

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.**

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

October 18, 2019

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Court-appointed Information Officer

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF SECTION 60 OF THE TRUSTEE ACT, R.S.O. 1990, C. T.23, AS  
AMENDED, AND RULE 10 OF THE ONTARIO RULES OF CIVIL PROCEDURE,  
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**AND IN THE MATTER OF HI-RISE CAPITAL LTD. AND IN THE MATTER OF  
ADELAIDE STREET LOFTS INC.**

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

1. Pursuant to the Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 21, 2019 (the “**Appointment Order**”), Miller Thomson LLP was appointed as Representative Counsel (in such capacity, “**Representative Counsel**”) appointed pursuant to the Order of the Honourable Mr. Justice Hainey dated March 21, 2019 (the “**Appointment Order**”) to represent the interests of all individuals and/or entities (the “**Investors**”, which term does not include persons who have opted out of such representation in accordance with the Appointment Order) that have invested funds in a syndicated mortgage (the “**Syndicated Mortgage**”) administered by Hi-Rise Capital Ltd. (“**Hi-Rise**”) in respect of the proposed development known as the “**Adelaide Street Lofts**” (the “**Project**”) at the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the “**Property**”). A copy of the Appointment Order is attached as **Appendix “A”**.

2. Registered title to the Property is held by Adelaide Street Lofts Inc. (“**Adelaide**”) as nominee on behalf of the beneficial owner 263 Holdings Inc. (“**Holdings**”, and together with Adelaide, the “**Company**”), in connection with the negotiation and implementation of a settlement with respect to such investments.

## PURPOSE OF REPORT

3. On October 23, 2019, Hi-Rise intends to hold a meeting of Investors (the “**Meeting**”) in order to, among other things, allow the Investors to vote on a proposed settlement (the “**Proposed Settlement**”). If approved by Investors and sanctioned by the Court, the Proposed Settlement would allow the Company to move forward with a joint venture transaction (the “**Lanterra Transaction**”)<sup>1</sup> set out in a term sheet executed April 10, 2019 (the “**JV Agreement**”) with Lanterra Developments Limited (“**Lanterra**”) and result in the distributions contemplated in the Proposed Settlement.

4. Representative Counsel has filed this Third Report for the purpose of advising the Court and the Investors as to:

- (a) the recommendation of the Official Committee of Investors (the “**Official Committee**”) regarding the Proposed Settlement; and
- (b) Representative Counsel’s concerns with Hi-Rise’s proposal that Investors vote in a single class.

## ESTABLISHMENT OF OFFICIAL COMMITTEE

5. Pursuant to the Appointment Order, Representative Counsel was directed to establish an Official Committee in accordance with the process and procedure described in Schedule “B” attached to the Appointment Order. Pursuant to the Order of the Honourable Mr. Justice Hainey dated April 15, 2019, the Official Committee was approved and constituted (the “**Official Committee Approval Order**”, a copy of which is attached as **Appendix “B”**).

## APPOINTMENT OF INFORMATION OFFICER

6. Pursuant to the Order of the Honourable Mr. Justice Hainey dated September 17, 2019 (the “**IO Order**”), Alvarez & Marsal Canada Inc. was appointed as Information Officer (in such capacity, the “**Information Officer**”).

7. Pursuant to the IO Order, the Information Officer was authorized and empowered to, among other things, review and report to the Court and to all stakeholders, including but not limited to the Representative Counsel, Hi-Rise, the Company, the Financial Services Regulatory Authority of Ontario and Meridian Credit Union Limited, in respect of all matters relating to the Property, Hi-Rise's mortgage over the Property, and the Company's proposed sale of the Property, including, but not limited to, the marketing and sales process undertaken in respect of the Property, all aspects of any and all proposed transactions in respect of the Property (and in this regard, the Information Officer may engage in discussions with Tricon Lifestyle Rentals Investment LP to ascertain its interest in the Property), and the financial implications of such proposed transactions (the "**Mandate**").

8. In accordance with the IO Order, on October 7, 2019, the Information Officer delivered a report in respect of its Mandate (the "**IO Report**"). For ease of reference, a copy of the IO Report is attached hereto as **Appendix "C"** (without appendices).

9. Both Representative Counsel and the Official Committee accept the facts and conclusions set out in the IO Report, and are of the view that the Information Officer fulfilled its mandate.

#### **RECOMMENDATION OF THE OFFICIAL COMMITTEE**

10. The Official Committee does not support the Proposed Settlement and is unable to recommend that Investors approve it.

11. In reaching its conclusion, the Official Committee has relied upon the IO Report as well as certain clarifications made by the Information Officer directly to the Official Committee.<sup>2</sup> In particular, the Official Committee relies upon the following statements made by the Information Officer:

- (a) Although the design and implementation of the Sale Process was consistent with industry standards and was carried out by BMO in a thorough and professional

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<sup>1</sup> While Adelaide has refused to provide Investors with a copy of the JV Agreement, a copy was provided to the Information Officer for review and the IO Report contains a description of the relevant provisions. See IO Report at para 63.

<sup>2</sup> Paragraph 11 of this Third Report was reviewed by the Information Officer to confirm its accuracy.



manner, BMO's mandate was to maximize transaction value, not to maximize Investor recoveries. The Sale Process was not specifically designed with the goal to maximize the cash proceeds on closing but to maximize the consideration and ultimate proceeds thereof, even if portions of proceeds may be deferred until a later date.<sup>3</sup>

- (b) Significant components of the distributions to Non-Registered Investors (as defined below) contemplated under the Proposed Settlement are contingent insofar as they are dependent upon the ultimate success of the Lanterra Project.<sup>4</sup> Taking this into account, the Official Committee notes that there is a high degree of risk to Investors with respect to full payment of the unsecured debenture in the amount of \$15,000,000 should the project not be successful. Only \$2,000,000 of the debenture is personally guaranteed by Jim Neilas.<sup>5</sup>
- (c) The Non-Registered Investors will not receive any payment on closing of the Lanterra Transaction. Non-Registered Investors will not receive any payments until December 2021 or December 2022, depending upon when the vendor takeback mortgage is repaid. The balance of payments to Non-Registered Investors is not expected to occur until December 2025.<sup>6</sup>
- (d) If the Project is successfully completed, the Company's undiscounted potential net proceeds are projected to equal approximately \$22.8 million arising from the Company's continued interest (*ie*, its 25% share in the joint venture) in the Property (after accounting for the \$15 million debenture). The Official Committee believes this continued interest and amount of profit to the Company are unfair to Investors who will sustain a significant shortfall.<sup>7</sup> This also appears inconsistent

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<sup>3</sup> IO Report at paras 59-61, 109.

<sup>4</sup> IO Report at para 103(a).

<sup>5</sup> IO Report at para 73.

<sup>6</sup> IO Report at para 73. Note that Schedule "A" to the Updated Information Statement dated October 9, 2019 confirms the amount to be guaranteed by Mr. Neilas.

<sup>7</sup> IO Report at para 113.

with certain fundamental principles of insolvency law, including the *Bankruptcy and Insolvency Act* (Canada) (the “BIA”), which prohibits payments to equity holders in priority to payment in full of creditor claims.<sup>8</sup>

12. The Official Committee recognizes the considerable uncertainty with respect to the outcome of any alternative to implementation of the Proposed Settlement, including a receivership proceeding. As noted in the IO Report, the Information Officer does not believe that there is any reasonable prospect of a sale process generating sufficient funds to repay the Investors in full.<sup>9</sup> While there are indications that a superior result may be achievable through a new sale process (eg, the agreement of purchase and sale submitted by Tricon Lifestyle Rentals Investment LP),<sup>10</sup> it is also possible that a sale process would result in an inferior result than the Lanterra Transaction and Proposed Settlement.<sup>11</sup>

13. As such, there does appear to be some merit to the Proposed Settlement. Nevertheless, in light of the concerns referenced herein including at paragraph 11, the Official Committee is unable to support or recommend approval of the Proposed Settlement.

#### **CONCERNS WITH SINGLE INVESTOR CLASS**

14. Representative Counsel understands that all Investors will be included in a single class for the purpose of voting on the Proposed Settlement, and that approval will require Investors representing two-thirds in value and a majority in number to vote in favour of the Proposed Settlement.<sup>12</sup> These approval thresholds are consistent with those prescribed in the BIA.

15. As noted below, the structure of the Proposed Settlement is premised on Hi-Rise’s position that Investors who hold their beneficial interest in the Syndicated Mortgage through a

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<sup>8</sup> While Representative Counsel recognizes that this proceeding is not being conducted under the BIA, the adoption of certain provisions of the BIA by analogy (*ie*, the voting thresholds) makes the comparison appropriate.

<sup>9</sup> At para 105.

<sup>10</sup> IO Report at paras 87-88.

<sup>11</sup> IO Report at para 99-102. Note that the Official Committee does not accept the validity of the Potential Priority Costs set out in Note 1 of the chart at para 102.

<sup>12</sup> IO Report at para 73.

registered investment plan (the “**Registered Investors**”) rank in priority to Investors who hold their beneficial interest in the Syndicate Mortgage directly through Hi-Rise (the “**Non-Registered Investors**”) for principal, interest accrued to date and interest continuing to accrue. If Registered Investors do have priority over Non-Registered Investors then the Proposed Settlement will have vastly different outcomes for the two groups.

16. Consequently, Representative Counsel is of the view that it is inappropriate and unfair to Non-Registered Investors to be included in the same class as Registered Investors for the purpose of voting on the Proposed Settlement.

17. Representative Counsel recommends that Investors vote in two separate classes (*ie*, Registered Investors and Non-Registered Investors) for the purpose of voting on the Proposed Settlement, and that approval require that Investors representing two-thirds in value and a majority in number of each such class vote in favour of the Proposed Settlement.

