

**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., REG. 194, AS AMENDED**

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

**MOTION RECORD OF THE RESPONDENT, DAVID POZO  
(Motion Returnable April 22, 2020)**

April 20, 2020

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**Court-appointed Information Officer**

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SUPERIOR COURT OF JUSTICE  
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**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., REG. 194, AS AMENDED**

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

**AFFIDAVIT OF DAVID POZO**

I, David Pozo, of Mississauga, Ontario, AFFIRM:

1. I have knowledge of the matters I depose here because I am a respondent in this application and an investor in the project at issue in this application, and because Pulat Yunusov, my lawyer in this application, informed me about these matters. He, and the documents I identify below, are sources of my information and belief and I believe them.
2. I make this affidavit in response to Hi-Rise Capital Ltd.'s motion for directions and court approval and for no improper purpose.

**My investment in the syndicated mortgage**

3. The applicant, Hi-Rise Capital Ltd. ("**Hi-Rise**"), is an administrator and trustee in respect of a syndicated mortgage given by Adelaide Street Lofts Inc. in a property located at 263 Adelaide Street West, Toronto, Ontario ("**263 Adelaide**").



4. Hi-Rise's previous name is Waterview Capital Corp. A true copy of Hi-Rise's corporation profile report as of November 24, 2017 confirming this is attached to this affidavit as **exhibit A** (see "Corporate Name History" on page 2).
5. A true copy of a parcel register for 263 Adelaide (PIN: 21411-0294) as of August 24, 2017 is attached to this affidavit as **exhibit B**.
6. A true copy of a previous parcel register for 263 Adelaide (PIN: 21411-0162) that was retired and re-entered into PIN 21411-0294 on June 9, 2017 is attached to this affidavit as **exhibit C**.
7. The syndicated mortgage is second-ranked to the first mortgage on the property.
8. I am one of the investors in the syndicated mortgage and one of several respondents in this application.
9. In 2011 and in particular on June 15, 2011, Jim Neilas was Hi-Rise's sole officer and director. A true copy of Waterview Capital Corp.'s point-in-time corporation profile report as of June 15, 2011 confirming this is attached to this affidavit as **exhibit D**.
10. Jim Neilas's other name is Dimitrios Neilas. A true copy of a record from the Financial Services Commission of Ontario confirming this is attached to this affidavit as **exhibit E**.
11. In 2011 and in particular on June 15, 2011, Jim Neilas was also the sole officer and director of Adelaide Street Lofts Inc. A true copy of its point-in-time corporation profile report as of June 15, 2011 confirming this is attached to this affidavit as **exhibit F**.

12. In 2011, I and Jim Neilas, on behalf of Hi-Rise, executed two trust agreements and a loan participation agreement in respect of my investment in the syndicated mortgage. True copies of the loan participation agreement and trust agreements are attached to this affidavit as **exhibit G**.

13. I invested \$1,000,000.00 in this mortgage. Trust agreements in **exhibit G** confirm this.

14. The amount currently owing to me under my share of the syndicated mortgage is about \$325,000.00 plus accrued interest.

15. Miller Thomson LLP ("**Representative Counsel**") is representative counsel to some investors in the syndicated mortgage. I opted-out from Miller Thomson LLP's representation, in accordance with the March 21, 2019 order of Justice Hainey ("**Appointment Order**"). A true copy of my opt-out notice, which was duly served, is attached to this affidavit as **exhibit H**.

### **Recent proposed sale of the property**

16. In December 2019, Representative Counsel, Jim Neilas, his holding company 263 Holdings Inc., Hi-Rise, Adelaide Street Lofts Inc., and the proposed buyer of 263 Adelaide (Lanterra Developments Ltd.) entered into a settlement agreement to sell 263 Adelaide and discharge the syndicated mortgage, subject to investor vote and court approval.

17. Hi-Rise is now seeking court approval of this proposed sale of 263 Adelaide, discharge of the syndicated mortgage, and distribution of some of the proceeds to syndicated mortgage investors. The terms of the proposed transaction are found in

minutes of settlement (“**Minutes of Settlement**” or “**Minutes**”) attached as appendix B to the Fourth Report of the Representative Counsel. A true copy of the Fourth Report is attached to this affidavit as **exhibit I** and a true copy of its appendix B is attached to this affidavit as **exhibit J**.

18. Neither I nor my counsel were invited to or participated in the negotiation of the settlement agreement of which Hi-Rise is now seeking court approval. I am not a party to this agreement, I did not consent to this agreement, and I am not bound by this agreement. I also have not released and have not agreed to release any party in connection with issues raised in this proceeding. The Appointment Order specifically exempts opt-out investors such as I from being bound by actions of Representative Counsel. The Appointment Order also provides that investor vote in favour of the proposed transaction merely gives Hi-Rise the right to bring a motion for court approval of the transaction and conduct and fees of Representative Counsel and further directions (see para. 31 of the order). A true copy of the Appointment Order is attached to this affidavit as **exhibit M**.

### **Unequal distribution of sale proceeds to investors**

19. The proposed distribution separates syndicated mortgage investors into two groups: “registered” and “non-registered” investors. The plan provides that the former group will receive 100% of their investment back and the latter, only about 50%.

20. In its January 13, 2020 letter concerning the proposed sale, Representative Counsel wrote about its position on this distinction. According to Representative

Counsel, “registered” investors are those who participated in the syndicated mortgage through a trust company by way of a “registered” plan such as an RRSP. “Non-registered” investors participated in the mortgage through Hi-Rise. On property title, both types of investments were bundled into the same second mortgage registered to Hi-Rise and the trust company but according to Representative Counsel, “non-registered” investors agreed to subordinate their interest in the second mortgage to that of “registered” investors contractually by way of their agreements with Hi-Rise. Representative counsel referred to a corresponding provision of a loan participation agreement and attached copies of pages from sample agreements to its letter. A true copy of this letter is attached to this affidavit as **exhibit K**. Representative counsel referred to the same theory in its Fourth Report.

21. The only time I agreed to subordinating Hi-Rise’s interest in the second mortgage was in 2011. At that time, D. Sud & Sons Limited provided a short-term loan of \$2 million to Hi-Rise in return for a portion of the mortgage held by Hi-Rise. Hi-Rise specifically represented to me that once this loan is paid in full, Hi-Rise will assume the entire mortgage and will not postpone its interest in the mortgage further. A true copy of Hi-Rise’s statement confirming this is attached to this affidavit as **exhibit L**.

22. I did not consent to subordination of my investment to other second-ranked mortgages such as investments held through Canadian Western Trust or Community Trust Company.

23. The agreements that I executed (**exhibit G**) do not contain the subordination provision referred to by Representative Counsel as the basis for classifying investors as “non-registered” for purposes of the distribution of the sale proceeds.

24. I object to any treatment of me as a “non-registered” investor and to any corresponding reduction of my share of sale proceeds in relation to any other investor.

25. Nevertheless, I am entitled to my share of the proceeds of any sale of the property as provided by my loan participation agreement with Hi-Rise.

Representative Counsel confirmed that it would include opt-out investors in the distribution of sale proceeds. A true copy of emails between Representative Counsel and opt-out investor counsel confirming this is attached to this affidavit as **exhibit N**. I have not previously taken steps in this proceeding to oppose the proposed sale in reliance on this representation of Representative Counsel.

