

**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.**

**SUPPLEMENTARY AFFIDAVIT OF NOOR AL-AWQATI  
(SWORN APRIL 3, 2019)**

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

1. I am the Chief Operating Officer of the Applicant, Hi-Rise Capital Ltd. ("**Hi-Rise**"). I am also a licensed mortgage broker and the principal broker of Hi-Rise. As such, I have knowledge of the matters to which I hereinafter depose.
2. I make this affidavit to supplement my affidavit sworn March 19, 2019 ("**First Affidavit**"). All capitalized terms used herein have the same meaning ascribed to them in the First Affidavit.
3. In the First Affidavit, I attached as Exhibits "H" and "I" two prescribed Disclosure Statements about the Syndicated Mortgage. As indicated in paragraph 9 of my First Affidavit, I did not include the appendices accompanying each Exhibit (the "**Appendices**") because they were lengthy and did not contain information that was germane to the purpose for which the Exhibits were included in the First Affidavit.

4. I am advised by my counsel that on March 25, 2019, counsel for the Superintendent of Financial Services (the "**Superintendent**"), asked to review these Appendices and he was provided with the Appendices that same day. I understand that the Superintendent has attached the Appendices for Exhibits "H" and "I" to my First Affidavit as Exhibits "A" and "B", respectively, to the affidavit contained in the Superintendent's Responding Record. I have no objection to the Superintendent putting those documents into the record.

5. I am further advised by my counsel that the Superintendent has made the following statements in its responding factum:

(a) "[The Appendices] reveal that Hi-Rise was receiving mortgage administration and marketing fees totalling 10.5% of the principal outstanding plus commissions of 14% of the amounts invested" (para. 10);  
and

(b) "Applying the percentages in paragraph 10 above to the principal amount owing to the SMIs, one can extrapolate that Hi-Rise received fees of 24.5% of \$52,242,500 or \$12,799,412..." (para 12).

6. The Superintendent's statements are not correct, especially because they are simply assumptions made by the Superintendent based on the Superintendent's reading of the sample disclosure statement information included in the Responding Record of the Superintendent.

7. In particular, Hi-Rise has not received fees of 24.5% in respect of the Adelaide Project. In fact, Hi-Rise has not received any fees in respect of the Adelaide Project (or in respect of the remaining syndicated mortgage that it continues to administer) since approximately September of 2017.

8. Prior to September of 2017, Hi-Rise collected commission totalling 14% of each investment, of which Hi-Rise retained 2-4 percentage points with the remaining 10-12 percentage points being paid to third parties who provided referral services in respect of investments made in the Syndicated Mortgage. Hi-Rise also collected a marketing fee of 2% of each investment.

9. Hi-Rise is also entitled to annually collect 18% of the principal outstanding on each investment, of which 10 percentage points are to be paid to investors as interest and Hi-Rise is entitled to receive the other 8 percentage points.

10. However, this is not how matters actually operated on the Adelaide Project. In general terms, investors received their 10% interest up to approximately 2017. With respect to the additional 8 percentage point amount referred to in the disclosure documents, Hi-Rise collected only a small fraction of this amount. Aside from this, Hi-Rise has only collected 0.5 percentage points as an annual mortgage administration fee.

11. As my initial affidavit indicated, the Adelaide Project experienced delays that resulted from external factors such as zoning. During these periods of delay, both the Borrower and Hi-Rise continued to incur expenses associated with the project. For example, the Borrower had to pay ongoing development costs such as consultants and others involved in zoning. Hi-Rise had to cover its own operating expenses, including the

cost of updating investors and overseeing the syndicated mortgage. However, given that Hi-Rise stopped accepting investor money in 2017, Hi-Rise has no funds of its own to cover the expenses associated with this *Trustee Act* application or the completion of a settlement of claims against the Adelaide Project.

