortgage administration agreements (each, an "**MAA**") that it entered into with Investors, to enter into and complete the Transaction despite the fact that the net proceeds of the Transaction, after paying prior-ranking debts and expenses, will be insufficient to pay in full the principal and interest owing under the Syndicated Mortgage.

10. **THIS COURT ORDERS, DECLARES AND DIRECTS** Representative Counsel is hereby authorized to execute and deliver on behalf of and in the name of CTC such documents as are required to permit the Transaction to be completed and proceeds to be distributed to Investors.

11. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Certificate or the Representative Counsel Certificate, as applicable, all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

12. **THIS COURT ORDERS, DECLARES AND DIRECTS** that the distribution of the Purchase Price in accordance with the Minutes of Settlement (the “**Distribution**”) is hereby authorized and approved, with such minor amendments as the Parties may deem necessary. The Parties and CTC are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable to carry out the Distribution.

13. **THIS COURT ORDERS** that, notwithstanding:

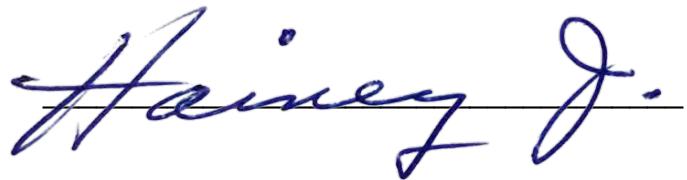
- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of Adelaide and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of Adelaide;

the vesting of the Purchased Assets in Lanterra pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of Adelaide and shall not be void or voidable by creditors of Adelaide, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any

other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

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

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

A handwritten signature in blue ink, reading "Hainey J.", is written over a horizontal line. The signature is cursive and stylized.

Schedule A — Minutes of Settlement

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

FIRST AMENDMENT TO MINUTES OF SETTLEMENT

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

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

IN CONSIDERATION of the promises and the mutual covenants, agreements, representations and warranties expressed herein and other good and valuable consideration, the receipt and sufficiency of which are hereby irrevocably acknowledged, the Parties hereby agree as follows:

1. The Parties agree that the above-noted recitals are true and accurate.
2. All capitalized terms used and not otherwise defined in this First Amendment to Minutes of Settlement (the "**Amendment**") shall have the respective meanings ascribed thereto in the Minutes of Settlement.

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

“(a) Lanterra and Adelaide shall enter into an agreement of purchase and sale in respect of the Transaction (the “**APS**”), as amended, which shall provide for, *inter alia*, (i) the Purchase Price, (ii) a deposit paid to McCarthy Tétrault LLP, in trust, in the amount of \$10,000 (the “**Deposit**”), (iii) a closing date of no later than November 16, 2020 (the “**Closing Date**”), (iv) limited representations and warranties customary in receivership sales, (v) closing conditions customary in receivership sales, and (vi) the issuance by the Court of an Approval and Vesting Order vesting the Property in Lanterra or its designee on closing free and clear of all encumbrances, in form satisfactory to Lanterra, acting reasonably;”

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

5. This Amendment shall be construed in accordance with the laws of the Province of Ontario. Any dispute arising from this Amendment shall be adjudicated by the Ontario Superior Court of Justice, Commercial List, and the Parties hereby attorn to the exclusive jurisdiction of this Court for this purpose.

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

7. The Parties agree to do and execute such further acts and documents as may be reasonably necessary or desirable to give effect to the covenants, provisions and terms of this Amendment.

8. Each of the Parties acknowledges and agrees that:

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

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

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

11. This Amendment may be executed in counterparts, and by facsimile or electronic mail, each of which shall be deemed to be an original, all such separate counterparts shall together constitute one and the same instrument. This Amendment becomes effective when executed by all of the Parties. After that time, it will be binding upon and enure to the benefit of the Parties and their respective heirs, executors, administrators, assigns, agents, advisors, consultants and other representatives.

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

[signature page follows]

DATED this 27th day of April, 2020.

LANTERRA DEVELOPMENTS LTD.

Per: 

(I have authority to bind the corporation)

DATED this _____ day of _____, 2020.

Witness: _____

JIM NEILAS

:

DATED this _____ day of _____, 2020.

263 HOLDINGS INC.

Per: _____

(I have authority to bind the corporation)

DATED this _____ day of _____, 2020.

ADELAIDE STREET LOFTS INC.

Per: _____

(I have authority to bind the corporation)

[signature continues on next page]

DATED this _____ day of _____, 2020.

LANTERRA DEVELOPMENTS LTD.

Per: _____

(I have authority to bind the corporation)

DATED this 27th day of April, 2020.

Witness: _____

JIM NEILAS

: _____

DATED this 27th day of April, 2020.

263 HOLDINGS INC.

Per: _____

(I have authority to bind the corporation)

DATED this 27th day of April, 2020.

ADELAIDE STREET LOFTS INC.

Per: _____

(I have authority to bind the corporation)

[signature continues on next page]

DATED this 27th day of April, 2020.

HI-RISE CAPITAL LTD.

Per: 
(I have authority to bind the corporation)

DATED this _____ day of _____, 2020.

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

Per: _____
(I have authority to bind the limited
liability partnership)

DATED this _____ day of _____, 2020.

Witness: _____

**VIPIN BERRY, in his capacity as court-
appointed member of the Official
Committee**

[signature continues on next page]

DATED this _____ day of _____, 2020.

HI-RISE CAPITAL LTD.

Per: _____

(I have authority to bind the corporation)

DATED this 27th day of April, 2020.

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

Per: _____

(I have authority to bind the limited liability partnership)

DATED this 27th day of April, 2020.

Witness: _____

VIPIN BERRY, in his capacity as court-appointed member of the Official Committee

Per: _____

[signature continues on next page]

DATED this 29th day of April, 2020.

Witness: [Signature]

MICHAEL SINGH, in his capacity as court-appointed member of the Official Committee

[Signature]

DATED this _____ day of _____, 2020.

Witness: _____

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

DATED this _____ day of _____, 2020.

Witness: _____

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

Per: _____

DATED this _____ day of _____, 2020.

Witness: _____

MICHAEL SINGH, in his capacity as court-appointed member of the Official Committee

DATED this 15th day of May, 2020.

Witness: Nick Tsakonacos

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

Nick Tsakonacos

DATED this _____ day of _____, 2020.

Witness: _____

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

Per: _____

DATED this _____ day of _____, 2020.

Witness: _____

MICHAEL SINGH, in his capacity as court-appointed member of the Official Committee

DATED this _____ day of _____, 2020.

Witness: _____

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

DATED this 30 day of April, 2020.

Witness: Jay EMB

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

Per: 

SCHEDULE "A"

Minutes of Settlement

See attached.

**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

Per: _____
Name: _____
Title: _____
(I have authority to bind the corporation)

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**

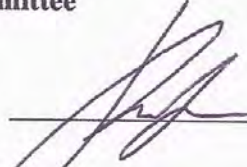
[Signature: Vipin Berry]

DATED AT Toronto, ON this 20th day of Dec, 2019.

Witness: Nima Dghanian



MICHAEL SINGH, in his capacity as
court-appointed member of the Official
Committee



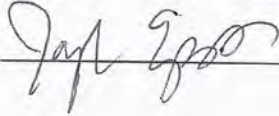
DATED AT _____ this _____ day of _____, 2019.

Witness: _____

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

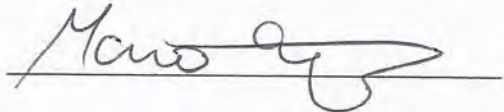
DATED AT Ottawa, ON this 23 day of Dec, 2019.

Witness: Jay Goo



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

Per:



DATED AT _____ this _____ day of _____, 2019.

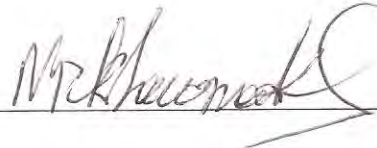
Witness: _____

**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 Hainey dated March 21, 2019 (the "**Appointment Order**") to represent the interests of all individuals and/or entities ("**Investors**", which term does not include persons who have opted out of such representation in accordance with the Appointment Order) that have invested funds in a syndicated mortgage investment administered by Hi-Rise Capital Ltd. ("**Hi-Rise**"), in respect of the proposed development known as the "Adelaide Street Lofts" (the "**Project**") at the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the "**Property**") and owned by Adelaide Street Lofts Inc. (the "**Adelaide**"), a corporation wholly owned by 263 Holdings Inc. ("**263 Holdings**") was heard this day at the Court House, 330 University Avenue, Toronto, Ontario,

UPON READING the Minutes of Settlement dated December 20, 2019 entered into in connection with this proceeding (the "**Minutes of Settlement**") and the consent of the parties, Hi-Rise, Adelaide, 263 Holdings, Representative Counsel, Meridian Credit Union Limited

(“**Meridian**”), and Lanterra Developments Ltd., and upon hearing the submissions of Representative Counsel,

1. **THIS COURT ORDERS** that, subject to the encumbrances permitted by the Minutes of Settlement, title to the Property shall not be further encumbered by any person or entity pending further order of the Court, and any registration made on title to the Property shall be of no force or effect.

2. **THIS COURT ORDERS** that Adelaide shall not execute any lease or lease amendment in respect of the Property which specifies an expiration date later than May 14, 2020.

3. **THIS COURT ORDERS** that nothing in paragraph 1 of this Order shall prejudice the exercise of Meridian’s rights against the Property, including with respect to its application bearing Court File No. CV-19-00628145-00CL, on seven (7) days’ notice to each of the parties to the Minutes of Settlement.

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

Proceeding commenced at Toronto

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

Schedule B — Agreement of Purchase and Sale

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT is made as of the 20th day of December, 2019

BETWEEN:

ADELAIDE STREET LOFTS INC.
(the "**Vendor**")

- and -

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

RECITALS

A. **WHEREAS** pursuant to the Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated March 21, 2019 (the "**Appointment Order**") in Court File No. CV-19-616261-00CL, Miller Thomson LLP was appointed as Representative Counsel ("**Representative Counsel**") to represent all individuals and/or entities (collectively, the "**Investors**") holding an interest in the syndicated mortgage administered by Hi-Rise Capital Ltd. ("**Hi-Rise**") in respect of the proposed development known as the "Adelaide Street Lofts", at the property municipally known as 263 Adelaide Street West, Toronto, Ontario and owned by the Vendor, in connection with the negotiation and implementation of a settlement with respect to such investments, except for those Investors who opted out of representation by Representative Counsel in accordance with the terms of the Appointment Order (collectively, the "**Opt-Out Investors**");

B. **AND WHEREAS** pursuant to paragraph 27 of the Appointment Order, Hi-Rise is permitted to call, hold and conduct a meeting of all Investors in the Project, including the Opt-Out Investors, in order for such parties to consider and, if determined advisable, pass a resolution approving the Transaction (as defined below) and the net sale proceeds arising therefrom (the "**Vote**");

C. **AND WHEREAS**, subject to the approval of the Vote and the Court, the Vendor wishes to sell and the Purchaser wishes to purchase on an "as is, where is" basis all of the right, title and interest of the Vendor in and to the Purchased Assets (as defined below) pursuant to the terms and conditions of this Agreement (as defined below);

NOW THEREFORE for value received, the parties agree as follows:

SECTION 1 – INTERPRETATION

1.1 Definitions.

In this Agreement:

- (1) "**Agreement**" means this agreement including any recitals and schedules to this agreement, as amended, supplemented or restated from time to time;
- (2) "**Appointment Order**" has the meaning set forth in Recital A;