**Hi-Rise’s last minute assertion of a release from opt-out investors’ claims**

26. On January 9, 2020, Representative Counsel disclosed the Minutes of Settlement in its Fourth Report. I did not know the terms of the proposed transaction until then.

27. On the same day, my lawyer wrote to Representative Counsel and expressed his concern about the ambiguity of the Fourth Report on including opt-out investors in the distribution of sale proceeds. The Report provided that opt-out investors will participate in the distribution in accordance with the Minutes. But as

my lawyer wrote to Representative Counsel, the Minutes “specifically exclude opt-out investors from distribution by using only the term ‘Investors’ in paragraph 10(e).” He further wrote that the Minutes “define this term to exclude opt-outs (see the second whereas clause).” A true copy of this email is attached to this affidavit as **exhibit O**. Another opt-out counsel also wrote to Representative Counsel with the same concern.

28. On January 13, 2020, Representative Counsel replied to opt-out counsel and wrote that opt-out investors will be included in the distribution under the terms of the Appointment Order and that the Minutes “need not reflect this.” In the same email, Representative Counsel wrote: “I will pass this email along to Hi-Rise as well.” A true copy of this email is attached to this affidavit as **exhibit N**.

29. On April 16, 2020, opt-out counsel again raised the issue that opt-out investors are not covered by the Minutes. He requested an amendment to the draft order to reflect an understanding among all the parties that opt-out investors will have the same rights with respect to the distribution of the sale proceeds as opt-in investors.

30. In response to this email, counsel for Hi-Rise John Birch wrote that in the Minutes, “Opt-Outs are merely a subset of ‘Investors’ not a different group.” This was the first time Hi-Rise shared this position with opt-out counsel. A true copy of his email is attached to this affidavit as **exhibit P**.

31. My lawyer wrote back to John Birch:

My concern is with Mr. Birch's position that opt-out investors are a subset of "Investors" for the purposes of the Minutes of Settlement. If this position relates only to the payout of the sale proceeds, that is not an issue.

But if this position is understood more broadly to mean that the Minutes bind opt-out investors, I disagree with it. Paragraph 10(e) of the Minutes provides for a payout to "Investors" and it provides that such payout is "in full satisfaction of all claims each Investor may have in relation to the Property and the Project." This appears to be a full release by the "Investors" with a broad scope of the "Property and the Project".

Opt-out investors are not parties to the Minutes. Hi-Rise did not seek such release in its notice of application. Rep counsel cannot bind opt-outs. The appointment order is very clear on this. There is no legal basis for opt-outs to lose their claims because third parties entered into an agreement. The court cannot approve the Minutes that purport to disentitle opt-out investors of substantive legal rights without notice to opt-out investors. The only notice of prejudice to their rights that opt-outs received was the notice of application which sought the power to discharge the security for less the full outstanding amount. Everything else is either between rep counsel, Hi-Rise and third parties or off the table where opt-outs are concerned.

We have not opposed Hi-Rise's motion in reliance on the language of the Minutes which specifically excludes opt-out investors from the term "Investors" and consequently from the term that the payout is "in full satisfaction of all claims each Investor may have in relation to the Property and the Project." In the second WHEREAS clause of the Minutes, "Investors" are defined as "all individuals and/or entities" that "Miller Thomson LLP was appointed as Representative Counsel ... to represent." This definition then expressly excludes opt-out investors: "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")."

This is the first time we learned of a potential issue that Hi-Rise may be seeking a release of all claims by opt-out investors in addition to the discharge of their security. If this is actually the case, we will seek an adjournment of Hi-Rise's motion so we can prepare a response. The adjournment shouldn't be an issue as Lanterra is seeking to move the closing date forward anyway.

32. In response, John Birch admitted that opt-out investors are not parties to the Minutes but asserted that the Minutes nevertheless bind opt-out investors and

release opt-out investors' claims against Hi-Rise and other related parties. When asked about the scope of the purported release, John Birch refused to answer.

33. A true copy of these emails is attached to this affidavit as **exhibit Q**.

34. The April 17, 2020 email from John Birch was also the first time Hi-Rise or any party asserted that court approval of the proposed transaction would release Hi-Rise and related parties from all of opt-out investors' claims. Hi-Rise did not mention this in any of its information statements before the investor vote.

35. On April 17, 2020, in response to these emails, Representative Counsel again confirmed that

- a. "the Minutes do not specifically spell out 'Opt-Out Investors'"
- b. "the language in the Minutes doesn't specifically include 'Opt Out Investors' with respect to Distribution."

36. On the same day, Representative Counsel also confirmed that "As for the issue related to the release, this is a matter between Opt Outs and Hi Rise/Adelaide directly, and has nothing to do with Rep Counsel. We are taking no position on this."

A true copy of these emails is attached to this affidavit as **exhibit R**.

37. On September 13, 2017, I started an action in Superior Court against Hi-Rise, Jim Neilas, Adelaide Street Lofts Inc., and other defendants, with the court file no. CV-17-582615. The pleadings in the action closed in June 2018, and I intend to move the action forward. A true copy of the pleadings in the action is attached to this affidavit as **exhibit S**.

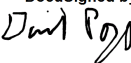


AFFIRMED BEFORE ME at Toronto,  
Ontario by videoconference under  
emergency social distancing due  
COVID-19 on April 20, 2020.



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Commissioner for taking affidavits  
Pulat Yunusov, LSO#: 60014U

DocuSigned by:  
  
F1B71805F60C41D...

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**David Pozo**

THIS IS EXHIBIT "A" REFERRED TO IN THE  
AFFIDAVIT OF DAVID POZO  
AFFIRMED BEFORE ME THIS  
20TH DAY OF APRIL 2020.



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Commissioner for taking affidavits

# CORPORATION PROFILE REPORT

<b>Ontario Corp Number</b>	<b>Corporation Name</b>			<b>Incorporation Date</b>
1359918	HI-RISE CAPITAL LTD.			1999/06/11
				<b>Jurisdiction</b>
				ONTARIO
<b>Corporation Type</b>	<b>Corporation Status</b>			<b>Former Jurisdiction</b>
ONTARIO BUSINESS CORP.	ACTIVE			NOT APPLICABLE
<b>Registered Office Address</b>		<b>Date Amalgamated</b>	<b>Amalgamation Ind.</b>	
200 ADELAIDE STREET WEST		NOT APPLICABLE	NOT APPLICABLE	
<b>Suite # 401</b>		<b>New Amal. Number</b>	<b>Notice Date</b>	
TORONTO		NOT APPLICABLE	NOT APPLICABLE	
ONTARIO				
CANADA M5H 1W7			<b>Letter Date</b>	
<b>Mailing Address</b>			NOT APPLICABLE	
200 ADELAIDE STREET WEST		<b>Revival Date</b>	<b>Continuation Date</b>	
<b>Suite # 401</b>		NOT APPLICABLE	NOT APPLICABLE	
TORONTO				
ONTARIO		<b>Transferred Out Date</b>	<b>Cancel/Inactive Date</b>	
CANADA M5H 1W7		NOT APPLICABLE	NOT APPLICABLE	
		<b>EP Licence Eff.Date</b>	<b>EP Licence Term.Date</b>	
		NOT APPLICABLE	NOT APPLICABLE	
		<b>Number of Directors</b>	<b>Date Commenced</b>	<b>Date Ceased</b>
		<b>Minimum</b>	<b>in Ontario</b>	<b>in Ontario</b>
		00001	NOT APPLICABLE	NOT APPLICABLE
		00015		
<b>Activity Classification</b>				
NOT AVAILABLE				

# CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
1359918	HI-RISE CAPITAL LTD.

Corporate Name History	Effective Date
HI-RISE CAPITAL LTD.	2011/08/18
WATERVIEW CAPITAL CORP.	2004/09/16
1359918 ONTARIO INC.	1999/06/11

<b>Current Business Name(s) Exist:</b>	NO
<b>Expired Business Name(s) Exist:</b>	YES - SEARCH REQUIRED FOR DETAILS

Administrator: Name (Individual / Corporation)	Address
NOOR AL-AWQATI	200 ADELAIDE STREET WEST  Suite # 401 TORONTO ONTARIO CANADA M5H 1W7

<b>Date Began</b>	<b>First Director</b>	
2017/02/13	NOT APPLICABLE	
<b>Designation</b>	<b>Officer Type</b>	<b>Resident Canadian</b>
OFFICER	CHIEF OPERATING OFFICER	

# CORPORATION PROFILE REPORT

**Ontario Corp Number**

1359918

**Corporation Name**

HI-RISE CAPITAL LTD.