12. Further, since the Borrower has not had access to further syndicated mortgage funds since 2017, it has had to cover project-related expenses by obtaining emergency loans from one or more of Jim Neilas's companies, which loans now total over \$2,890,000 and none of which have been repaid. The Borrower also has also failed to pay Neilas Inc. for development services that it provided to the Adelaide Project over these last few years and Neilas Inc. is now owed approximately \$1,790,000 in unpaid development fees.

13. On top of this, Neilas Inc. has provided funding to Hi-Rise of approximately \$1,460,000 to allow Hi-Rise to continue its operations.

14. Hi-Rise does not have funds available to pay the fees of Cassels Brock & Blackwell LLP in the absence of a Charge being granted as described in the Notice of Application.

15. The factum filed by the Superintendent suggests that recourse to the *Companies' Creditors Arrangement Act* ("CCAA") should be had in respect of the Adelaide Project. However, the CCAA is a statute that only debtors can avail themselves of. Hi-Rise has no power to compel the Borrower to seek protection under the CCAA and, in fact, the Borrower has refused to do so.

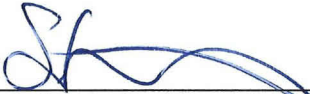
16. Hi-Rise also cannot avail itself of creditors' remedies. For example, there is a Standstill Agreement and Postponement (the "**Standstill**") in effect between Hi-Rise (on

behalf of the investors) and Meridian Credit Union Limited (“**Meridian**”) that prevents Hi-Rise from enforcing its security before the Meridian mortgage is paid in full. Therefore, Hi-Rise cannot issue a Notice of Sale or seek the appointment of a receiver over the assets of the Borrower.

17. But, more importantly, any proceeding under insolvency legislation is almost certain to create a distress situation that will likely lead to materially lower recoveries for investors.

18. A copy of the instrument reflecting the registration on title of the Standstill, including the Standstill as a schedule, is attached as **Exhibit “A”**.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario on April 3, 2019



Commissioner for Taking Affidavits  
(or as may be)

STEPHANIE VOUDOURIS



NOOR AL-AWQATI

This is Exhibit "A" referred to in the Affidavit of Noor Al-Awqati sworn April 3, 2019



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*Commissioner for Taking Affidavits (or as may be)*

STEPHANIE VOUKOURIS

**Properties**

*PIN* 21411 - 0294 LT  
*Description* PART BLK B PLAN 216-E PARTS 1 & 2 PLAN 66R29363; SUBJECT TO AN EASEMENT  
OVER PART 2 PLAN 66R29363 AS IN ES61538; TOGETHER WITH AN EASEMENT  
OVER PART 3 PLAN 66R29363 AS IN ES61223; CITY OF TORONTO  
*Address* TORONTO

**Source Instruments**

<i>Registration No.</i>	<i>Date</i>	<i>Type of Instrument</i>
AT3522463	2014 02 18	Charge/Mortgage
AT4664798	2017 08 25	Transfer Of Charge

**Party From(s)**

*Name* HI-RISE CAPITAL LTD.  
*Address for Service* 200 Adelaide Street West, Suite  
401  
Toronto, ON M5H 1W7  
I, Michael Kraft, CEO, have the authority to bind the corporation.  
This document is not authorized under Power of Attorney by this party.

*Name* COMMUNITY TRUST COMPANY  
*Address for Service* 2350 Matheson Blvd. East  
Mississauga,  
ON L4W 5G9  
I, Jacqueline Taylor, AVP, Operations, Investments Services and I, Michael E. Favelyukis, VP and CFO, have the authority to bind the corporation.  
This document is not authorized under Power of Attorney by this party.