## **CONCLUSION**

18. As noted above, the Official Committee does not recommend that Investors vote in favour of the Proposed Settlement.

19. Both Representative Counsel and the Official Committee acknowledge that Registered Investors will likely support it as it provides for a substantial portion of their claims to be paid on closing, based on the feedback received from Non-Registered Investors it appears there is little prospect of support among members of this group. Given the proportionate weight of the group of Non-Registered Investors, a lack of support among them will likely be fatal to the prospect of the Lanterra Transaction and the Proposed Settlement.

20. If Hi-Rise seeks to secure the support of Non-Registered Investors without abandoning the Lanterra Transaction, Representative Counsel recommends the following amendments to the Proposed Settlement:

- (a) Non-Registered Investors should receive a substantial portion (*eg*, 50%) of the \$15 million contemplated under the debenture at closing;

- (b) the amount of the \$15 million debenture guaranteed by Jim Neilas should be increased from \$2 million to \$5 million, and should be secured; and
- (c) a meaningful amount of the forecasted \$22.8 million net profit to the Company should be diverted to the Investors, possibly through a share of ownership in the joint venture or through a royalty arrangement.

21. While these amendments will not guarantee the support of the Official Committee or individual Non-Registered Investors, in the opinion of Representative Counsel and the Official Committee they would collectively constitute a display of goodwill toward the Investors and would address certain of the most common objections to the Proposed Settlement in its current incarnation.

All of which is respectfully submitted at Toronto, Ontario this 18<sup>th</sup> day of October, 2019.



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

# APPENDIX A

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

THE HONOURABLE

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THURSDAY, THE 21st

MR. JUSTICE HAINEY

DAY OF MARCH, 2019

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



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

**ORDER**

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

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

**SERVICE**

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

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

**APPOINTMENT OF REPRESENTATIVE COUNSEL**

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

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

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

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

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

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

#### **TERMINATION OF EXISTING ADVISORY COMMITTEE**

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

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

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

#### **APPOINTMENT OF OFFICIAL COMMITTEE**

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



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

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

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

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

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

#### **INVESTOR INFORMATION**

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

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

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


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

**FEES OF COUNSEL**

*which amount shall exclude disbursements incurred by Representative Counsel*

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

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

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

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

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

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

#### **GENERAL**

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

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

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

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

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

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

- Attention: Gregory Azeff & Stephanie De Caria

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

**POWERS OF HI-RISE CAPITAL LTD.**

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

**INVESTOR AND COURT APPROVAL**

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

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

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

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

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

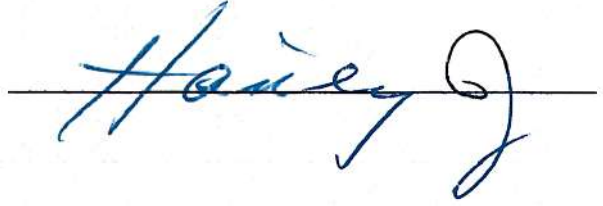
31. **THIS COURT ORDERS** that if at the Meeting a majority in number of the investors representing two-thirds in value present and voting either in person or by proxy cast votes in favour of the proposed Transaction and Distribution, Hi-Rise may proceed to bring a motion to this court, on a date to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

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

#### **NOTICE TO INVESTORS**

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

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

A handwritten signature in blue ink, appearing to read "Haley", is written over a solid horizontal black line. The signature is cursive and extends slightly above and below the line.

**Schedule "A"**  
**OPT-OUT NOTICE**

**Miller Thomson LLP, in its capacity as  
Representative Counsel**  
Scotia Plaza  
40 King Street West, Suite 5800  
P.O. Box 1011  
Toronto, Ontario M5H 3S1

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

Attention: Stephanie De Caria

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

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

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

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

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

\_\_\_\_\_

Date

\_\_\_\_\_

Signature

\_\_\_\_\_

Date

\_\_\_\_\_

Signature

If the Investor is a corporation, please execute below:

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



## Schedule "B"

### Official Committee Establishment Process

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

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

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

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

#### Establishment of the Official Committee

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

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

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

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

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

- (a) all of the interviews will follow the same structure and will be approximately the same length (about half an hour); and
- (b) substantially similar questions will be posed to each interviewee.

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

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

## Schedule "C"

### Official Committee Protocol

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

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

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

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

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

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

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

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

HI-RISE CAPITAL LTD.  
Applicant

SUPERINTENDENT OF FINANCIAL SERVICES *et. al.*  
Respondents

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

**ORDER**

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svoudouris@casselsbrock.com

Lawyers for the Applicant, Hi-Rise Capital Ltd.

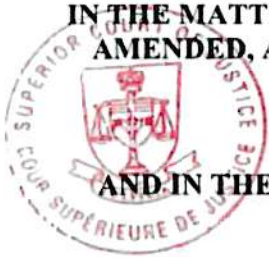
## APPENDIX B

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. )  
 )  
 )  
JUSTICE HAINEY ) MONDAY THE 15<sup>th</sup>  
 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.



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ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

APR 15 2019

PER / PAR: 

HI-RISE CAPITAL LTD.

Applicant

and

SUPERINTENDENT OF FINANCIAL  
SERVICES et. al.  
Respondents

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

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

Proceeding commenced at Toronto

**ORDER  
(April 15, 2019)**

**MILLER THOMSON LLP**

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

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**Stephanie De Caria LSO#: 68055L**

sdecaria@millerthomson.com

Tel: 416.595.2652/Fax: 416.595.8695

Court-appointed Representative Counsel

## APPENDIX C

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

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

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

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

**REPORT OF THE INFORMATION OFFICER**

**ALVAREZ & MARSAL CANADA INC.**

**October 7, 2019**

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### APPENDICES

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<b>Appendix B</b>	<b>Lanterra Project Proforma</b>
<b>Appendix C</b>	<b>Hi-Rise Notice of Meeting and Information Statement (September 6, 2019)</b>
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<b>Appendix E</b>	<b>Information Officer's Truncated Receivership Scenario</b>

## INTRODUCTION

1. On March 19, 2019, Hi-Rise Capital Ltd. (“**Hi-Rise**”) made an application (the “**Initial Application**”) under section 60 of the *Trustee Act*, R.S.O. 1990, c. T.23, as amended and Rule 10 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, and on March 21, 2019, an initial order (the “**Initial Order**”), was granted by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) which, among other things:
  - (a) appointed Miller Thomson LLP as representative counsel (“**Representative Counsel**”) to represent the interests of all individuals and/or entities (the “**Investors**”)<sup>1</sup> that have invested funds in a syndicated mortgage investment (the “**SMI**”) administered by Hi-Rise in respect of the proposed development located at 263 Adelaide Street West, Toronto, Ontario (the “**Property**”), whose registered title is held by Adelaide Street Lofts Inc. (“**Adelaide**”) as nominee on behalf of the beneficial owner 263 Holdings Inc. (“**Holdings**”, and together with Adelaide, the “**Company**”), in connection with the negotiation and implementation of a settlement with respect to such investments;
  - (b) permits Hi-Rise to conduct a meeting of all Investors, including opt-out investors, in order for the investors to consider and, if determined advisable, pass a resolution approving a settlement transaction that would discharge the SMI and result in the distribution of certain proceeds; and
  - (c) directed Representative Counsel to establish an Official Committee of Investors (the “**Official Committee**”).

---

<sup>1</sup> The Initial Order allows for certain investors in the SMI to opt out of representation by Representative Counsel. Throughout this Report, the term “Investors” refers to all individuals and/or entities that have invested funds in the SMI, whether or not they have opted-out of such representation.

2. On April 15, 2019, the Court granted an Order constituting the Official Committee.
3. Since its appointment, Representative Counsel has issued two reports dated April 9, 2019 (the “**First Report of Counsel**”) and September 13, 2019 (the “**Second Report of Counsel**”, and together, “**Representative Counsel’s Reports**”). Representative Counsel’s Reports and other Court-filed documents, orders and notices in these proceedings are available on Representative Counsel’s case website at: <https://www.millerthomson.com/en/hirise/>.
4. On September 17, 2019, this Court made an order (the “**Information Officer Appointment Order**”) which, among other things, appointed Alvarez & Marsal Canada Inc. as a Court officer to act as an information officer (the “**Information Officer**”) in respect of Hi-Rise and the Property. A copy of the Information Officer Appointment Order is attached as **Appendix “A”**.
5. The Information Officer Appointment Order, among other things, outlines the Information Officer’s role, including:
  - (a) Pursuant to paragraph 4(b), the Information Officer is empowered and authorized *“to review and report to the Court and to all stakeholders... in respect of matters relating to the Property, Hi-Rise’s mortgage over the Property, and the Company’s proposed sale of the Property, including but not limited to, the marketing and sales process undertaken in respect of the Property, all aspects of any and all proposed transactions in respect of the Property (and in this regard, the Information Officer may engage in discussions with Tricon Lifestyle Rentals Investment LP to ascertain its interest in the Property), and the financial implications of such proposed transaction (the “**Mandate**”)”*; and

- (b) Pursuant to paragraph 9, *“on or before October 7, 2019, the Information Officer shall file a report with the Court in respect of the Mandate, including in particular whether sufficient effort has been made to obtain the best price in respect of the Company's proposed sale of the Property, that the proposed sale is not improvident, and in respect of the efficacy and integrity of the process by which offers had been obtained.”*

#### **TERMS OF REFERENCE AND DISCLAIMER**

6. In preparing this report (the **“Report”**), the Information Officer has relied solely on the information and documents provided by Representative Counsel, Hi-Rise, its counsel Cassels Brock & Blackwell LLP (**“Cassels”**), and its financial advisor, Grant Thornton Limited (**“GT”**), the Company and its counsel McCarthy Tétrault LLP (**“McCarthy”**), the Company's real estate broker, Bank of Montreal Capital Markets Real Estate Inc. (**“BMO”**), and discussions held with parties who participated in the marketing and sale process (collectively, the **“Information”**).
7. The Information Officer has reviewed the Information for reasonableness, consistency and use in the context in which it was provided. However, the Information Officer has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (**“CASs”**) pursuant to the Chartered Professional Accountants Canada Handbook (the **“Handbook”**), and accordingly, the Information Officer expresses no opinion or other form of assurance contemplated under CASs in respect of the Information.