- (3) **"Approval and Vesting Order"** means an Order of the Court providing for, among other things, the vesting in the Purchaser of all of the right, title and interest of the Vendor in and to the Purchased Assets, free and clear of all liens, charges and encumbrances, except Permitted Encumbrances;
- (4) **"Business Day"** means any day of the year, other than a Saturday, Sunday or any day on which Canadian chartered banks are closed in Toronto, Ontario, Canada;
- (5) **"Court"** has the meaning set forth in Recital A;
- (6) **"Closing"** means the completion of the Transaction;
- (7) **"Closing Date"** means May 14, 2019;
- (8) **"Closing Time"** means 2:00 p.m. Toronto time on the Closing Date;
- (9) **"Deposit"** has the meaning set forth in Section 3.2(1);
- (10) **"ETA"** means the Excise *Tax Act* (Canada);
- (11) **"Governmental Authority"** means any Canadian federal, provincial, state, municipal or local, or other government, governmental, regulatory or administrative authority, agency or commission or any court, tribunal or judicial or arbitral body having jurisdiction over the Purchased Assets;
- (12) **"HST"** means taxes, interest, penalties and fines imposed under Part IX of the ETA;
- (13) **"Lease"** means, with respect to the Property, any offer or promise to lease, agreement to lease, lease, sublease, renewal of lease and other right or licence granted by or on behalf of the Vendor or any of its predecessors in title which entitle a Person to possess or occupy or lease space in the Property, now or hereafter, together with all security, guarantees and indemnities of the tenant's, subtenant's and licensee's obligations thereunder, in each case as amended, renewed or otherwise varied.
- (14) **"Minutes of Settlement"** means the Minutes of Settlement dated December ●, 2019 among Jim Neilas, 263 Holdings, Adelaide, Hi-Rise, the Representative Counsel, Vipin Berry, in his capacity as court-appointed member of the Official Committee and Michael Singh, in his capacity as court-appointed member of the Official Committee;
- (15) **"Person"** means a natural person, partnership, limited liability partnership, corporation, joint stock company, trust, unincorporated association, joint venture or other entity or Governmental Authority, and pronouns have a similarly extended meaning;
- (16) **"Permitted Encumbrances"** means the liens and encumbrances set forth on Schedule B;
- (17) **"Purchase Price"** has the meaning set forth in Section 3.1;
- (18) **"Purchased Assets"** has the meaning set forth in Section 2.1;
- (19) **"Real Property"** means the real property described in the legal description attached hereto as Schedule A, including any and all improvements, tenements, hereditaments and

appurtenances belonging or in any way pertaining thereto, including but not limited to fixtures (to the extent the Vendor owns or has rights in such fixtures) and easements for ingress and egress, storm water drainage or otherwise over adjoining property, if any;

(20) **"Representative Counsel"** has the meaning set forth Recital A;

(21) **"Certificates"** means, collectively, all of the certificates to be executed by the parties to the Minutes of Settlement confirming, *inter alia*, that the Purchaser has paid the Purchase Price in accordance with the Minutes of Settlement;

(22) **"Transaction"** means the transaction of purchase and sale contemplated by this Agreement; and

(23) **"Transfer Taxes"** has the meaning set forth in Section 3.5(1).

1.2 Headings and References.

The division of this Agreement into sections and subsections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms "this Agreement," "hereof," "hereunder" and similar expressions refer to this Agreement and not to any particular section, subsection or other portion hereof and include any agreement supplemental hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to "Sections" are to sections, subsections and further subdivisions of sections of this Agreement.

1.3 Extended Meanings.

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders. The term "including" means "including without limitation."

1.4 Statutory References.

Each reference to an enactment is deemed to be a reference to that enactment, and to the regulations made under that enactment, as amended or re-enacted from time to time.

1.5 Schedules.

The following are the Schedules to this Agreement:

- (a) Schedule A – Real Property
- (b) Schedule B – Permitted Encumbrances

SECTION 2– PURCHASE AND SALE

2.1 Purchase and Sale of Purchased Assets.

Subject to the terms and conditions of this Agreement, on the Closing Date, the Vendor shall sell, assign and transfer to the Purchaser or its assignee, and the Purchaser or its assignee shall purchase from the Vendor, all of the right, title and interest of the Vendor in and

to the following (collectively, the "**Purchased Assets**");

- (a) the Real Property; and
- (b) all deposits and prepaid expenses relating to the Real Property.

2.2 Excluded Assets.

With the exception of those assets listed in Section 2.1 all other assets of the Vendor are excluded from the Transaction. For greater certainty, the Purchased Assets shall not include any of the following assets:

- (a) the minute books and corporate records of the Vendor;
- (b) any shares in any other corporate entity held by, or for the benefit of, the Vendor;
- (c) all accounts receivable, trade accounts, book debts and insurance claims of the Vendor; and
- (d) all books and records, in electronic form or otherwise, used in connection with the Vendor's business.

SECTION 3 – PURCHASE PRICE

3.1 Purchase Price and Deposit.

The consideration payable by the Purchaser to the Vendor for the Purchased Assets shall be Sixty-Nine Million Dollars (\$69,000,000) (the "**Purchase Price**").

3.2 Deposit

(1) Upon delivery of this Agreement to the Vendor, the Purchaser shall pay to the Vendor's solicitors, in trust, by wire transfer, a deposit in the amount of \$10,000 (the "**Deposit**"), which Deposit shall be held in accordance with the provisions of this Agreement.

(2) The Deposit, and any interest accrued thereon, will be:

- (a) applied immediately towards the Purchase Price, if the Closing occurs;
- (b) non-refundable and retained by the Vendor, together with any accrued interest thereon, if the sale and purchase of the Purchased Assets provided for herein is not completed by the Purchaser for any reason whatsoever, save and except for the valid termination of this Agreement by the Purchaser in accordance with Section 5.3; or
- (c) paid to the Purchaser within five (5) Business Days, together with any accrued interest thereon, if this Agreement is terminated by the Purchaser in accordance with Section 5.3.

3.3 Satisfaction of Purchase Price

The Purchase Price shall be satisfied by the Purchaser on Closing as follows:

- (a) the Deposit, together with any interest accrued thereon, shall be applied against the Purchase Price; and
- (b) the remainder of the Purchase Price, being the net amount owing after deducting the Deposit, shall be paid by the Purchaser by wire transfer of immediately available funds in accordance with the Minutes of Settlement.

3.4 Adjustment of Purchase Price

The Purchase Price shall be adjusted as of the Closing Time for any municipal realty taxes, utilities, tenant deposits, tenant inducements, prepaid rent, prepaid expenses and any other items which are usually adjusted in purchase transactions involving assets similar to the Purchased Assets. The Vendor shall prepare a statement of adjustments and deliver same with all supporting documentation to the Purchaser for approval by no later than the fifth Business Day prior to the Closing Date. If the amount of any adjustments cannot be reasonably determined as of the Closing Date, an estimate shall be agreed upon by the parties, each acting reasonably, and such estimate shall serve as a final determination.

3.5 Taxes.

(1) The Purchaser will be liable for and shall pay, directly to the relevant Governmental Authority, as required, all federal and provincial sales taxes, duties or other taxes or charges payable in connection with the conveyance and transfer of the Purchased Assets to the Purchaser, including HST, but excluding any income taxes payable by the Vendor or any other person as a result of the completion of the Transaction (collectively, the "**Transfer Taxes**"). All Transfer Taxes shall be in addition to the Purchase Price and the Vendor hereby directs the Purchaser to make such payments directly to the relevant Governmental Authority.

(2) The Vendor will not collect HST on Closing if the Purchaser provides to the Vendor prior to Closing, (i) a certificate establishing that the Purchaser is a HST registrant, and (ii) a written undertaking to self-assess and remit the HST payable in connection with the Transaction. If this Section 3.5(2) is not complied with, the Purchaser will pay to the Vendor on Closing all HST payable in connection with the sale of the Purchased Assets.

(3) To the extent any Transfer Taxes are required to be paid by or are imposed upon the Vendor, the Purchaser shall reimburse to the Vendor such Transfer Taxes within five (5) Business Days of payment of same by the Vendor. The Purchaser will indemnify and hold the Vendor harmless in respect of any Transfer Taxes, penalties, interest and other amounts that may be assessed against the Vendor as a result of the sale of the Purchased Assets.

(4) The Purchaser's obligations under this Section 3.5 shall survive Closing.

SECTION 4 – REPRESENTATIONS AND WARRANTIES

4.1 Vendor's Representations.

(1) The Vendor represents and warrants to the Purchaser that:

- (a) the Vendor has good and sufficient power, authority and right to enter into and deliver this Agreement and complete the transactions contemplated hereunder,

subject to the Minutes of Settlement;

- (b) this Agreement and all other documents contemplated hereunder to which the Vendor (including the Minutes of Settlement) is or will be a party have been or will be, as at the Closing Time, duly and validly executed and delivered by the Vendor and constitute, or will constitute as at the Closing Time, valid and binding obligations of the Vendor, enforceable in accordance with the terms hereof or thereof;
- (c) the Vendor is not aware of any action or proceeding pending or threatened against it which may affect its right to convey any of the Purchased Assets or in any way restrain or prohibit the completion of the Transaction; and
- (d) the Vendor is not, and at the Closing Time will not be, a non-resident of Canada within the meaning of that term as used in the *Income Tax Act* (Canada).

4.2 Purchaser's Representations.

- (1) The Purchaser represents and warrants to the Vendor that:
 - (a) the Purchaser is a corporation existing under the laws of Ontario and has full corporate power and authority to enter into and carry out this Agreement and the Transaction;
 - (b) the entering into of this Agreement and all other documents contemplated hereunder to which the Purchaser is or will be a party and the consummation of the Transaction have been duly authorized by all requisite corporate action;
 - (c) the execution and delivery by the Purchaser of this Agreement and the performance by the Purchaser of its obligations under this Agreement will not result in the breach or violation of any terms or conditions of (i) the constating documents or by-laws of the Purchaser, or (ii) any applicable law, regulation or order;
 - (d) no approval or consent of and no filing with or application to any Governmental Authority is required for the Purchaser to enter into this Agreement or to complete the Transaction, other than (i) pursuant to the Minutes of Settlement, and (ii) such approvals, consents, filings and applications that have been obtained or made as at the date hereof, copies of which have been provided to the Vendor;
 - (e) this Agreement and all other documents contemplated hereunder to which the Purchaser is or will be a party have been or will be, as at the Closing Time, duly and validly executed and delivered by the Purchaser and constitute, or will constitute as at the Closing Time, valid and binding obligations of the Purchaser, enforceable in accordance with the terms hereof or thereof;
 - (f) the Purchaser has, or prior to the Closing Date will have, sufficient unencumbered funds to pay the Purchase Price and all other amounts payable by the Purchaser in connection with this Agreement and the Transaction contemplated hereby; and

- (g) the Purchaser is or will be registered under Part IX of the ETA and its registration number will be provided to the Vendor prior to the Closing Date.

4.3 “As is, Where is”

(1) The Purchaser acknowledges that the Vendor is selling the Purchased Assets on an “as is, where is” basis as the Purchased Assets shall exist on the Closing Date and no adjustments shall be made for any changes in the condition of the Purchased Assets. The Purchaser further acknowledges that it has entered into this Agreement on the basis that the Purchaser has conducted such inspections of the condition of, and title to, the Purchased Assets, as it deemed appropriate and has satisfied itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to title, encumbrances, description, fitness for any particular use or purpose, merchantability, condition, assignability, value or quality or in respect of any other matter or thing whatsoever concerning the Purchased Assets or the right of the Vendor to sell same. Without limiting the generality of the foregoing, (i) any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act* (Ontario) or similar legislation in any other jurisdiction do not apply hereto and have been waived by the Purchaser, and (ii) no representation or warranty is made with respect to the accuracy or completeness of any information provided by the Vendor and its respective officers, directors, employees and agents to the Purchaser in connection with this Transaction. The description of the Purchased Assets contained herein is for the purpose of identification only. No representation, warranty or condition has or will be given by the Vendor concerning completeness or the accuracy of such descriptions.

(2) The Purchaser shall have reasonable access to the Purchased Assets on reasonable notice to the Vendor for the purposes of conducting inspections prior to the Closing Date.

