

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

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TUESDAY, THE 17TH

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JUSTICE HAINEY

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DAY OF SEPTEMBER, 2019

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



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

ORDER

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

ON HEARING the submissions of Representative Counsel, Hi-Rise, the Company, the Financial Services Regulatory Authority of Ontario (“**FSRA**”), Meridian Credit Union Limited

(“**Meridian**”) and such other counsel as appeared, and on being advised of the consent of the parties,

APPOINTMENT

1. **THIS COURT ORDERS** that Alvarez & Marsal Canada Inc. is hereby appointed as a Court officer to act as an information officer in respect of Hi-Rise and the Property (in such capacity, the “**Information Officer**”).

2. **THIS COURT ORDERS** that the Information Officer shall not take possession of or exercise control over, and shall not be deemed to have taken possession of or exercise control over the business or assets of Hi-Rise or the Company, including, without limitation, the Property.

NO EFFECT ON RIGHTS AND REMEDIES OF MERIDIAN

3. **THIS COURT ORDERS** that nothing in this Order in any way affects Meridian’s ability to exercise any or all of its rights or remedies under any one or more of any credit agreement, security agreement or other document between Meridian and the Company or any other party named in such documents, including the right to the appointment of a receiver under the *Bankruptcy and Insolvency Act*, the *Courts of Justice Act* or otherwise, and the right to apply to the Court for any other remedies.

INFORMATION OFFICER’S POWERS

4. **THIS COURT ORDERS** that the Information Officer is hereby empowered and authorized to do any of the following where the Information Officer considers it necessary or desirable:

- (a) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis to assist with the exercise of the Information Officer's powers and duties conferred by this Order;
- (b) to review and report to the Court and to all stakeholders, including but not limited to the Representative Counsel, Hi-Rise, the Company, FSRA and Meridian, in

respect of all matters relating to the Property, Hi-Rise's mortgage over the Property, and the Company's proposed sale of the Property, including, but not limited to, the marketing and sales process undertaken in respect of the Property, all aspects of any and all proposed transactions in respect of the Property (and in this regard, the Information Officer may engage in discussions with Tricon Lifestyle Rentals Investment LP to ascertain its interest in the Property), and the financial implications of such proposed transactions (the "Mandate");

- (c) to meet with and discuss with such affected Persons (as defined below) as the Information Officer deems appropriate on all matters relating to the Mandate, subject to such confidentiality terms as the Information Officer deems advisable; and
- (d) to take any steps reasonably incidental to the exercise of these powers or the fulfilment of the Mandate.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE INFORMATION OFFICER

5. **THIS COURT ORDERS** that (i) the Company and Hi-Rise, (ii) all of their current and former directors, officers, employees, agents, advisors, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms or corporations (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Information Officer of the existence of any information the Information Officer considers that it requires in order to fulfil the Mandate that is within such Person's possession or control, shall grant immediate and continued access to such information to the Information Officer, and shall deliver all such information to the Information Officer upon the Information Officer's request, provided that nothing contained in this paragraph 5 shall oblige any Person to disclose information that is subject to any privilege (including but not limited to solicitor-client privilege, litigation privilege, settlement privilege, or any common law or statutory privilege prohibiting such disclosure).

6. **THIS COURT ORDERS** that all Persons shall forthwith advise the Information Officer of the existence of any books, documents, securities, contracts, orders, corporate and accounting

records, and any other papers, records and information of any kind that the Information Officer considers that it requires in order to fulfil the Mandate, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the “**Records**”), including but not limited to Records in respect of any and all proposed transactions in respect of the Property, in that Person's possession or control, and shall provide to the Information Officer or permit the Information Officer to make, retain and take away copies thereof and grant to the Information Officer unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 6 or in paragraph 7 of this Order shall require the delivery of Records, or the granting of access to Records, that are subject to any privilege (including but not limited to solicitor-client privilege, litigation privilege, settlement privilege, or any common law or statutory privilege prohibiting such disclosure).

7. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Information Officer for the purpose of allowing the Information Officer to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Information Officer in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Information Officer. Further, for the purposes of this paragraph, all Persons shall provide the Information Officer with all such assistance in gaining immediate access to the information in the Records as the Information Officer may in its discretion require including providing the Information Officer with instructions on the use of any computer or other system and providing the Information Officer with any and all access codes, account names and account numbers that may be required to gain access to the information.

DUTY TO FACILITATE INFORMATION DISCLOSURE

8. **THIS COURT ORDERS** that upon request by the Information Officer, the Company and/or Hi-Rise shall immediately provide consent or authorization for any Person to release and disclose Records to the Information Officer, which Records may be requested by the Information

Officer in connection with the Mandate, provided that nothing contained herein shall oblige any Person to disclose information that are subject to any privilege (including but not limited to solicitor-client privilege, litigation privilege, settlement privilege, or any common law or statutory privilege prohibiting such disclosure).

INFORMATION OFFICER'S REPORT

9. **THIS COURT ORDERS** that on or before October 7, 2019, the Information Officer shall file a report with the Court in respect of the Mandate, including in particular whether sufficient effort has been made to obtain the best price in respect of the Company's proposed sale of the Property, that the proposed sale is not improvident, and in respect of the efficacy and integrity of the process by which offers had been obtained, ~~and whether there has been unfairness in the working out of the process.~~



NO PROCEEDINGS AGAINST THE INFORMATION OFFICER

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

LIMITATION ON THE INFORMATION OFFICER'S LIABILITY

11. **THIS COURT ORDERS** that the Information Officer shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

RESETTING OF THE DATE OF THE INVESTORS' MEETING AND COMMUNICATION RESTRICTION

12. **THIS COURT ORDERS** that:

- (a) The meeting of Investors called by Hi-Rise for September 25, 2019 is adjourned to October 23, 2019 (the "**Adjournment**"), which date may be altered by further Order of this Court;
- (b) Hi-Rise and the Company, all of their directors, officers, employees, agents, advisors, accountants, legal counsel and shareholders, and all other

persons acting on its instructions or behalf, are hereby restricted from communicating with Investors, either directly or indirectly, without the consent of the Representative Counsel or Order of the Court, which restriction shall remain in effect until September 30, 2019 or such later date as may be imposed by further Order of the Court (the “**Restriction Expiry Date**”). Provided, however, that communication may be made to the Investors about the Adjournment, and such communication shall be subject to review and approval by Representative Counsel prior to being delivered to Investors, in accordance with paragraph 12(c), below;

- (c) All communications delivered by Hi-Rise or the Company to Investors, whether before the Restriction Expiry Date with the consent of Representative Counsel, or after the Restriction Expiry Date, shall be subject to review and approval of Representative Counsel prior to being delivered to Investors. Representative Counsel shall conduct its review and advise Hi-Rise or the Company of its position within 24 hours upon receipt of same, provided, however, that Representative Counsel shall only be entitled to object to the content of a proposed communication that is factually incorrect, and further, Representative Counsel acknowledges that Hi-Rise shall be permitted to express its opinion regarding the sales process and any proposed transaction and to recommend to Investors that they vote in favour or against any transaction or settlement;
- (d) In the event Representative Counsel asserts that part of any communication is factually incorrect, Hi-Rise or the Company shall not deliver said communication to Investors and, Hi-Rise, the Company or Representative Counsel shall be permitted to seek directions from the Court regarding the communication;
- (e) Hi-Rise and the Company are at liberty to communicate with syndicated mortgage investors in the OptArt Loft project at 54-60 Shepherd Road, Oakville (the “**Oakville Investors**”). Notwithstanding paragraph 12(c) of

this Order, communications to the Oakville Investors may refer to the Project and the Property even though some of the Oakville Investors are also Investors, provided that the Representative Counsel is provided with 24 hours to review the portion of any communication to Oakville Investors that references the Project or the Property. The Representative Counsel does not have the right to approve such communications, but is at liberty to seek directions from the Court if the Representative Counsel has any concerns about the proposed communication; and

- (f) Hi-Rise and the Company are restricted from negotiating any settlement or compromise with Investors on a private basis during the course of these proceedings.