8. Some of the information referred to in this Report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the Handbook, has not been performed.
9. Future-oriented financial information referred to in this Report was prepared based on estimates and assumptions made by Hi-Rise, the Company or as otherwise indicated herein. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, and the variations could be significant.
10. This Report should be read in conjunction with the Initial Application, the Information Officer Appointment Order and Representative Counsel's Reports.
11. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

#### **PURPOSE OF REPORT**

12. The Information Officer understands that on October 23, 2019, pursuant to the Initial Order, Hi-Rise intends to hold a meeting of Investors (the "**Meeting**") in order to, among other things, allow the Investors to vote on a proposed settlement (the "**Proposed Settlement**"), which, if approved, would ultimately discharge the SMI in place, allow the Company to move forward with closing the Lanterra Transaction (as defined and described below) and result in the distributions contemplated in the Proposed Settlement.
13. As described later in this Report, the distributions contemplated in the Proposed Settlement will not be sufficient to fully repay the amounts owing to all Investors.
14. The Information Officer understands that if the Investors vote to approve the Proposed Settlement, Hi-Rise will bring a motion before this Court seeking approval of the Proposed

Settlement, however if Investors do not vote to approve the Proposed Settlement an alternate path forward will need to be pursued.

15. In performing its duties under the Mandate, the Information Officer has undertaken an extensive review of the following:
  - (a) the events prior to and following the date of the Initial Application that resulted in the Lanterra Transaction and the Proposed Settlement;
  - (b) the design, implementation and results of the Sale Process (as defined below) and whether sufficient effort was made to obtain the best price under the circumstances;
  - (c) the Lanterra Transaction and the Proposed Settlement, including financial and other implications to Investors; and
  - (d) potential alternatives that may be available to Investors, including, as requested by the Court, an evaluation of Tricon Lifestyle Rentals Investment LP's ("**Tricon**") interest in the Property.
  
16. Pursuant to the Mandate, the Information Officer held a number of diligence meetings with and reviewed extensive Information received from:
  - (a) Representative Counsel and the Official Committee;
  - (b) the Company, its principal Mr. Jim Neilas and McCarthy;
  - (c) BMO (the Company's real estate broker);
  - (d) Hi-Rise and Cassels; and
  - (e) Lanterra Developments Inc., Tricon and certain other parties that expressed an interest in or were otherwise involved in the Sale Process (the "**Interested Parties**").

17. The Information Officer's conclusions and other findings are outlined in the last section of this Report.

## **THE INFORMATION OFFICER'S REVIEW**

### ***Case Background***

18. The affidavit of Noor Al-Awqati (sworn March 19, 2019 and found at Tab 2 of the Initial Application Record) (the "**Al-Awqati Affidavit**") sets out the history of the Company and the Property, including Hi-Rise's involvement as administrator and trustee of the SMI, which is summarized below:
- (a) the Company purchased the Property in June of 2011 for the purpose of developing a high-rise condominium;
  - (b) Jim Neilas is the President and majority shareholder of Holdings, the parent company of Adelaide;
  - (c) Meridian Credit Union Limited ("**Meridian**") holds a first mortgage in respect of the Property and has registered a charge in that regard (the "**Meridian Mortgage**"). As of the date of this Report, Meridian is owed approximately \$17.0 million, including principal and accrued interest; and
  - (d) the SMI is a second mortgage in respect of the Property and Hi-Rise has registered charges in that regard. As of the date of this Report, the debt owing under the SMI is approximately \$67.9 million, including principal and accrued interest. As such, there is approximately \$84.9 million in outstanding secured debt on the Property<sup>2</sup>.

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<sup>2</sup> Materials provided to the Information Officer indicate that Meridian has a first mortgage on the Property and the SMI ranks subordinate to Meridian. Neither the Information Officer nor its counsel have conducted a security review.

19. Following its acquisition of the Property, the Company took steps to advance the development prospects of the Property, including engaging various professionals and submitting zoning, development and building applications. During this time, and prior to the commencement of the formal marketing and sale process described below, the Information Officer understands that the Company explored and pursued various strategic alternatives in an attempt to test the market and potentially divest all or part of the Property. During this period however, a formal marketing process was never initiated and no executable sale transaction materialized.
20. As described in the Al-Awqati Affidavit, following the events in 2017 referred to as the syndicated mortgage “freeze”, Hi-Rise began working with its borrowers in order to commence a voluntary wind-up of its syndicated mortgages portfolio and instructed a number of its borrowers to commence marketing and sale processes to divest the properties to which it was lending. In this regard, the Company commenced a marketing and sale process for the Property.
21. Due to the impact of the syndicated mortgage freeze, Hi-Rise stopped making cash interest payments to Investors in relation to the Property in April of 2017 and stopped raising new funds from Investors in October of 2017.

***BMO's Engagement by the Company***

22. The Information Officer understands that the Company considered a small group of reputable parties to act as its broker and conduct a marketing and sale process on its behalf. This group was narrowed down and the Company requested proposals from two brokers, BMO and CBRE Limited. The Company interviewed the two parties and ultimately selected BMO to act as its broker in June of 2017.

23. Pursuant to its engagement letter, BMO's compensation for undertaking the marketing and sales process would be a contingency fee based on gross sales price, including increased compensation for a sale price exceeding certain thresholds.
24. BMO's mandate was to assist in the design and implementation of a marketing and sale process for the Property, including:
- (a) assisting in the development of an investment summary, confidential information memorandum ("CIM"), an electronic data room and other diligence materials;
  - (b) compiling a list of potentially interested parties, communicating with such parties in respect of the opportunity and making itself available to answer questions and address diligence requests; and
  - (c) negotiating with interested parties during the process in order to maximize the purchase price of potential offers. The Information Officer notes that the maximum purchase price is not necessarily the same as the maximum cash consideration available on closing<sup>3</sup>.
25. Based on discussions with BMO and a review of the information provided, the Information Officer understands the marketing and sale process followed BMO's standard two phased process:
- (a) during the first phase ("Phase 1"), potentially interested parties are contacted to solicit interest, an investment summary is provided and parties that sign a non-disclosure agreement ("NDA") are invited to undertake due diligence and submit a letter of interest ("LOI"). These Phase 1 LOIs are evaluated to determine which

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<sup>3</sup> The Information Officer understands that as a result of increased land values and construction costs, it is now more common for real estate transactions especially in downtown Toronto to include joint venture and/or vendor takeback structures which allow for higher purchase prices but lower cash consideration on closing.

parties, if any, would be invited to participate in a second phase (the “**Qualified Parties**”); and

(b) during the second phase (“**Phase 2**”), Qualified Parties are given additional time to perform due diligence and are encouraged to enhance their purchase price and limit conditions. Qualified Parties are provided a standard form of agreement of purchase and sale (“**APS**”) and are requested to submit final bids by marking-up and submitting an APS by the bid deadline.

26. The Information Officer is of the view that: (a) BMO is an experienced and qualified broker and advisor capable of running a robust and competitive marketing and sale process; (b) BMO’s engagement letter is consistent with industry standards and provided appropriate incentive to achieve the maximum sale price possible in the circumstances; and (c) the marketing and sale process was of a typical structure and consistent with similar real estate processes designed to achieve the maximum sale price possible in the circumstances.

#### *The 2017 Sale Process*

27. BMO commenced its first marketing and sale process in June of 2017 (the “**2017 Sale Process**”). The 2017 Sale Process was a combined process for the Property (i.e. 263 Adelaide Street West) and a second parcel of real estate located at 40 Widmer Street in Toronto (“**Widmer**”)<sup>4</sup>. Interested Parties were advised that they could bid on both properties together or each individually.

28. The Information Officer understands that BMO contacted over 2,500 parties to solicit interest in the 2017 Sale Process. BMO received 47 executed NDAs of which ten parties

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<sup>4</sup> Widmer is located in close proximity to the Property and was previously owned by an entity ultimately controlled by Jim Neilas.

submitted LOIs on or before the Phase 1 bid deadline of September 7, 2017. Of this group, seven bidders submitted an LOI for both the Property and Widmer (the “**Joint Offer LOIs**”) and three bidders submitted an LOI for Widmer only. No bidder submitted an LOI for the Property only.

29. The consideration outlined in the seven Joint Offer LOIs received for the Property ranged in value from \$43.7 million to \$80.0 million. The Information Officer understands that 2017 Phase 1 bids were presented to the Company on a “no-names” basis in order to preserve the integrity and competitive nature of the 2017 Sale Process.
30. BMO invited five of the ten bidders to participate in Phase 2 as Qualified Parties. The Information Officer understands the five Qualified Parties were selected based on the quantum of their purchase price and the quality of the diligence they had performed. Of the five Qualified Parties, two parties had interest in Widmer only, leaving three Qualified Parties with interest in the Property. The range in values offered by such parties in respect of the Property was \$59.4 million to \$80.0 million.
31. The five remaining Qualified Parties (including the three with interest in the Property) were requested to submit final bids by the Phase 2 bid deadline of September 19, 2017 in the form of a marked-up APS.
32. Of the three Qualified Parties which submitted Joint Offer LOIs: (a) one party, Concord Adex Buildings Limited (“**Concord**”), submitted a formal bid in the form of a marked-up APS; (b) a second party expressed its bid verbally to BMO; and (c) the third party declined to submit a bid.

