

**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.**

**FACTUM OF THE APPLICANT/MOVING PARTY, HI-RISE CAPITAL LTD.
(SALE APPROVAL MOTION RETURNABLE ON A DATE TO BE FIXED)**

April 14, 2020

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

PART I - OVERVIEW

1. Hi-Rise Capital Ltd. ("**Hi-Rise**") is the trustee and mortgage administrator of a syndicated second mortgage (the "**Syndicated Mortgage**") securing a loan to Adelaide Street Lofts Inc. ("**Adelaide**") by numerous investors (the "**Investors**"). Adelaide owns the property located at 263 Adelaide Street West, Toronto, Ontario (the "**Property**").
2. Hi-Rise brings this motion to seek approval of a transaction whereby Adelaide proposes to sell the Property to Lanterra Developments Ltd. or its designee ("**Lanterra**") pursuant to the terms of Minutes of Settlement dated December 20, 2019 (the "**Minutes of Settlement**") for a purchase price of \$69,000,000, to be paid on closing (the "**Sale**").
3. The Sale is supported by Miller Thomson LLP in its capacity as court-appointed representative counsel for Investors ("**Representative Counsel**") and by an overwhelming majority (by both number and value) of the two classes of Investors that participate in the Syndicated Mortgage. Moreover, before Adelaide and Lanterra entered into the transaction, the Property was exposed to market over the course of a two-year sales process conducted by the Bank of Montreal ("**BMO**").

4. Hi-Rise seeks an approval and vesting order that will facilitate the closing of the Sale and authorize and direct Hi-Rise and certain other parties to take certain steps to complete the transaction and to distribute proceeds.

5. Hi-Rise also bring this motion pursuant to section 60 of the *Trustee Act* RSO 1990, c T.23 (the “**Trustee Act**”) and seeks a declaration that it at law, or under loan participation agreements (each, an “**LPA**”) and mortgage administration agreements (each, an “**MAA**”) that it entered into with Investors, has the power to permit the discharge of the Syndicated Mortgage since the proceeds to be received from the Sale are insufficient to pay in full amounts owing under the Syndicated Mortgage.

6. Hi-Rise wants to ensure that it acts in a manner that is consistent with Hi-Rise’s powers pursuant to the LPA and MAA, that it adequately protects Investors’ rights, and that it provides Investors with the greatest possible recovery and/or benefit in the circumstances. Hi-Rise believes that the process leading to the Sale, including the Investor vote (defined and described below), has benefitted Investors by ensuring that their interests are fairly represented and by ensuring that the Court has final oversight over the approval of the Sale and the Minutes of Settlement.

PART II - THE FACTS

A. Hi-Rise and Investors

7. As set out above, Hi-Rise is the administrator and trustee of the Syndicated Mortgage. The Syndicated Mortgage is a second mortgage over the Property in the principal amount of \$52,107,764.44¹ that ranks subordinate to a commercial first

¹ Paragraph 7 of the Affidavit of Noor Al-Awqati sworn April 1, 2020 (the “Second Al-Awqati Affidavit”) inadvertently set out an outdated number for the principal owing under the Syndicated Mortgage (accurate as at March 10, 2019). Paragraph 58 of the Second Al-Awqati Affidavit provides the correct

mortgage (the “**Meridian Mortgage**”) granted by Meridian Credit Union Limited (“**Meridian**”). As of December 5, 2019, the amount outstanding on the Meridian Mortgage was \$17,045,466.82.

Affidavit of Noor Al-Awqati Sworn April 1, 2020 (the “Second Al-Awqati Affidavit”), Hi-Rise Motion Record Tab 2, para. 7.

8. Advances made under the Syndicated Mortgage were by approximately 650 investors (“**Investors**”),² each of whom holds a share of such mortgage. There are generally two types of participants in the Syndicated Mortgage:

- (a) Individuals whose registered plans (e.g., RRSP or TFSA) have made the investment (“**Registered Investors**”). Registered Investors’ interests in the Syndicated Mortgage are held by Community Trust Company (“**CTC**”) as trustee, in order to comply with the requirements of the *Income Tax Act*;
- (b) Individuals who have advanced funds, directly or indirectly (including through transfer), via non-registered means (“**Non-Registered Investors**”), at different times over the course of the project, based on different investment terms - their interest is held by Hi-Rise.

Second Al-Awqati Affidavit, Hi-Rise Motion Record, Tab 2, para. 8.

9. Under the terms of Investors’ LPAs and MAAs, Registered Investors received a priority for the repayment of their principal and interest.

Second Al-Awqati Affidavit, Hi-Rise Motion Record, Tab 2, para. 9.

number if the principal amounts owing to Registered Investors and Non-Registered Investors as contained in those paragraphs are added together.

² Some Investors held both Registered and Non-Registered investments.

10. Hi-Rise and CTC are both shown as joint chargees in respect of the Syndicated Mortgage and therefore both parties are required to discharge such mortgage.

Second Al-Awqati Affidavit, Hi-Rise Motion Record, Tab 2, para. 10.

B. The Property

11. The Property is a 0.35 acre (15,429 square feet) parcel on which currently sits a Multi-Tenant Class “B” five-storey mixed-use building (both commercial and residential) which was constructed around 1915. The existing structure has 45 units and a gross leasable area of 56,630 square feet.

First Al-Awqati Affidavit, Hi-Rise Motion Record, Tab 2A, para. 22.

12. Adelaide first purchased the existing land and building in June 2011 for the purpose of developing a high-rise condominium containing approximately 290 units.

First Al-Awqati Affidavit, Hi-Rise Motion Record, Tab 2A para. 23

13. In 2017, however, the market for syndicated mortgages in Ontario effectively “froze” because a number of other mortgage brokers and administrators became insolvent and were the subject of regulatory action. Accordingly, lenders refused to provide construction financing to the few remaining projects with syndicated mortgages administered by Hi-Rise (including in respect of the Property) where construction had either not started or was at an early stage.

First Al-Awqati Affidavit, Hi-Rise Motion Record, Tab 2A, paras. 18-19.

14. It was apparent to Hi-Rise that because the Property had not been developed (due to the construction-related challenges and difficulty obtaining construction financing), it was appropriate to explore a transaction that would generate sufficient

proceeds from the Property in the short term to repay at least part of the Syndicated Mortgage.

Second Al-Awqati Affidavit, Hi-Rise Motion Record, Tab 2, para. 12.

15. Adelaide therefore retained BMO as a financial advisor in 2017 and again in 2018 to market the Property for sale in its current, undeveloped state.

Second Al-Awqati Affidavit, Hi-Rise Motion Record, Tab 2, paras. 16-20.

16. During the 2017 sales process, several interested parties identified various construction and zoning issues that would make development of the Property more difficult and expensive (including that the City of Toronto had designated certain aspects of the building on the Property as heritage attributes). Because of these construction challenges, the 2017 sales process did not result in a transaction.

Second Al-Awqati Affidavit, Hi-Rise Motion Record, Tab 2, paras. 18-19.

17. Adelaide took the Property off the market to allow time to address the construction-related concerns so that it could re-market the Property. This resulted in Adelaide commissioning construction methodology reports and securing \$9,000,000 in capital for a re-zoning process. Thereafter, in 2018, Adelaide asked BMO to conduct a second sales process. The purpose of the sales process was to obtain the highest possible value for the Property and thereby maximize recoveries for Investors.

Second Al-Awqati Affidavit, Hi-Rise Motion Record, Tab 2, paras. 19-20.

18. Ultimately, three parties submitted joint venture proposals. Adelaide, with the input of BMO, ultimately determined that one joint venture bid (which Adelaide later learned was from Lanterra) was materially better than the other bids because

- (a) it contained the highest purchase price;
- (b) this bidder had performed considerable due diligence on the Property and spent effort determining how to approach the construction-related challenges; and
- (c) this bidder is a reputable developer with extensive experience building in downtown Toronto on sites that have faced similar construction challenges.

Second Al-Awqati Affidavit, Hi-Rise Motion Record, Tab 2, para. 23.

19. Hi-Rise wanted to ensure a democratic process was put in place whereby Investors' rights would be protected as Adelaide and Lanterra negotiated a transaction. As such, Hi-Rise proposed the appointment of Representative Counsel as well as a voting mechanism (the "**Vote**") that would allow Investors to approve the JV Transaction, and bind Investors to that transaction if it received the specified majority of votes (the "**Specified Majority**"): Investors representing two-thirds of value and a majority in number.

Second Al-Awqati Affidavit, Hi-Rise Motion Record, Tab 2, para. 13.

20. On March 21, 2019, Justice Hainey granted an initial order (the "**Appointment Order**") in this matter which, among other things, (i) appointed Miller Thomson LLP as Representative Counsel and authorized Representative Counsel to establish an Official Committee of Investors (the "**Official Committee**"), which it would regularly consult and from which it would take instruction on matters in this proceeding; (ii) granted Hi-Rise

permission to hold the Vote; and (iii) if the Specified Majority voted in favour, to return to seek court approval of the transaction.

Second Al-Awqati Affidavit, Hi-Rise Motion Record, Tab 2, para. 14.