SECTION 5 – CONDITIONS TO CLOSING

5.1 Conditions for the Benefit of the Purchaser.

(1) The obligation of the Purchaser to complete the Transaction is subject to the following conditions being fulfilled or performed at or prior to the date or time set forth below:

- (a) at or prior to the Closing Time, all representations and warranties of the Vendor contained in this Agreement shall be true as of the Closing Time with the same effect as though made as of that time and the Vendor shall deliver to the Purchaser a certificate signed by a representative of the Vendor to that effect;
- (b) at or prior to the Closing Time, the Vendor shall have performed or complied with, in all material respects, each of its obligations contained in this Agreement and the Minutes of Settlement to the extent required to be performed on or before the Closing Date, and the Vendor shall execute and deliver to the Purchaser a certificate signed by a representative of the Vendor to that effect;
- (c) at or prior to the Closing Time, the Approval and Vesting Order will have been granted by the Court, in form acceptable to the Purchaser, acting reasonably, and, as at the Closing Time, the Approval and Vesting Order shall not have been stayed, dismissed or amended in any manner not approved by the Purchaser acting reasonably;
- (d) at or prior to the Closing Time, no order, proceeding, action or motion shall be

pending, threatened or commenced by any Person to restrain, enjoin or prohibit the purchase and sale of the Purchased Assets; and

- (e) at or prior to the Closing Time, the Vendor shall have delivered or caused to be delivered to the Purchaser each of the items listed in Section 6.2.
- (2) The foregoing conditions are for the exclusive benefit of the Purchaser and may be waived, in whole or in part, by the Purchaser in its sole discretion.

5.2 Conditions for the Benefit of the Vendor.

- (1) The obligation of the Vendor to complete the Transaction is subject to the following conditions being fulfilled or performed at or prior to the Closing Time:
- (a) all representations and warranties of the Purchaser contained in this Agreement shall be true as of the Closing Time with the same effect as though made as of that time and the Purchaser shall deliver to the Vendor a certificate signed by an officer of the Purchaser to that effect;
 - (b) the Purchaser shall have performed or complied with, in all material respects, each of its obligations contained in this Agreement and the Minutes of Settlement to the extent required to be performed on or before the Closing Date, and the Purchaser shall deliver to the Vendor a certificate signed by an officer of the Purchaser to that effect;
 - (c) the Approval and Vesting Order has been granted by the Court, and, as at the Closing Time, the Approval and Vesting Order has not been stayed, dismissed or amended in any manner not approved by the Vendor acting reasonably;
 - (d) no order, proceeding, action or motion shall be pending, threatened or commenced by any Person to restrain, enjoin or prohibit the purchase and sale of the Purchased Assets; and
 - (e) the Purchaser shall have delivered or caused to be delivered to the Vendor each of the items listed in Section 6.3.
- (2) The foregoing conditions are for the exclusive benefit of the Vendor and may be waived, in whole or in part, by the Vendor in its sole discretion.

5.3 Termination Rights

- (1) This Agreement may be terminated by notice in writing given to the other party at or prior to the Closing Date:
- (a) by the Purchaser if any of the conditions in Section 5.1 have not been satisfied on the Closing Date and the Purchaser has not waived that condition at or prior to the Closing Date; or
 - (b) by the Vendor if any of the conditions in Section 5.2 have not been satisfied on the Closing Date and the Vendor has not waived that condition at or prior to the Closing Date.

(2) This Agreement may be terminated by mutual written agreement of the Vendor and the Purchaser upon the terms of that agreement.

5.4 Effect of Exercise of Termination Rights

(1) If the Purchaser validly terminates this Agreement in accordance with Section 5.3(1)(a), then:

- (a) all the obligations of both the Vendor and Purchaser pursuant to this Agreement shall be at an end; and
- (b) the Deposit, together with any interest accrued thereon, will be paid by the Vendor to the Purchaser.

(2) If the Vendor validly terminates this Agreement in accordance with Section 5.3(1)(b) then:

- (a) all the obligations of both the Vendor and Purchaser pursuant to this Agreement shall be at an end; and
- (b) the Deposit, plus any interest accrued thereon, shall be forfeited to the Vendor on account of liquidated damages, not as a penalty, and the Purchased Assets may be resold by the Vendor

(3) Termination of this Agreement shall not relieve any party from any liability for any breach of this Agreement prior to Termination.

SECTION 6 – CLOSING

6.1 Closing.

The completion of the Transaction shall take place at the offices of Stikeman Elliott LLP, solicitors for the Purchaser, in Toronto, Ontario at the Closing Time or at such other location(s) as are agreed upon by the parties.

6.2 Vendor's Deliveries on Closing.

At or before the Closing Time, the Vendor shall deliver the following, each of which shall be in form and substance satisfactory to the Purchaser, acting reasonably:¹

- (a) a copy of the issued and entered Approval and Vesting Order;
- (b) all deeds, conveyances, bills of sale, transfers, assignments and other documents, executed by the Vendor, as may be reasonably requested by the Purchaser to convey to the Purchaser all of the right, title and interest of the Vendor, if any, in and to the Purchased Assets including, if requested by the Purchaser, a general conveyance of all of the Vendor's right, title and interest in and to all leases, offers to lease, licenses or other occupancy agreements,

¹ Parties to consider escrow of all vendor closing documentation.

contracts and permitted encumbrances appertaining to the Property (the "**General Conveyance**");

- (c) the statement of adjustments prepared in accordance with Section 3.4;
- (d) the certificates of the Vendor referenced in Sections 5.1(a) and (b);
- (e) the Certificates;
- (f) agreements satisfactory to the Purchaser wherein the Vendor and/or each related or affiliated party surrenders any and all leasehold interests in and to the Real Property, effective as of the date upon which the Purchaser exercises its rights, as landlord, as against other tenants of the Real Property under any early termination clauses or demolition clauses in any of their respective leases, offers to lease, licenses or other occupancy agreements; and
- (g) such further and other documentation as is referred to in this Agreement or as the Purchaser may reasonably require to give effect to this Agreement and convey the Purchased Assets to the Purchaser.

6.3 Purchaser's Deliveries on Closing

At or before the Closing Time, the Purchaser shall execute and deliver the following, each of which shall be in form and substance satisfactory to the Vendor, acting reasonably:

- (a) payment of the Purchase Price pursuant to the Minutes of Settlement;
- (b) the certificates of the Purchaser referenced in Section 5.2(a) and (b);
- (c) payment or evidence of the payment of the Transfer Taxes, if any;
- (d) if requested by the Purchaser, the General Conveyance;
- (e) the certificate of HST registration and undertaking contemplated by Section 3.5(2); and
- (f) such further and other documentation as is referred to in this Agreement or as the Vendor may reasonably require to give effect to this Agreement.

6.4 Operation Before Closing

(1) After the date hereof, the Vendor shall not, with respect to the Property:

- (a) enter into any new Lease;
- (b) amend, terminate or accept a surrender of any Lease or any guarantee or indemnity with respect to a Lease; or
- (c) encumber the Property other than as contemplated in the Minutes of Settlement,

without, in each case, the prior approval of the Purchaser, which approval may be withheld by the Purchaser in its sole discretion. If the Purchaser fails to respond in

writing pursuant to this Section 6.4 within three (3) Business Days after the date on which the Vendor has given written notice to the Purchaser of any such action together with relevant information with respect thereto, the Purchaser shall be deemed not have approved same.

- (2) The Vendor hereby acknowledges and agrees that the Purchaser shall not be obligated to replace any existing letters of credit or security deposits posted with any governmental authorities in connection with the Property on Closing and that the Vendor shall continue to retain full responsibility for same following Closing.

6.5 Risk.

- (1) Until the Closing Time, the Purchased Assets shall be and remain at the risk of the Vendor.

- (2) In the event that the Purchased Assets shall be damaged prior to Closing, then the Vendor shall promptly notify the Purchaser in writing of such damage and, notwithstanding the same, the Transaction shall be completed and the Vendor shall release its interest in the insurance proceeds payable in respect thereof (if any) to the Purchaser.

6.6 Possession of Purchased Assets.

On Closing the Purchaser shall acquire ownership of the Purchased Assets where situate at the Closing Time provided that in no event shall title to the Purchased Assets pass to the Purchaser until the Approval and Vesting Order is effective.

6.7 Tender.

Any tender of documents or money hereunder may be made upon the Vendor or the Purchaser or their respective solicitors on the Closing Date.

SECTION 7 – GENERAL

7.1 Notices.

Any demand, notice or other communication to be given in connection with this Agreement shall be given in writing and shall be given by personal delivery (in which case it shall be left with a responsible officer of the recipient) or by facsimile or electronic communication addressed to the recipients as follows:

- (a) in the case of the Purchaser:

Lanterra Developments Ltd., in trust
2811 Dufferin Street
Toronto, Ontario M6B 3R9

Attention: Christopher Wein
Email: cwein@lanterradev.com

Attention: Tim Watson
Email: twatson@lanterradev.com

Attention: Christopher Wein
Email: cwein@lanterradev.com

with a copy to:

Stikeman Elliott LLP
Commerce Court West
199 Bay Street, Suite 5300
Toronto, ON M5L 1B9

Attention: Eric Carmona
Email: ecarmona@stikeman.com

Attention: Ashley Taylor
Email: ataylor@stikeman.com

(b) in the case of the Vendor:

Adelaide Street Lofts Inc.
200 Adelaide Street West, Suite 400
Toronto, Ontario M5H 1W7

Attention: Jim Neilas
Email: jim@storeyliving.com

with a copy to:

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

Attention: Geoff Hall
Email: ghall@mccarthy.ca

Attention: Charlene Schafer
Email: cschafer@mccarthy.ca

or to such other address, individual or electronic communication number as may be designated by notice given by either party to the other. Any demand, notice or other communication shall be conclusively deemed to have been given, if given by personal delivery, on the day of actual delivery thereof if delivered during normal business hours of the recipient on a Business Day and, if given by electronic communication, on the day of transmittal thereof if transmitted during normal business hours of the recipient on a Business Day and on the next Business Day following the delivery or transmittal thereof if not so delivered or transmitted.

7.2 Time of Essence.

Time shall be of the essence for every provision hereof.

7.3 Expenses.

Except as otherwise expressly provided herein, all costs and expenses (including the fees and disbursements of legal counsel, investment advisers and auditors) incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such expenses.

7.4 Third Party Beneficiaries.

Each party hereto intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any person other than the parties hereto and their successors and permitted assigns, and no person, other than the parties hereto and their successors and their permitted assigns shall be entitled to rely on the provisions hereof in any action, suit, proceeding, hearing or other forum.

7.5 Commission.

The parties hereby acknowledge and agree that all agent's or broker's fees or other commissions payable by the Vendor on the Purchase Price shall be paid in accordance with the Minutes of Settlement.

7.6 Further Assurances.

Each party shall from time to time, before or after the Closing Date, execute and deliver, or cause to be executed and delivered, all such documents and instruments and do, or cause to be done, all such acts and things as the other party may, either before or after the Closing, reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

7.7 Entire Agreement.

This Agreement, the Minutes of Settlement and the agreements therein contained constitute the only agreements between the parties with respect to the subject matter hereof and supersedes any and all prior negotiations, provisions, covenants, agreements, understandings and representations on that subject, all of which have become merged and finally integrated into this Agreement.

7.8 Amendments.

This Agreement may only be amended, modified or supplemented by a written agreement signed by the parties.

7.9 Waiver.

No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision (whether or not similar), nor shall such waiver constitute a waiver or continuing waiver unless otherwise expressly provided in writing duly executed by the party to be bound thereby.

7.10 Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the

Province of Ontario and the laws of Canada applicable therein and each of the parties hereby irrevocably attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.

7.11 Benefit of Agreement.

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

7.12 Severability.

If any provision of this Agreement or any document delivered in connection with this Agreement is partially or completely invalid or unenforceable, the invalidity or unenforceability of that provision shall not affect the validity or enforceability of any other provision of this Agreement, all of which shall be construed and enforced as if that invalid or unenforceable provision were omitted. The invalidity or unenforceability of any provision in one jurisdiction shall not affect such provision's validity or enforceability in any other jurisdiction.

7.13 Paramountcy.

It is acknowledged and agreed by the parties hereto that in the event of any conflict between the terms of this Agreement and those of the Minutes of Settlement, the terms of the Minutes of Settlement (including the Approval and Vesting Order therein contemplated) shall in every respect govern, including without limitation with respect to Permitted Encumbrances.