**Party To(s)***Capacity**Share*

*Name* MERIDIAN CREDIT UNION LIMITED  
*Address for Service* 75 Corporate Park Drive  
St. Catharines, ON L2S 3W3

**Statements**

The applicant postpones the rights under the selected instrument to the rights under an instrument registered as number AT4862974 registered on 2018/05/14

Schedule: See Schedules

This document relates to registration number(s) AT3522463, AT3522464, AT3586925, AT3946856, AT4420428, AT4420442, AT4505545, AT4505546, AT4529978, AT4529979, AT4572550, AT4572551, AT4627861, AT4627862, AT4664798 and AT4664799

**Signed By**

Karen Kar Yan Ng Box 48 Suite 5300, TD Bank Tower acting for Signed 2018 05 14  
Toronto Party From(s)  
M5K 1E6

Tel 416-362-1812

Fax 416-868-0673

I have the authority to sign and register the document on behalf of the Party From(s).

**Submitted By**

MCCARTHY TETRAULT LLP Box 48 Suite 5300, TD Bank Tower 2018 05 14  
Toronto  
M5K 1E6

Tel 416-362-1812

Fax 416-868-0673

**Fees/Taxes/Payment**

<i>Statutory Registration Fee</i>	\$63.65
<i>Total Paid</i>	\$63.65

LRO # 80 Postponement Of Interest

Registered as AT4863246 on 2018 05 14 at 15:43

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 2 of 13

**File Number**

Party To Client File Number :

4108456 SIP/MK



**SCHEDULE 61:**

The applicant postpones the rights under the selected instrument to the rights under Instrument No. AT4862975.

The applicant also postpones the rights under AT4664799 to the rights under Instrument No. AT4862974 and Instrument No. AT4862975.

The applicant further postpones the rights under each of Instrument Nos. AT3586925, AT3946856, AT4420428, AT4420442, AT4505545, AT4505546, AT4529978, AT4529979, AT4572550, AT4572551, AT4627861, AT4627862 and AT4664799 to the rights under each of Instrument Nos. AT4862974 and AT4862975.

PRIORITY AND STANDSTILL AGREEMENT

THIS AGREEMENT is made as of the 14<sup>th</sup> day of May, 2018.

A M O N G:

MERIDIAN CREDIT UNION LIMITED

(hereinafter referred to as the "Primary Lender")

- and -

HI-RISE CAPITAL LTD. and  
COMMUNITY TRUST COMPANY

(hereinafter referred to as the "Subordinated Lender")

- and -

ADELAIDE STREET LOFTS INC.

(hereinafter referred to as "Borrower")

WHEREAS:

A. Pursuant to a commitment letter dated April 2, 2018 between the Borrower and the Primary Lender (as amended, restated, supplemented, extended, or replaced from time to time, hereinafter referred to as the "Commitment") the Primary Lender agreed to provide to the Borrower a first mortgage loan in the principal amount of Canadian \$16,414,000.00 (which principal amount together with interest thereon and other amounts as more particularly described in the Commitment and the Primary Lender Security (as defined below), including, without limitation, yield maintenance, all costs, fees, disbursements or monies expended by the Primary Lender pursuant to or secured by the Primary Lender Security as well as monies expended by the Primary Lender for the purpose of enforcement or protection of the Primary Lender Security is, collectively, hereafter referred to as the "Primary Lender Indebtedness");

B. The Borrower, in consideration of the loan made available to the Borrower by the Primary Lender, has granted to the Primary Lender the security described in Schedule "A" hereto (which security as amended, restated, supplemented, extended or replaced from time to time together with such further security granted by the Borrower in favour of the Primary Lender as security for the Primary Lender Indebtedness is hereafter collectively referred to as the "Primary Lender Security") upon and in respect of the assets described in such security, including and together with all assets of the Borrower now and or hereafter acquired (collectively, all of the foregoing being the "Collateral");

C. The Borrower is indebted to the Subordinated Lender in a principal amount not to exceed Canadian \$60,000,000.00 (which principal amount together with interest thereon and other amounts now or hereafter owing including, without limitation, all costs, fees, disbursements or monies expended by the Subordinated Lender pursuant to or secured by the Subordinated Security (as hereafter defined) including as well monies expended by the Subordinated Lender for the purpose of

enforcement or protection of his security is collectively, hereinafter referred to as the "Subordinated Indebtedness");

D. The Borrower, in consideration of the loan made available to it by the Subordinated Lender, granted to the Subordinated Lender, the security described in Schedule "B" hereto (which security as amended, restated, supplemented, extended or replaced from time to time together with such further security granted by the Borrower in favour of the Subordinated Lender as security for the Subordinated Indebtedness is hereafter collectively, the "Subordinated Security").