21. Over a period of months, Lanterra and Adelaide (with the assistance of BMO) negotiated the terms of a joint venture agreement to develop the Property using a limited partnership (“**LP**”) structure (the “**JV Transaction**”). The key terms of JV Transaction were as follows:

- (a) Lanterra would acquire a 75% interest in the LP and Adelaide’s parent company, 263 Holdings Inc. (“**263 Holdings**”) would hold the remaining 25% interest;
- (b) Lanterra would pay a portion of its share of the purchase price on closing and the balance would be secured by an interest-bearing vendor take-back mortgage maturing in two or three years; and
- (c) The consideration to be paid by Lanterra for its 75% interest would result in the following recoveries for Investors:
 - (i) Registered Investors would receive the majority of their principal and interest on closing of the JV Transaction, with the remainder of principal and interest in December 2021 or 2022; and
 - (ii) Non-Registered Investors would potentially receive 60% of their principal and interest, depending on certain contingencies, in December 2021 or 2022 (with no payment on closing).

Second Al-Awqati Affidavit, Hi-Rise Motion Record, Tab 2, paras. 24-25.

22. Adelaide, Hi-Rise, and Representative Counsel (among others) appeared before the Court on various occasions to provide an update on the status of the negotiations and continued to negotiate the terms of the JV Transaction. Adelaide and Hi-Rise provided information to Representative Counsel (after Representative Counsel executed an NDA at the Court's direction) regarding the JV Transaction, and made BMO personnel available to meet and speak with Representative Counsel as well as members of the Official Committee to answer questions and address concerns regarding the sales processes.

Second Al-Awqati Affidavit, Hi-Rise Motion Record, Tab 2, paras. 26-38.

23. Ultimately, in the fall of 2019, the parties agreed to the appointment of an information officer to evaluate the circumstances surrounding the JV Transaction and Adelaide's efforts to market and sell the Property. Accordingly, on September 17, 2019, on the consent of all relevant parties, Justice Hainey appointed Alvarez & Marsal Canada Inc. as Information Officer (the "**Information Officer**") with the power to review and report to the Court and all stakeholders on the BMO sales process, the JV Transaction and estimated realizations by Investors.

Second Al-Awqati Affidavit, Hi-Rise Motion Record, Tab 2, para. 39.

C. The Information Officer's Report

24. The Information Officer's report (the "**Report**") was completed on October 7, 2019 and published on Representative Counsel's website the same day. The Report reached the following conclusions:

- (a) The 2017 and 2018 sales process (collectively the “**Sales Process**”) was a robust and thorough market test designed to achieve the maximum transaction value in the circumstances;
- (b) The Sales Process was consistent with industry standards and was carried out by BMO in a thoughtful and professional manner;
- (c) Nothing led the Information Officer to believe that the JV Transaction would be considered improvident; and
- (d) The Information Officer did not believe there was any reasonable prospect of a sales process generating sufficient funds to repay both the Meridian Mortgage and the Syndicated Mortgage in full.

Second Al-Awqati Affidavit, Hi-Rise Motion Record, Tab 2, paras. 39-40.

25. The Information Officer also considered whether reopening the Sales Process, or commencing a receivership, might generate a result that would provide greater recovery for Investors than the JV Transaction. The Information Officer concluded that while a receivership may result in a faster distribution of proceeds to Investors, to achieve the same returns as the JV Transaction, the receivership selling price would have to be higher. Moreover, if a receivership was initiated, interest on the Meridian Mortgage and the Syndicated Mortgage and receivership costs would continue to accrue and ultimately reduce net recoveries for Investors, with no certainty that a new process would generate a higher purchase price than under the JV Transaction.

Second Al-Awqati Affidavit, Hi-Rise Motion Record, Tab 2, para. 41.

26. The Information Officer concluded as follows:

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. 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. 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. 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. [emphasis added]

Second Al-Awqati Affidavit, Hi-Rise Motion Record, Tab 2, para. 42.

D. The First Investor Vote – Investors Vote “No” on the JV Transaction

27. Following the release of the Report, Hi-Rise convened a Vote of Investors. Hi-Rise sent Investors a disclosure package about the JV Transaction. Representative Counsel recommended to Investors that they vote against the JV Transaction. Representative Counsel was concerned, among other things, that payment of Non-Registered Investors in particular was not guaranteed because they would receive funds several years in the future and, further, that by retaining a 25% interest in the development, Adelaide would receive a profit upon completion.

Second Al-Awqati Affidavit, Hi-Rise Motion Record, Tab 2, para. 43.

28. After the votes were tallied, it became apparent that the JV Transaction had not been approved by the Specified Majority. In particular, of the 61.77% share of investors that voted, a margin of 70.636% by value voted against the JV Transaction.

Second Al-Awqati Affidavit, Hi-Rise Motion Record, Tab 2, paras. 44-45.

E. Threatened Receivership, Judicial Mediation, and Minutes of Settlement

29. On October 28, 2019, Meridian Credit Union commenced an application against Adelaide in Court File No. CV-19-00628145-00CL for the appointment of a receiver, without security, over all of the assets, undertakings and properties of Adelaide (the “**Receivership Application**”). Such application followed the “no” vote of Investors.

Second Al-Awqati Affidavit, Hi-Rise Motion Record, Tab 2, para. 46.

30. Hi-Rise and Adelaide were concerned that a receivership over Adelaide had the potential to reduce sale proceeds because the Property would be sold in a “distress” situation, although it was likely that it would be a cash sale. These parties opposed the receivership application and wanted to obtain more time to try to negotiate a transaction that maximized recoveries for stakeholders. Lanterra remained interested in acquiring the Property.

Second Al-Awqati Affidavit, Hi-Rise Motion Record, Tab 2, para. 47.

31. Justice McEwen adjourned the Receivership Application to December 12, 2019 and scheduled a Judicial Mediation for November 27, 2019. The following parties participated in the Judicial Mediation: Lanterra, Jim Neilas, 263 Holdings, Adelaide, Hi-Rise, Representative Counsel and Vipin Berry, Michael Singh, Nick Tsakonacos, and Marco Arquilla in their capacity as court-appointed members of the Official Committee.

Second Al-Awqati Affidavit, Hi-Rise Motion Record, Tab 2, para. 49; Exhibit “B” to the Second Al-Awqati Affidavit, Hi-Rise Motion Record, Tab 2B, p. 3.

32. At the Judicial Mediation—which ran all day and lasted into the evening—the parties agreed to the terms of a new transaction (previously defined as the “Sale”) for an

all-cash sale of the Property to Lanterra, with an expected closing date of May 14, 2020 (the “**Closing Date**”).

Second Al-Awqati Affidavit, Hi-Rise Motion Record, Tab 2, para. 51.

33. Following the Judicial Mediation, counsel for the parties drafted Minutes of Settlement which were signed on December 24, 2019. To complement the Minutes of Settlement, Meridian, Adelaide, and 263 Holdings (among others) entered into a forbearance agreement with Meridian by which Meridian agreed to forbear from enforcing its security conditional on certain events such as the holding of an Investor Vote and the closing of the Sale by May 20, 2020 with proceeds paid to Meridian by May 22, 2020.

Second Al-Awqati Affidavit, Hi-Rise Motion Record, Tab 2, para. 53.

34. The key terms of the Minutes of Settlement are set out in the Affidavit of Noor Al-Awqati sworn April 1, 2020 (the “**Second Al-Awqati Affidavit**”) at paragraph 55. The waterfall provision setting out the distribution of proceeds after the closing of the Sale are set out in the Second Al-Awqati Affidavit at paragraphs 56-57. Representative Counsel estimates that, after paying these amounts, there will be a total of approximately \$45,000,000 in net proceeds available for distribution to Investors (the “**Distribution**”):

- (a) Registered Investors have a priority to recover under the Syndicated Mortgage and are entitled to be paid in full before any other Investors. Representative Counsel estimates that the amount owing to Registered Investors is approximately \$22,810,717.84 as of the Closing Date (composed of \$17,133,872.86 in principal and \$5,676,844.98 in accrued

interest). Since the Registered Investors have priority, they will receive a 100% recovery of principal and interest.

- (b) Representative Counsel estimates that Investors other than Registered Investors (who invested indirectly and directly (including through transfers) via non-registered means, at different times over the course of the project, based on different investment terms) will receive an aggregate of approximately \$22.68 million after Registered Investors are paid. With respect to Non-Registered Investors, they will be owed \$48,235,032.06 as of the Closing Date, (composed of \$34,973,891.58 in principal and \$13,261,140.48 in accrued interest) and therefore it is estimated that they will receive recoveries of around 64.86% (based on principal alone) or 47.03% (based on principal and interest).

Second Al-Awqati Affidavit, Hi-Rise Motion Record, Tab 2, para. 58.

35. The above-noted recoveries are based on Representative Counsel's projected estimations only and have been calculated based on the current prime rate, and therefore, are subject to change. These estimates were prepared by Representative Counsel to provide Investors and the Court with an estimate of the expected Distribution amounts following the closing of the Sale. The Distribution will be subject to ordinary closing adjustments as at closing, and accordingly, the estimated numbers noted above are not final.

Fourth Report of Representative Counsel dated January 9, 2020, filed.

F. Second Investor Vote: Investors Approve the Sale and Distribution In Accordance With the Minutes of Settlement

36. In early January 2020, Representative Counsel made the Minutes of Settlement available on its website and recommended that Investors vote to approve the Minutes of Settlement.

Second Al-Awqati Affidavit, Hi-Rise Motion Record, Tab 2, paras. 59-60.