33. Concord was the leading Qualified Party in respect of both the Property and Widmer and was granted a period of exclusivity to complete its diligence and execute an APS on each of the properties.
34. The Information Officer understands that during its due diligence period, Concord communicated to BMO that primarily due to a number of construction challenges relating to the Property it would not proceed with its contemplated transaction<sup>5</sup>.
35. Concord completed its diligence and the closing of its purchase transaction in respect of Widmer occurred in December of 2017.
36. The construction challenges identified by Concord, as well as the other Interested Parties participating in the 2017 Sale Process, included, but were not limited to, the following:
  - (a) *Heritage Wall*: The north-façade of the Property (the “**Heritage Wall**”) has been designated by the City of Toronto (the “**City**”) as a “heritage site” and may not be removed, demolished, or altered without approval from the City;
  - (b) *Site Issues*: The Property is situated on a site that is currently land-locked by surrounding properties, including sites currently under construction, with the only access available on Adelaide Street. Adelaide Street is a one-way street that is heavily trafficked by pedestrians, cyclists and vehicles. Access to the Property is also located directly across from a fire station;
  - (c) *Rental Replacement*: Prior to developing the Property, the City imposes certain conditions that must be satisfied in connection with any residential tenants currently on the site; and

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<sup>5</sup> As of the date of this report, the Information Officer has not been able to schedule a meeting with Concord to discuss its participation in the 2017 Sale Process.



- (d) *Easements*: The Property and surrounding area are subject to a number of easements. It is unclear whether or not such existing easements would be sufficient for construction purposes.

(collectively referred to as the “**Construction Challenges**”).

37. Based on discussions with the Interested Parties, the Information Officer understands that the Construction Challenges created a high level of uncertainty in relation to the costs and the time required to demolish and develop on the site of the Property, hindering their ability to participate in the 2017 Sale Process and/or submit a firm and executable bid for the Property.

#### *The 2018 Sale Process*

38. In an effort to address the Construction Challenges and other issues raised during the 2017 Sale Process, the Company took steps and incurred expenditures to mitigate certain issues and assist Interested Parties with diligence. These steps included:

- (a) commissioning two construction methodology reports<sup>6</sup>;
- (b) executing a Heritage Easement Agreement (October 16, 2017) with the City in order to allow the Heritage Wall to be altered for future development under certain conditions; and
- (c) obtaining certain additional approvals from the City related to rental replacement, community contribution (Section 37), and storm water management agreements.

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<sup>6</sup> The two reports include: (i) 263 Adelaide St. West Methodology Report (dated February 12, 2018) prepared by Ledcor Group (the “**Ledcor Report**”); and (ii) 263 Adelaide St Preconstruction Report No. 1 (dated June 19, 2018) prepared by EllisDon Corporation (the “**EllisDon Report**”).

39. The Company has indicated that it incurred in excess of \$2.7 million in third party costs to continue to improve the marketability of the Property, and that such costs were funded directly by Holdings. This amount excludes any costs that may be owing by Adelaide to Holdings for ongoing management fees, which are estimated by Holdings to be an additional \$2.5 million.
40. Following the steps taken above, the Company re-engaged with BMO and a second sale process was commenced in August of 2018 (the “**2018 Sale Process**” and together with the 2017 Sale Process, the “**Sale Process**”).
41. The Information Officer understands that BMO contacted over 2,500 parties to solicit interest in the 2018 Sale Process. BMO received 37 executed NDAs of which, four bidders submitted LOIs on or before the 2018 Phase 1 bid deadline of September 18, 2018.
42. The 2018 Phase 1 LOIs ranged in value from \$59.1 million to \$75.0 million. The Information Officer understands that the 2018 Phase 1 bids were presented to the Company on a “no-names” basis in order to preserve the integrity and competitive nature of the Sale Process.
43. The Information Officer reviewed each of the LOIs and noted that each were subject to various diligence and other closing conditions, including further construction and development related investigations, satisfaction with the viability, feasibility and costs associated with development, satisfaction that the Property meets investment and development criteria, receiving certain approval from the City including amendments to the existing Heritage Easement Agreement, receiving a court order to extinguish/amend easements, executing construction agreements with adjacent property owners and obtaining approval from boards of directors or investment committees.

44. Two bidders were advanced by BMO to participate in Phase 2, including: (a) Lanterra Developments Limited (“**Lanterra**”) which submitted an LOI valued at \$75.0 million; and (b) a second bidder (the “**Second Bidder**”) which submitted an LOI valued at \$70.0 million. The Information Officer understands that Lanterra and the Second Bidder were selected based on the quantum of their purchase price and the quality of diligence performed<sup>7</sup>.
45. Lanterra and the Second Bidder (the “**2018 Qualified Bidders**”) were each sent a process letter requesting they submit final bids by October 5, 2018 (the “**2018 Phase 2 Bid Deadline**”) in the form of a marked-up APS. The Information Officer understands that neither party submitted a final offer prior to the 2018 Phase 2 Bid Deadline. Following discussions with Lanterra and the Second Bidder, BMO determined the parties were not prepared to submit definitive offers at the purchase prices offered in their LOIs due to continued concern and uncertainty with the Construction Challenges.
46. Following the 2018 Phase 2 Bid Deadline, BMO began exploring alternate transaction structures with the two bidders executable at the purchase prices offered in their LOIs. Based on these discussions, BMO determined that in order to effect a transaction while maximizing the purchase price, the 2018 Phase 2 Bid Deadline should be extended and the 2018 Qualified Bidders should be invited to submit joint venture proposals.
47. The Information Officer understands that joint venture structures typically allow for higher purchase prices for various reasons, including, without limitation, the sharing of risk and

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<sup>7</sup> The Information Officer notes that a third party submitted a 2018 Phase 1 bid comparable in value to that of the Second Bidder. The Information Officer understands from BMO that in its view, this party had not performed a significant amount of diligence, was not prepared to increase its purchase price and would not remove significant conditions included in its bid and accordingly was not invited to participate in Phase 2. Based on discussions with this party, the Information Officer is of the view that BMO’s rationale to not advance this party to Phase 2 was reasonable in the circumstances.

the lower initial cash outlay required by the prospective purchaser, thereby increasing their rate of return.

### *Joint Venture Proposals*

48. During October of 2018, the 2018 Qualified Bidders were invited to meetings with BMO and the Company to discuss and explore their intentions for the Property, including how they intended to deal with the Construction Challenges.
49. Following these meetings, the 2018 Qualified Bidders were requested to submit a joint venture proposal (“**JV Proposal**”) that would provide for their final and best offer.
50. Lanterra submitted a JV Proposal on November 13, 2018 (the “**Lanterra JV Proposal**”). The Second Bidder submitted formal correspondence to BMO regarding continued interest in the Property but did not submit a formal JV Proposal by the requested date.
51. The Information Officer understands from BMO that after numerous meetings with the Second Bidder, it settled on a joint venture structure in a form that could be presented to the Company.
52. The Information Officer understands that two additional parties expressed interest to BMO in participating in a joint venture and submitted a JV Proposal. One of these JV Proposals was in an acceptable form, while the other was not and accordingly was not considered to be qualified.
53. In December of 2018, the three JV Proposals were presented to the Company on a “no-names” basis. Following additional meetings and review, the Information Officer understands that the Company selected the Lanterra JV Proposal based primarily on the following factors:

- (a) the Lanterra JV Proposal provided for the highest purchase price and greatest potential profit at completion of development. As noted earlier in this Report, it has become more common for downtown Toronto land transactions to include certain structures that increase purchase price but decrease cash consideration on closing. The Information Officer understands from discussions with Lanterra that its purchase price was premised on a joint venture structure as it allows for the sharing of risks and a lower initial cash investment that is needed to achieve its required rate of return;
- (b) Lanterra had performed extensive diligence and investigation on the Property and spent considerable time and effort developing approaches to address the Construction Challenges; and
- (c) Lanterra is a reputable developer with extensive experience building in downtown Toronto on sites that contained construction challenges similar to those at the Property.

54. Throughout January and February 2019, the Company and Lanterra worked towards settlement of the Lanterra JV Proposal. The parties reached an agreement on a letter of intent with Lanterra on February 13, 2019.

55. In March and April 2019, the Company and Lanterra continued to negotiate a term sheet which was ultimately executed on April 10, 2019 (the “**Term Sheet**”).

## **ASSESSMENT OF THE SALE PROCESS**

56. The Information Officer reviewed the design and implementation of the Sale Process, a short list of the parties contacted<sup>8</sup> and each of the bids submitted during all phases of the Sale Process. A summary of the Information Officer's conclusions is as follows:

- (a) the design of the Sale Process was typical of such marketing and sale processes in the real estate industry;
- (b) the materials utilized, including the investment summary, CIM and documents uploaded to the electronic data room were robust;
- (c) the list of potentially interested parties compiled by BMO was extensive, thorough, and provided for wide market coverage;
- (d) the Sale Process allowed interested parties adequate opportunity to conduct due diligence and the timelines provided for were reasonable;
- (e) the activities undertaken by BMO were thorough and professional, and consistent with the activities that a competent advisor or broker would be expected to undertake;
- (f) BMO was appropriately incentivized to achieve the highest value available for the Property;
- (g) the steps taken by BMO, including the selection of bidders to advance into further rounds, were consistent with the activities that other brokers or sale advisors would be expected to perform; and

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<sup>8</sup> The Information Officer understands BMO contacted over 2,500 parties in connection with each of the marketing and sale processes. The Information Officer determined it was not feasible to review all of the parties and instead reviewed a short list of Interested Parties.

(h) BMO sought to maximize transaction value by adjusting the Sale Process to include joint venture proposals when no cash offers materialized.

57. To gain a better understanding of the Sale Process and results thereof, the Information Officer held a number of discussions with Interested Parties to discuss matters including, but not limited to, the following:

- (a) was there any concern or issue with respect to the Sale Process and how it was run?
- (b) was BMO attentive and responsive in conducting the Sale Process?
- (c) what were the primary reasons why Interested Parties did not further pursue a transaction?