E. The Subordinated Lender has agreed to subordinate and postpone the Subordinated Indebtedness and the Subordinated Security to and in favour of and grant priority to the Primary Lender Indebtedness and the Primary Lender Security, subject to and in accordance with the terms of this Agreement; and

F. The Primary Lender and the Subordinated Lender have agreed to enter into this agreement for the purposes of establishing their respective rights.

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties, each of the parties hereby covenants, agrees and declares as follows:

#### ARTICLE 1

#### **ACKNOWLEDGMENT, REPRESENTATIONS AND WARRANTIES**

##### Section 1.1

Each of the parties hereby acknowledges, represents and warrants that the foregoing recitals pertaining to them respectively are true and correct, both in substance and in fact.

##### Section 1.2

The Subordinated Lender hereby acknowledges, represents and warrants that it has full right, power and authority to execute this Agreement. The Subordinated Lender further acknowledges, represents and warrants that the principal amount of indebtedness secured by the Subordinated Security as of the date of this Agreement does not exceed Canadian \$60,000,000.00 and the Subordinated Security is in full force and effect, in good standing and has not been assigned or amended (and if assigned, the Subordinated Lender will assign subject only to the terms of this Agreement and the assignee will enter into a written agreement acknowledging the same and agreeing to be bound by the terms hereof).

##### Section 1.3

The Borrower and the Subordinated Lender further represent and warrant that the Borrower has not made any payments of principal or interest in connection with the Subordinated Indebtedness in contravention of Section 5.1 hereof.

#### ARTICLE 2

#### **SUBORDINATED LENDER'S POSTPONEMENT**

##### Section 2.1

The Subordinated Lender hereby subordinates, postpones and grants priority to and in favour of the Primary Lender in accordance with the terms of this Agreement in respect of all of its right, title and interest in and to the Collateral, whether now or hereinafter acquired, existing under and by virtue of

the Subordinated Security to and in favour of all of the right, title and interest of the Primary Lender in and to the Collateral now or hereafter existing under and by virtue of the Primary Lender Security to the extent of the Primary Lender Indebtedness with the intent that with respect to the Collateral, notwithstanding any priority to which the Subordinated Lender may be or may hereafter become entitled for any reason whatsoever (including, without limitation, priority by date and the time or order of creating, granting or executing any document, the perfection, or the giving of notice under any demand for payment, the date of advance, registration, publication, filing or crystallization of any charge or encumbrance contained in the Subordinated Security and the security interests created thereby or by the provisions of any relevant law or statute or any issues relating to the enforceability of the Primary Lender Security), the Primary Lender Security and all rights provided thereunder or by law or otherwise shall have full and absolute priority over and with respect to the Subordinated Security, and the Subordinated Security shall, with respect to the Collateral, whether now or hereinafter acquired, in all respects, be subordinated, postponed and rank junior to the Primary Lender Security and all rights provided thereunder or by law or otherwise until the parties hereto agree otherwise in writing.

ARTICLE 3  
CONSENT

Section 3.1

The Subordinated Lender hereby consents to the granting of the Primary Lender Security by the Borrower to the Primary Lender.

ARTICLE 4  
ACKNOWLEDGMENT

Section 4.1

The Borrower agrees to be bound by the provisions of this Agreement.

ARTICLE 5  
PAYMENT TO SUBORDINATED LENDER AND TRUST FUNDS

Section 5.1

From and after the date hereof and until repayment of the Primary Lender Indebtedness in full:

- (a) The Borrower shall not make any payments of principal or of interest pursuant to or in connection with the Subordinated Indebtedness or the Subordinated Security or any other amount owing by the Borrower to the Subordinated Lender, all of which are postponed to repayment of the Primary Lender Indebtedness in full; and
- (b) the Subordinated Security shall not be amended or assigned unless the assignee provides the documentation contemplated by Section 1.2 hereof..