37. To ensure that the Vote was properly tabulated and the results could be relied on, Hi-Rise engaged TSX Trust to prepare and distribute ballots (each containing a unique control number). On January 13, 2020, at the instruction of Hi-Rise, TSX Trust mailed an information statement (the “**Information Statement**”), providing a summary of the Sale and Distribution as well as instructions regarding the Vote, and ballot to all Investors. Hi-Rise informed Investors their votes could be submitted by mail, online, or by fax anytime during the voting window of January 22, 2020 to January 28, 2020.

Second Al-Awqati Affidavit, Hi-Rise Motion Record, Tab 2, para. 61.

38. Investors approved the transaction as described in the Minutes of Settlement by far more than the Specified Majority. The details of the Vote results are as follows:

- (a) Out of 708 Investors, 417 cast ballots, representing an overall turn-out of 58.89%.
- (b) The voter turn-out among Registered Investors was 62% and among Non-Registered Investors it was 56%;

- (c) Among Registered Investors, 100% in number of votes cast (representing \$11,861,862 in value and 100% by value of votes cast) voted in favour;
and
- (d) Among Non-Registered Investors, 95.9% in number of votes cast (representing \$19,960,791 in value and 93.184% by value of votes cast) voted in favour.

Second Al-Awqati Affidavit, Hi-Rise Motion Record, Tab 2, para. 63.

39. As such, the number and value of votes in favour was far in excess of the Specified Majority. Investors overwhelmingly supported the Sale.

Second Al-Awqati Affidavit, Hi-Rise Motion Record, Tab 2, para. 64.

G. Hi-Rise's Powers and Obligations Pursuant to the MAA and LPA

40. The MAA provides that Hi-Rise holds the amount advanced by the Investor and the Syndicated Mortgage as trustee for the Investor. The MAA also provides that the rights and obligations of the parties (i.e., Hi-Rise and the Investor/Plan Administrator) are set out in the LPA. The LPA governs Hi-Rise's rights, powers, and obligations in respect of administering the Syndicated Mortgage. These rights, powers, and obligations of Hi-Rise include the following:

- (a) pursuant to section 8 of the LPA: upon default of the Borrower to "make such decisions, to take such action and exercise all such rights and remedies as Hi-Rise may, in its absolute discretion, deem advisable in the best interests of all participants in the Participation Loan, including the

right to re-negotiate the Loan Commitment with the Borrower upon such terms as Hi-Rise shall deem advisable”; and

- (b) pursuant to section 13 of the LPA: “to give a good and valid discharge or assignment of the Participation Loan without the consent of the participants in the Participation Loan, provided all monies due under the Participation Loan as originally agreed upon or as amended, together with all other costs and charges, have been fully repaid or will be fully repaid under the terms of any discharge or assignment”. [emphasis added]

First Al-Awqati Affidavit, Hi-Rise Motion Record, Tab 2A, para. 51; Second Al-Awqati Affidavit, Hi-Rise Motion Record, Tab 2, para. 68.

41. In addition, certain LPAs executed in 2011, and all LPAs executed after 2011 permit Hi-Rise “to make all decisions and take any actions it may deem necessary to protect the principal advanced under the Participation Loan and enhance the value of the security including, without limitation, changing the nature and scope of the mortgage security”.

Second Al-Awqati Affidavit, Hi-Rise Motion Record, Tab 2, para. 69.

42. Hi-Rise believes that it has the power pursuant to its MAAs and LPAs to discharge the Syndicated Mortgage even though not all Investors will be repaid in full, and following the democratic process that has allowed Investors to vote on the Sale, however, in doing so Hi-Rise wants to ensure that it is acting in a manner consistent with its obligations pursuant to the MAA and LPA, and at law.

First Al-Awqati Affidavit, Hi-Rise Motion Record, Tab 2A, paras. 54-55.

43. In any event, the completion of the transaction and the vesting of the Property in Lanterra free and clear of all encumbrances (including the Syndicated Mortgage) allows the maximum realizable value for the Property to be obtained and for proceeds (after prior-ranking obligations are paid) to be distributed to Investors. There is no other alternative that would provide any greater recovery for investors.

H. Release of the Parties

44. The parties to the Minutes of Settlement intended to reach a final, binding settlement that resolves all claims in respect of the Property, so that any potential disputes are left behind. In order to finalize the Minutes of Settlement, each of the parties was required to compromise and give up claims and they expected other parties to do likewise. In addition, the purpose of the Minutes of Settlement is to promote certainty for all stakeholders, including Investors.

Second Al-Awqati Affidavit, Hi-Rise Motion Record, Tab 2, para. 72.

45. In recognition of these principles, section 20 of the Minutes of Settlement requires all parties to execute and deliver a Mutual Release prior to the Distribution, with such release including a carve-out in respect of the activities and conduct of Representative Counsel and Hi-Rise solely in respect of the Distribution to Investors. Upon completion of the Distribution, and in accordance with section 20 of the Minutes of Settlement, the parties will execute a further full and final release.

Second Al-Awqati Affidavit, Hi-Rise Motion Record, Tab 2, para. 73; Exhibit "B" to the Second Al-Awqati Affidavit, Hi-Rise Motion Record, Tab 2B.

46. Hi-Rise, Adelaide, and 263 Holdings have provided substantial consideration for the release, collectively totalling approximately \$9,000,000. In particular, Hi-Rise is waiving its claim for payment of all accrued but unpaid administration fees associated

with the Syndicated Mortgage. Adelaide and 263 Holdings are waiving their claim for full reimbursement of all expenses incurred to preserve the Property and get it ready for development (including legal fees, security, insurance and interest on the Meridian Mortgage).³ As a result of these compromises and waivers of claims by 263 Holdings, Adelaide, and Hi-Rise, the amount of money available for distribution to Investors has been materially increased, to the benefit of Non-Registered Investors in particular.

Second Al-Awqati Affidavit, Hi-Rise Motion Record, Tab 2, para. 74.

47. In light of the consideration that the parties have provided, and the concessions that they have made in order to reach a final, overall settlement that maximizes the amount of money being paid to Investors, Hi-Rise seeks, as a term of the order being sought, a release of liability relating to the Property, which would include a release of liability arising out of the Syndicated Mortgage or Investors' investments.

Second Al-Awqati Affidavit, Hi-Rise Motion Record, Tab 2, para. 75.

PART III - THE ISSUES

48. The issues to be determined by this Court are as follows:

- (a) Whether Hi-Rise should be granted a declaration to discharge the Syndicated Mortgage, including in circumstances where the proceeds received from the Sale are insufficient to pay in full amounts owing under the Syndicated Mortgage; and

³ The Minutes of Settlement provide for a much-reduced payment to 263 Holdings, which is also forgoing its right to profit from the development of the Property.

- (b) Whether to approve the Minutes of Settlement, the Sale and vest the Property in Lanterra, and authorize the transaction to be completed on the terms set out in the Minutes of Settlement.

PART IV - LAW & ARGUMENT

A. Direction Pursuant to the *Trustee Act* and the *Rules*

49. Hi-Rise wants to ensure that it acts in accordance with its duties and powers at law. In particular, Hi-Rise wants to ensure that its proposed role in completing the Sale and allowing the Syndicated Mortgage to be discharged is proper in the circumstances and consistent with Hi-Rise's powers as mortgage administrator.

50. The *Trustee Act* and the *Rules of Civil Procedure* create a framework for trustees to seek the Court's guidance in the interpretation and implementation of their power and authority pursuant to applicable governing agreements and at law.

Trustee Act, section 60.
Rules of Civil Procedure, RRO 1990, Reg 194, Rule 14.

51. In particular, section 60 of the *Trustee Act* permits a trustee to seek "advice as to the legal matters or legal difficulties arising in the *discharge of [their] duties...*" [emphasis added]. Pursuant to this section, the Court has the power to provide direction in respect of a trustee's proposed plan to manage or administer trust property to ensure that such management or administration is consistent with a trustee's obligations. The Court has relied on this power to assist trustees in the management of complex transactions related to trust property where the Court's advice and direction are required to sanction, in effect, Hi-Rise's ability to discharge the Syndicate Mortgage even though not all Investors will be repaid in full.

InnVest Real Estate Investment, 2011 ONSC 7693, paras. 10, 12-14, Hi-Rise Book of Authorities ("Hi-Rise BOA"), Tab 4.

***Gilchrist v. Deakin Estate*, 2011 ONSC 1289, para. 4, Hi-Rise BOA, Tab 3.
Endorsement and Order of Justice Hainey dated February 28, 2019 in *Hi-Rise Capital Ltd. v Superintendent of Financial Services et. al.* (CV-19-00614404-00CL) (“Hainey J. Endorsement and Order”), Hi-Rise BOA, Tab 2.**

52. The Court’s advice and direction is particularly required where, as here, there is a risk that some Investors will argue that the agreements governing Hi-Rise’s obligations to Investors do not clearly authorize Hi-Rise to discharge the Syndicated Mortgage where there is a deficiency.