**Administrator:**

**Name (Individual / Corporation)**

MICHAEL  
KRAFT

**Address**

200 ADELAIDE STREET WEST  
  
**Suite # 401**  
TORONTO  
ONTARIO  
CANADA M5H 1W7

**Date Began**

2017/02/13

**First Director**

NOT APPLICABLE

**Designation**

OFFICER

**Officer Type**

CHIEF EXECUTIVE OFFICER

**Resident Canadian**

**Name (Individual / Corporation)**

JIM  
NEILAS

**Administrator:  
Address**

200 ADELAIDE STREET WEST  
  
**Suite # 401**  
TORONTO  
ONTARIO  
CANADA M5H 1W7

**Date Began**

2000/05/10

**First Director**

NOT APPLICABLE

**Designation**

DIRECTOR

**Officer Type**

**Resident Canadian**

Y

# CORPORATION PROFILE REPORT

**Ontario Corp Number**

1359918

**Corporation Name**

HI-RISE CAPITAL LTD.

**Administrator:**

**Name (Individual / Corporation)**

JIM  
NEILAS

**Address**

200 ADELAIDE STREET WEST  
  
**Suite # 401**  
TORONTO  
ONTARIO  
CANADA M5H 1W7

**Date Began**

2000/05/10

**First Director**

NOT APPLICABLE

**Designation**

OFFICER

**Officer Type**

PRESIDENT

**Resident Canadian**

Y

**Administrator:**

**Name (Individual / Corporation)**

JIM  
NEILAS

**Address**

200 ADELAIDE STREET WEST  
  
**Suite # 401**  
TORONTO  
ONTARIO  
CANADA M5H 1W7

**Date Began**

2000/05/10

**First Director**

NOT APPLICABLE

**Designation**

OFFICER

**Officer Type**

SECRETARY

**Resident Canadian**

Y

# CORPORATION PROFILE REPORT

**Ontario Corp Number**

1359918

**Corporation Name**

HI-RISE CAPITAL LTD.

**Administrator:  
Name (Individual / Corporation)**

PETER

NEILAS

**Address**

200 ADELAIDE STREET WEST

**Suite # 401**  
TORONTO  
ONTARIO  
CANADA M5H 1W7

**Date Began**

2017/02/13

**First Director**

NOT APPLICABLE

**Designation**

OFFICER

**Officer Type**

CHIEF FINANCIAL OFFICER

**Resident Canadian**

# CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
1359918	HI-RISE CAPITAL LTD.

Last Document Recorded			
Act/Code	Description	Form	Date
CIA	ANNUAL RETURN 2016	1C	2017/06/11 (ELECTRONIC FILING)

**THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.**

**ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.**

The issuance of this report in electronic form is authorized by the Ministry of Government Services.



THIS IS EXHIBIT "B" REFERRED TO IN THE  
AFFIDAVIT OF DAVID POZO  
AFFIRMED BEFORE ME THIS  
20TH DAY OF APRIL 2020.



---

Commissioner for taking affidavits

LAND  
REGISTRY  
OFFICE #66

21411-0294 (LT)

PREPARED FOR PY  
ON 2017/08/24 AT 13:18:18

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

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

PROPERTY REMARKS: "FOR THE PURPOSE OF THE QUALIFIER THE DATE OF REGISTRATION OF ABSOLUTE TITLE IS 2017/06/09".

ESTATE/QUALIFIER:  
FEE SIMPLE  
LT ABSOLUTE PLUS

RECENTLY:  
RE-ENTRY FROM 21411-0162

PIN CREATION DATE:  
2017/06/09

OWNERS' NAMES  
ADELAIDE STREET LOFTS INC.

CAPACITY SHARE

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2017/06/09 **						
**SUBJECT TO SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPHS 3 AND 14 AND *						
** PROVINCIAL SUCCESSION DUTIES AND EXCEPT PARAGRAPH 11 AND ESCHEATS OR FORFEITURE **						
** TO THE CROWN UP TO THE DATE OF REGISTRATION WITH AN ABSOLUTE TITLE. **						
63BA1446	1979/02/02	PLAN BOUNDRIES ACT REMARKS: PLD558, CT340669				C
AT2730828	2011/06/24	TRANSFER REMARKS: PLANNING ACT STATEMENTS	\$16,500,000	GUESTVILLE ENTERPRISES LIMITED	ADELAIDE STREET LOFTS INC.	C
AT3522046	2014/02/18	CHARGE	\$14,300,000	ADELAIDE STREET LOFTS INC.	KINGSETT MORTGAGE CORPORATION	C
AT3522047	2014/02/18	NO ASSGN RENT GEN REMARKS: AT3522046.		ADELAIDE STREET LOFTS INC.	KINGSETT MORTGAGE CORPORATION	C
AT3522463	2014/02/18	CHARGE	\$40,000,000	ADELAIDE STREET LOFTS INC.	HI-RISE CAPITAL LTD.	C
AT3522464	2014/02/18	NO ASSGN RENT GEN REMARKS: AT3522463.		ADELAIDE STREET LOFTS INC.	HI-RISE CAPITAL LTD.	C
AT3522631	2014/02/18	POSTPONEMENT REMARKS: AT3522463 TO AT3522046 & AT3522047		HI-RISE CAPITAL LTD.	KINGSETT MORTGAGE CORPORATION	C
AT3586925	2014/05/22	TRANSFER OF CHARGE REMARKS: AT3522463.		HI-RISE CAPITAL LTD.	CANADIAN WESTERN TRUST COMPANY	C
AT3591493	2014/05/28	POSTPONEMENT REMARKS: AT3522463, AT3522464 AND AT3586925 TO AT3522046 AND AT3522047		HI-RISE CAPITAL LTD. CANADIAN WESTERN TRUST COMPANY	KINGSETT MORTGAGE CORPORATION	C
AT3946856	2015/07/15	NOTICE	\$2	ADELAIDE STREET LOFTS INC.	HI-RISE CAPITAL LTD.	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.

NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

LAND  
REGISTRY  
OFFICE #66

21411-0294 (LT)

PREPARED FOR PY  
ON 2017/08/24 AT 13:18:18

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
					CANADIAN WESTERN TRUST COMPANY	
AT4420428	2016/12/01	TRANSFER OF CHARGE		HI-RISE CAPITAL LTD. CANADIAN WESTERN TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
AT4420442	2016/12/01	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. CANADIAN WESTERN TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
AT4505545	2017/03/08	TRANSFER OF CHARGE		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
AT4505546	2017/03/08	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
AT4529978	2017/04/04	TRANSFER OF CHARGE		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
AT4529979	2017/04/04	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
AT4572550	2017/05/18	TRANSFER OF CHARGE		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
AT4572551	2017/05/18	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
66R29363	2017/06/09	PLAN REFERENCE				C
AT4593553	2017/06/09	APL ABSOLUTE TITLE		ADELAIDE STREET LOFTS INC.		C
AT4627861	2017/07/14	TRANSFER OF CHARGE		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C

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NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

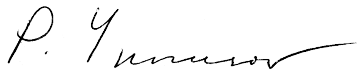
LAND  
 REGISTRY  
 OFFICE #66

21411-0294 (LT)

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT4627862	2017/07/14	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
REMARKS: AT3522463, 4572551						

THIS IS EXHIBIT "C" REFERRED TO IN THE  
AFFIDAVIT OF DAVID POZO  
AFFIRMED BEFORE ME THIS  
20TH DAY OF APRIL 2020.



---

Commissioner for taking affidavits

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

PROPERTY DESCRIPTION: PT BLK B PL 216E TORONTO AS IN ES61538; S/T & T/W ES61538; CITY OF TORONTO

PROPERTY REMARKS:

ESTATE/QUALIFIER:  
FEE SIMPLE  
LT CONVERSION QUALIFIED

RECENTLY:  
FIRST CONVERSION FROM BOOK

PIN CREATION DATE:  
2003/08/25

OWNERS' NAMES  
ADELAIDE STREET LOFTS INC.

CAPACITY SHARE

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2003/08/22 **						
**SUBJECT, ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:						
** SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES * AND ESCHEATS OR FORFEITURE TO THE CROWN.						
** THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY CONVENTION.						
** ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.						
**DATE OF CONVERSION TO LAND TITLES: 2003/08/25 **						
NOTE: THIS PROPERTY WAS RETIRED ON 2017/06/09. THIS PROPERTY IS NOW RE-ENTERED INTO THE FOLLOWING PROPERTY: 21411-0294						
ES61538	1966/12/19	TRANSFER		*** COMPLETELY DELETED ***	GUESTVILLE ENTERPRISES LIMITED	
63BA1446	1979/02/02	PLAN BOUNDRIES ACT REMARKS: PLD558, CT340669				C
CT723966	1985/06/14	CONSTRUCTION LIEN		*** COMPLETELY DELETED ***		
AT1162301	2006/06/09	DIS CONSTRUCT LIEN REMARKS: RE: CT723966		*** COMPLETELY DELETED ***	GUESTVILLE ENTERPRISES LIMITED	
AT2730174	2011/06/23	CAU AGR PUR & SALE		*** COMPLETELY DELETED *** GUESTVILLE ENTERPRISES LIMITED	CENTRESTONE URBAN DEVELOPMENTS INC.	
AT2730827	2011/06/24	WITHDRAWAL CAUTION		*** COMPLETELY DELETED ***		

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

LAND  
REGISTRY  
OFFICE #66

21411-0162 (LT)

PREPARED FOR PY  
ON 2017/10/10 AT 16:52:48

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
				CENTRESTONE URBAN DEVELOPMENTS INC.		
AT2730828	2011/06/24	TRANSFER	\$16,500,000	GUESTVILLE ENTERPRISES LIMITED	ADELAIDE STREET LOFTS INC.	C
AT2730829	2011/06/24	CHARGE		*** COMPLETELY DELETED *** ADELAIDE STREET LOFTS INC.	GUESTVILLE ENTERPRISES LIMITED	
AT2730830	2011/06/24	CHARGE		*** COMPLETELY DELETED *** ADELAIDE STREET LOFTS INC.	D. SUD & SONS LIMITED	
AT2730851	2011/06/24	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** ADELAIDE STREET LOFTS INC.	GUESTVILLE ENTERPRISES LIMITED	
AT2731118	2011/06/24	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** ADELAIDE STREET LOFTS INC.	D. SUD & SONS LIMITED	
AT2891391	2011/12/08	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** D. SUD & SONS LIMITED	TERRA FIRMA CAPITAL CORPORATION	
AT2891392	2011/12/08	NOTICE		*** COMPLETELY DELETED *** D. SUD & SONS LIMITED	TERRA FIRMA CAPITAL CORPORATION	
AT2891393	2011/12/08	NOTICE		*** COMPLETELY DELETED *** ADELAIDE STREET LOFTS INC.	TERRA FIRMA CAPITAL CORPORATION	
AT3164284	2012/10/30	NOTICE		*** COMPLETELY DELETED *** GUESTVILLE ENTERPRISES LIMITED	ADELAIDE STREET LOFTS INC.	
AT3278302	2013/04/16	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** TERRA FIRMA CAPITAL CORPORATION	CERJANEC, MIRKO	
AT3278307	2013/04/16	NOTICE		*** COMPLETELY DELETED *** TERRA FIRMA CAPITAL CORPORATION	CERJANEC, MIRKO	

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LAND  
REGISTRY  
OFFICE #66

21411-0162 (LT)

PREPARED FOR PY  
ON 2017/10/10 AT 16:52:48

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT3325477	2013/06/14	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** CERJANEC, MIRKO	CERJANEC, MIRKO HI-RISE CAPITAL LTD.	
		REMARKS: AT3278302, AT2730830, AT2891391, AT2891393				
AT3325510	2013/06/14	NOTICE		*** COMPLETELY DELETED *** ADELAIDE STREET LOFTS INC.	CERJANEC, MIRKO HI-RISE CAPITAL LTD.	
		REMARKS: AT2730830				
AT3398406	2013/09/04	NOTICE		*** COMPLETELY DELETED *** ADELAIDE STREET LOFTS INC.	CERJANEC, MIRKO HI-RISE CAPITAL LTD.	
		REMARKS: AMENDING AT2730830				
AT3522046	2014/02/18	CHARGE	\$14,300,000	ADELAIDE STREET LOFTS INC.	KINGSETT MORTGAGE CORPORATION	C
AT3522047	2014/02/18	NO ASSGN RENT GEN		ADELAIDE STREET LOFTS INC.	KINGSETT MORTGAGE CORPORATION	C
		REMARKS: AT3522046.				
AT3522406	2014/02/18	DISCH OF CHARGE		*** COMPLETELY DELETED *** GUESTVILLE ENTERPRISES LIMITED		
		REMARKS: AT2730829.				
AT3522444	2014/02/18	DISCH OF CHARGE		*** COMPLETELY DELETED *** CERJANEC, MIRKO HI-RISE CAPITAL LTD.		
		REMARKS: AT2730830.				
AT3522463	2014/02/18	CHARGE	\$40,000,000	ADELAIDE STREET LOFTS INC.	HI-RISE CAPITAL LTD.	C
AT3522464	2014/02/18	NO ASSGN RENT GEN		ADELAIDE STREET LOFTS INC.	HI-RISE CAPITAL LTD.	C
		REMARKS: AT3522463.				
AT3522631	2014/02/18	POSTPONEMENT		HI-RISE CAPITAL LTD.	KINGSETT MORTGAGE CORPORATION	C
		REMARKS: AT3522463 TO AT3522046 & AT3522047				
AT3586925	2014/05/22	TRANSFER OF CHARGE		HI-RISE CAPITAL LTD.	CANADIAN WESTERN TRUST COMPANY	C
		REMARKS: AT3522463.				
AT3591493	2014/05/28	POSTPONEMENT		HI-RISE CAPITAL LTD. CANADIAN WESTERN TRUST COMPANY	KINGSETT MORTGAGE CORPORATION	C