7.14 Counterparts and Electronic Delivery.

This Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered will be deemed an original and all of which taken together constitute one and the same instrument. Delivery by electronic transmission of an executed counterpart of this Agreement is as effective as delivery of an originally executed counterpart of this Agreement.

7.15 Assignment and Enurement.

The Purchaser may assign this agreement to an affiliate (as such term is defined in the *Canada Business Corporations Act*) without the consent of but upon notice to the Vendor; provided, however, that the Purchaser shall remain jointly and severally liable for all obligations of the Purchaser pending the completion of the subject transaction. The Vendor may not assign its rights or obligations under this Agreement without the prior written consent of the Purchaser.

[signature page follows]

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

263 ADELAIDE LOFTS INC.

Per: 

Name:

Title:

LANTERRA DEVELOPMENTS LTD., in trust

Per: _____

Name:

Title:

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

263 ADELAIDE LOFTS INC.

Per: _____

Name:

Title:

LANTERRA DEVELOPMENTS LTD., in trust

Per: 

Name: Christopher J. Weir
Title: Chief Operating Officer

**Schedule A
Real Property**

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

PART BLK B PLAN 216-E PARTS 1 & 2 PLAN 66R29363; SUBJECT TO AN EASEMENT OVER PART 2 PLAN 66R29363 AS IN ES61538; TOGETHER WITH AN EASEMENT OVER PART 3 PLAN 66R29363 AS IN ES61223; CITY OF TORONTO

Schedule B

Permitted Encumbrances

General

1. Encumbrances, charges or prior claims for taxes (which term includes charges, rates and assessments) or utilities (including charges, levies or imposts for sewers, electricity, power, gas, water and other services and utilities) not yet due and owing or, if due and owing, that are adjusted for pursuant to Section 3.4.
2. Easements, rights of way, restrictive covenants and servitudes and other similar rights in land granted to, reserved or taken by any Governmental Authority, transit authority or public or private utility supplier; or any subdivision, development, servicing, site plan or other similar agreement with any Governmental Authority, transit authority or public or private utility supplier, provided that at Closing the same are in good standing in all material respects with no material outstanding defaults by the Vendor thereunder.
3. Encroachments by the Property over neighbouring lands which are permitted under existing agreements with neighbouring landowners.
4. Any subsisting reservations, limitations, provisos, conditions or exceptions in any original grants from the Crown of the Property or any part thereof or interest therein.
5. Statutory exceptions, reservations, limitations, provisos, qualifications and conditions to title provided for or implied by the *Land Titles Act* (Ontario) (including without limitation those set forth in subsection 44(1) thereof), but not including the matters listed in paragraph 11 of subsection 44(1) of the *Land Titles Act* (Ontario) and not including any circumstance by which all or any part of the Property may have escheated to the Crown.
6. Any rights of expropriation, access, use or any other right conferred or reserved by or in any statute of Canada or the Province of Ontario.
7. The provisions of Applicable Laws, including without limitation any by-laws, regulations, ordinances and similar instruments relating to development and zoning provided same are complied with in all material respects.
8. Any minor title defects, irregularities, easements, reserves, servitudes, encroachments, rights of way or other discrepancies in title or possession relating to the Property that (i) would be disclosed by an up-to-date survey of the Property, (ii) do not have a material adverse effect on the operation of the Property, or (iii) will not prevent the Purchaser from obtaining satisfactory title insurance policy for the Property.

Specific

9. Instrument No. ES61223 registered on October 18, 1966 being an easement.
10. Instrument No. ES61538 registered on December 19, 1966 being an easement.
11. Instrument No. 63BA1446 registered on February 2, 1979 being a Boundries Act plan.
12. Instrument No. 66R29363 registered on June 9, 2017 being reference plan.

13. Instrument No. AT4593553 registered on June 9, 2017 being an application for absolute Title.
14. Instrument No. AT4773446 registered on January 4, 2018 being a bylaw.

FIRST AMENDING AGREEMENT

THIS FIRST AMENDING AGREEMENT (the “**Agreement**”) made effective as of the 27th day of April, 2020,

B E T W E E N:

ADELAIDE STREET LOFTS INC.
(the “**Vendor**”)

- and -

LANTERRA DEVELOPMENTS LTD., IN TRUST
(the “**Purchaser**”)

RECITALS:

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

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

Section 1 Capitalized Terms.

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

Section 2 Amendments to the Purchase Agreement.

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

Section 3 Time of the Essence.

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

Section 4 Paramountcy.

In the case of any conflict between the terms and conditions of the Purchase Agreement and the terms or conditions of this Agreement, the terms and conditions of this Agreement will prevail.

Section 5 Reference to and Effect on the Purchase Agreement.

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

Section 6 Successors and Assigns.

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

Section 7 Governing Law.

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

Section 8 Electronic Delivery.

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

Section 9 Counterparts.

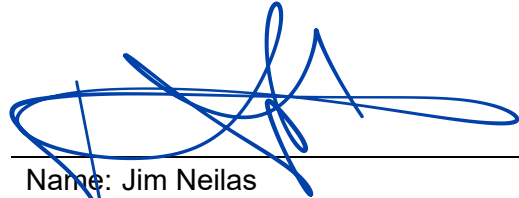
This Agreement may be executed in any number of original counterparts, with the same effect as if all the parties had signed the same document and will become effective when one or more counterparts have been signed by all of the parties and delivered to each of the other parties. All counterparts will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

(signature page follows)

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

ADELAIDE STREET LOFTS INC.

Per:



Name: Jim Neilas

Title: Authorized Signing Officer

I have authority to bind the corporation

LANTERRA DEVELOPMENTS LTD., in trust

Per:

Name: Christopher Wein

Title: Authorized Signing Officer

I have the authority to bind the corporation

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

ADELAIDE STREET LOFTS INC.

Per: _____

Name: Jim Neilas

Title: Authorized Signing Officer

I have authority to bind the corporation

LANTERRA DEVELOPMENTS LTD., in trust

Per: _____


Name: Christopher Wein

Title: Authorized Signing Officer

I have the authority to bind the corporation

[Signature Page – First Amending Agreement]

Schedule C

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

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

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

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

CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Hainey of the Ontario Superior Court of Justice (the "**Court**") dated March 21, 2019 (the "**Appointment Order**"), Miller Thomson LLP was appointed as representative counsel ("**Representative Counsel**") to represent the interests of all individuals and/or entities (the "**Investors**") which term does not include persons who have opted out of such representation in accordance with the Appointment Order, that have invested funds in a syndicated mortgage investment administered by Hi-Rise Capital Ltd. ("**Hi-Rise**"), in respect of the proposed development at the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the "**Property**") and owned by Adelaide Street Lofts Inc. ("**Adelaide**").

B. Pursuant to an Order of the Court dated March 19, 2020, the Court approved the Minutes of Settlement made as of December 20, 2019 (the "**Minutes of Settlement**") between the Parties (as defined therein) and Lanterra Developments Ltd. ("**Lanterra**") and the Agreement of Purchase and Sale dated December 20, 2019 between Lanterra or its designee and Adelaide and provided for the vesting in Lanterra or its designee of Adelaide's right, title and interest in and to the Property, which vesting is to be effective with respect to the Property upon delivery to Lanterra of a certificate executed by Aird &

Berlis LLP, Stikeman Elliott LLP, McCarthy Tetrault LLP and Miller Thomson LLP confirming receipt of the funds paid pursuant to paragraph 9 of the Minutes of Settlement.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Minutes of Settlement.

D. This certificate may be executed in counterparts, and by facsimile or electronic mail, each of which shall be deemed to be an original, all such separate counterparts shall together constitute one and the same certificate.

EACH OF THE UNDERSIGNED CONFIRMS receipt of the funds to be paid to it pursuant to paragraph 9 of the Minutes of Settlement.

AIRD & BERLIS LLP

Per: _____
Name:
Title:

STIKEMAN ELLIOTT LLP

Per: _____
Name:
Title:

MCCARTHY TETRAULT LLP

Per: _____

Name:

Title:

MILLER THOMSON LLP

Per: _____

Name:

Title:

Schedule D

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

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

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

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

REPRESENTATIVE COUNSEL CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Hainey of the Ontario Superior Court of Justice (the "**Court**") dated March 21, 2019 (the "**Appointment Order**"), Miller Thomson LLP was appointed as representative counsel ("**Representative Counsel**") to represent the interests of all individuals and/or entities (the "**Investors**") which term does not include persons who have opted out of such representation in accordance with the Appointment Order, that have invested funds in a syndicated mortgage investment administered by Hi-Rise Capital Ltd. ("**Hi-Rise**"), in respect of the proposed development at the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the "**Property**") and owned by Adelaide Street Lofts Inc. ("**Adelaide**").

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a certificate confirming (i) the payment by Lanterra of the Purchase Price for the Property; and (ii) the Transaction has been completed to the satisfaction of Representative Counsel.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Minutes of Settlement.

REPRESENTATIVE COUNSEL CERTIFIES the following:

1. Lanterra has paid the Purchase Price for the Property in accordance with the Minutes of Settlement;
3. The Transaction has been completed to the satisfaction of Representative Counsel.
4. This Certificate was delivered by Representative Counsel at _____ [TIME] on _____ [DATE].

**MILLER THOMSON LLP, in its capacity
as Representative Counsel**

Per: _____
Name:
Title:

Schedule E — Purchased Assets

“Purchased Assets” is defined in the APS to mean the following:

- (a) the Real Property (as defined in the APS); and
- (b) all deposits and prepaid expenses relating to the Real Property (as defined in the APS).

Schedule F — Claims to be deleted and expunged from title to Property

| Reg. No. | Date | Type | Amount | Parties From | Parties To |
|-----------|------------|---------------------|--------------|--|--|
| AT2730828 | 2011/06/24 | Transfer | \$16,500,000 | GUESTVILLE ENTERPRISES LIMITED | ADELAIDE STREET LOFTS INC. |
| AT3522463 | 2014/02/18 | Charge | \$40,000,000 | ADELAIDE STREET LOFTS INC. | HI-RISE CAPITAL LTD. |
| AT3522464 | 2014/02/18 | Assignment of Rents | N/A | ADELAIDE STREET LOFTS INC. | HI-RISE CAPITAL LTD. |
| AT3586925 | 2014/05/22 | Transfer of Charge | N/A | HI-RISE CAPITAL LTD. | CANADIAN WESTERN TRUST COMPANY |
| AT3946856 | 2015/07/15 | Notice | \$2 | ADELAIDE STREET LOFTS INC. | HI-RISE CAPITAL LTD. CANADIAN WESTERN TRUST COMPANY |
| AT4420428 | 2016/12/01 | Transfer of Charge | N/A | HI-RISE CAPITAL LTD. CANADIAN WESTERN TRUST COMPANY | HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY |
| AT4420442 | 2016/12/01 | Assignment of Rents | N/A | HI-RISE CAPITAL LTD. CANADIAN WESTERN TRUST COMPANY | HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY |
| AT4505545 | 2017/03/08 | Transfer of Charge | N/A | HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY | HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY |
| AT4505546 | 2017/03/08 | Assignment of Rents | N/A | HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY | HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY |
| AT4529978 | 2017/04/04 | Transfer of Charge | N/A | HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY | HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY |
| AT4529979 | 2017/04/04 | Assignment of Rents | N/A | HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY | HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY |
| AT4572550 | 2017/05/18 | Transfer of Charge | N/A | HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY | HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY |
| AT4572551 | 2017/05/18 | Assignment of Rents | N/A | HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY | HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY |
| AT4627861 | 2017/07/14 | Transfer of Charge | N/A | HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY | HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY |
| AT4627862 | 2017/07/14 | Assignment of Rents | N/A | HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY | HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY |
| AT4664798 | 2017/08/25 | Transfer of Charge | N/A | HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY | HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY |
| AT4664799 | 2017/08/25 | Assignment of Rents | N/A | HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY | HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY |
| AT4862974 | 2018/05/14 | Charge | \$16,414,000 | ADELAIDE STREET LOFTS INC. | MERIDIAN CREDIT UNION LIMITED |
| AT4862975 | 2018/05/14 | Assignment of Rents | N/A | ADELAIDE STREET LOFTS INC. | MERIDIAN CREDIT UNION LIMITED |

| | | | | | |
|-----------|------------|------------------------|-------------|--|-------------------------------|
| AT4863246 | 2018/05/14 | Postponement | N/A | HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY | MERIDIAN CREDIT UNION LIMITED |
| AT5329784 | 2019/12/24 | Notice | N/A | ADELAIDE STREET LOFTS INC. | MERIDIAN CREDIT UNION LIMITED |
| AT5329785 | 2019/12/24 | Charge | \$1,550,000 | ADELAIDE STREET LOFTS INC. | LANTERRA DEVELOPMENTS LTD. |
| AT5329786 | 2019/12/24 | Assignment of Rents | N/A | ADELAIDE STREET LOFTS INC. | LANTERRA DEVELOPMENTS LTD. |
| AT5329787 | 2019/12/24 | Postponement | N/A | HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY | LANTERRA DEVELOPMENTS LTD. |
| AT5330113 | 2019/12/27 | Postponement | N/A | COMMUNITY TRUST COMPANY HI-RISE CAPITAL LTD. | MERIDIAN CREDIT UNION LIMITED |
| AT5357503 | 2020/02/04 | Restrictions Order | N/A | ONTARIO SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST | LANTERRA DEVELOPMENTS LTD. |