53. The overall purpose of the LPA and MAA is to ensure that Hi-Rise acts in the best interests of Investors and fairly manages their investment. The spirit of the MAA, LPA, and section 60 of the *Trustee Act* should provide Hi-Rise with the power to discharge the Syndicated Mortgage in the event of a deficiency, especially in a case like this where the best available price has been obtained for the Property. It would be contrary to the interests of all stakeholders, in particular, Investors, to prevent Hi-Rise from permitting the Syndicated Mortgage to be discharged unless payment in full is received. Adelaide is a special-purpose company whose only asset is the Property. The Information Officer and other relevant parties have recognized that it will simply not be possible to sell the Property in its current state at a price sufficient to fully repay the Syndicated Mortgage. If Hi-Rise were barred from permitting the discharge of the Syndicated Mortgage absent full payment, the Property would languish and could likely never be sold. Alternatively, Meridian would sell the Property under power of sale or through a receivership (potentially at a lower price) and the Syndicated Mortgage would be extinguished on closing.

54. Finally, in an earlier application by Hi-Rise involving a syndicated mortgage over 799 College St. in Toronto, this Court has determined that Hi-Rise has the power pursuant to its LPAs and MAAs to discharge a syndicated mortgage even where the

proceeds for distribution to investors are not sufficient to repay the investors their full principal and interest owing under the syndicated mortgage.

Hailey J. Endorsement and Order, Hi-Rise BOA, Tab 2.

B. The Approval and Vesting Order

55. The following four factors assist the Court in determining whether to approve a transaction and vest the property at issue in the purchaser: (1) whether sufficient effort has been made to obtain the best price for the Property and whether the party seeking approval of the sale has acted improvidently; (2) the interests of all parties; (3) the efficacy and integrity of the process by which offers were obtained; and (4) whether there has been unfairness in the process to obtain offers for the property. Each of these principles is discussed in greater detail below.

***Royal Bank v Soundair Corp*, [1991] O.J. No. 1137 (C.A.) (“*SoundAir*”), para. 16, Hi-Rise BOA Tab 5.**

i. Hi-Rise and Adelaide Have Made Sufficient Effort to Obtain the Best Price for the Property and Has Not Acted Improvidently

56. As set out above, the Sale arose from a series of events involving
- (a) a two-year Sales Process facilitated by an experienced real estate advisor and which process the court-appointed Information Officer described as a “thorough market test...executed with proper efficacy and integrity” whereby “sufficient effort was made to obtain the best price in respect of the Property”;
 - (b) the appointment of Representative Counsel and the Official Committee to protect Investors’ rights while providing an option to Investors to opt-out and be represented by counsel of their choice;

- (c) the calling of an Investor vote to approve the JV Transaction;
- (d) when the JV Transaction was not approved, the cooperation of all relevant parties through a Judicial Mediation to propose and agree to a transaction that would lead to the best possible recoveries for Investors in the circumstances; and
- (e) a second Investor vote to approve the Minutes of Settlement, and the Sale and Distribution in accordance with the Minutes of Settlement, which was ultimately approved by the Specified Majority of Investors.

57. Hi-Rise and Adelaide were faced with an undeveloped Property in a market where construction lending had essentially “frozen” and for which construction-related challenges made the Property increasingly more difficult to develop. Even after Adelaide took steps to address the construction challenges and re-market the Property, Adelaide and Hi-Rise knew that the circumstances would impact their ability to achieve a viable transaction that would result in 100% recoveries for Investors.

58. The decision to enter into the JV Transaction was a matter of business judgment exercised by Adelaide (and Hi-Rise) in light of market circumstances and on the information available to it in light of responses received by potentially interested parties over the course of the Sales Process. The Investor vote, which ultimately did not approve the JV Transaction, provided an additional layer of protection for Investors and ensured that the Property would not be subject to a transaction unless the Specified Majority voted in favour.

59. At the Judicial Mediation, the parties agreed to the terms of the Sale, which would result in better recoveries for Investors. The parties worked diligently to negotiate and agree to Minutes of Settlement approving the Sale and Distribution to account for the contributions and concessions made by various of the parties. The Investors ultimately voted and the Specified Majority of Investors approved the Sale and Distribution in accordance with the Minutes of Settlement.

ii. The Interests of all Parties

60. The process that led to the Sale and the associated terms in the Minutes of Settlement considered the interests of all relevant stakeholders, especially Investors. Hi-Rise proactively sought the appointment of Representative Counsel, provided a mechanism for Investors to vote on two proposed transactions (i.e., the JV and, later, the Minutes of Settlement), and allowed an Information Officer to be appointed to objectively review the proposed terms of the JV Transaction. In addition, Representative Counsel attended the Judicial Mediation and had an active role in the negotiation of the Minutes of Settlement.

iii. The Minutes of Settlement and the Sale are the result of Efficacious and Integrous Process

61. To be clear, the determination of the efficacy and integrity of the Sale does not depend on whether a better process might arise or might have arisen:

While every proper effort must always be made to assure maximum recovery consistent with the limitations inherent in the process, no method has yet been devised to entirely eliminate those limitations or to avoid their consequences. Certainly it is not to be found in loosening the entire foundation of the system. Thus to compare the results of the process in this case with what might have been recovered in some other set of circumstances is neither logical nor practical. [emphasis in original]

SoundAir, para. 45, Hi-Rise BOA Tab 5.

62. It is in the interests of commercial certainty that the Court not lightly interfere with an agreement that has been arrived at in good faith and bargained for extensively by the parties and with the assistance of the Court (at the Judicial Mediation). The Court should also refrain from reviewing, in minute detail, all of the circumstances leading up to the Sale. It is sufficient for the Court to be satisfied that the process leading up to the Sale was conducted with efficacy and integrity.

SoundAir, para. 46, Hi-Rise BOA Tab 5.

63. As set out in paragraphs 56 to 59 above the Sale resulted after the appetite of the real estate market in respect of the Property was tested, and after participation by court-appointed Representative Counsel for Investors, two Investor votes, and a Judicial Mediation. All relevant parties were given an opportunity to participate in the Judicial Mediation and all parties that participated, contributed to, and ultimately agreed to the Minutes of Settlement and the Sale and Distribution in accordance with the Minutes of Settlement.

iv. There was No Unfairness in the Process

64. Representative Counsel was heavily involved in the negotiation of the Minutes of Settlement. In addition, Investors received disclosure of the terms of the transaction in the form of a lengthy report from Representative Counsel. Investors also received a copy of the Minutes of Settlement. With this information in hand, they were allowed to vote to approve or reject the transaction. The transaction was approved by a significant majority of both Registered Investors and Non-Registered Investors. Investor participation in the vote was strong, with almost 60% of Investors casting ballots.

65. In *Soundair*, the Ontario Court of Appeal said the following about the fourth criterion of the Soundair Test:

The court should not proceed against the recommendations of its Receiver except in special circumstances and where the necessity and propriety of doing so are plain. Any other rule or approach would emasculate the role of the Receiver and make it almost inevitable that the final negotiation of every sale would take place on the motion for approval.

It is equally clear, in my view, though perhaps not so clearly enunciated, that it is only in an exceptional case that the court will intervene and proceed contrary to the Receiver's recommendations if satisfied, as I am, that the Receiver has acted reasonably, prudently and fairly and not arbitrarily.

SoundAir, para. 58, Hi-Rise BOA Tab 5.

66. Although there is no Receiver in the present case, Representative Counsel has strongly recommended acceptance and approval of the Minutes of Settlement. The court should give significant credence to this recommendation.

67. Hi-Rise and Adelaide have made sufficient efforts to obtain the best price for the Property, ensure the best recoveries for Investors in the circumstances, and implemented a reasonable, effective, and democratic process to allow Investors to approve of the transaction.

PART V - ORDER REQUESTED

68. Hi-Rise therefore respectfully requests an Order approving the Minutes of Settlement and the Sale and Distribution in accordance with the Minutes of Settlement, substantially in the form attached as Appendix "A".

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 14th day of April 2020.



CASSELS BROCK & BLACKWELL LLP

**SCHEDULE “A”
LIST OF AUTHORITIES**

1. *Dugal v. Research in Motion Ltd.*, [2007] O.J. No. 4535 (S.C.)
2. *Endorsement and Order of Justice Hainey* dated February 28, 2019 in *Hi-Rise Capital Ltd. v Superintendent of Financial Services et. al.* (CV-19-00614404-00CL)
3. *Gilchrist v. Deakin Estate*, 2011 ONSC 1289
4. *InnVest Real Estate Investment*, 2011 ONSC 7693
5. *Royal Bank v Soundair Corp.*, [1991] O.J. No. 1137 (C.A.)

SCHEDULE “B”
TEXT OF STATUTES, REGULATIONS & BY-LAWS

Trustee Act, RSO 1990, c T.23

Trustee, etc., may apply for advice in management of trust property

60 (1) A trustee, guardian or personal representative may, without the institution of an action, apply to the Superior Court of Justice for the opinion, advice or direction of the court on any question respecting the management or administration of the trust property or the assets of a ward or a testator or intestate. R.S.O. 1990, c. T.23, s. 60 (1); 2000, c. 26, Sched. A, [s. 15 \(2\)](#).

Costs may be ordered to be paid out of estate

64 The Superior Court of Justice may order the costs of and incidental to any application, order, direction, conveyance, assignment or transfer under this Act to be paid or raised out of the property in respect of which it is made, or out of the income thereof, or to be borne and paid in such manner and by such persons as the court considers proper. R.S.O. 1990, c. T.23, s. 64; 2000, c. 26, Sched. A, [s. 15 \(2\)](#).

Courts of Justice Act, RSO 1990 c C. 43

COMMON LAW AND EQUITY

Rules of law and equity

96 (1) Courts shall administer concurrently all rules of equity and the common law. R.S.O. 1990, c. C.43, [s. 96 \(1\)](#); 1993, c. 27, Sched.