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LAND  
REGISTRY  
OFFICE #66

21411-0162 (LT)

PREPARED FOR PY  
ON 2017/10/10 AT 16:52:48

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
		REMARKS: AT3522463, AT3522464 AND AT3586925 TO AT3522046 AND AT3522047				
AT3946856	2015/07/15	NOTICE	\$2	ADELAIDE STREET LOFTS INC.	HI-RISE CAPITAL LTD. CANADIAN WESTERN TRUST COMPANY	C
		REMARKS: AT3522463				
AT4420428	2016/12/01	TRANSFER OF CHARGE		HI-RISE CAPITAL LTD. CANADIAN WESTERN TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
		REMARKS: AT3522463.				
AT4420442	2016/12/01	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. CANADIAN WESTERN TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
		REMARKS: AT3522464				
AT4505545	2017/03/08	TRANSFER OF CHARGE		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
		REMARKS: AT3522463				
AT4505546	2017/03/08	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
		REMARKS: AT4420442				
AT4529978	2017/04/04	TRANSFER OF CHARGE		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
		REMARKS: AT3522463. AT3522463				
AT4529979	2017/04/04	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
		REMARKS: AT4420442 RENTS				
AT4546644	2017/04/27	NO APL ABSOLUTE		ADELAIDE STREET LOFTS INC.		C
AT4572550	2017/05/18	TRANSFER OF CHARGE		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
		REMARKS: AT4529978.				
AT4572551	2017/05/18	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
		REMARKS: AT4529979				
66R29363	2017/06/09	PLAN REFERENCE				C
AT4593553	2017/06/09	APL ABSOLUTE TITLE		ADELAIDE STREET LOFTS INC.		C

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THIS IS EXHIBIT "D" REFERRED TO IN THE  
AFFIDAVIT OF DAVID POZO  
AFFIRMED BEFORE ME THIS  
20TH DAY OF APRIL 2020.



---

Commissioner for taking affidavits

Request ID: 024333840  
Transaction ID: 74957924  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2020/03/12  
Time Report Produced: 14:25:32  
Page: 1

## CORPORATION POINT IN TIME REPORT

As of: 2011/06/15

<b>Ontario Corp Number</b>	<b>Corporation Name</b>	<b>Incorporation Date</b>
1359918	WATERVIEW CAPITAL CORP.	1999/06/11
		<b>Jurisdiction</b>
		ONTARIO
<b>Corporation Type</b>	<b>Corporation Status</b>	<b>Former Jurisdiction</b>
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE
<b>Registered Office Address</b>		<b>Date Amalgamated</b>
200 ADELAIDE STREET WEST		NOT APPLICABLE
<b>Suite # 401</b>		<b>Amalgamation Ind.</b>
TORONTO		NOT APPLICABLE
ONTARIO		<b>New Amal. Number</b>
CANADA M5H 1W7		NOT APPLICABLE
		<b>Notice Date</b>
		NOT APPLICABLE
<b>Mailing Address</b>		<b>Letter Date</b>
170 UNIVERSITY AVE.		NOT APPLICABLE
<b>Suite # SUITE 903</b>		<b>Revival Date</b>
TORONTO		NOT APPLICABLE
ONTARIO		<b>Continuation Date</b>
CANADA M5H 3B3		NOT APPLICABLE
		<b>Transferred Out Date</b>
		NOT APPLICABLE
		<b>Cancel/Inactive Date</b>
		NOT APPLICABLE
		<b>EP Licence Eff.Date</b>
		NOT APPLICABLE
		<b>EP Licence Term.Date</b>
		NOT APPLICABLE
	<b>Number of Directors</b>	<b>Date Commenced</b>
	<b>Minimum</b>	<b>in Ontario</b>
	<b>Maximum</b>	
	00001	00015
<b>Activity Classification</b>		<b>Date Ceased</b>
NOT AVAILABLE		<b>in Ontario</b>
		NOT APPLICABLE

Request ID: 024333840  
Transaction ID: 74957924  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2020/03/12  
Time Report Produced: 14:25:32  
Page: 2

## CORPORATION POINT IN TIME REPORT

As of: 2011/06/15

**Ontario Corp Number**

1359918

**Corporation Name**

WATERVIEW CAPITAL CORP.

**Corporate Name History**

WATERVIEW CAPITAL CORP.

**Effective Date**

2004/09/16

1359918 ONTARIO INC.

1999/06/11

**Current Business Name(s) Exist:**

NO

**Expired Business Name(s) Exist:**

YES - SEARCH REQUIRED FOR DETAILS

**Active Administrator:**

**Name (Individual / Corporation)**

DIMITRIOS

NEILAS

**Address**

130 KING STREET WEST

Suite # 1800  
TORONTO  
ONTARIO  
CANADA M5X 1E3

**Date Began**

2000/05/10

**First Director**

NOT APPLICABLE

**Designation**

DIRECTOR

**Officer Type**

**Resident Canadian**

Y

Request ID: 024333840  
Transaction ID: 74957924  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2020/03/12  
Time Report Produced: 14:25:32  
Page: 3

## CORPORATION POINT IN TIME REPORT

**As of: 2011/06/15**

**Ontario Corp Number**

1359918

**Corporation Name**

WATERVIEW CAPITAL CORP.

**Active Administrator:  
Name (Individual / Corporation)**

DIMITRIOS  
NEILAS

**Address**

130 KING STREET WEST  
  
Suite # 1800  
TORONTO  
ONTARIO  
CANADA M5X 1E3

**Date Began**

2000/05/10

**First Director**

NOT APPLICABLE

**Designation**

OFFICER

**Officer Type**

PRESIDENT

**Resident Canadian**

Y

Request ID: 024333840  
Transaction ID: 74957924  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2020/03/12  
Time Report Produced: 14:25:32  
Page: 4

## CORPORATION POINT IN TIME REPORT

**As of: 2011/06/15**

**Ontario Corp Number**

1359918

**Corporation Name**

WATERVIEW CAPITAL CORP.

**Last Document Recorded**

<b>Act/Code</b>	<b>Description</b>	<b>Form</b>	<b>Date</b>
CIA	ANNUAL RETURN 2009	1C	2009/12/07 (ELECTRONIC FILING)

**THIS REPORT SETS OUT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992 AND RECORDED ON THE ONTARIO BUSINESS INFORMATION SYSTEM UP TO THE "AS OF DATE" INDICATED ON THE REPORT. ALL CURRENT DIRECTORS AND OFFICERS ARE INCLUDED AS ACTIVE ADMINISTRATORS.**

**ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON THE MICROFICHE.**

The issuance of this report in electronic form is authorized by the Director of Companies and Personal Property Security Branch.

THIS IS EXHIBIT "E" REFERRED TO IN THE  
AFFIDAVIT OF DAVID POZO  
AFFIRMED BEFORE ME THIS  
20TH DAY OF APRIL 2020.