Section 5.2

Should any payment, proceeds or monies be received by the Subordinated Lender on or with respect to the Subordinated Indebtedness in contravention of the provisions of this Agreement, the Subordinated Lender shall deliver such payment, proceeds, or monies to the Primary Lender in the form received and until delivered the same shall be held in trust by the Subordinated Lender for the Primary Lender.

ARTICLE 6  
LIMITED REMEDIES OF THE SUBORDINATED LENDER

Section 6.1

The Subordinated Lender shall not be entitled and hereby agrees not to exercise or take any steps to exercise any of its remedies and/or recourses against or in respect of the Collateral or any part thereof under the Subordinated Security or otherwise until such time as the Primary Lender Indebtedness is repaid in full, nor will the Subordinated Lender take any steps to impair the priority of the Primary Lender Security or directly or indirectly act in any way, allege or make any claims prejudicial or adverse to the security interests of the Primary Lender arising pursuant to the Primary Lender Security.

ARTICLE 7  
FURTHER ASSURANCES

Section 7.1

The Primary Lender, the Subordinated Lender and the Borrower hereby agree, at the cost of the Borrower, to execute and deliver all such further documents, confirmations, postponements and acknowledgements as may reasonably be requested by any party hereto from time to time in order to give effect to the terms of this Agreement including, without limitation, such registrations or filings as the Primary Lender may require to reflect the agreements contained herein. Notwithstanding the delivery for registration or filing of specific postponements or subordinations, this Agreement shall govern the priority between the Primary Lender, the Borrower and the Subordinated Lender and shall be paramount in that regard.

ARTICLE 8  
ADVANCES

Section 8.1

The Subordinated Lender hereby acknowledges that all advances by the Primary Lender to the Borrower constituting the Primary Lender Indebtedness from time to time shall have full priority over the interests of the Subordinated Lender and the Subordinated Security, which Subordinated Security is hereby postponed to all future advances, and the Primary Lender Security shall constitute a security, encumbrance and charge upon the Collateral in priority to the Subordinated Security. The Subordinated Lender hereby agrees to a subordination of the priority of the Subordinated Security to the Primary Lender Security up to the amount of the Primary Lender Indebtedness at any time and from time to time, and as aforesaid to the same effect as if the Primary Lender Indebtedness and such other amounts aforesaid was secured and/or advanced prior to the advance of any monies secured by the Subordinated Security and the Subordinated Lender expressly agrees to execute any instruments giving effect to such subordination as may be required for such purpose.

ARTICLE 9  
AGREEMENT

Section 9.1

The Subordinated Lender agrees that it will not, and will not allow any person to, take any steps to impair the Primary Lender Security or the priority thereof provided for in this Agreement.

ARTICLE 10  
NOTICE

Section 10.1

Any demand, notice or communication to be made or given hereunder shall be in writing, except as expressly provided otherwise, and may be made or given by personal delivery or by transmittal by telecopy addressed to the respective parties as follows:

- (a) to the Primary Lender:

Meridian Credit Union Limited  
75 Corporate Park Drive  
St. Catharines, ON L2S 3W3  
Fax No.: (905) 988-4006

- (b) to the Subordinated Lender:

Hi-Rise Capital Ltd.  
200 Adelaide Street West, Suite 401  
Toronto, ON M5H 1W7

Attention:  
Fax No.:

And:

Community Trust Company  
2350 Matheson Boulevard East  
Mississauga, ON L4W 5G9

Attention:  
Fax No.:

- (c) to the Borrower:


Adelaide Street Lofts Inc.  
263 Adelaide Street West, Suite 503  
Toronto, ON M5H 1W7