Rules of equity to prevail

(2) Where a rule of equity conflicts with a rule of the common law, the rule of equity prevails. R.S.O. 1990, c. C.43, [s. 96 \(2\)](#); 1993, c. 27, Sched.

Jurisdiction for equitable relief

(3) Only the Court of Appeal and the Superior Court of Justice, exclusive of the Small Claims Court, may grant equitable relief, unless otherwise provided. R.S.O. 1990, c. C.43, [s. 96 \(3\)](#); 1994, c. 12, s. 38; 1996, c. 25, s. 9 (17).

Declaratory orders

97 The Court of Appeal and the Superior Court of Justice, exclusive of the Small Claims Court, may make binding declarations of right, whether or not any consequential relief is

or could be claimed. R.S.O. 1990, c. C.43, [s. 97](#); 1994, c. 12, s. 39; 1996, c. 25, s. 9 (17).

Vesting orders

100 A court may by order vest in any person an interest in real or personal property that the court has authority to order be disposed of, encumbered or conveyed. R.S.O. 1990, c. C.43, [s. 100](#).

Rules of Civil Procedure, RRO 1990, Reg 194

APPLICATIONS — BY NOTICE OF APPLICATION

Notice of Application

14.05 (1) The originating process for the commencement of an application is a notice of application (Form 14E, 14E.1, 68A or 73A) or an application for a certificate of appointment of an estate trustee (Form 74.4, 74.5, 74.14, 74.15, 74.21, 74.24, 74.27 or 74.30). R.R.O. 1990, Reg. 194, [r. 14.05 \(1\)](#); O. Reg. 484/94, s. 5; O. Reg. 43/14, s. 5 (1).

Information for Court Use

(1.1) Form 14F (Information for court use) shall be filed together with a notice of application in Form 14E, 14E.1, 68A or 73A. O. Reg. 260/05, s. 2; O. Reg. 43/14, s. 5 (2).

Application under Statute

(2) A proceeding may be commenced by an application to the Superior Court of Justice or to a judge of that court, if a statute so authorizes. R.R.O. 1990, Reg. 194, [r. 14.05 \(2\)](#); O. Reg. 292/99, s. 1 (2).

Application under Rules

(3) A proceeding may be brought by application where these rules authorize the commencement of a proceeding by application or where the relief claimed is,

- (a) the opinion, advice or direction of the court on a question affecting the rights of a person in respect of the administration of the estate of a deceased person or the execution of a trust;
- (b) an order directing executors, administrators or trustees to do or abstain from doing any particular act in respect of an estate or trust for which they are responsible;
- (c) the removal or replacement of one or more executors, administrators or trustees, or the fixing of their compensation;

- (d) the determination of rights that depend on the interpretation of a deed, will, contract or other instrument, or on the interpretation of a statute, order in council, regulation or municipal by-law or resolution;
- (e) the declaration of an interest in or charge on land, including the nature and extent of the interest or charge or the boundaries of the land, or the settling of the priority of interests or charges;
- (f) the approval of an arrangement or compromise or the approval of a purchase, sale, mortgage, lease or variation of trust;
- (g) an injunction, mandatory order or declaration or the appointment of a receiver or other consequential relief when ancillary to relief claimed in a proceeding properly commenced by a notice of application;
- (g.1) for a remedy under the [*Canadian Charter of Rights and Freedoms*](#); or
- (h) in respect of any matter where it is unlikely that there will be any material facts in dispute requiring a trial. R.R.O. 1990, Reg. 194, [r. 14.05 \(3\)](#); O. Reg. 396/91, s. 3; O. Reg. 537/18, s. 2.

(**Lanterra**) (Hi-Rise, Adelaide, 263 Holdings, Jim Neilas, Representative Counsel, the Official Committee and Lanterra shall be referred to collectively as the "**Parties**"), and (ii) the Agreement of Purchase and Sale made as of December 20, 2019, between Adelaide and Lanterra (the "**APS**"), a copy of which is attached hereto as **Schedule B**;

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

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

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

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Noor Al-Awqati sworn April 1, 2020, and the Affidavit of Service of ● sworn April ●, 2020, filed, the Fourth Report and Fifth Report of Representative Counsel dated January 9, 2020 and April ●, 2020, respectively, and on hearing the submissions of counsel for each of the Parties, the Superintendent of Financial Services, Meridian Credit Union Limited, CTC, Lanterra, and ●, no one else appearing for any other person on the service list,

1. **THIS COURT ORDERS** that all parties entitled to notice of this Motion have been served with the Motion Record of Hi-Rise, and that service of the Motion Record is hereby abridged and validated such that this Motion is properly returnable today, and further service of the Motion Record is hereby dispensed with.

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

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

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

5. **THIS COURT ORDERS AND DECLARES** that upon delivery to Lanterra of (a) the certificate contemplated by paragraph 11 of the Minutes of Settlement substantially in the form attached as **Schedule C** hereto (the "**Certificate**"), or (b) the Representative Counsel's certificate substantially in the form attached as **Schedule D** hereto (the "**Representative Counsel Certificate**"), all of Adelaide's right, title and interest in and to the Purchased Assets (as defined in the APS) (and listed on **Schedule E** hereto) shall vest absolutely in Lanterra or its designee free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, encumbrances, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Orders of the Honourable Mr. Justice Hailey dated March 21, 2019 and September 17, 2019; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule F** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule G) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

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

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

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

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

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

11. **THIS COURT ORDERS, DECLARES AND DIRECTS** that the distribution of the Purchase Price in accordance with the Minutes of Settlement (the “**Distribution**”) is

hereby authorized and approved, with such minor amendments as the Parties may deem necessary. The Parties and CTC are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable to carry out the Distribution.

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

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

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

Schedule A — Minutes of Settlement

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

MINUTES OF SETTLEMENT

WHEREAS on March 21, 2019, Hi-Rise Capital Ltd. ("**Hi-Rise**") brought an application to the Court in Court File No. CV-19-616261-00CL under section 60 of the *Trustee Act* (Canada) for, *inter alia*, the appointment of Representative Counsel (as hereinafter defined), and a declaration that Hi-Rise has the power under the loan participation agreements and mortgage participation agreements with the Investors (as hereinafter defined) to grant a discharge of the syndicated mortgage (the "**Syndicated Mortgage**") held for the benefit of the Investors over the Property (as hereinafter defined) in the event the net proceeds received from the completion of a contemplated sale transaction relating to the Property (the "**Transaction**") are insufficient to pay the full indebtedness under the Syndicated Mortgage (the "**Trustee Application**");

AND WHEREAS pursuant to the Order of the Honourable Mr. Justice Hailey of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated March 21, 2019 (the "**Appointment Order**"), Miller Thomson LLP was appointed as Representative Counsel (in such capacity, "**Representative Counsel**") to represent all individuals and/or entities (collectively, the "**Investors**") holding an interest in the Syndicated Mortgage (each, a "**SMI**"), administered by Hi-Rise in respect of the proposed development known as the "Adelaide Street Lofts" (the "**Project**") at the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the "**Property**") and owned by Adelaide Street Lofts Inc. ("**Adelaide**"), in connection with the negotiation and implementation of a settlement with respect to such investments, except for those Investors who opted out of representation by Representative Counsel in accordance with the terms of the Appointment Order (collectively, the "**Opt-Out Investors**");

AND WHEREAS Adelaide is wholly owned by 263 Holdings Inc. ("**263 Holdings**");

AND WHEREAS BMO Capital Markets Real Estate Inc. ("**BMO**") was retained by 263 Holdings to market and sell the Property (the "**Sale Engagement**");

AND WHEREAS BMO has agreed to a reduced payment in the amount of \$649,000, inclusive of harmonized sales tax, on account of the commission payable to it in respect of the Sale Engagement (the "**BMO Commission**");

AND WHEREAS pursuant to paragraph 27 of the Appointment Order, Hi-Rise is permitted to call, hold and conduct a meeting of all Investors in the Project, including the Opt-Out Investors, in order for such parties to consider and, if determined advisable, pass a resolution approving the Transaction and the net sale proceeds arising therefrom (the "**Vote**"). Paragraphs 28 to 31 of the Appointment Order set out a mechanism and rules for the Vote;

AND WHEREAS pursuant to the Appointment Order, Representative Counsel was directed to establish an Official Committee in accordance with the process and procedure described in Schedule "B" to the Appointment Order (the "**Official Committee**");

AND WHEREAS pursuant to the Order of Justice Hainey dated April 15, 2019, the Official Committee was approved and constituted. There are currently four members of the Official Committee;

AND WHEREAS Meridian Credit Union Limited ("**Meridian**") commenced an application against Adelaide in Court File No. CV-19-00628145-00CL for the appointment of a receiver, without security, in respect of all of the assets, undertakings and properties of Adelaide (the "**Receivership Application**");

AND WHEREAS pursuant to the Endorsement of Justice McEwen dated November 1, 2019, the Receivership Application was adjourned to December 12, 2019 and a Judicial Mediation was scheduled for November 27, 2019 before Justice McEwen (the "**Judicial Mediation**");

AND WHEREAS the Parties (as defined below), together with Lanterra Developments Ltd. (“**Lanterra**”), being the proposed purchaser of the Property pursuant to the Transaction, and Meridian (though not a party to these Minutes of Settlement) attended at the Judicial Mediation;

AND WHEREAS the Receivership Application has now been adjourned sine die;

AND WHEREAS pursuant to the Order of Madam Justice Conway dated December 20, 2019, Representative Counsel is authorized on behalf of only the Investors as defined in the Appointment Order to instruct Community Trust Company to consent to the subordination of its mortgage registered on title to the Property, only in connection with this settlement, and is authorized to instruct Community Trust Company to execute any and all documents as may be necessary or required to give effect to same.