PAYMENT OF FEES TO MERIDIAN

13. **THIS COURT ORDERS** that the Company shall pay an extension fee to Meridian in the amount of \$85,220.00.

ENCUMBRANCES IN RESPECT OF THE PROPERTY

14. **THIS COURT ORDERS** that subject to this Order, the Property shall not be further encumbered by any Person other than Meridian, pending further Order of this Court.

PIPEDA

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act* and any other applicable privacy legislation, the Information Officer may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable to fulfill its mandate pursuant to this Order.

INFORMATION OFFICER'S ACCOUNTS

16. **THIS COURT ORDERS** that the Information Officer and counsel to the Information Officer shall be paid by the Company their reasonable fees and disbursements, both before and after the making of this Order on a ~~bi-weekly~~ basis forthwith after delivery of the Information

monthly



Officer's accounts to the Company. Any disputes regarding the Information Officer's accounts shall be determined by the Court. For greater certainty, Representative Counsel shall not be liable for the fees and disbursements of the Information Officer or its counsel.

17. **THIS COURT ORDERS** that the Information Officer and counsel to the Information Officer shall be entitled to and are hereby granted a charge (the "**Information Officer Charge**") on the Property, as security for their fees and disbursements, both before and after the making of this Order, up to the maximum amount of \$100,000 or as may otherwise be ordered by this Court. The Information Officer Charge shall form a charge on the Property, subordinate in priority only to: (i) the Rep Counsel Charge (as defined in the Appointment Order and as may be increased by further Orders of this Court); and (ii) any encumbrances ranking in priority to the Rep Counsel Charge (including, without limitation, the mortgage in favour of Meridian), and, for greater certainty, the Information Officer Charge shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, including, without limitation, the Hi-Rise Mortgage (as defined in the Appointment Order), and shall not rank in priority to any security interests, trusts, liens, charges, statutory or otherwise, in favour of Meridian.

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

SERVICE AND NOTICE

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

Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission.

20. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Information Officer is at liberty to serve or distribute this Order, any materials and other orders in this proceeding, and any notices or other correspondence in this proceeding, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Company's creditors or other interested parties at their respective addresses as last shown on the records of the Company and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL


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

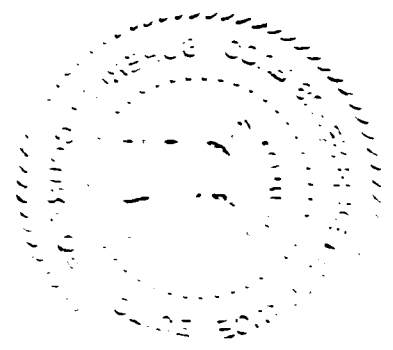
22. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Information Officer and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Information Officer, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Information Officer and its agents in carrying out the terms of this Order.

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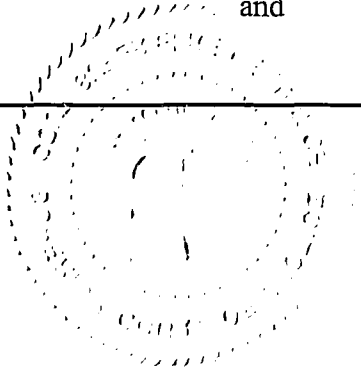
HI-RISE CAPITAL LTD.

Applicant

and

SUPERINTENDENT OF
FINANCIAL SERVICES et. al.
Respondents

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



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

Proceeding commenced at Toronto

ORDER

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