**Schedule G — Permitted Encumbrances, Easements and Restrictive Covenants
related to the Property**

| Reg. No. | Date | Type | Amount | Parties From | Parties To |
|-----------|------------|-----------------------------------|--------|----------------------------|------------|
| ES61223 | 1966/10/18 | Easement | N/A | N/A | N/A |
| ES61538 | 1966/12/19 | Easement | N/A | N/A | N/A |
| 63BA1446 | 1979/02/02 | Plan Boundaries Act | N/A | N/A | N/A |
| 66R29363 | 2017/06/09 | Plan Reference | N/A | N/A | N/A |
| AT4593553 | 2017/06/09 | Application for Absolute Title | N/A | ADELAIDE STREET LOFTS INC. | N/A |
| AT4773446 | 2018/01/04 | Bylaw | N/A | CITY OF TORONTO | N/A |

Schedule H — Legal Description of the Property

PIN 21411-0294 (LT)

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

HI-RISE CAPITAL LTD.
Applicant/Moving Party

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

APPENDIX F

STATEMENT OF ADJUSTMENTS

VENDOR: Adelaide Street Lofts Inc.

PURCHASER: 263 Adelaide Limited Partnership, by its general partner, 263 Adelaide GP Limited

ADJUSTMENT DATE: November 16, 2020

PROPERTY: 263 Adelaide Street West, Toronto

| | Credit Purchaser | Credit Vendor |
|--|------------------------|------------------------|
| Purchase Price | | \$69,000,000.00 |
| Deposit paid to McCarthy Tétrault LLP, In Trust | \$10,000.00 | |
| Last month Rent Deposits | \$57,039.00 | |
| Security Deposits | \$26,200.00 | |
| <u>Rent adjustments</u> | | |
| Total Rental Income collected as at November 10, 2020: \$75,040.48 | | |
| Vendor's portion: \$37,520.24 | | |
| Purchaser's portion: \$37,520.24 | \$37,520.24 | |
| <i>All rent adjustments are inclusive of HST</i> | | |
| 2019 and 2020 Annual Property Taxes | | |
| inclusive of the principal taxes, fire fees, penalties & interest, bailiff fees and HST as seen in the Tax Statement received from A. O. Shingler & Co. Ltd. and attached hereto as Schedule A | \$914,793.40 | |
| Purchaser's Portion of 2020 Realty Taxes (period of November 16 – December 31, 2020) | | \$61,957.30 |
| Balance Required to be paid in accordance with the Minutes of Settlement | \$68,016,404.66 | |
| TOTAL | \$69,061,957.30 | \$69,061,957.30 |

E. & O. E.

SCHEDULE A



A. O. SHINGLER & CO. LTD. | BAILIFFS

Specialists in the Recovery of Municipal Property Tax & Commercial Rent Arrears

TAX STATEMENT

To:

Adelaide Street Lofts Inc.
263 Adelaide St. W., Unit 320
Toronto ON M5H 1Y2

Re: The City of Toronto

Property Taxes
263 Adelaide St. W.
Toronto

Roll#: 1904-06-2-280-00200

Date: 09-Nov-20

Last Payment

No Payments Have Been Made

Balances

| Year | Warrant | Type | Principal Tax | Penalties & Interest | Bailiff Fees | HST | Misc. Charges | Total |
|-------------------------------|-----------|------|---------------|----------------------|--------------|------------|---------------|---------------------|
| 2019 | 5-0088-20 | F | \$1,448.61 | \$273.40 | \$68.85 | \$8.93 | \$0.00 | \$1,799.79 |
| 2019 | 5-0089-20 | T | \$318,053.08 | \$58,483.23 | \$15,220.50 | \$1,978.64 | \$0.00 | \$393,735.45 |
| 2020 | 5-TOR1-20 | F | \$977.86 | \$106.08 | \$0.00 | \$0.00 | \$0.00 | \$1,083.94 |
| 2020 | 5-TOR2-20 | T | \$491,617.75 | \$26,556.47 | \$0.00 | \$0.00 | \$0.00 | \$518,174.22 |
| Total Now Due | | | | | | | | \$914,793.40 |
| Due As Of December 1st | | | | | | | | \$925,125.13 |

If the above taxes remain unpaid they are subject to further interest charges per month or portion thereof as determined by law until paid.

We accept payment by internet or telephone banking, cheque, money order, or bank draft.
Please provide your property assessment roll number on your method of payment.

288 Gibbons Street, Oshawa, ON L1J 4Y8
Toll free 877-883-1222 Tel 905-432-3262 Fax 905-432-3761
info@shinglerbailiffs.com www.shinglerbailiffs.com

E&OE

APPENDIX G

Re Hi-Rise Capital Ltd.

① 2-Hour Hearing scheduled
for May 13, 2021 at 10 AM.

Harvey J.

January 21, 2021

APPENDIX H

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

**SUPPLEMENTAL REPORT OF MILLER THOMSON LLP, IN ITS CAPACITY
AS COURT-APPOINTED REPRESENTATIVE COUNSEL
(Supplemental to Sixth Report dated November 6, 2020)**

MILLER THOMSON LLP

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M5H 3S1, Canada

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Representative Counsel

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

**SUPPLEMENTAL REPORT OF MILLER THOMSON LLP, IN ITS CAPACITY
AS COURT-APPOINTED REPRESENTATIVE COUNSEL
(Supplemental to Sixth Report dated November 6, 2020)**

I. INTRODUCTION

1. Representative Counsel has filed its Sixth Report dated November 6, 2020 (the “**Sixth Report**”). This Report (the “**Supplemental Report**”) is supplemental to, and must be read in conjunction with, the Sixth Report. Capitalized terms are as defined in the Sixth Report unless otherwise defined herein. For ease of reference, a copy of the Sixth Report (without appendices) is attached hereto as **Appendix “A”**.

II. PURPOSE OF REPORT

2. The purpose of this Supplemental Report is to provide an update to the Court, the Investors and other stakeholders regarding the following:

- (a) The Closing of the Lanterra Transaction;
- (b) Details of the Municipal Tax Issue (as defined below);

- (c) Objections to the Distribution Plan proposed by Representative Counsel;
- (d) Next steps contemplated by Representative Counsel; and
- (e) Activities and conduct of Representative Counsel since the date of the Sixth Report.

III. TERMS OF REFERENCE

3. In preparing this Supplemental Report and making the comments herein Representative Counsel has, where applicable, relied upon the Information. Certain of the information contained in this Supplemental Report may refer to, or is based on, the Information. As the Information has been provided by third parties or has been obtained from documents filed with the Court in this matter, Representative Counsel has relied on the Information and, to the extent possible, has reviewed the Information for reasonableness. However, Representative Counsel has neither audited nor otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook and accordingly, Representative Counsel expresses no opinion or other form of assurance in respect of the Information.

IV. CLOSING OF THE LANTERRA TRANSACTION

A. Court Approval of Lanterra Transaction

4. On April 27, 2020, the Honourable Mr. Justice Hainey granted the Approval Motion and issued an Approval and Vesting Order which, *inter alia*, approved the Lanterra Transaction and the Minutes (including the First Amendment), declared that Adelaide's right, title and interest in and to the Purchased Assets (as defined in the Approval and Vesting Order) shall vest absolutely

in Lanterra upon certain conditions being met, and directed that the Distribution of the Purchase Price in accordance with the Minutes be approved.

5. Pursuant to the First Amendment to the Minutes of Settlement, the Closing Date was extended to November 16, 2020.

B. Closing of Lanterra Transaction

6. On November 16, 2020, the Lanterra Transaction was closed. Pursuant to the Approval and Vesting Order, title to the Property was vested in Lanterra upon the filing of the Certificate dated November 16, 2020 (the “**Closing Certificate**”, a copy of which is attached hereto as **Appendix “B”**).

C. Proceeds Held by Representative Counsel

7. Representative Counsel executed and released the Closing Certificate to Lanterra upon its receipt of net proceeds of the Lanterra Transaction in the amount of \$46,074,666.27 (the “**Sale Proceeds**”), which Representative Counsel is now holding in trust. Attached hereto as **Appendix “C”** is a copy of the Statement of Adjustments current to November 16, 2020 (the “**Statement of Adjustments**”) showing the distribution of the Purchase Price and calculation of the Sale Proceeds.

8. Pursuant to the Minutes of Settlement, Representative Counsel will pay outstanding professional fees that had been secured by charges on title to the Property. The balance of the Sale Proceeds (net of the reserve amounts described below) will be distributed to Investors and Opt Out Investors in the manner described in the Minutes, in full satisfaction of their claims.

V. MUNICIPAL TAX ISSUE

A. Overview

9. An issue has arisen with respect to liability for payment of municipal taxes in respect of the Property (the “**Municipal Tax Issue**”). On November 16, 2020, Representative Counsel was provided with a copy of the Statement of Adjustments, which indicated municipal property tax arrears in the amount of \$914,793.40 in respect of the Property (the “**Tax Arrears**”).

10. Pursuant to Section 4 of the Minutes, Adelaide had an obligation to continue to pay the operating expenses in respect of the Property that it was paying as at the date of execution of the Minutes. Representative Counsel is of the view that this included the obligation to pay municipal property taxes.

11. Furthermore, pursuant to section 23 of the Minutes, Adelaide, 263 Holdings Inc. (“**263 Holdings**”) and Jim Neilas (“**Neilas**”) (collectively, the “**Neilas Parties**”) had an obligation to do and execute such further acts and documents as may be reasonably necessary or desirable to give effect to the covenants, provisions and terms of the Minutes.

12. Although the Tax Arrears were paid from the closing funds (thereby reducing the amount ultimately available for Investors), Representative Counsel takes the position that such obligation ought to have been serviced by Adelaide, and should therefore be deducted from the amount otherwise payable to 263 Holdings under the Minutes and remitted to Representative Counsel for distribution to the Investors. The Neilas Parties do not agree with Representative Counsel’s position.

13. In light of the dispute, the amount of the Municipal Tax Arrears will be held in trust by counsel to the Neilas Parties pending a judicial determination or other resolution of this issue.

VI. DISTRIBUTION PLAN & OBJECTIONS

A. Overview

14. In the Sixth Report Representative Counsel recommended that the Sale Proceeds be distributed to the Investors and Opt Out Investors as follows:

- (a) First, to Registered Investors (as recorded in the Master Index) on account of principal and interest; and
- (b) Second, to Non-Registered Investors (as recorded in the Master Index) *pro rata* based on principal and interest outstanding.

15. However, given the issues identified in the Sixth Report, Representative Counsel is of the view that the proposed Distribution Plan should accommodate individual Investors who wish to object to their classification and treatment thereunder.

16. Representative Counsel recommends that the Distribution Plan be conducted in accordance with the procedures (the “**Distribution Plan Procedures**”) described in the attached **Appendix “D”**.