58. The Information Officer's findings from discussions with the Interested Parties are summarized as follows:

- (a) no concerns were identified with respect to the Sale Process or how it was conducted;
- (b) the Interested Parties were complimentary of the work undertaken by BMO, noted BMO was helpful and responsive in all instances and no concerns were identified with respect to their conduct;
- (c) despite the steps taken by the Company to address the Construction Challenges, the Interested Parties raised significant concern regarding the uncertainty of the costs and timing of construction, in particular that changes may be required to the design and zoning of the Property and the uncertainty in connection with the Heritage Wall and other constructability issues with the site. Interested Parties commented that given the high level of uncertainty, initial purchase prices submitted in LOIs would need to be materially discounted or an alternate structure would be required (i.e. a

joint venture or vendor takeback structure) in order to transact at such purchase prices; and

(d) certain Interested Parties informed the Information Officer that based on market trends at the time and comparable transactions, including Widmer, they did not participate in the Sale Process or submit formal offers because they did not wish to transact at such values.

59. Based on its review, the Information Officer is of the view that the Sale Process was a thorough market test, that sufficient effort had been made to obtain the best price in respect of the Property and that the process was executed with proper efficacy and integrity.

60. In particular, the Information Officer concludes that the design and implementation of the Sale Process was consistent with industry standards and was carried out by BMO in a thorough and professional manner.

61. The Information Officer notes that the Sale Process was not specifically designed with the goal to maximize the cash proceeds on closing but to maximize the consideration and ultimate proceeds thereof, even if portions of proceeds may be deferred until a later date. In that regard, the Sale Process was consistent with BMO's mandate to maximize transaction value.

## **LANTERRA TRANSACTION**

### ***Lanterra Offer***

62. As previously discussed, on April 10, 2019, Lanterra and the Company entered into the Term Sheet setting out the key terms of the joint venture agreement. On June 28, 2019, following further negotiations and refinement of deal points, Lanterra and the Company



entered into a Waiver and Amending Agreement dated June 28, 2019 (the “JV Agreement” and together with the Term Sheet, the “Lanterra Transaction”).

63. The Information Officer was provided with copies of the Term Sheet, the JV Agreement and all related schedules. The Information Officer understands that the Company and Lanterra consider these documents to be confidential and has not appended them hereto but has instead included a summary of key terms:

<b>Lanterra Transaction</b>	
JV Transaction	<ul style="list-style-type: none"> <li>▪ Lanterra and the Company to form a single purpose limited partnership (“LP”) in which Lanterra would acquire an interest in 75% of the Property and the assets, books and records related to the redevelopment of the Property (the “Lanterra Project”). The Company would retain a 25% interest in the Lanterra Project;</li> <li>▪ BRE Fund LP, being part of the Bank of Montreal’s private equity group, will have the option to purchase 15% of Lanterra’s interest (the “Investor Option”) in the Lanterra Project.</li> </ul>
Transaction Value and Initial Capitalization	<ul style="list-style-type: none"> <li>▪ Transaction value of \$73.15 million, capitalized as follows:               <ul style="list-style-type: none"> <li>i. LP will grant a first mortgage on the Property in the amount of \$36.58 million (the “First Mortgage”);</li> <li>ii. The Company will be granted a vendor takeback mortgage of approximately \$18.29 million (the “VTB”); and</li> <li>iii. The Company will contribute equity-in-kind of approximately \$18.29 million in exchange for its 25% share of the Lanterra Project.</li> </ul> </li> </ul>
First Mortgage Terms	<ul style="list-style-type: none"> <li>▪ The LP will immediately distribute the mortgage proceeds as follows:               <ul style="list-style-type: none"> <li>i. to discharge the Meridian Mortgage; and</li> <li>ii. to be used as a return of capital to allow it to retire the Syndicated Mortgage.</li> </ul> </li> </ul>
VTB Mortgage Terms	<ul style="list-style-type: none"> <li>▪ Secured against title to the Property, ranking behind the First Mortgage and any surety financing. Will not be subordinate to construction financing;</li> <li>▪ Expires on the earlier of (a) receipt of certain construction permits; and (b) three years from the closing date of the Lanterra Transaction;</li> <li>▪ Bears interest at 5% per annum during the first two years and 8% per annum for the final year;</li> <li>▪ Entirety of the VTB to be guaranteed by Lanterra; and</li> <li>▪ Lanterra to repay principal and interest then due on the VTB out of Lanterra’s own resources.</li> </ul>

Interest Reserve	<ul style="list-style-type: none"> <li>▪ Lanterra will fund approximately \$1.85 million to an interest reserve account to prefund the first two years of interest obligations under the VTB.</li> </ul>
Company's Fees	<ul style="list-style-type: none"> <li>▪ The Company is entitled to the following fees: <ul style="list-style-type: none"> <li>i. Development Fee: 0.25% of revenues from the Lanterra Project<sup>9</sup>; and</li> <li>ii. Property Management Fee: \$5,000 per month during the term of the Lanterra Project (5-6 years).</li> </ul> </li> </ul>
The Company Guarantee	<ul style="list-style-type: none"> <li>▪ The Company is required to jointly and severally guarantee 25% of all obligations of the LP in respect of any project debt.</li> </ul>

64. The Information Officer understands that Lanterra has completed all diligence and provided the deposits contemplated in the Term Sheet. Closing of the Lanterra Transaction is subject to: (a) approval of the Investors (as described further below); and (b) execution of certain documents including definitive agreements governing the LP, the Investor Option, and agreements for development, construction and property management (the “**Transaction Agreements**”). The Information Officer has been provided with current drafts of the Transaction Agreements and understands they have been substantially negotiated.

65. The Information Officer notes that definitive documents related to the VTB have not yet been drafted.

***The Company's Projected Returns***

66. The Information Officer has been provided with a copy of a financial forecast in respect of the Lanterra Project (the “**Proforma**”), which is attached as **Appendix “B”**. The Proforma estimates the development will take up to six years and projects a total profit of

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<sup>9</sup> Should BRE Fund LP exercise its option, and achieve a baseline internal rate of return, the Company could be eligible for an additional Deferred Development Fee of 0.5% of Project Revenues.

approximately \$66.0 million to the LP, based on Lanterra's estimate of revenues and expenses.

67. Based on the Information Officer's review of the Proforma and the Lanterra Transaction, the Company's projected return at the completion of the Lanterra Project is estimated to be approximately \$34.8 million, comprised of:
- (a) a return of capital of approximately \$18.3 million (i.e. the Company's initial contribution for 25% interest in the LP); and
  - (b) the Company's share of the potential profit of approximately \$16.5 million (i.e. 25% of \$66.0 million).
68. In addition to the above proceeds, the Company is projected to earn approximately \$3.0 million over the term of the Project (up to 6 years) in connection with development and property management fees.
69. As described in the following section, the Information Officer understands that the Company is proposing to provide a \$15 million debenture to Investors as additional compensation in connection with the Proposed Settlement. Should the Proforma be representative of actual Lanterra Project economics, the Company's potential profit and fees, net of the obligations owing under the debenture, would equal approximately \$22.8 million, excluding any tax considerations (i.e. \$34.8 million plus \$3.0 million less \$15.0 million). The Company has indicated that the remaining share of potential profit is to compensate Holdings: (a) for time and effort to assist Lanterra in completion of the Lanterra Project; and (b) to recoup funds advanced by Holdings to Hi-Rise and Adelaide to fund both operations and additional costs incurred to improve the Property subsequent to the syndicated mortgage freeze. Should the Lanterra Project fail in its entirety, Holdings

could be liable for up to 25% of the outstanding Lanterra Project debt pursuant to certain loan guarantees.

70. Future success and profit of the Lanterra Project is dependent upon many factors, including market conditions, timing of completion and ultimate construction costs. While the development and property management fees would be earned over the life of the Lanterra Project, the return of capital and profit share would not be earned by the Company until project completion which is currently estimated at approximately five to six years. Actual results may differ significantly from that of the Proforma.
71. The Information Officer notes that the Bank of Montreal may continue to participate in the joint venture after closing through advancement of the First Mortgage and potential participation in the Investor Option. It is the understanding of the Information Officer that the First Mortgage is being arranged directly by Lanterra (with no Company involvement) and the Investor Option was negotiated at the direction of the Company after Lanterra was selected as the preferred party.
72. Based on its review of the Information and discussions with the parties noted in paragraph 16 of this Report, nothing has led the Information Officer to conclude that the Lanterra Transaction would be considered to be an improvident transaction.

### **PROPOSAL TO INVESTORS**

73. A fundamental condition in the Lanterra Transaction is for the Company to discharge the SMI registered against title to the Property. On September 6, 2019, Hi-Rise provided an Information Statement (the “**Information Statement**”) to Investors which, among other things, calls for a meeting of Investors in order for the Investors to conduct a vote on the Proposed Settlement. The Information Officer understands the Meeting is currently

contemplated to be held on October 23, 2019. The Information Statement was attached to the Second Report of Counsel as Appendix “AA”, and has been attached to this report as Appendix “C”. A summary of the key financial terms is as follows:

<b>Information Statement</b>	
Classes of Investors	<ul style="list-style-type: none"> <li>▪ Two types of Investors, those who hold their beneficial interest in the Syndicated Mortgage via a registered investment plan (the “Registered Investors”) and those who hold their beneficial interest in the Syndicate Mortgage directly with Hi-Rise (the “Non-Registered Investors”). Registered Investors are provided a priority in the waterfall; and</li> <li>▪ Approval will require Investors representing two thirds in value and majority in number to vote in favour of the Proposed Settlement.</li> </ul>
Offer to Settle	<ul style="list-style-type: none"> <li>▪ Repayment to Investors of approximately \$17,036,000 on closing (the “Initial Settlement”);</li> <li>▪ Investors to have the benefit of the VTB of \$18,270,000. The terms of the VTB are described in the overview of the Lanterra Transaction. Purchaser has agreed to provide a full corporate guarantee on the VTB<sup>10</sup>; and</li> <li>▪ A debenture from Holdings in the amount of \$15,000,000 (the “Debenture”)<sup>11</sup>, unsecured and non-interest bearing, payable six years from the date of closing.</li> </ul>
Guarantees in Respect of Debenture	<ul style="list-style-type: none"> <li>▪ Corporate guarantee of Holdings; and</li> <li>▪ Personal guarantee by Jim Neilas limited to 25% of the total debenture.</li> </ul>
Implementation	<ul style="list-style-type: none"> <li>▪ October 23, 2019 – Meeting to vote on the Proposed Settlement</li> <li>▪ November 2019 – Final Court Order</li> <li>▪ December 2019 – Closing &amp; Initial Repayment to Investors</li> <li>▪ December 2021 or December 2022 – Repayment of VTB</li> <li>▪ December 2025 (estimate) – Debenture paid</li> </ul>

<sup>10</sup> The Information Officer understands that specific documentation related to the structure of the VTB and the Debenture has not yet been prepared.