---

Commissioner for taking affidavits

### NEILAS, JIM (DIMITRIOS)

#### Mortgage Agent/Broker Licence Information:

<b>Agent/Broker Name:</b>	NEILAS, JIM (DIMITRIOS)
<b>Licence #:</b>	M08003817
<b>Brokerage Name:</b>	Hi-Rise Capital Ltd.
<b>Licence Class:</b>	Broker
<b>Status:</b>	Expired
<b>Issue Date:</b>	April 1, 2016
<b>Expiry Date:</b>	March 31, 2018
<b>Inactive Date:</b>	December 12, 2017
<a href="#">Update Contact Information (email, address, telephone...)</a>	

You may print this page provided you do not modify its contents.

Information is current as of: March 12, 2020

[Go back](#)



THIS IS EXHIBIT "F" REFERRED TO IN THE  
AFFIDAVIT OF DAVID POZO  
AFFIRMED BEFORE ME THIS  
20TH DAY OF APRIL 2020.

A handwritten signature in black ink, appearing to read "P. Y. Yumurov". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

---

Commissioner for taking affidavits

Request ID: 024333841  
Transaction ID: 74957925  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2020/03/12  
Time Report Produced: 14:25:32  
Page: 1

## CORPORATION POINT IN TIME REPORT

As of: 2011/06/15

<b>Ontario Corp Number</b>	<b>Corporation Name</b>	<b>Incorporation Date</b>
2259079	ADELAIDE STREET LOFTS INC.	2010/10/04
		<b>Jurisdiction</b>
		ONTARIO
<b>Corporation Type</b>	<b>Corporation Status</b>	<b>Former Jurisdiction</b>
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE
<b>Registered Office Address</b>	<b>Date Amalgamated</b>	<b>Amalgamation Ind.</b>
200 ADELAIDE STREET WEST	NOT APPLICABLE	NOT APPLICABLE
<b>Suite # 401</b>	<b>New Amal. Number</b>	<b>Notice Date</b>
TORONTO	NOT APPLICABLE	NOT APPLICABLE
ONTARIO		
CANADA M5H 1W7		<b>Letter Date</b>
<b>Mailing Address</b>		NOT APPLICABLE
200 ADELAIDE STREET WEST	<b>Revival Date</b>	<b>Continuation Date</b>
<b>Suite # 401</b>	NOT APPLICABLE	NOT APPLICABLE
TORONTO	<b>Transferred Out Date</b>	<b>Cancel/Inactive Date</b>
ONTARIO	NOT APPLICABLE	NOT APPLICABLE
CANADA M5H 1W7	<b>EP Licence Eff.Date</b>	<b>EP Licence Term.Date</b>
	NOT APPLICABLE	NOT APPLICABLE
	<b>Number of Directors</b>	<b>Date Commenced</b>
	<b>Minimum</b> <b>Maximum</b>	<b>in Ontario</b>
	00001 00010	NOT APPLICABLE
<b>Activity Classification</b>		<b>Date Ceased</b>
NOT AVAILABLE		<b>in Ontario</b>
		NOT APPLICABLE

Request ID: 024333841  
Transaction ID: 74957925  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2020/03/12  
Time Report Produced: 14:25:32  
Page: 2

## CORPORATION POINT IN TIME REPORT

**As of: 2011/06/15**

**Ontario Corp Number**

2259079

**Corporation Name**

ADELAIDE STREET LOFTS INC.

**Corporate Name History**

ADELAIDE STREET LOFTS INC.

**Effective Date**

2010/10/04

**Current Business Name(s) Exist:**

NO

**Expired Business Name(s) Exist:**

NO

**Active Administrator:  
Name (Individual / Corporation)**

JIM  
NEILAS

**Address**

131 BLOOR STREET WEST  
  
Suite # 906  
TORONTO  
ONTARIO  
CANADA M5S 1S3

**Date Began**

2010/10/04

**First Director**

NOT APPLICABLE

**Designation**

DIRECTOR

**Officer Type**

**Resident Canadian**

Y

Request ID: 024333841  
Transaction ID: 74957925  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2020/03/12  
Time Report Produced: 14:25:32  
Page: 3

## CORPORATION POINT IN TIME REPORT

As of: 2011/06/15

**Ontario Corp Number**

2259079

**Corporation Name**

ADELAIDE STREET LOFTS INC.

**Active Administrator:**

**Name (Individual / Corporation)**

JIM  
NEILAS

**Address**

131 BLOOR STREET WEST  
  
**Suite # 906**  
TORONTO  
ONTARIO  
CANADA M5S 1S3

**Date Began**

2010/10/04

**First Director**

NOT APPLICABLE

**Designation**

OFFICER

**Officer Type**

PRESIDENT

**Resident Canadian**

Y

**Active Administrator:**

**Name (Individual / Corporation)**

JIM  
NEILAS

**Address**

131 BLOOR STREET WEST  
  
**Suite # 906**  
TORONTO  
ONTARIO  
CANADA M5S 1S3

**Date Began**

2010/10/04

**First Director**

NOT APPLICABLE

**Designation**

OFFICER

**Officer Type**

SECRETARY

**Resident Canadian**

Y

Request ID: 024333841  
Transaction ID: 74957925  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2020/03/12  
Time Report Produced: 14:25:32  
Page: 4

## CORPORATION POINT IN TIME REPORT

**As of: 2011/06/15**

**Ontario Corp Number**

2259079

**Corporation Name**

ADELAIDE STREET LOFTS INC.

**Active Administrator:  
Name (Individual / Corporation)**

JIM  
NEILAS

**Address**

131 BLOOR STREET WEST  
  
Suite # 906  
TORONTO  
ONTARIO  
CANADA M5S 1S3

**Date Began**

2010/10/04

**First Director**

NOT APPLICABLE

**Designation**

OFFICER

**Officer Type**

TREASURER

**Resident Canadian**

Y

Request ID: 024333841  
Transaction ID: 74957925  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2020/03/12  
Time Report Produced: 14:25:32  
Page: 5

## CORPORATION POINT IN TIME REPORT

**As of: 2011/06/15**

**Ontario Corp Number**

**Corporation Name**

2259079

ADELAIDE STREET LOFTS INC.

**Last Document Recorded**

**Act/Code Description**

**Form**

**Date**

CIA INITIAL RETURN

1

2010/11/05

**THIS REPORT SETS OUT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992 AND RECORDED ON THE ONTARIO BUSINESS INFORMATION SYSTEM UP TO THE "AS OF DATE" INDICATED ON THE REPORT. ALL CURRENT DIRECTORS AND OFFICERS ARE INCLUDED AS ACTIVE ADMINISTRATORS.**

**ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON THE MICROFICHE.**

The issuance of this report in electronic form is authorized by the Director of Companies and Personal Property Security Branch.

THIS IS EXHIBIT "G" REFERRED TO IN THE  
AFFIDAVIT OF DAVID POZO  
AFFIRMED BEFORE ME THIS  
20TH DAY OF APRIL 2020.