IN CONSIDERATION of the promises and the mutual covenants, agreements, representations and warranties expressed herein and other good and valuable consideration, the receipt and sufficiency of which are hereby irrevocably acknowledged by Lanterra and each of Jim Neilas, 263 Holdings, Hi-Rise, Adelaide and Representative Counsel and the Official Committee (collectively, the “**Parties**”), the Parties hereby agree to settle all matters raised in the Trustee Application on the following terms:

1. The Parties agree that the above-noted recitals are true and accurate.
2. Lanterra, or a designee, agrees to pay on the closing of the Transaction the amount of \$69,000,000 (the “**Purchase Price**”) in respect of its purchase of a 100% legal and beneficial interest in the Property. A portion of the Purchase Price shall be satisfied by way of the Deposit (as hereinafter defined) to be paid, in trust, to the lawyers for Adelaide, namely, McCarthy Tétrault LLP, with the balance to be distributed on the terms hereinafter set forth.
3. Upon the execution of these Minutes of Settlement by the Parties and Lanterra, the following shall occur forthwith:
 - (a) Lanterra and Adelaide shall enter into an agreement of purchase and sale in respect of the Transaction (the “**APS**”) which shall provide for, *inter alia*, (i) the Purchase Price, (ii) a deposit paid to McCarthy Tétrault LLP, in trust, in the

amount of \$10,000 (the “**Deposit**”), (iii) a closing date of no later than May 14, 2020 (the “**Closing Date**”), (iv) limited representations and warranties customary in receivership sales, (v) closing conditions customary in receivership sales, and (vi) the issuance by the Court of an Approval and Vesting Order vesting the Property in Lanterra or its designee on closing free and clear of all encumbrances, in form satisfactory to Lanterra, acting reasonably;

- (b) Lanterra will lend \$18,000 to Adelaide, which loan shall accrue interest at the rate of prime plus 2% (the “**Forbearance Fee Loan**”), and Adelaide shall direct Lanterra to pay the \$18,000 to Meridian on account of the forbearance fee owing by Adelaide to Meridian;
- (c) Lanterra will lend \$1,550,000 to Adelaide, which loan shall accrue interest at the rate of prime plus 2% (the “**Interest Payment Loan**”), and Adelaide shall direct Lanterra to pay the amount of \$1,550,000 to Meridian on account of outstanding interest due and owing by Adelaide to Meridian;
- (d) As security for the Interest Payment Loan, Adelaide shall grant in favour of Lanterra a second-ranking mortgage (the “**Lanterra Mortgage**”) secured against title to the Property, which mortgage shall be on the same terms as and shall rank subordinate to the mortgage held by Meridian, but in priority to the mortgage held by Hi-Rise (the “**Hi-Rise Mortgage**”) (and in such regard Hi-Rise agrees to subordinate the existing mortgage held by it). The costs associated with registering the Lanterra Mortgage on title to the Property shall be added to the amount of, and shall be secured by, the Lanterra Mortgage;
- (e) Each of Lanterra and the Parties, or any of one of them, shall execute any and all documents as may be necessary to give effect to paragraphs 3(a) to 3(d), above.

4. Until the Closing Date, Adelaide shall (a) continue to operate the Property on the same basis as at the date of execution of these Minutes of Settlement; (b) continue to pay the operating expenses in respect of the Property that it is paying as at the date of execution of these Minutes

of Settlement, and will not be liable or responsible for any other expenses in respect of the Property; and (c) pay all remittances on account of harmonized sales tax or HST.

5. These Minutes of Settlement, including the Transaction and the terms noted in paragraph 9 below, shall be subject to approval of the Investors and the Court. Upon execution of these Minutes of Settlement by Lanterra and the Parties, Hi-Rise shall hold the Vote as soon as reasonably practicable in accordance with paragraphs 27 to 30 of the Appointment Order. Thereafter, and provided that the Vote passes by the margin provided for in paragraph 31 of the Appointment Order, Hi-Rise shall forthwith bring a motion to the Court in the Trustee Application in accordance with paragraph 31 of the Appointment Order:

- (a) For approval of the Transaction and the Investor Settlement Amount;
- (b) To permit and direct Hi-Rise to grant a discharge of the Hi-Rise Mortgage; and
- (c) To issue an Approval and Vesting Order in form satisfactory to Lanterra and Representative Counsel, acting reasonably.

6. Upon execution of these Minutes of Settlement by Lanterra and the Parties, Representative Counsel shall be entitled to bring a motion within the Trustee Application for an order, substantially in the form attached as Appendix "A" to these Minutes of Settlement, and Lanterra and the Parties shall provide their written consent to same.

7. On the closing of the Transaction, each of Lanterra, 263 Holdings and the Investors (from the proceeds of the Investor Settlement Amount, as hereinafter defined) agrees to contribute one-third of the BMO Commission; provided, however, that the liability of 263 Holdings in respect of same shall be limited to the sum of \$216,000.

8. On the closing of the Transaction, 263 Holdings agrees to pay to Lanterra the amount of \$50,000 in respect of the breakage fee payable under a joint venture transaction contemplated between Adelaide and Lanterra pursuant to a term sheet made as of April 10, 2019, as amended from time to time.

9. On closing of the Transaction, Lanterra shall pay:

- (a) To Aird & Berlis LLP in trust (on behalf of Meridian), the amounts owing as of the date of repayment (the “**Meridian Repayment Amount**”) under the loan agreement between Meridian and Adelaide dated April 2, 2018 (as may be or have been subsequently amended, replaced, restated or supplemented from time to time, the “**Credit Agreement**”) and/or the forbearance agreement between Meridian and Adelaide dated December 20, 2019, which amounts shall include principal, interest and amounts which may be or become owing for Meridian’s fees, agent costs, reasonable professional fees and accrued interest at the rates set out in the Credit Agreement, which amounts shall be reviewed by Representative Counsel prior to such payment;
- (b) To Stikeman Elliott LLP in trust (on behalf of Lanterra):
 - (i) the amounts owing to Lanterra as of the date of repayment under the Forbearance Fee Loan, which amounts shall be reviewed by Representative Counsel prior to payment;
 - (ii) the amounts owing to Lanterra as of the date of repayment under the Interest Payment Loan, which amounts shall be reviewed by Representative Counsel prior to payment, less \$216,500 on account of Lanterra’s contribution to the BMO Commission;
 - (iii) the sum of \$50,000 on behalf of 263 Holdings in respect of the breakage fee payable under a joint venture transaction contemplated between Adelaide and Lanterra pursuant to a term sheet made as of April 10, 2019, as amended from time to time;
- (c) To McCarthy Tétrault LLP in trust (on behalf of 263 Holdings), the sum of \$3,734,000, representing the amount payable to 263 Holdings (\$4,000,000 less 263 Holdings’ contribution to the BMO Commission and the \$50,000 breakage fee); and
- (d) To Miller Thomson LLP in trust (to be distributed in accordance with paragraph 10), the balance of the Purchase Price remaining after payment of the amounts

required to be made to Aird & Berlis LLP in trust, Stikeman Elliott LLP in trust, and McCarthy Tétrault LLP in trust pursuant to paragraphs 9(a) to 9(c).

10. The amount paid to Miller Thomson LLP in trust pursuant to paragraph 9(d) shall be distributed by Miller Thomson LLP in the following order of priority:

- (a) First, to professionals with charges on the Property in full satisfaction of the amounts secured by such charges registered on title to the Property as of the date of repayment, and to Representative Counsel (Miller Thomson LLP, in trust) a reasonable reserve amount to be held back in order to pay fees and disbursements of professionals with charges on the Property in respect of the implementation and completion of these Minutes of Settlement;
- (b) Second, to BMO in full satisfaction of the BMO Commission;
- (c) Third, to Cassels Brock & Blackwell LLP ("**Cassels**"),
 - (i) the sum of \$146,223.00 (a discounted sum) to pay Cassels's legal fees, disbursements, and taxes for work done for Hi-Rise in regard to the Trustee Application, these Minutes of Settlement, and the Transaction (collectively, the "**Cassels Services**") over the period up to and including December 8, 2019, plus
 - (ii) the actual legal fees, disbursements, and taxes incurred by Hi-Rise for the period from and after December 9, 2019 to the date of closing of the Transaction in connection with Cassels Services, as evidenced by redacted invoices provided to Representative Counsel that set out details of numbers of hours billed by timekeepers on each date but with narrative details of activities redacted;
- (d) Fourth, to set aside and pay over to Cassels a reasonable reserve for legal fees, disbursements, and taxes of Cassels in connection with Cassels Services required after the closing of the Transaction, such as services associated with the distribution of proceeds to Investors and any motion required to terminate the

Trustee Application (the “**Cassels Reserve**”), with the amount of the Cassels Reserve to be agreed upon by Cassels and Representative Counsel, acting reasonably, or, failing agreement, to be determined by the Court; and

- (e) Fifth, to the Investors (the “**Distribution**”) in full satisfaction of all claims each Investor may have in relation to the Property and the Project (in aggregate, the “**Investor Settlement Amount**”), and, for greater certainty, the amounts payable to Investors holding their investment through a registered plan shall be paid to Community Trust Company as trustee of the registered plans.