<sup>11</sup> The Information Statement includes an \$8,000,000 Debenture, however, the information Officer is advised by the Company that the current Proposed Settlement now contemplates a \$15,000,000 Debenture.

74. The Information Officer understands from Hi-Rise that the Registered Investors rank in priority to the Non-Registered Investors for principal, interest accrued to date and interest continuing to accrue. The Information Officer has not performed a legal review of these priorities but understands that Representative Counsel will be setting out its analysis of priorities in a report, to be filed with the Court.
75. The Information Officer understands that upon approval of the Proposed Settlement, no further interest will accrue to Investors and rights to any further interest payments, if any, are waived.
76. Based on the information contained in the Information Statement, together with additional information provided by the Company, Hi-Rise and GT, the Information Officer projected potential Investor recoveries from the Proposed Settlement, including timing of receipt of funds, which can be found in detail in **Appendix “D”** and is provided in summary form below.

<b>Projected Return to Investors (in '000s)</b>			
	Notes	Undiscounted	Present Value as at Dec. 2019 <sup>(10)</sup>
<u>Proceeds from Lanterra Transaction</u>			
First Mortgage (December 2019)	1	36,575	36,575
VTB Mortgage Interest Reserve (December 2019)	2	1,850	1,850
VTB Mortgage (December 2021)	3	18,270	15,099
<b>Proceeds from Lanterra Transaction</b>		<b>56,695</b>	<b>53,524</b>
Less: Retirement of Meridian Mortgage	4	(17,218)	(17,218)
Less: BMO Sale Fee	5	(1,615)	(1,615)
Less: Hi-Rise Cost Recovery	6	(2,214)	(2,214)
Less: Property Taxes	7	(343)	(343)
<b>Proceeds from Lanterra Transaction available to Investors</b>		<b>35,306</b>	<b>32,135</b>
Add: Debenture (December 2025)	8	15,000	8,467
<b>Total Proceeds available to Investors</b>		<b>50,306</b>	<b>40,602</b>
<u>Proposed Distributions to Registered Investors</u>			
On Closing (December 2019)		17,036	17,036
On Repayment of VTB Mortgage (December 2021)		5,280	4,364
<b>Total Distribution to Registered Investors</b>		<b>22,316</b>	<b>21,399</b>
<i>Return to Investors Excluding Interest Paid to Date</i>	9	100%	96%
<u>Proposed Distributions to Non-Registered Investors</u>			
On Closing (December 2019)		-	-
On Repayment of VTB Mortgage (December 2021)		12,990	10,736
On Completion Date (December 2025)		15,000	8,467
<b>Total Distribution to Non-Registered Investors</b>		<b>27,990</b>	<b>19,203</b>
<i>Return to Investors Excluding Interest</i>	9	60%	41%
<b>Total Proposed Distribution to Investors</b>		<b>50,306</b>	<b>40,602</b>

#### Summary of Notes & Key Assumptions

1. The Information Officer understands that proceeds from the First Mortgage and VTB Interest Reserve will be distributed to Investors on, or shortly after, closing of the Lanterra Transaction.
2. Notwithstanding the provisions of the Term Sheet, it is anticipated that the full amount of the VTB Interest Reserve will be paid to Investors at close (December 2019).
3. Repayment of the VTB is anticipated to be after two or three years. The Information Officer understands that the VTB may be extended for a third year with Investors receiving additional cash interest at 8% of the principal amount.
4. Amounts owing in respect of the First Mortgage will be paid to Meridian on closing of the Lanterra Transaction. Hi-Rise has estimated the balance above based on accrued interest to December 11, 2019 and including a provision for legal fees.
5. The BMO Sale Fee is estimated by Hi-Rise based on the terms of the BMO engagement letter and a transaction value of \$75.0 million (transaction value of \$73.15 million plus prefunding of VTB interest of \$1.85 million). The Information Officer reviewed the calculation of this fee and notes that the balance presented above includes HST, which, if recoverable by the Company may slightly increase amounts distributed to Investors.
6. As further discussed below, the Information Officer understands that Hi-Rise asserts that pursuant to agreements with Investors, Hi-Rise has the ability to recover certain costs. The costs included above by Hi-Rise include the legal and professional fees related to this process, including Hi-Rise's counsel, the Company's counsel, Representative Counsel, the Information Officer and a provision for other consultants and costs incurred by Holdings.

7. Property taxes were estimated by Hi-Rise based on amounts outstanding as at October 1, 2019 plus two months' accrued interest on the property taxes.
  8. The Information Officer understands from the Company that the Proposed Settlement now contemplates a \$15 million Debenture that would be paid to Investors upon the completion of the Lanterra Project (i.e. approximately 6 years).
  9. Total projected return to investors are calculated as follows: (total return / (principal plus accrued interest to December 2019)). This excludes return from interest previously paid to Investors.
  10. For presentation purposes only, the Information Officer has included the present value of distributions based on the current anticipated timing of certain payments and a 10% discount factor.
77. Included in the table above, the Information Officer has estimated the present value of contemplated payments to illustrate the impact of the deferred distributions to Investors (i.e. the VTB and Debenture). The present value of deferred distributions was calculated using a discount rate of 10% which the Information Officer understands from Hi-Rise is the indicative interest rate they pay to Investors (interest rates vary depending on the time of the investment). The distributions from the repayment of the VTB are assumed to be collected two years from closing (December 2021) and the proceeds from the Debenture are assumed to be collected six years from closing (December 2025).
78. The Information Officer understands that in development of the Proposed Settlement, Hi-Rise and/or the Company is seeking reimbursement of certain costs related to the Lanterra Transaction and the Proposed Settlement (legal and other fees totaling \$1.2 million) and Holdings' own costs of \$1.0 million, for a total of \$2.2 million. While Hi-Rise/the Company have asserted that actual costs are higher than \$2.2 million, the Information Officer understands that the Company is proposing a \$2.2 million cap.
79. As further detailed in the GT Report dated August 30, 2019 (the "**GT Report**"), and confirmed through communication with Cassels, the Information Officer understands that Hi-Rise and/or the Company are taking the position that they are actually entitled to a priority of up to \$9.0 million pursuant to the participation/administration agreements with



Investors for costs incurred to enhance the value of the Property and would be seeking same in the event that the Property becomes subject to receivership proceedings (the “**Potential Priority Costs**”). The Information Officer understands that \$5.1 million of the Potential Priority Costs were incurred by Hi-Rise (the “**Hi-Rise Potential Priority Costs**”) and \$4.2 million of costs were incurred by Adelaide. Neither the Information Officer or GT have undertaken a legal review of the Potential Priority Costs. The Information Officer notes that of the \$5.1 million in Hi-Rise Potential Priority Costs, approximately \$0.4 million relate to Representative Counsel’s legal fees which form a priority charge on the Property. The Information Officer understands that litigation risk in relation to the Potential Priority Costs should be considered by the Investors in their evaluation of the Proposed Settlement.

80. The following table further summarizes the projected distributions and overall recoveries to Investors. Recoveries have been estimated based on total amounts owing to Investors, including interest and principal<sup>12</sup> per the books and records of Hi-Rise, including interest accrued to December 11, 2019 and are presented below on an undiscounted basis:

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<sup>12</sup> The Information Officer understands that the recovery calculations included in the Information Statement provided to Investors are based only on principal outstanding.

<b>Recovery Analysis (Undiscounted)</b>		<b>(('\$000s))</b>	
	<b>Registered</b>	<b>Non-Registered</b>	<b>Total</b>
Principal Invested	17,305	34,802	52,108
Estimated Accrued Interest as at December 2019	<u>5,010</u>	<u>11,766</u>	<u>16,776</u>
<b>Total Principal and Interest Owed</b>	<b>22,316</b>	<b>46,568</b>	<b>68,884</b>
On Closing (December 2019)	17,036	-	17,036
On Repayment of VTB (December 2021)	5,280	12,990	18,270
On Completion Date (December 2025)	<u>-</u>	<u>15,000</u>	<u>15,000</u>
<b>Total Projected Recoveries</b>	<b>22,316</b>	<b>27,990</b>	<b>50,306</b>
<b>Total Projected Recoveries (%)</b>	<b>100%</b>	<b>60%</b>	<b>73%</b>
Add: Cash Interest Received to Date	3,095	7,431	10,526
<b>Total Projected Recoveries and Interest</b>	<b>25,410</b>	<b>35,421</b>	<b>60,832</b>
<b>Total Projected Recoveries and Interest (%)</b>	<b>114%</b>	<b>76%</b>	<b>88%</b>

81. Based on the Proposed Settlement, Registered Investors are projected to receive a 100% recovery:
- (a) approximately \$17.0 million at close (December 2019) from the proceeds of the new First Mortgage and the payment of the VTB Interest Reserve; and
  - (b) approximately \$5.3 million two years from close (December 2021) from the repayment of the VTB.
82. Non-Registered Investors are projected to receive a 60% recovery:
- (a) approximately \$13.0 million two years from close (December 2021) from the repayment of the VTB; and
  - (b) approximately \$15.0 million six years from close (December 2025) from the payment of the Debenture.
83. The Information Officer notes that these recoveries have not been discounted and certain of the distributions (i.e. the Debenture) could be contingent on the success of the Lanterra Project, however the Information Officer also notes that the Debenture is to be wholly guaranteed by Holdings and 25% is guaranteed by Jim Neilas personally.