---

Commissioner for taking affidavits

Client Copy

**LOAN PARTICIPATION AGREEMENT**

Participation Agreement No. 10-1010

**THIS PARTICIPATION AGREEMENT**

made between

**WATERVIEW CAPITAL CORP.**  
(hereinafter called "WCC")

**OF THE FIRST PART**

- and -

**DAVID POZO**  
(hereinafter called the "Participant")

**OF THE SECOND PART**

WHEREAS WCC has given to the Participant the opportunity to participate in a certain loan which is a participating loan, (hereinafter called the "Investment") made or to be made to the investee company hereinafter set out (hereinafter called the "Investee Company") upon the terms set out in the investment documentation between the Investee Company and WCC;

AND WHEREAS, WCC and the Participant agree that the relationship between WCC and the Participant shall be governed by the following terms and conditions:

- Name of Borrower Company: **Adelaide Street Lofts Inc.**
- Participating Lender: **Waterview Capital Corp.**
- Project Name: **Adelaide Street Lofts (the "Project")**
- Security: **2<sup>nd</sup> Mortgage**
- Prior Mortgages: **1<sup>st</sup> Mortgage TBD**
- Amount of Mortgage: **\$ 25,000,000.00**
- Term: **4 Years**
- Interest Rate: **10%**
- Profit Participation: **Profit is to be shared as follows: Neilas Inc. (or a related company) 60% and Waterview Capital Corp. 40%.  
The Participant shall be entitled to its pro rate share of the amount of profit earned by Waterview Capital Corp. Its pro rata share shall be calculated by determining the Participant's percentage of the mortgage amount above.**

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the covenants herein contained and the sum of TEN (\$10.00) DOLLARS now paid by each of the parties (the "Parties") to the other (the receipt of which is hereby acknowledged by each of the Parties) and other good and valuable consideration, the Parties hereto hereby agree as follows:



## 1. Receipt of Funds

WCC acknowledges having received from the Participant the sum of **FOUR HUNDRED THOUSAND DOLLARS (\$400,000.00)** (hereinafter called the "Participant's Participation") and agrees to hold the same on the terms and conditions set out herein.

## 2. Use of Funds

WCC agrees to advance the Participant's Participation to the Investee Company upon the terms and conditions contained in the Equity Loan Commitment issued by WCC to the Investee Company and accepted by the Investee Company and the Borrower, or if already advanced to the Investee Company upon the said terms and conditions upon which such loan was advanced, then to reimburse and purchase the interest of those who have made such advance.

## 3. Priority of Return

Subject to the terms and conditions hereinafter set out, the Parties agree that all monies received by WCC on account of the Investment shall be applied in the following manner: firstly, to pay all costs, charges and expenses of, and incidental to, collecting, demanding, recovering and enforcing payment of the Investment, and secondly, any and all remaining monies shall be distributed pro-rata to each Participant based on each Participant's proportionate share of the total amount invested by all of the Participants and the share of profits received from WCC on behalf of all of the Participants from the Investee Company or of any proceeds of disposition from any action taken by WCC to enforce its security against the Investee Company.

## 4. Syndication, Asset Management, and other Fees

The Participant acknowledges that the following fees are payable to WCC for its role in the Investment:

- i Syndication Fee / Step Up Fee: A \$140,000.00 fee will be paid by all Participants in the Investment to WCC on first advance of the Investment to the Investee Company;
- ii Commission of 14% of the total amount advanced by WCC to the Investee Company will be paid to WCC and co-operating brokers and dealers.

The Participant expressly authorizes WCC or anyone else retained by WCC, to perform the services of asset manager and monitor the Project. Such duties will include monitoring the investment in the Project by reviewing monthly income and expense reports, making major decisions together with the Investee Company, and ensuring the Investee Company is in compliance with the undertakings and covenants set out in the Investment.

## 5. Remittance of Proceeds

Forthwith upon the receipt of payments on account of the Investment by way of certified cheque and/or forthwith upon clearance by WCC or its banker of any uncertified cheques received on account of payments representing the Investment, WCC agrees to remit to the Participant the Participant's share of all monies to which it is entitled under this agreement. WCC shall be entitled a period of ten business days from the of receipt of funds or clearance of funds to determine what amount the Participant is entitled to after deducting any costs or expenses related to the Investment which WCC is entitled to deduct.

## 6. Closing of the Investment

The Parties agree that in the event WCC shall not complete the Investment to the Investee Company for any reason whatsoever, then the Participant's Participation shall be returned forthwith to the Participant without interest or reduction, and this Agreement shall become null and void.

In the event that WCC shall complete only a part of the Investment to the Investee Company for any reason whatsoever, then WCC may, at its option, either return the whole of the Participant's Participation forthwith to the Participant, without interest or deduction, in which event this Agreement shall become null and void or, proceed to close on the Investment and subscribe for the remaining amount of the Investment for its own account.

#### **7. Default of Investment**

Upon default being made under the Loan Agreement by the Investee Company, the Participant agrees that WCC shall be vested with the following rights:

- (a) To make such decisions, to take such action and exercise all such rights and remedies as WCC may, in its absolute discretion, deem advisable in the best interests of all Participants in the Investment, including the right (with the consent of Participants holding fifty-one (51%) percent of the total outstanding principal of the Investment) to re-negotiate the Investment upon such terms as WCC shall deem advisable.
- (b) To hire, or otherwise retain the services of a receiver, solicitor, appraiser and such other parties who WCC, in its discretion, deems necessary or advisable to enforce the rights of WCC and to pay reasonable fees for all such services.
- (c) To request that each Participant in the Investment advance such further monies (the "Required Funds") which WCC in its discretion deems desirable or necessary in order to protect the Investment or any securities given for the Investment or the Participant's Participation. In the event the Participants fails to advance the Required Funds, WCC and/or any other participants in the Investment may advance the Required Funds and, in such event, the party or parties which advanced the Required Funds shall have (subject to paragraph 8(b)) a lien and charge against the Participant's Participation. Such advances made C shall bear interest on the amount advanced at the rate of 25% per annum, calculated monthly.

#### **8. Relationship of Participant to WCC**

It is expressly understood and agreed that the Participant's Participation is in no way to be deemed a Investment by the Participant in or in addition to WCC, or any of its affiliates, subsidiaries, employees or officers, or a borrowing by WCC or any of its affiliates, subsidiaries, employees or offices from the Participant, and repayment of the Participant's Participation is in no way, either directly or indirectly, guaranteed by WCC or any of its affiliates, subsidiaries, employees or officers, other than any the corporate guarantee for the amount of the Investment being provided by WCC. The parties hereto further acknowledge and agree that the Participant's decision to participate in the Investment has not been induced by, nor does the Participant rely upon or regard as material, any representation or promise whatsoever with respect to the Investment, whether oral or otherwise, by whomsoever made, except as herein expressly set out.

WCC's role to the Participant will be that of trustee for security documentation and asset management for the purpose of monitoring and managing the investment.

#### **9. Security Documents**

The Parties hereto acknowledge that the Mortgage and other securities given for the Investment as hereinbefore set out shall be made to WCC and WCC acknowledges that it will hold the Mortgage and such securities as trustee for all Participants in the Investment to the extent of the Participant's Participation in the Investment and subject to the terms of this Agreement.

## **10. Registration of Interest on Title**

The Participant covenants and agrees, which covenant and agreement shall be binding upon his heirs, administrators, successors and assigns, not to register on title to the property which is the subject matter of the Investment as set out herein, the within Agreement, any notice thereof, or any assignment, mortgage, hypothecation, or transfer thereof, whether directly or indirectly, and it is expressly understood and agreed that if the within Agreement, any notice thereof or any assignment, hypothecation, or transfer thereof, whether directly or indirectly, shall be registered contrary to the provisions hereof, then in any such event, WCC may, at its option, declare this Agreement terminated and pay to the Participant, in full and complete satisfaction of any claims by the Participant, four-fifths ( $\frac{4}{5}$ <sup>ths</sup>) of the balance of the Participant's Participation then outstanding, without interest, and the balance shall be retained by WCC as liquidated damages and not as a penalty.