11. Upon payment of funds in accordance with paragraph 9, and for greater certainty, prior to any of the distributions in accordance with paragraph 10, Aird & Berlis LLP, Stikeman Elliott LLP, McCarthy Tétrault LLP and Miller Thomson LLP shall each execute a certificate in the form attached to the Approval and Vesting Order (the “**Certificate**”) confirming receipt of the funds paid pursuant to paragraph 9 and deliver same to Lanterra. Upon delivery of the Certificate, the Property shall vest in Lanterra in accordance with the terms set out in the Approval and Vesting Order.

12. In the event there is a dispute in respect of the distributions set out in paragraph 10, Representative Counsel shall seek directions from the Court prior to such distributions being made.

13. Hi-Rise shall be responsible for preparing a list of the Investors, corresponding distribution entitlements and priorities of each of the Investors (together with appropriate documentation establishing same) from the Investor Settlement Amount (the “**Investor Distribution List**”). Solely for the purposes of ensuring that the Investor Settlement Amount is distributed in accordance with the respective entitlements of Investors, Representative Counsel shall be entitled to review the Investor Distribution List prior to any distribution of the Investor Settlement Amount. If there are disputes over Investors’ entitlements or any part of the Investor Distribution List, Representative Counsel shall seek directions from the Court prior to its Distribution of the Investor Settlement Amount set out in paragraph 10(e). For greater certainty, Representative Counsel shall be entitled, in consultation with Hi-Rise, to delegate the task of Distribution of the Investor Settlement Amount as set out in paragraph 10(e).

14. Prior to effecting any Distribution of the Investor Settlement Amount, Representative Counsel shall obtain Court approval of the Investor Distribution List and the proposed mechanism for Distribution.

15. For greater certainty, the Investors as defined in these Minutes of Settlement shall include all Investors in the Project, including but not limited to those Investors whose investments were originally in the Cube Lofts Project at the property municipally known as 799 College Street, Toronto, but the Distribution shall be made in accordance with the relative priority that each of the Investors has (i.e., registered, non-registered, and subordinated), which priority information shall be provided by Hi-Rise and included in the Investor Distribution List in accordance with paragraph 13, above.

16. Notwithstanding that 263 Holdings is an Investor, 263 Holdings shall be excluded from the distribution to Investors from the Investor Settlement Amount. For greater certainty, 263 Holdings shall not receive a distribution or return on its SMI from the Investor Settlement Amount.

17. Hi-Rise shall have no liability for any failure by Representative Counsel or its agents or delegates to effect the Distribution in accordance with the Investor Distribution List.

18. Upon distribution of the amounts set out in paragraph 10 above, Representative Counsel and the Official Committee shall obtain a discharge order in the Trustee Application, and the Parties shall provide their written consent to same.

19. If on or prior to the Closing Date Adelaide, without lawful justification, refuses to perform its obligations under the APS or takes any action to frustrate the closing:

- (a) Lanterra may make the payments otherwise required to be made by Lanterra under paragraph 9;
- (b) If Lanterra makes the payments pursuant to paragraph 9, Representative Counsel shall execute a certificate substantially in the form attached to the Approval and Vesting Order upon receipt of written confirmation by Stikeman Elliott LLP that

the distribution amounts set out in paragraph 9, above, have been delivered (the “**Representative Counsel Certificate**”) and deliver same to Lanterra; and

- (c) Upon delivery of the Representative Counsel Certificate by Representative Counsel to Lanterra, the Property shall vest in Lanterra in accordance with the terms set out in the Approval and Vesting Order.

20. Each of Lanterra and the Parties shall each execute full and final mutual releases (the “**Releases**”), including full and final releases of all directors, officers and affiliates of Lanterra and the Parties (including their legal counsel), where applicable, in a form to be mutually agreed upon between counsel, which Releases shall include a carve out in respect of the activities and conduct of Representative Counsel and Hi-Rise solely in respect of the Distribution of the Investor Settlement Amount. Upon completion of the Distribution, each of Lanterra and the Parties shall execute a further full and final release in a form substantially similar to the Releases.

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

22. These Minutes of Settlement and every covenant, provision and term herein contained shall enure to the benefit of and be binding upon each of Lanterra and the Parties and their respective heirs, executors, administrators, assigns, agents, advisors, consultants and other representatives.

23. Lanterra and each of the Parties agree to do and execute such further acts and documents as may be reasonably necessary or desirable to give effect to the covenants, provisions and terms of these Minutes of Settlement.

24. Any amendments to these Minutes of Settlement must be agreed to as between Lanterra and the Parties and must be in writing.

25. Each of Lanterra and the Parties acknowledges and agrees that:

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

26. These Minutes of Settlement may be executed in counterparts, and by facsimile or electronic mail, each of which shall be deemed to be an original, all such separate counterparts shall together constitute one and the same instrument.

27. These Minutes of Settlement and the documents attached hereto, together with the executed Full and Final Mutual Release, represent the entire agreement among each of Lanterra and the Parties.

***[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
– SIGNATURE PAGE TO FOLLOW]***

DATED AT this _____ day of _____, 2019.

LANTERRA DEVELOPMENTS LTD.

Per: 

Name: Christopher J. Warr
Title: Chief Operating Officer
(I have authority to bind the corporation)

DATED AT this _____ day of _____, 2019.

Witness: _____

JIM NEILAS

: _____

DATED AT this _____ day of _____, 2019.

263 HOLDINGS INC.

Per: _____

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

DATED AT this _____ day of _____, 2019.

ADELAIDE STREET LOFTS INC.

Per: _____

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

DATED AT _____ this _____ day of _____, 2019.

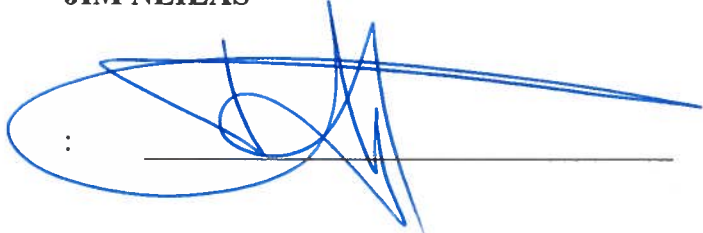
LANTERRA DEVELOPMENTS LTD.

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

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

Witness: 
Geoff L. Hall

JIM NEILAS


: _____

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

263 HOLDINGS INC.

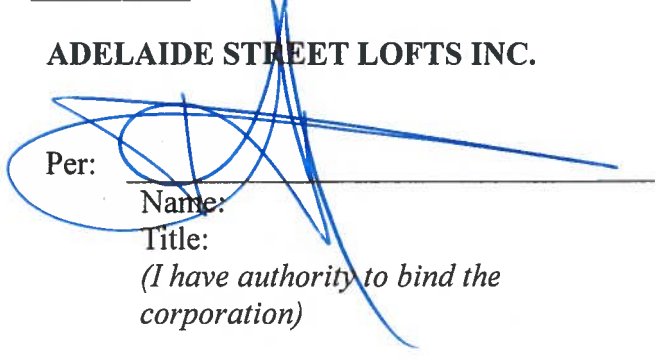
Per: _____
Name:
Title:
(I have authority to bind the corporation)



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

ADELAIDE STREET LOFTS INC.

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



DATED AT this _____ day of _____, 2019.

HI-RISE CAPITAL LTD.

Per: _____

Name: MOOR AL-RWQATI

Title: COO

(I have authority to bind the corporation)

DATED AT this _____ day of _____, 2019.

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

Per: _____

Name:

Title:

(I have authority to bind the limited liability partnership)

DATED AT this _____ day of _____, 2019.

Witness: _____

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

DATED AT

this _____ day of _____, 2019.

HI-RISE CAPITAL LTD.

Per: _____

Name:

Title:

(I have authority to bind the corporation)

DATED AT the City of Toronto this 23rd day of December, 2019.

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



Per: _____

Name: Gregory R. Azeff

Title: Partner

(I have authority to bind the limited liability partnership)

DATED AT

this _____ day of _____, 2019.

Witness: _____

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

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

DATED AT this _____ day of _____, 2019.

HI-RISE CAPITAL LTD.

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

DATED AT this _____ day of _____, 2019.

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

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

DATED AT this 23rd day of December, 2019.

Witness: [Signature]

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

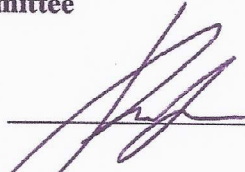
[Signature: Vipin Berry]

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

Witness: Nima Ghanian



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



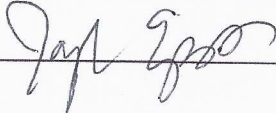
DATED AT _____ this _____ day of _____, 2019.

Witness: _____

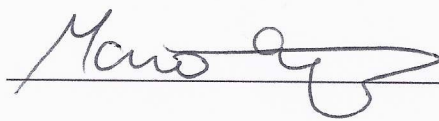
NICK TSAKONACOS, in his capacity as court-appointed member of the Official Committee

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

Witness: Jay Goo



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

Per: 

DATED AT _____ this _____ day of _____, 2019.

