

August 30, 2019

Important Update on Proposed Transaction and Proposed Vote

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

Pursuant to the Order of the Honourable Mr. Justice 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.

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

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

Please be advised that:

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

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

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

Yours Truly,

Miller Thomson LLP,
solely in its capacity as
Representative Counsel



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August 29, 2019

Sent via E-mail

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Attention: John Birch

Dear Counsel:

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

And Re: Final Settlement Offer from Borrower

As you know, Miller Thomson LLP was appointed as Representative Counsel pursuant to the Order of Justice Hainey dated March 21, 2019 to represent all individuals and/or entities ("**Investors**") that hold an interest in a syndicated mortgage administered by Hi-Rise Capital Ltd. ("**Hi-Rise**") in respect of the Property owned by Adelaide Street Lofts Inc. ("**Adelaide**").

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

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

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

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

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

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



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

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

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

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

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



We trust that the foregoing is sufficiently clear.

Yours truly,

MILLER THOMSON LLP

Per:

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