## **OTHER INDICATIONS OF POTENTIAL VALUE**

84. The Information Officer has considered other indications of value and whether there may be viable alternatives to the Proposed Settlement, in particular the following:
- (a) the Tricon offer;
  - (b) Third Party Appraisals; and
  - (c) re-opening the marketing and sale process / Receivership.

### ***Tricon Offer***

85. The Information Officer understands that Tricon<sup>13</sup> first expressed interest in the Property in or around August of 2016. The Information Officer has been provided with and reviewed email correspondence between Tricon and the Company and understands that Tricon performed diligence on the Property and several meetings between Tricon and the Company were held. Ultimately, Tricon and the Company were unable to come to any type of arrangement prior to commencement of the 2017 Sale Process.
86. The Information Officer understands that Tricon participated in the 2017 Sale Process. Tricon submitted a Phase 1 bid but due to its relative value, was not invited to participate in Phase 2. Tricon was invited by BMO to participate in the 2018 Sale Process but declined to participate.
87. As described in the Second Report of Counsel, Representative Counsel received an unsolicited expression of interest in respect of a cash purchase of the Property from Tricon. The offer was initially in the form of a non-binding letter of interest dated July 9, 2019.

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<sup>13</sup> Tricon is a subsidiary of the Tricon Capital Group Inc. a residential real estate company primarily focused on rental housing in North America, with approximately \$7.2 billion (C\$9.7 billion) of assets under management. Tricon invests in a portfolio of single-family rental homes, multi-family rental apartments and for-sale housing assets, and manages third-party capital in connection with its investments. More information about Tricon is available at: [www.triconcapital.com](http://www.triconcapital.com).

On July 19, 2019, Tricon submitted a refined offer in the form of a marked-up APS (the “Tricon Offer”).

88. The Information Officer understands the Tricon Offer was provided to both Representative Counsel and to BMO. Key terms and components of the Tricon Offer include the following:

<b>Tricon Offer</b>	
Purchaser	<ul style="list-style-type: none"> <li>▪ Tricon Lifestyle Rentals Investment LP</li> </ul>
Purchase Price	<ul style="list-style-type: none"> <li>▪ \$72.0 million;</li> <li>▪ Payment of the Purchase Price:               <ul style="list-style-type: none"> <li>i. \$2.0 million deposit on the third business day following execution of the APS (“First Deposit”);</li> <li>ii. \$3.0 million deposit on the third business day following the Due Diligence Date (“Second Deposit”); and</li> <li>iii. Balance of the of the Purchase Price on the Closing Date (“Final Payment”).</li> </ul> </li> <li>▪ The First Deposit and Second Deposit shall be returned to the Purchaser if the transaction is not completed for any reason except as a result of a default of the Purchaser under the APS;</li> <li>▪ The Final Payment is subject to customary real estate transaction closing adjustments.</li> </ul>
Due Diligence Conditions	<ul style="list-style-type: none"> <li>▪ The Purchaser has requested a number of additional diligence materials (the “Deliveries”) from the Vendor;</li> <li>▪ Following the receipt of all of the Deliveries, the Purchaser shall have 45 days to review the Deliveries and perform any additional due diligence that may be required;</li> <li>▪ The APS includes the following due diligence condition for the benefit of the Purchaser:               <p><i>“by the Due Diligence Date (i.e. 45 days), the Purchaser shall have examined and been satisfied, in the Purchaser’s sole, absolute and unfettered discretion, <u>which may be exercised arbitrarily for any reason or for no reason at all</u>, with the results of the its due diligence enquiries, tests and investigations in respect of the Purchase Assets, including the Purchaser’s review of the Deliveries”</i>; [emphasis added]</p> </li> </ul>
Closing Date	<ul style="list-style-type: none"> <li>▪ 45 days after the Due Diligence Date. The Due Diligence Date (45 days) and the Closing Date (45 days) provide the Purchaser with 90 days to close the transaction following receipt of all of the Deliveries;</li> <li>▪ Purchaser to be granted exclusivity.</li> </ul>

89. Based on its review of the Tricon Offer, the Information Officer notes the following:
- (a) the Tricon Offer of \$72.0 million is materially higher than the \$55.9 million offer Tricon submitted during Phase 1 of the 2017 Sale Process;
  - (b) compared to the Lanterra Transaction, the Tricon Offer provides for slightly lower consideration, however would provide a better return to Investors, assuming a similar distribution waterfall as the Proposed Settlement, because greater cash distributions would take place on closing, or shortly thereafter;
  - (c) in its current form the Tricon Offer remains subject to the due diligence condition described above, as well as approval from Tricon's Board of Directors and Investment Committee;
  - (d) if the due diligence condition is not waived by Tricon, Tricon could walk from the proposed transaction and receive a full refund of the First Deposit and Second Deposit, without penalty;
  - (e) the Tricon Offer was not submitted in accordance with the Sale Process guidelines and bid deadlines; and
  - (f) if the Company was to pursue the Tricon Offer, the exclusivity requirement would require the Company to terminate the Lanterra Transaction.
90. Based on discussions with Tricon, the Information Officer understands:
- (a) Tricon has performed diligence on the Property, including prior to and during the 2017 Sale Process, and has recently updated its diligence by working with one of its trusted construction partners;

- (b) Tricon did not participate in the 2018 Sale Process primarily because it believed its proposal would not be sufficient to meet the pricing expectations set by BMO at that time<sup>14</sup>;
- (c) by not participating in the 2018 Sale Process, Tricon did not have access to certain of the additional materials made available to Interested Parties in the electronic data room during such process;
- (d) Tricon appears to be familiar with each of the Construction Challenges and the Construction Challenges have been considered in the Tricon Offer however Tricon noted that it would need to engage third party experts and incur additional costs during diligence; and
- (e) Tricon explained that the increase in consideration offered compared to its offer in the 2017 Sale Process is reflective of a change in market dynamics, including increased market rents and a reduction in their cost of capital.

91. Based on discussions with BMO in connection with the Tricon Offer, the Information Officer understands:

- (a) notwithstanding BMO's efforts to solicit its participation, Tricon declined to participate in the 2018 Sale Process. However, if the Tricon Offer had been submitted in accordance with the 2018 Sale Process guidelines, it would have been explored and advanced through the process;
- (b) BMO held discussions with Tricon to better understand the Tricon Offer. Following these discussions, BMO concluded the Tricon Offer was not executable in its current form as Tricon would not waive its conditions; and

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<sup>14</sup> BMO has indicated to the Information Officer that no prior guidance was given.

- (c) BMO acknowledged that Tricon performed extensive due diligence in the 2017 Sale Process, however indicated that, in its view Tricon did not provide a satisfactory explanation as to why their purchase price increased substantially from their original offer during Phase 1 of the 2017 Sale Process.

***Third Party Appraisals***

- 92. In connection with the Sale Process, the Company engaged for two real estate appraisals:
  - (a) Cushman & Wakefield ULC prepared an appraisal dated February 27, 2018 (the “**Cushman Appraisal**”). The Cushman Appraisal values the Property at \$81.8 million (approximately \$235 per buildable square foot); and
  - (b) Colliers International prepared an appraisal dated July 16, 2018 (the “**Colliers Appraisal**”). The Colliers Appraisal values the Property at \$82.1 million (also approximately \$235 per buildable square foot).
- 93. As noted in the Cushman Appraisal, one of the factors considered in its appraisal included comparable land sales in the subject market area, including five comparable sites that transacted during the period December 2017 to January 2018, ranging in value from \$49.5 million to \$300 million, or approximately \$182 to \$284 per buildable square foot (average of \$251 per buildable square foot).
- 94. The Information Officer notes that these are comparable data points, however site-specific details would cause variations in valuation and ultimately the best judge of value would be a comprehensive market test through a robust marketing and sale process.

*Re-opening the Sale Process / Receivership*

95. The Information Officer has considered whether reopening the sale process might reasonably be expected to generate a result that would provide greater recovery for the Investors compared to the Lanterra Offer and the Proposed Settlement.
96. As previously noted, the Information Officer is of the view that BMO's Sale Process was a thorough canvassing of the market and fairly demonstrated the market value of the Property.
97. Furthermore, the accrual of interest and other potential costs in respect of the Meridian Mortgage and the SMI will continue to deteriorate potential recoveries for the Non-Registered Investors. There is no certainty that Meridian will continue to provide a standstill and not proceed to take further actions<sup>15</sup>.
98. There is no certainty whether a new marketing and sale process may generate a purchase price in excess of the Lanterra Transaction. The Information Officer notes however that re-opening the sale process would take additional time and costs would continue to accrue during this period.
99. The Information Officer reviewed the "Receivership Scenarios" presented in the GT Report which is attached as Appendix V to the Second Report of Counsel. The Information Officer is of the view the scenarios are appropriately presented for the purpose of which they were created and has included GT's analysis in its comparison of values below. In addition to the GT Report scenarios, the Information Officer has presented an alternate receivership scenario (the "**Truncated Receivership**").

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<sup>15</sup> Should Meridian seek Court appointment of a receiver, the receiver would have a duty to all stakeholders, not just Meridian.