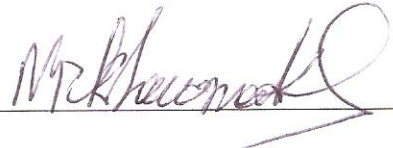
Witness: _____

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

DATED AT TORONTO this 20th day of December 2019.

Witness: 

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



DATED AT _____ this _____ day of _____, 2019.

Witness: _____

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

Per: _____

APPENDIX "A"

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) THE
)
)
JUSTICE) DAY OF , 2019

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

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

ORDER

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

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

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

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

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

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

HI-RISE CAPITAL LTD. and SUPERINTENDENT OF FINANCIAL
Applicant SERVICES Respondents et. al.

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

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

Proceeding commenced at Toronto

ORDER

MILLER THOMSON LLP

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

Greg Azeff LSO#: 45324C

gazeff@millerthomson.com
Tel: 416.595.2660/Fax: 416.595.8695

Stephanie De Caria LSO#: 68055L

sdecaria@millerthomson.com
Tel: 416.595.2652/Fax: 416.595.8695

Court-appointed Representative Counsel

HI-RISE CAPITAL LTD.

Applicant

and

SUPERINTENDENT OF FINANCIAL
SERVICES et. al.
Respondents

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

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

Proceeding commenced at Toronto

MINUTES OF SETTLEMENT

MILLER THOMSON LLP

Scotia Plaza

40 King Street West, Suite 5800

P.O. Box 1011

Toronto, ON Canada M5H 3S1

Greg Azeff LSO#: 45324C

gazeff@millerthomson.com

Tel: 416.595.2660/Fax: 416.595.8695

Stephanie De Caria LSO#: 68055L

sdecaria@millerthomson.com

Tel: 416.595.2652/Fax: 416.595.8695

Court-appointed Representative Counsel

Schedule B — Agreement of Purchase and Sale

AGREEMENT OF PURCHASE AND SALE

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

BETWEEN:

ADELAIDE STREET LOFTS INC.
(the "Vendor")

- and -

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

RECITALS

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

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

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

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

SECTION 1 – INTERPRETATION

1.1 Definitions.

In this Agreement:

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

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

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

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

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

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

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

1.2 Headings and References.

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

1.3 Extended Meanings.

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

1.4 Statutory References.

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

1.5 Schedules.

The following are the Schedules to this Agreement:

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

SECTION 2– PURCHASE AND SALE

2.1 Purchase and Sale of Purchased Assets.

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

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

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

2.2 Excluded Assets.

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

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

SECTION 3 – PURCHASE PRICE

3.1 Purchase Price and Deposit.

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

3.2 Deposit

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

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

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

3.3 Satisfaction of Purchase Price

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

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

3.4 Adjustment of Purchase Price

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

3.5 Taxes.

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

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

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

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

SECTION 4 – REPRESENTATIONS AND WARRANTIES

4.1 Vendor's Representations.

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

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

subject to the Minutes of Settlement;

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

4.2 Purchaser's Representations.

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

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

4.3 “As is, Where is”

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

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

SECTION 5 – CONDITIONS TO CLOSING

5.1 Conditions for the Benefit of the Purchaser.

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

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

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

- (e) at or prior to the Closing Time, the Vendor shall have delivered or caused to be delivered to the Purchaser each of the items listed in Section 6.2.

(2) The foregoing conditions are for the exclusive benefit of the Purchaser and may be waived, in whole or in part, by the Purchaser in its sole discretion.

5.2 Conditions for the Benefit of the Vendor.

(1) The obligation of the Vendor to complete the Transaction is subject to the following conditions being fulfilled or performed at or prior to the Closing Time:

- (a) all representations and warranties of the Purchaser contained in this Agreement shall be true as of the Closing Time with the same effect as though made as of that time and the Purchaser shall deliver to the Vendor a certificate signed by an officer of the Purchaser to that effect;
- (b) the Purchaser shall have performed or complied with, in all material respects, each of its obligations contained in this Agreement and the Minutes of Settlement to the extent required to be performed on or before the Closing Date, and the Purchaser shall deliver to the Vendor a certificate signed by an officer of the Purchaser to that effect;
- (c) the Approval and Vesting Order has been granted by the Court, and, as at the Closing Time, the Approval and Vesting Order has not been stayed, dismissed or amended in any manner not approved by the Vendor acting reasonably;
- (d) no order, proceeding, action or motion shall be pending, threatened or commenced by any Person to restrain, enjoin or prohibit the purchase and sale of the Purchased Assets; and
- (e) the Purchaser shall have delivered or caused to be delivered to the Vendor each of the items listed in Section 6.3.

(2) The foregoing conditions are for the exclusive benefit of the Vendor and may be waived, in whole or in part, by the Vendor in its sole discretion.

5.3 Termination Rights

(1) This Agreement may be terminated by notice in writing given to the other party at or prior to the Closing Date:

- (a) by the Purchaser if any of the conditions in Section 5.1 have not been satisfied on the Closing Date and the Purchaser has not waived that condition at or prior to the Closing Date; or
- (b) by the Vendor if any of the conditions in Section 5.2 have not been satisfied on the Closing Date and the Vendor has not waived that condition at or prior to the Closing Date.

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

5.4 Effect of Exercise of Termination Rights

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

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

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

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

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

SECTION 6 – CLOSING

6.1 Closing.

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

6.2 Vendor's Deliveries on Closing.

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

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

¹ Parties to consider escrow of all vendor closing documentation.

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

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

6.3 Purchaser's Deliveries on Closing

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

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

6.4 Operation Before Closing

- (1) After the date hereof, the Vendor shall not, with respect to the Property:
 - (a) enter into any new Lease;
 - (b) amend, terminate or accept a surrender of any Lease or any guarantee or indemnity with respect to a Lease; or
 - (c) encumber the Property other than as contemplated in the Minutes of Settlement, without, in each case, the prior approval of the Purchaser, which approval may be withheld by the Purchaser in its sole discretion. If the Purchaser fails to respond in

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

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

6.5 Risk.

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

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

6.6 Possession of Purchased Assets.

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

6.7 Tender.

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

SECTION 7 – GENERAL

7.1 Notices.

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

- (a) in the case of the Purchaser:

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

Attention: Christopher Wein
Email: cwein@lanterradev.com

Attention: Tim Watson
Email: twatson@lanterradev.com

Attention: Christopher Wein
Email: cwein@lanterradev.com

with a copy to:

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

Attention: Eric Carmona
Email: ecarmona@stikeman.com

Attention: Ashley Taylor
Email: ataylor@stikeman.com

(b) in the case of the Vendor:

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

Attention: Jim Neilas
Email: jim@storeyliving.com

with a copy to:

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

Attention: Geoff Hall
Email: ghall@mccarthy.ca

Attention: Charlene Schafer
Email: cschafer@mccarthy.ca

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

7.2 Time of Essence.

Time shall be of the essence for every provision hereof.

7.3 Expenses.

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

7.4 Third Party Beneficiaries.

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

7.5 Commission.

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

7.6 Further Assurances.

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

7.7 Entire Agreement.

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

7.8 Amendments.

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

7.9 Waiver.

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

7.10 Governing Law.

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

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

7.11 Benefit of Agreement.

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

7.12 Severability.

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

7.13 Paramountcy.

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

7.14 Counterparts and Electronic Delivery.

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

7.15 Assignment and Enurement.

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

[signature page follows]

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

263 ADELAIDE LOFTS INC.

Per: _____

Name:

Title:

LANTERRA DEVELOPMENTS LTD., in trust

Per: _____

Name:

Title:

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

263 ADELAIDE LOFTS INC.

Per: _____

Name:

Title:

LANTERRA DEVELOPMENTS LTD., in trust

Per: 

Name: Christopher J. Wern

Title: Chief Operating officer

**Schedule A
Real Property**

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

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

Schedule B Permitted Encumbrances

General

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

Specific

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

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

Schedule C

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

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

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

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

CERTIFICATE

RECITALS

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

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

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

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

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

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

AIRD & BERLIS LLP

Per: _____

Name:

Title:

STIKEMAN ELLIOTT LLP

Per: _____

Name:

Title:

MCCARTHY TETRAULT LLP

Per: _____

Name:

Title:

MILLER THOMSON LLP

Per: _____

Name:

Title:

Schedule D

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

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

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

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

REPRESENTATIVE COUNSEL CERTIFICATE

RECITALS

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

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

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

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

REPRESENTATIVE COUNSEL CERTIFIES the following:

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

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

Per: _____
Name:
Title:

Schedule E — Purchased Assets

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

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

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

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

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

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

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

Schedule H — Legal Description of the Property

PIN 21411-0294 (LT)

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

HI-RISE CAPITAL LTD.
Applicant

SUPERINTENDENT OF FINANCIAL SERVICES *et. al.*
Respondents

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

ORDER

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Lawyers for the Applicant, Hi-Rise Capital Ltd.

HI-RISE CAPITAL LTD.
Applicant/Moving Party

SUPERINTENDENT OF FINANCIAL SERVICES *et. al.*
Respondents

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**FACTUM OF THE APPLICANT/MOVING PARTY,
HI-RISE CAPITAL LTD.
(SALE APPROVAL MOTION RETURNABLE ON A
DATE TO BE FIXED)**

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