B. Notice to Investors & Opportunity to Object

17. As contemplated in the Sixth Report, immediately after service of this Sixth Report, Representative Counsel completed the following:

- (a) Published the Distribution Plan Approval Notice on the Website;

- (b) Published a copy of the Sixth Report on the Website; and
- (c) Emailed a copy of (and/or html link to) the Distribution Plan Approval Notice and the Sixth Report to Investors for which it has an email address.

18. As set out in the Distribution Plan Approval Notice and the Sixth Report, the Motion for approval of the proposed Distribution Plan (the “**Distribution Plan Motion**”) is returnable November 23, 2020. As such, Investors will have had approximately 17 days’ advance notice of the Motion and the Distribution Plan.

19. Pursuant to the Distribution Plan Approval Notice, Investors who wish to object to the proposed Distribution Plan and become “Objecting Investors” were required to provide notice of the objection to Representative Counsel at least three (3) days prior to the hearing of the Distribution Plan Motion, failing which they will be deemed to approve of the Distribution Plan, including their classification and treatment as a Non-Registered Investor.

20. As of the date hereof, Representative Counsel has received notices of objection from three (3) Non-Registered Investors and Opt Out Investors representing an aggregate amount of \$1,390,000 in principal investments.

C. Reserve for Objecting Investor Claims

21. In light of the claims of the Objecting Investors, Representative Counsel intends to hold back from the initial distribution under the Distribution Plan a reserve in an amount to be determined by Representative Counsel (the “**Objecting Investor Reserve**”) to deal with any outcome of the objections raised by the Objecting Investors.

22. Substantially all of the balance of the Sale Proceeds (*ie*, net of the Objecting Investor Reserve and other amounts held back in reserve for professional fees and other expenses that may be incurred through completion of the proceeding) will be distributed in the initial distribution, which Representative Counsel anticipates commencing in early January 2021.

23. Following resolution of the objections of the Objecting Investors and the Municipal Tax Issue, the amounts of the Objecting Investor Reserve, any recovery from the Municipal Tax Issue and any other funds remaining in the hands of Representative Counsel will be distributed to Investors in accordance with their priorities and entitlements.

D. Proposed Mechanism for Resolution of Objecting Investor Claims

24. Given the number of Objecting Investors and the relative aggregate amount of their claims, the holdback of the Objecting Investor Reserve will have a relatively minor impact on the amounts that the Non-Registered Investors will receive through the Initial Distribution. Nevertheless, Representative Counsel seeks to implement a process for resolving the Objecting Investor claims on an expedited, cost-effective basis.

25. Representative Counsel proposes that the Objecting Investor claims be dealt with in the manner described in the Distribution Plan Procedures.

26. As noted in the Sixth Report, in the event that the Distribution Plan is approved at the Distribution Plan Motion, Representative Counsel hopes to begin distributing funds to the Investors by early January 2021.

27. Subject to the outcome of the Distribution Motion, Representative Counsel will provide each Investor with an Investor Payment Notice setting out, among other things, the amount of

Investor's Investor Payment. The Investor Payment Notice provides that, among other things, the Investor has 14 days within which to object to the amount of the proposed Investor Payment (the "**Objection Period**"), failing which the Investor shall be deemed to have accepted the amount set out therein.

28. Representative Counsel intends to return to Court at its earliest opportunity following delivery of the Investor Payment Notices to seek approval of the proposed Investor Payments and to authorize Representative Counsel to complete the Distribution upon expiry of the Objection Period.

29. Representative Counsel is working with counsel to the Neilas Parties toward developing a timeline and process for resolving the Municipal Tax Issue, and anticipates reporting to the Court in that regard contemporaneously with seeking approval of the proposed Investor Payments..

VII. OTHER MATTERS

A. Activities of Representative Counsel

30. Representative Counsel seeks the Court's approval of its conduct and activities as set out herein.

31. Since the date of the Sixth Report Representative Counsel has continued to work with counsel to Hi-Rise, Adelaide, Lanterra and the other stakeholders toward closing of the Lanterra Transaction.

32. In an effort to maintain efficiency, Representative Counsel's policy is that it generally does not provide individualized responses or advice to the inquiries sent to the Email Account. Instead,

Representative Counsel reviews all emails and inquiries received and provides general responses to all Investors by way of communications.

33. However, given the importance of issues related to the Distribution Plan, as well as Investor concerns regarding closing of the Lanterra Transaction, since the issuance of the Sixth Report, Representative Counsel has made best efforts to respond directly to individual Investors with general questions regarding same.

34. As contemplated in the Sixth Report, Representative Counsel is in the course of engaging A&M to assist with implementation of the Distribution Plan, and anticipates that it will be in a position to commence implementation almost immediately following an Order approving it.

B. Website & Email Account

35. Representative Counsel maintains a public Website at the following URL: <https://www.millerthomson.com/en/hirise/> (the “**Website**”), where it continuously posts information related to this proceeding for all Investors to view, including communications prepared by Representative Counsel, Court Reports and motion materials, and Orders issued in these proceedings. The Website is up to date and contains all relevant information related to the status of this proceeding, including in particular the Sixth Report. A copy of this Supplemental Report will be posted to the Website once filed.

36. Representative Counsel maintains and monitors the Email Account (at HiRiseCapital@millerthomson.com), through which Investors may submit inquiries to Representative Counsel. Representative Counsel continues to regularly monitor inquiries submitted by Investors to the Email Account.

C. Communications

37. Since the date of the Sixth Report, Representative Counsel prepared a notice (the “**Distribution Plan Approval Notice**”, a copy of which is attached as **Appendix “E”**), to provide Investors with notice that Representative Counsel will be seeking court approval of the Distribution Plan described in the Sixth Report. Representative Counsel has emailed the Distribution Plan Approval Notice to all Investors for which it has an email address, and posted a copy of same to its Website.

VIII. CONCLUSION

38. Representative Counsel prepares this Supplemental Report as a supplement to the Sixth Report, in further support of the relief sought in its Notice of Motion returnable November 23, 2020.

All of which is respectfully submitted at Toronto, Ontario this 20th day of November, 2020.



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

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

Proceeding commenced at Toronto

**SUPPLEMENTAL REPORT OF
REPRESENTATIVE COUNSEL
(November 20, 2020)**

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Court-appointed Representative Counsel

APPENDIX I

**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.**

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

March 10, 2021

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Court-appointed Representative Counsel

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**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.**

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

I. INTRODUCTION

1. 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 “**Appointment Order**”), Miller Thomson LLP was appointed as Representative Counsel to represent all individuals and/or entities (“**Investors**”) that hold an interest in a syndicated mortgage administered by Hi-Rise Capital Ltd. (“**Hi-Rise**”) in respect of the proposed development known as the “Adelaide Street Lofts” (the “**Project**”) at the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the “**Property**”) and owned by Adelaide Street Lofts Inc. (“**Adelaide**”), in connection with the negotiation and implementation of a settlement with respect to such investments, except for those Investors who opted out of representation by Representative Counsel in accordance with the terms of the Appointment Order (the “**Opt Out Investors**”). Copies of the Appointment Order and Endorsement of the Honourable Mr. Justice Hailey dated March 22, 2019 are attached hereto as **Appendix “A”**.

2. 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.

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

II. PURPOSE OF REPORT

4. Pursuant to the Order of Justice Hailey dated November 23, 2020 (the “**Distribution Plan Approval Order**”, a copy of which is attached hereto as **Appendix “C”**), the Distribution Plan was approved. This Seventh Report has been filed in support of Representative Counsel’s Motion for, among other things, approval of Representative Counsel’s calculations of individual Investor claim amounts and authorization of an initial distribution (the “**Initial Distribution**”) on the basis of such calculations.

5. For the purposes of this Seventh Report, all reference to the singular herein shall include the plural, and the plural shall include the singular. Unless otherwise stated, all references to dollars shall be in Canadian dollars.

A. Background

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**”) memorialized in the Minutes of Settlement, as amended (the “**Minutes**”, a copy of which is attached hereto as **Appendix “D”**). The Minutes and the Settlement contemplated, among other things, a sale of the Property to Lanterra (the “**Lanterra Transaction**”), and were subsequently approved by the Investors (by way of an Investor vote) and this Honourable Court.

8. On April 27, 2020, Justice Hainey granted the Approval Motion and issued an Approval and Vesting Order which, *inter alia*, approved the Lanterra Transaction and the Minutes (including the First Amendment), declared that Adelaide’s right, title and interest in and to the Purchased Assets (as defined in the Approval and Vesting Order) shall vest absolutely in Lanterra upon certain conditions being met, and directed that the Distribution of the Purchase Price in accordance with the Minutes be approved. Pursuant to the First Amendment to the Minutes of Settlement, the Closing Date was extended to November 16, 2020. A copy of the Approval and Vesting Order is attached hereto as **Appendix “E”**

9. On November 16, 2020, the Lanterra Transaction was closed, and as set out below the amount of \$46,074,666.27 of the proceeds (the “**Net Sale Proceeds**”) was delivered to Representative Counsel, representing the balance of the purchase price after certain payments contemplated in the Minutes were made:

| | |
|--|------------------------|
| Purchase Price | \$69,000,000.00 |
| Less: Municipal Tax Arrears | (914,793.40) |
| Less: Closing Adjustments | (68,801.94) |
| Less: Meridian Mortgage | (16,751,924.01) |
| Less: 263 Holdings Settlement Amount | (3,724,000.00) |
| Less: Lanterra Interest Loan and Forbearance Fee Payment | (1,465,814.38) |
| Net Sale Proceeds | \$46,074,666.27 |

10. The Minutes contemplate that Representative Counsel shall be responsible for attending to the distribution of the Net Sale Proceeds to the Investors and certain other parties set out in section 10 of the Minutes.

B. Activities of Representative Counsel

11. This Seventh Report is filed to provide this Honourable Court with an update on Representative Counsel's conduct and activities since the date of the Sixth Report dated November 6, 2020 (the "**Sixth Report**") and the Supplemental Sixth Report dated November 20, 2020 (the "**Supplemental Sixth Report**"), copies of which are attached hereto (without appendices) as **Appendix "F" and "G"**, respectively.

12. Since the date of the Supplementary Sixth Report, Representative Counsel has continued to work with the various stakeholders toward implementation and completion of the Distribution Plan. In particular, Representative Counsel has engaged in the following activities:

- (a) Attended the Motion heard November 23, 2020 to obtain the Distribution Plan Approval Order;
- (b) Attended a scheduling case conference on January 21, 2021 regarding the Municipal Tax Motion (as defined below);
- (c) Arranged for discharge of the Information Officer (as defined below);
- (d) Worked with the Distribution Agent (as defined below) and Community Trust Company ("**CTC**") to finalize calculation of the amounts payable to Registered Investors;

- (e) Assisted in the verification of amounts and other information in the Revised Claim Index (as defined below);
- (f) Prepared the form of Investor Claim Notices (as defined below);
- (g) Made the payments to the parties described in subparagraphs 10(a) through (d) of the Minutes;
- (h) Engaged in discussions with counsel to various objecting Investors;
- (i) Communicated directly with Investors including responding to a significant number of email and telephone inquiries; and
- (j) Prepared and issued Communications, and delivered same to Investors by email and by posting on Representative Counsel's website.

C. Orders Sought

13. Representative Counsel files this Seventh Report in support of its motion for the following relief:

- (a) An Order approving the activities and conduct of Representative Counsel since the date of the Supplementary Sixth Report, as disclosed herein;
- (b) An Order authorizing and directing Representative Counsel to complete the Initial Distribution in accordance with the Revised Claim Index and the Investor Claim Notices (as such terms are defined below);

- (c) An Order authorizing and directing Representative Counsel to transfer the aggregate amount of the Initial Distribution payable to Registered Investors directly to CTC for the purpose of distribution to the Registered Investors;
- (d) An Order authorizing Alvarez & Marsal Canada Inc. (the “**Distribution Agent**”) to open a trust account (the “**Distribution Trust Account**”);
- (e) An Order authorizing and directing Representative Counsel to transfer the Initial Distribution (after the payment contemplated in subparagraph (c) above) to the Distribution Trust Account;
- (f) An Order authorizing and directing the Distribution Agent to distribute amounts in the Distribution Trust Account to the Non-Registered Investors, on a *pro rata* basis based upon the Revised Claim Index;
- (g) An Order declaring that the amount payable to Investors (including, for greater certainty, the Opt Out Investors) shall be determined as of November 16, 2020;
- (h) An Order declaring that any Investors that did not deliver a Notice of Objection (as defined below) by the expiry of their respective Objection Periods shall be deemed to accept the Investor Claim Amount as set out in their Investor Claim Notice and be forever extinguished and barred from disputing their respective Investor Claim Amount; and
- (i) A Sealing Order in respect of Confidential Appendix “1”, as described below.