100. The Truncated Receivership is based on an accelerated timeline of four months, compared to nine to 15 months in the GT Report, to reflect the possibility of an expedited receivership process by relying on the Sale Process already performed by BMO. Accordingly, the costs and disbursements associated with the receivership proceedings have been adjusted downward.
101. The table below includes a summary of recoveries to Investors in the Truncated Receivership scenario in comparison to the Proposed Settlement and two scenarios as presented in the GT Report. A detailed summary of the Truncated Receivership scenario is included as **Appendix “E”**. Based on the assumptions included, the Information Officer notes the following:
- (a) if Hi-Rise is unsuccessful in asserting its claim to the Hi-Rise Potential Priority Costs in the amount of \$4.7 million<sup>16</sup>, the Property would need to be sold for approximately \$71.2 million for Investors to receive the same (or similar) nominal recovery as they would in the Proposed Settlement. Accounting for the time value of delayed payments included in the Proposed Settlement at a 10% discount rate (i.e. the VTB and the Debenture), on a present value basis, the Property would need to be sold for approximately \$62.0 million<sup>17</sup>;
  - (b) if Hi-Rise is successful in asserting its claim to the Hi-Rise Potential Priority Costs, the Property would need to be sold for approximately \$76.1 million for Non-Registered Investors to receive the same (or similar) nominal recovery as they

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<sup>16</sup> The Hi-Rise Potential Priority Costs were estimated to be \$5.1 million less Representative Counsel’s legal fee priority charge of \$0.4 million. The \$5.1 million of Hi-Rise Potential Priority Costs was used to be consistent with the GT Report. However, the Information Officer understands that Hi-Rise will assert its full Potential Priority Costs.

<sup>17</sup> Actual calculation of present value equivalents would be depended upon timing of closing of any sale transaction.

would in the Proposed Settlement. Accounting for the time value of delayed payments included in the Proposed Settlement at a 10% discount rate (i.e. the VTB and the Debenture), on a present value basis, the Property would need to be sold for approximately \$66.9 million;

- (c) proceeds realized through a receivership proceeding are likely to be distributed to Investors faster compared to the Proposed Settlement. The balances noted herein are in nominal dollars and the time value of money has not been considered; and
- (d) the Information Officer understands from Hi-Rise that in a receivership scenario, Hi-Rise and/or the Company may seek to recover all the Potential Priority Costs which, if successful, would have a material impact on distributions to Investors and further increase the selling price required to achieve the same result as the Proposed Settlement.

### ***Comparison of Values***

102. For information purposes only, the Information Officer has prepared the following table to summarize the potential values that may be available to the Investors under various alternatives.

Summary of Investor Recoveries (nominal dollars)					('000s)
	Proposed Settlement <sup>1</sup>	Truncated Receivership Low <sup>2</sup>	Truncated Receivership High <sup>2</sup>	GT Receivership Low <sup>3</sup>	GT Receivership High <sup>3</sup>
<b>Estimated Sale Price</b>	<b>73,150</b>	<b>71,170</b>	<b>76,071</b>	<b>44,000</b>	<b>72,000</b>
<b>Without Hi-Rise Potential Priority Costs</b>					
<i>Registered Investors</i>					
Investor Recovery (\$)	22,316	22,605	22,605	22,171	22,171
Investor Recovery (%)	100%	100%	100%	100%	100%
<i>Non-Registered Investors</i>					
Investor Recovery (\$)	27,990	27,990	32,694	424	28,194
Investor Recovery (%)	60%	59%	69%	1%	61%
<b>Total Recovery</b>	<b>50,306</b>	<b>50,595</b>	<b>55,300</b>	<b>22,595</b>	<b>50,366</b>
<b>With Hi-Rise Potential Priority Costs</b>					
<i>Registered Investors</i>					
Investor Recovery (\$)	n/a	22,605	22,605	17,541	22,171
Investor Recovery (%)	n/a	100%	100%	79%	100%
<i>Non-Registered Investors</i>					
Investor Recovery (\$)	n/a	23,286	27,990	-	23,140
Investor Recovery (%)	n/a	49%	59%	0%	50%
<b>Total Recovery</b>	<b>n/a</b>	<b>45,891</b>	<b>50,595</b>	<b>17,541</b>	<b>45,311</b>

Summary of Notes & Key Assumptions

1. Hi-Rise is only asserting certain Potential Priority Costs under the Proposed Settlement.
2. See full summary of Truncated Receivership scenario in **Appendix "E"**.
3. Per GT Report.

103. Based on its review of the Proposed Settlement and the alternatives presented above, the Information Officer notes the following:
- (a) as detailed in this Report, the Proposed Settlement is premised on the Lanterra Transaction. While the Lanterra Transaction provides a high level of certainty in terms of purchase price, significant parts of the distributions associated with the Proposed Settlement are deferred into the future and may be subject to the ultimate success of the Lanterra Project (i.e. the Debenture);
  - (b) compared to the Proposed Settlement, the alternatives each have a materially higher level of conditionality and uncertainty, all of which could significantly impact the

- quantum and timing of proceeds and there is no guarantee that an all cash offer can be obtained for the values indicated in the Truncated Receivership scenario; and
- (c) in developing the Truncated Receivership scenario, to maintain consistency with the GT Report, the Information Officer only sensitized for the Hi-Rise Potential Priority Costs. If Hi-Rise is successful in asserting the full Potential Priority Costs in priority to Investors, distributions to Investors could be materially altered. Further, if the Potential Priority Costs are litigated between Hi-Rise and the Investors, additional time and cost may be incurred impacting ultimate recovery.

## **CONCLUSIONS & OTHER FINDINGS**

### ***Sale Process***

104. It is clear that Schedule I and institutional construction lenders are hesitant to provide construction financing in situations where syndicated mortgages are registered on title. To realize maximum value for the Property (as a development site), a sale transaction and related discharge of the SMI is required. Absent additional financing, the Property would remain an undeveloped low-rise rental property.
105. Based on the Information reviewed to date and results of the Sale Process, the Information Officer does not believe that there is any reasonable prospect of a sale process generating sufficient funds to repay both the Meridian Mortgage and the SMI.
106. After the 2017 Sale Process failed to generate any transaction in respect of the Property, the Company and BMO took positive steps and incurred considerable cost to address certain Construction Challenges.
107. The Information Officer is of the view that the Sale Process conducted was a thorough market test, that sufficient effort was made to obtain the best price in respect of the Property and that the process was executed with proper efficacy and integrity.

108. While no specific asking price was provided for the Property, the Information Officer found that certain Interested Parties were guided by recent comparable transactions, including Widmer, and considering the Construction Challenges, these market trends discouraged certain Interested Parties from participating in the Sale Process.
109. As discussed herein, no Interested Party was willing to submit an all cash offer by the applicable Sale Process bid deadlines. The Sale Process was designed and executed to maximize the ultimate proceeds from the transaction, not necessarily cash consideration on closing. In that regard, the Information Officer is of the view that the Lanterra Transaction provides for the best price in respect of the Property.

***Consultations Held***

110. The Information Officer held a number of meetings and requested significant information from the parties mentioned in this Report. During its review, the Information Officer found the conduct of all parties to be cooperative and supportive, was granted unfettered access to the individuals and groups it requested meetings with and was provided with requested information on a timely basis.
111. Nothing in its review of the Information provided to it and in discussions with the parties noted herein has led the Information Officer to conclude that the Lanterra Transaction would be considered to be an improvident transaction.
112. Each of the Interested Parties agreed that the Property's value is impacted by the Construction Challenges and other constructability issues which create significant uncertainty around the cost and time it may take to complete development on the site. Considering these issues, together with recent trends in the market, the Interested Parties confirmed that the best way to maximize purchase price would be through a transaction

including a joint venture and/or vendor takeback structure. The Information Officer found no indication that management of the Company influenced the creation of the joint venture structure proposed in the Lanterra Transaction.

***Lanterra Transaction & Proposed Settlement***

113. Based on the Information reviewed by the Information Officer, at the completion of the project, the Company's undiscounted potential proceeds, net of the \$15.0 million Debenture, are projected to equal approximately \$22.8 million. In the Information Officer's view, it is appropriate for the members of the Official Committee, and the Investors, to express concern over the Company's continued interest (i.e. its 25% share of the JV) in the Property.
114. If Investors vote to approve the Proposed Settlement, Registered Investors are projected to receive \$22.3 million (100% return) and Non-Registered Investors are projected to receive \$28.0 million (60% return), however as described previously, certain of these proceeds will only be distributed years in the future.

***Alternatives***

115. The Information Officer is of the view the Sale Process was a robust and thorough market test and the results thereof should be given more weight than: (a) alternate transactions that could be pursued that include a higher level of conditionality and would require time to execute; and (b) other indications of value, including the third party appraisals, which are subject to a number of conditions and restrictions.
116. The Information Officer noted that several key items in the Information Statement (and therefore the Proposed Settlement) may need to be refreshed and/or further developed. For example, the ultimate structure of the VTB and the structure and amount of the Debenture

are not accurately reflected in the Information Statement. The Information Officer recommends that, prior to any vote, an updated Information Statement be provided to the Investors.

117. If the Investors do wish to pursue an alternate transaction, based on communications reviewed by the Information Officer, it is likely that Meridian would commence enforcement proceedings resulting in a receivership. Within receivership proceedings, the Information Officer estimates that to generate a nominal return to Investors that would be the same or similar to the Proposed Transaction, the Property would need to be sold for an amount in excess of \$71.2 million, or \$76.1 million if Hi-Rise successfully asserts the \$4.7 million Hi-Rise Potential Priority Costs or approximately \$62.0 million to \$66.9 million when considering the estimated present value of distributions contained in the Proposed Settlement.
118. As requested by this Court, the Information Officer reviewed and explored the Tricon Offer. Although Tricon appears to be very familiar with the Property and its cash offer of \$72.0 million would provide a better and immediate return to Investors, the Tricon offer remains subject to an open-ended diligence condition that requires a minimum of 45 days to satisfy and has not yet been approved by its investment committee or board of directors. The Information Officer also notes that Tricon had an opportunity to participate in the 2018 Sale Process and declined to do so. The Information Officer supports BMO's assertion that maintaining the integrity of the marketing and sale process, including its timelines and bid deadlines, is of high importance, and especially so when presented with a conditional offer.

All of which is respectfully submitted this 7<sup>th</sup> day of October, 2019.

**ALVAREZ & MARSAL CANADA INC.,  
in its capacity as Information Officer**

Per:   
\_\_\_\_\_  
Name: Stephen Ferguson  
Title: Senior Vice-President



HI-RISE CAPITAL LTD.

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

**THIRD REPORT OF MILLER THOMSON LLP,  
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