Attention: Dimitrios (Jim) Neilas  
Fax No.:

or to such other addresses or telecopy number as any party may from time to time notify the others in accordance with this Article 10. Any demand, notice or communication made or given by personal delivery shall be conclusively deemed to have been made or given on the day of actual delivery thereof, or, if made or given by telecopy, on the first business day (being a day other than Saturday,

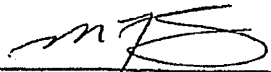


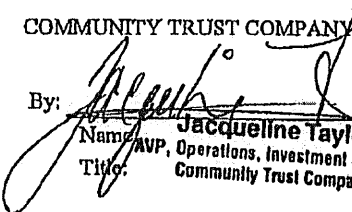
HI-RISE CAPITAL LTD

By:   
Name: Michael Kraft  
Title: C.E.O.

I/We have authority to bind the corporation

COMMUNITY TRUST COMPANY

  
NAME: Michael E. Favelyukis  
TITLE: Vice-President and CFO  
Community Trust Company

By:   
Name: Jacqueline Taylor  
Title: AVP, Operations, Investment Services  
Community Trust Company

I/We have authority to bind the corporation

ADELAIDE STREET LOFTS INC.

By: \_\_\_\_\_  
Name: Dimitrios (Jim) Neilas  
Title: President / Secretary

By: \_\_\_\_\_  
Name: Ioannis Neilas  
Title: Authorized Signing Officer

We have authority to bind the corporation.



HI-RISE CAPITAL LTD

By: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the corporation

COMMUNITY TRUST COMPANY

By: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the corporation

ADELAIDE STREET LOFTS INC.

By: \_\_\_\_\_  
Name: ~~Dimitrios (Jim) Neilas~~  
Title: ~~President / Secretary~~

By: \_\_\_\_\_

Name: Ioannis Neilas

Title: Authorized Signing Officer

We have authority to bind the corporation.

**SCHEDULE "A"**

**THE PRIMARY LENDER SECURITY**

1. First ranking charge on the lands and premises municipally known as 263 Adelaide Street West, Toronto, Ontario currently bearing PIN 21411-0294(LT) (the "Property");
2. First ranking General Assignment of Rents and Income from the Property;
3. A first in priority general security agreement charging all of the Borrower's present and after-acquired personal property situate on, relating to, arising from or used or acquired in connection with the Property;
4. First ranking Financing Statement filed under the Personal Property security Act as File Number 728577548 being Registration Number 20180424 1354 1862 1257

## SCHEDULE "B"

### SUBORDINATED SECURITY

1. Second ranking charge registered February 18, 2014 as Instrument No. AT3522463 on the lands and premises municipally known as 263 Adelaide Street West, Toronto, Ontario currently bearing PIN 21411-0294(LT) (the "Property");
2. Second ranking General Assignment of Rents and Income from the Property registered February 18, 2014 as Instrument No. AT3522464;
3. A second in priority general security agreement charging all of the Borrower's present and after-acquired personal property situate on, relating to, arising from or used or acquired in connection A first in priority general security agreement charging all of the Borrower's present and after-acquired personal property situate on, relating to, arising from or used or acquired in connection with the Property;
4. A Notice of Agreement Amending Charge registered July 15, 2017 as Instrument No. AT39468561
5. Financing Statement filed under the Personal Property Security Act as File Number 693816777 being Registration Number 20140214 1548 1862 5597
6. Financing Statement filed under the Personal Property Security Act as File Number 693816786 being Registration Number 20140214 1548 1862 5598

HI-RISE CAPITAL LTD.  
Applicant

SUPERINTENDENT OF FINANCIAL SERVICES et. al.  
Respondents

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

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

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**SUPPLEMENTARY AFFIDAVIT OF NOOR AL-AWQATI**

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**Cassels Brock & Blackwell LLP**  
2100 Scotia Plaza  
40 King Street West  
Toronto, ON M5H 3C2

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svoudouris@casselsbrock.com

Lawyers for the Applicant, Hi-Rise Capital Ltd.