III. TERMS OF REFERENCE

14. In preparing this Seventh Report and making the comments herein Representative Counsel has, where applicable, relied upon information prepared or provided by Hi-Rise and/or Adelaide, and information from other third-party sources (collectively, the “**Information**”). Certain of the information contained in this Seventh Report may refer to, or is based on, the Information. As the Information has been provided by third parties or has been obtained from documents filed with the Court in this matter, Representative Counsel has relied on the Information and, to the extent possible, has reviewed the Information for reasonableness. However, Representative Counsel has neither audited nor otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook and accordingly, Representative Counsel expresses no opinion or other form of assurance in respect of the Information.

15. All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Appointment Order.

IV. DISTRIBUTION PLAN

A. Distribution Agent

16. Pursuant to the Order of Justice Hainey dated Wednesday April 22, 2020, a copy of which is attached hereto as **Appendix “H”**, Representative Counsel was granted Court authority to obtain the assistance of an accounting firm, consultant or other third-party professional as agent to Representative Counsel in connection with the Distribution of the Investor Settlement Amount (as such terms are defined in the Minutes).

17. In this regard, Representative Counsel has engaged Alvarez & Marsal Canada Inc. as Distribution Agent in respect of the Distribution of the Investor Settlement Amount.

B. Investor Classification

18. As more fully particularized in the Sixth Report¹, investments in Hi-Rise were offered either through Hi-Rise on a cash-investment basis or through Canadian Western Trust, now CTC, on a registered-investment basis (*i.e.*, through an RRSP).

19. Accordingly, for the purpose of the Distribution Plan, Investors are classified in one of the following two classes:

- (a) Registered Investors – Registered Investors are Investors that participate in the Second Mortgage through CTC (as trustee) and made their investment through a registered plan such as an RRSP. Accordingly, as the Registered Investors participate in the Second Mortgage through CTC, their interest in the Second Mortgage ranks ahead of the Non-Registered Investors participating through Hi-Rise.
- (b) Non-Registered Investors – Non-Registered Investors are Investors that participate in the Second Mortgage through Hi-Rise and did not make their investment through a registered plan but rather, through a non-registered cash investment. Accordingly, as the Non-Registered Investors participate in the Second Mortgage through Hi-

¹ See paragraphs 26 to 33 of the Sixth Report, previously attached hereto at Appendix “F”.

Rise, their interest in the Second Mortgage ranks behind the interest of Registered Investors participating through CTC.²

20. In or around April 2020, Hi-Rise provided Representative Counsel with an index (the “**Master Index**”) setting out information regarding each Investor’s investment including, in particular, the classification of each Investor as a Registered Investor, a Non-Registered Investor, or both.

21. Representative Counsel and the Distribution Agent have worked with Hi-Rise and CTC to verify the information in the Master Index. In addition, Representative Counsel and the Distribution Agent reviewed each Investor’s investment documentation (*eg*, Loan Participation Agreements, etc.) to ensure consistency with the information contained in the Master Index.

22. In the course of the review process, Representative Counsel and the Distribution Agent identified a number of discrepancies between and among the various records and agreements. In particular, the following issues were identified and resolved:

- (a) allocations between Registered and Non-Registered amounts for Investors with RRSPs and/or RRIFs (as defined and described below) that were converted into non-registered holdings;

² Non-Registered Investors also include certain Registered Investors whose investments have been partially de-registered, to the extent of such de-registration. These Investors received Investor Claim Notices in respect of both the registered and non-registered components of their investments.

- (b) discrepancies between the amounts of accrued interest stated in Registered Investors' CTC statements and the books and records of Hi-Rise;³
- (c) incorrect interest rate used to calculate accrued interest; and
- (d) adjustments required for Investors' names.

C. Investor Priorities

23. In light of the above-noted priorities within the Second Mortgage, pursuant to the Distribution Plan Approval Order (and the Distribution Plan approved therein), Registered Investors receive priority treatment in respect of a return of their investments, and Non-Registered Investors rank subordinate to (and therefore receive payment after) the Registered Investors.

24. Consequently, the proceeds shall be distributed to the Investors as follows:

- (a) First, to Registered Investors on account of principal and interest outstanding accrued through to November 16, 2020; and
- (b) Second, to Non-Registered Investors *pro rata* based on principal and interest outstanding accrued through to November 16, 2020.

25. As noted above, CTC is the trustee for the investments of Registered Investors. Representative Counsel has been in communication with counsel to CTC regarding the distribution process. CTC has requested that distributions to Registered Investors be made through CTC (rather

³ Representative Counsel was advised that interest calculations set out on individual Registered Investor's statements from CTC were calculated on a compound basis (*i.e.*, interest on interest) and therefore exceeded that of the books and records of Hi-Rise. CTC has confirmed to Representative Counsel that CTC's calculations were incorrect in this regard.

than directly to Registered Investors) in order to, among other things, preserve RRSP and RRIF eligibility. As such, Representative Counsel recommends that the aggregate amount payable to Registered Investors be delivered to CTC for distribution to the Registered Investors.

26. Representative Counsel and the Distribution Agent will continue to consult with CTC regarding the most efficient manner in which to distribute non-registered amounts payable to Registered Investors with a non-registered component to their investments resulting from mandatory minimum RRIF withdrawals (as more particularly described below).

D. RRIF Conversions & Withdrawals

27. Pursuant to the *Income Tax Act* (Canada) and the regulations made thereunder,⁴ investments held in a Registered Retirement Savings Plan (“RRSP”) must be converted to a Registered Retirement Income Fund (“RRIF”) by the end of the calendar year in which the owner turns 71.

28. CTC is the trustee and administrator in respect of the investments of Registered Investors. While the conversion of amounts in a RRSP to a RRIF is a non-taxable event, amounts subsequently withdrawn from the RRIF are taxable. A RRIF has a mandatory minimum withdrawal requirement, which is calculated using a percentage amount determined by the owner’s age, multiplied by the market value of the RRIF holdings at the beginning of the calendar year.

29. For the past few years no funds have been available to satisfy the mandatory minimum withdrawal requirements under the RRIFs. As such, the unpaid amounts have accrued and been recorded as Non-Registered investments (as the amounts of the mandatory minimum withdrawals

⁴ See section 146.3 of the *Income Tax Act*, R.S.C. 1985 c. 1 (5th Supp.) and Regulation 7308 of the *Income Tax Regulations* C.R.C. c. 945.

are no longer RRIF eligible). Consequently, Registered Investors with unpaid mandatory minimum withdrawals under a RRIF received two Claim Amounts in their Investor Claim Notices, indicating the Registered and Non-Registered components of their investments.

30. Pursuant to the Distribution Plan Approval Order and the attached Distribution Plan Procedures, Investors Claim Amounts (including accrued interest) were determined as of November 16, 2020 (*i.e.*, the date upon which the Lanterra Transaction closed).

31. The Revised Claim Index (as defined below) was developed on the basis that the status of an Investor's investments as either Registered or Non-Registered should also be determined and "frozen" as of November 16, 2020. In other words, an investment that was classified as Registered as of November 16, 2020 will remain classified as such, regardless of whether some amount was subsequently converted.

E. Calculation of Investor Claims

32. Representative Counsel and the Distribution Agent have worked with Hi-Rise and CTC to verify the amounts set out in the Master Index (a copy of which was filed as Confidential Appendix "1" to the Sixth Report and has been sealed pursuant to the Order dated November 23, 2020). As noted in paragraph 22, during the verification process a number of discrepancies and other issues were identified, investigated and resolved.

33. The Distribution Agent has prepared a revised index of Investor classification and claim amounts (the "**Revised Claim Index**", a copy of which has been filed as a Confidential Appendix "1" to this Seventh Report). Any changes between the Master Index and the Revised Claim Index have been reviewed and confirmed Hi-Rise and CTC as appropriate.

34. The Revised Claim Index contains private and sensitive information related to the Investors including names, addresses and investment details. Accordingly, Representative Counsel is seeking a sealing Order in respect of the Revised Claim Index.

35. Based on the Revised Claim Index, there are a total of \$17,145,245.62 in investments by Registered Investors and a total of \$34,912,518.82 in investments by Non-Registered Investors.⁵

| Investor Type | Principal | Interest | Total |
|-----------------------|------------------------|------------------------|------------------------|
| Registered | 17,145,245.62 | 6,616,998.05 | \$23,762,243.67 |
| Non-Registered | 34,912,518.82 | 15,020,446.94 | \$49,932,965.76 |
| Total | \$52,057,764.44 | \$21,637,444.99 | \$73,695,209.43 |

F. Delivery of Investor Claim Notices

36. By mailing completed between February 4 and February 25, 2021, Representative Counsel provided each Investor with notice of the amount of his or her Investor Claim substantially in the form attached hereto as **Appendix “I”** (the **“Investor Claim Notice”**), which provides the following information extracted from the Revised Claim Index:

- (a) The Investor’s classification as either a Registered Investor or Non-Registered Investor;
- (b) The initial amount of the Investor’s investment;
- (c) The current amount of the Investor’s investment (having regard to any principal payments received by the Investor);

⁵ As of March 10, 2021.

- (d) Accrued interest (having regard to any interest payments received by the Investor);
and
- (e) The total amount of the Investor's claim.

37. In addition, the Investor Claim Notice provides that, among other things, the Investor has 14 days from the date set out in the Investor Claim Notice to object to the amount, classification and other information in the Investor Claim Notice (the “**Objection Period**”), failing which the Investor shall be deemed to have accepted such information contained therein as correct and to have waived any further right to object. All Investors that deliver a Notice of Objection shall be referred to as “**Objecting Investors**”.

G. Objections

38. As of the date of this Seventh Report (*ie*, March 10, 2021), Representative Counsel has received 20 Notices of Objections from Investors with respect to their Investor Claim Notices. As the Investor Claim Notices were mailed out in batches and on different days during the above-noted period, the timeline for all Investors to deliver their Notices of Objection has not yet expired.

39. As such, Representative Counsel intends on filing a Supplemental Seventh Report prior to the Initial Distribution motion to update the Court on the total number of objections received, the aggregate claim amount in respect of those objections, and to provide a summary on the objections/potential proposed resolutions for same. At such time, Representative Counsel will be in a position to determine the appropriate Objection Reserve (as defined below).

40. In certain instances, the objections received can be easily explained and/or resolved. Representative Counsel and the Distribution Agent continue to work with the Objecting Investors

with a view toward resolving their objections and will provide this Honourable Court with an update in this regard prior to the next Court attendance.

V. MUNICIPAL TAX MOTION

41. As noted in the Supplemental Sixth Report, on the day of closing of the Lanterra Transaction, Representative Counsel was provided with a copy of the Statement of Adjustments, which indicated municipal property tax arrears in the amount of \$914,793.40 in respect of the Property (the “**Municipal Tax Arrears**”).

42. Although the Municipal Tax Arrears were paid from the closing funds (thereby reducing the amount ultimately available for Investors), Representative Counsel immediately took the position that such obligation ought to have been serviced by Adelaide and should therefore be deducted from the amount otherwise payable to 263 Holdings under the Minutes and remitted to Representative Counsel for distribution to the Investors. The Neilas Parties do not agree with Representative Counsel’s position.

43. In light of the dispute, the amount of the Municipal Tax Arrears was held back from the amounts distributed to the Neilas Parties, and the funds (the “**Disputed Funds**”) are now being held in trust by counsel to the Neilas Parties pending a judicial determination or other resolution of this issue.

44. On January 21, 2021, the parties attended before the Justice Hainey to determine a schedule for the hearing of a motion with respect to entitlement to the Disputed Funds (the “**Municipal Tax Motion**”). Pursuant to the Endorsement of Justice Hainey dated January 21, 2021, the Municipal Tax Motion will be heard on May 13, 2021. A copy of Justice Hainey’s Endorsement dated January 21, 2021 is attached hereto as **Appendix “J”**.

VI. NET PROCEEDS AND INITIAL DISTRIBUTION

45. Subject to the approval of this Honourable Court, Representative Counsel and the Distribution Agent anticipate commencing the Distribution process expeditiously following Court approval.

46. Pursuant to section 10 of the Minutes, certain amounts were to be paid from the Net Sale Proceeds upon closing, in advance of distributions to the Investors. The amounts have been paid, as set out in the Distribution Summary below.

A. Registered Investors

47. Registered Investors will be paid the full amount of their principal and accrued interest claims as at the Closing Date (being, as at November 16, 2020). Based on the Revised Claim Index, the aggregate amount of the claims of Registered Investors are currently estimated at \$23,762,243.67 as of the Closing Date, composed of the amounts of \$17,145,245.62 in respect of principal and \$6,616,998.05 in respect of accrued and unpaid interest. The aggregate amount payable to Registered Investors shall be delivered directly by Representative Counsel to CTC for distribution to individual Registered.

B. Non-Registered Investors

48. As noted above, based on the Revised Claim Index, the aggregate amount of the claims of Non-Registered Investors are currently estimated at \$49,932,965.76 as of the expected Closing Date, composed of the amounts of \$34,912,518.82 in respect of principal and \$15,020,446.94 in respect of accrued and unpaid interest. The following distribution summary (the “**Distribution Summary**”) provides estimates of the expected initial distribution amount:

| | |
|---|-------------------------|
| Funds Received By Representative Counsel In Trust | \$46,074,666.27 |
| Less: BMO Commission | (649,000.00) |
| Less: Professional Fees to Date | |
| Representative Counsel | (928,112.74) |
| Counsel to Hi-Rise | (287,801.42) |
| Information Officer | (115,513.76) |
| Counsel to the Information Officer | (26,199.08) |
| Total Professional Fees to Date | (\$1,357,627.00) |
| Less: General Reserve | (1,100,000.00) |
| Less: Objection Reserve | TBD ⁶ |
| Interim Distribution Amount | \$42,968,039.27 |
| Less: Amounts Owing to Registered Investors | (23,762,243.67) |
| Interim Distribution Amount for Non-Registered Investors | \$19,205,795.60 |
| | |
| Total Amounts Owing to Non-Registered Investors | \$49,932,965.76 |
| Principal Amounts Owing to Non-Registered Investors | \$34,912,518.82 |
| <i>Estimated Non-Registered Investor Initial Distribution Recovery (%)</i> | <i>38.46%</i> |
| <i>Estimated Non-Registered Investor Initial Distribution Recovery on Principal (%)</i> | <i>55.01%</i> |

49. As of the date of this Report, the Distribution Summary is based on estimations only and is subject to change.

C. Reserves

50. There are a number of outstanding issues and contingencies that will have an impact (positive or negative) on the total amount of funds available for distribution, including the following:

- (a) The outcome of the Municipal Tax Motion, including any potential cost awards;
- (b) Professional fees incurred , but not paid to-date; and

⁶ The Reserve for Potential Objecting Claims will be determined prior to the Initial Distribution Motion and will be reported to the Court in a Supplemental Seventh Report. See paragraphs 38 to 40, and 52 of this Seventh Report.

(c) Estimated professional fees to complete these proceedings.

51. As such, Representative Counsel recommends that an amount of \$1,100,000 be held back from the Net Proceeds as a reserve (the “**General Reserve**”) from the Initial Distribution.

52. Representative Counsel also recommends that an amount be held in reserve in connection with objecting Investors (the “**Objection Reserve**”).⁷ Representative Counsel intends to file a supplementary report prior to the next Court attendance, in order to advise stakeholders as to the outcome of the objection process and the impact on the distribution. However, as of the date of this Seventh Report, Representative Counsel does not anticipate that the Objection Reserve will be a particularly material amount.

53. Depending upon the outcome of the issues described above, the amount of the reserves and other funds may be available for a second Distribution to Non-Registered Investors at a later date.

VII. OTHER MATTERS

A. Website & Email Account

54. Representative Counsel maintains a public website at the following URL: <https://www.millerthomson.com/en/hirise/> (the “**Website**”), where it regularly posts information related to this proceeding including communications prepared by Representative Counsel, Court Reports and motion materials, and Orders issued in these proceedings. The Website is up to date and contains all relevant information related to the status of this proceeding. A copy of a printout of the Website is attached as **Appendix “K”**.

⁷ Representative Counsel intends to reserve only in respect of the amount at issue in an objection; the balance of the Investor claim will be paid as part of the Initial Distribution.

55. Representative Counsel maintains an email address for Investors to submit inquiries to Representative Counsel: HiRiseCapital@millerthomson.com (the “**Email Account**”). Representative Counsel continues to regularly monitor inquiries submitted by Investors to the Email Account on a daily basis.

56. Despite its repeated requests that all Investor email inquiries be directed to the Email Account, Representative Counsel continues to receive a high volume of telephone calls and emails directed to individual lawyers. This has resulted in Representative Counsel spending additional time and costs to attend to such matters.

57. Notwithstanding the objection procedure provided for under the Distribution Plan and the Investor Claim Notices, numerous Investors have opted to contact Representative Counsel either personally (as noted above) or through the Email Account to inquire on the status of their claims. In such circumstances, Representative Counsel advises these Investors to follow the Court-ordered procedure and deliver a Notice of Objection.

58. In addition and as further described below, Representative Counsel reviews all inquiries received in the Email Inbox and prepares Communications to all Investors to address same. Many Investors have substantially the same questions or concerns, and from an efficiency and fairness perspective, it is preferable to aggregate the inquiries and respond broadly rather than provide individual responses.

B. Communications

59. Since the date of the Supplemental Sixth Report, Representative Counsel has prepared the following Communications, emailed same to Investors for which it has an email address, and has posted a copy of same to its Website:

- (a) “Update on Distribution Process” dated November 25, 2020, a copy of which is attached as **Appendix “L”**, to advise Investors, *inter alia*, (i) on the successful closing of the Lanterra Transaction, (ii) that the Court granted the Distribution Plan Approval Order, (iii) on the details of the Distribution Plan and Distribution entitlements (*ie* what it means for Registered Investors and Non-Registered Investors); (iv) that Representative Counsel will be holding back the Reserve to deal with Objecting Investors and other future contingencies; and, (v) on the anticipated procedure for Distribution;
- (b) “Update on Distribution Process and Investor Payment Notices” dated January 5, 2021, a copy of which is attached as **Appendix “M”**, to, *inter alia*, provide Investors with an update regarding the status of the Investor Claim Notices and the Distribution Agent’s calculations of Investor entitlements, namely, that at such time the Investor Claim Notices had not been completed or delivered;
- (c) “Further Update on Distribution Process and Investor Payment Notices” dated January 20, 2021, a copy of which is attached as **Appendix “N”**, to, *inter alia*, provide Investors with another update regarding the status of issues identified with respect to the Distribution entitlement and to again advise that at such time the Investor Claim Notices had not been delivered;
- (d) “Update on Distribution Process and Delivery of Investor Claim Notices” dated February 3, 2021, a copy of which is attached as **Appendix “O”**, to advise Investors, *inter alia*, (i) that a significant number of issues related to the Distribution entitlement calculations was resolved; (ii) that the first round of Investor Claim

Notices was to be distributed on February 4, 2021; (iii) to remind Investors of the objection procedure set out in the Distribution Plan; and, (iv) that Distribution payments to Registered Investors will be delivered to CTC for its subsequent distribution to Registered Investors and that amounts payable to Non-Registered Investors will be delivered directly to the Non-Registered Investor by way of cheque;

- (e) “Update on Delivery of Investor Claim Notices” dated February 16, 2021, a copy of which is attached as **Appendix “P”**, to advise Investors, *inter alia*, (i) on the status of delivery of the Investor Claim Notices and to remind Investors of the objection procedure set out in the Distribution Plan and (ii) on the steps that must be completed before the Distribution calculations and Distribution of funds can take place;
- (f) “Update on Investor Claim Notices & Accrued Interest Calculations” dated February 17, 2021, a copy of which is attached as **Appendix “Q”**, to advise Investors of the method in which the Distribution Agent calculated the “Accrued Interest” amount contained in the Investor Claim Notices;
- (g) “Update on Motion for Approval of Initial Distribution” dated February 24, 2021, a copy of which is attached as **Appendix “R”**, to advise the Investors that Representative Counsel intends to seek an Order approving the Initial Distribution, among other things, on March 17, 2021; and
- (h) “Update on Delivery of Investor Claim Notices” dated March 1, 2021, a copy of which is attached as **Appendix “S”**, to advise Investors that all Investor Claim

Notices were mailed out to Investors as of that date, and to remind all Investors of the objection procedure.

C. Discharge of Information Officer

60. Alvarez & Marsal Canada Inc. (“**A&M**”) was appointed as Information Officer (in such capacity, the “**Information Officer**”) pursuant to the Order of Justice Hainey dated September 17, 2020 (the “**IO Order**”). A copy of the IO Order is attached hereto as **Appendix “T”**.

61. To transfer to the role as Distribution Agent, it was appropriate for A&M to first be discharged by the Court from its role as Information Officer. Attached hereto as **Appendix “U”** are copies of the Order and Endorsement of Justice Hainey dated December 21, 2020 discharging A&M as Information Officer.

VIII. CONCLUSION

62. Representative Counsel has prepared this Seventh Report in support of the relief sought in its Notice of Motion returnable March 17, 2021, including an Order substantially in the form attached as Schedule “A” thereto, among other things:

- (a) approving the activities and conduct of Representative Counsel as disclosed in the Seventh Report;
- (b) authorizing and directing Representative Counsel to distribute the Initial Distribution Amount to the Investors and the Opt Out Investors in accordance with the Revised Claim Index and the Distribution Plan;
- (c) authorizing and directing Representative Counsel to pay the aggregate amount of the Initial Distribution Amount payable to Registered Investors directly to CTC;

- (d) authorizing the Distribution Agent to open the Distribution Trust Account;
- (e) authorizing and directing Representative Counsel to transfer the Initial Distribution (after the payment contemplated in subparagraph (c) above) to the Distribution Trust Account;
- (f) authorizing and directing the Distribution Agent to distribute amounts in the Distribution Trust Account to the Non-Registered Investors, on a *pro rata* basis based upon the Revised Claim Index;
- (g) declaring that the amount payable to each Investor, and his or her classification as such, shall be determined as of November 16, 2020;
- (h) authorizing Representative Counsel to establish the General Reserve and the Objection Reserve; and
- (i) sealing the Revised Claim Index.

All of which is respectfully submitted at Toronto, Ontario this 10th day of March, 2021.



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

ONTARIO
SUPERIOR COURT OF JUSTICE –
(COMMERCIAL LIST)

Proceeding commenced at Toronto

SEVENTH REPORT OF REPRESENTATIVE
COUNSEL
(March 10, 2021)

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Court-appointed Representative Counsel

APPENDIX J

July 4, 2019

Important Update on Proposed Transaction

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 (“**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.

Representative Counsel writes this update further to our communication dated June 20, 2019 entitled “Update on Status of Proceeding” (the “**Last Update**”), a copy of which is posted on the ‘Communications’ section of the Website, and to provide Investors with the following status update on this proceeding.

Proposed Transaction and Joint Venture Agreement

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

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

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

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

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

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

Next Steps

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

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

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

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

Yours Truly,

Miller Thomson LLP,
solely in its capacity as
Representative Counsel

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

Proceeding commenced at Toronto

**EIGHTH REPORT OF REPRESENTATIVE
COUNSEL
(March 12, 2021)**

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