## **11. Discharge of Security**

It is further understood and agreed, that WCC is hereby empowered to give a good and valid discharge or assignment of the securities given by the Investee Company to secure the Investment (or to carry through a sale of the securities) without the consent of the Participants in the Investment, provided all monies due under the Investment 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.

## **12. Duty of WCC**

WCC, so long as it acts in good faith, shall not be responsible with respect to the exercise and/or non-exercise of its powers hereunder. WCC shall only be liable for wrongful acts or breaches of this Agreement and WCC shall not be liable for any error in judgement.

## **13. Transfer of Interest**

The Participant covenants and agrees that he will not sell, assign, transfer, pledge, mortgage, charge, hypothecate or otherwise dispose of, encumber or deal with his Participation except with the prior written consent of WCC. In the event that the Participant obtains the said written consent of WCC, no such sale, assignment, transfer, pledge, mortgage, charge, hypothecation or other disposition of or encumbrance of dealing with the Participant's Participation shall be valid or effective unless or until the person, firm or corporation to whom the Participant's Participation has been sold, assigned, transferred, pledged, mortgaged, charged, hypothecated or otherwise disposed of, encumbered or dealt with shall have entered into an agreement with WCC consenting to the terms hereof and agreeing to assume all of the obligations of the Participant and to be bound by all of the terms hereof as though he were the Participant.

Provided further that, notwithstanding any such sale, assignment, transfer, pledge, mortgage, charge, hypothecation or other disposition of, encumbrance or dealing with the Participant's Participation, the Participant shall continue to be liable hereunder as though no such sale, assignment, transfer, pledge, mortgage, charge, hypothecation or other disposition of, encumbrance or dealing with the interest of the Participant in the Participant's Participation has been made.

## **14. Documents and Securities**

The Parties hereto agree that all relevant documents and securities pertaining to the Investment shall remain in the possession of WCC and shall be held by WCC for and on behalf of WCC and all the Participants in the Investment, subject to the terms of this Agreement. It is understood and agreed that the Participants in the Investment shall be entitled to examine said documents at the office of WCC during normal business hours and upon giving reasonable advance notice of their desire to examine such documents. WCC, as part of its reporting to Participants as asset manager shall forward a closing book containing, among other things, all security documentation executed by the Investee Company.

## **15. Tax Act**

Notwithstanding any other provision contained in this Agreement, if any Participant in the Investment is a trust which is governed by a registered retirement savings plan, then any provision in this Agreement which shall be interpreted to mean that the Participant's Participation is not a qualified investment within the meaning of Paragraph 146(1) (g) of the Income Tax Act, shall not be applicable to the said Participant.

## **16. Entire Agreement**

This Agreement expresses the entire and final agreement between the Parties hereto with respect to all matters herein and the Parties agree that the execution of this Agreement has not been induced by, nor do any of the Parties hereto rely upon or regard as material, any representation or promises whatsoever, whether oral or otherwise, by whomsoever made, except as hereinbefore expressly set out, nor shall any such representations, whether oral or otherwise, have the effect of varying or altering the terms of this Agreement.

## **17. Jurisdiction**

The Parties hereto covenant and agree that in the interpretation and application of any of the provisions and terms of this Agreement, the laws of the Province of Ontario shall apply and the Participant hereby attorns to the jurisdiction of Ontario in the event of any dispute arising from this or any other agreement between WCC and the Participant.

## **18. Interpretation**

The term "Participant", "Parties", "Investee Company" and the personal pronouns "he", "his", and/or "their" relating thereto and used therewith shall be used and construed as the number and gender of the party referred to in each case requires, and the verb agreeing therewith shall be construed as agreeing with the said word or pronouns so substituted.

## **19. Successors and Assigns**

Subject to the provisions of paragraph 16, this Agreement shall be binding upon the Participant and everything herein contained shall enure to the benefit of and be binding upon the Parties hereto and their respective heirs, executors, administrators, successors and assigns.

## **20. Closing Subscriptions**

The Participant agrees that should WCC have subscriptions for an amount equal to 50% of the amount required by WCC as equity under the terms of the Investment, WCC will close on the transaction. The Participant acknowledges that WCC may not be able to raise the remaining amount of the Investment which would pose a risk to the security of the Investment.

## **21. Address for Service**

A party will be deemed to have received any documentation sent by the parties to this Agreement if delivered, by registered mail, to the following address:

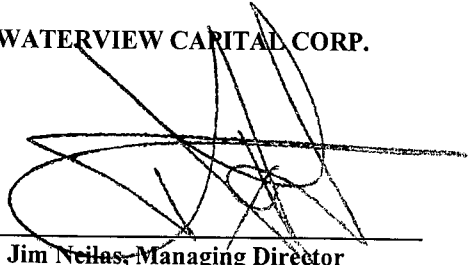
For WCC: **200 Adelaide Street West, Suite 401  
Toronto, ON M5H 1W7**

For the Participant: **At the address set out below under "Participant's Address".**

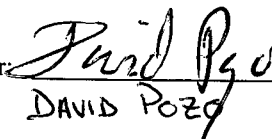
IN WITNESS WHEREOF the Parties hereto have hereunto set their hands and seals and, if corporations, have hereunto caused to be affixed their corporate seals under the hand(s) of their proper signing officer(s) duly authorized in that behalf, respectively.

DATED at Toronto, this 15 day of June, 2011

**WATERVIEW CAPITAL CORP.**

Per:   
Jim Neilas, Managing Director

SIGNED SEALED, AND  
DELIVERED

Per:   
DAVID POZO, Participant

**SIGN HERE** 



”

TRUST AGREEMENT

THIS AGREEMENT DATED the 15 day of June, 2011

BETWEEN:

**WATERVIEW CAPITAL CORP.**

of the City of Toronto, Province of Ontario  
(hereinafter called the "Trustee")

-and-

DAVID POZO

of the City of Mississauga, Province of Ontario  
(hereinafter called the "Beneficiary" individually and the "Beneficiaries" collectively)

WHEREAS the Trustee will hold a 100% interest in the second mortgage registered against 263 Adelaide Street West, Toronto (the "Investment");

AND WHEREAS the Beneficiaries have paid and advanced the sum of Four Hundred Thousand Dollars (\$400,000.00) as a portion of the Mortgage to the Trustee;

AND WHEREAS the Trustee holds the amount advanced by the Beneficiaries as trustee for the Beneficiaries;

AND WHEREAS the Beneficiaries have an undivided beneficial interest in the Investment to the extent of the portion advanced;

NOW THEREFORE this agreement witnesseth that in consideration of the mutual covenants and obligations contained herein, the parties agree as follows:

THE TRUSTEE ACKNOWLEDGES AND AGREES that he is the mortgagee and investor pursuant to the Investment as trustee for the Beneficiaries;

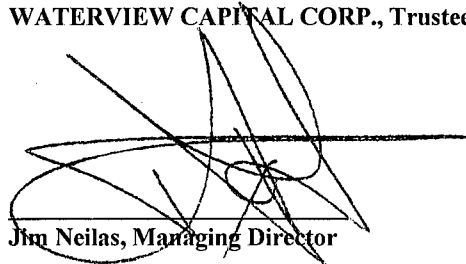
THE TRUSTEE UNDERTAKES AND AGREES to deliver a conveyance of the Beneficiaries' entire interest in the Investment upon the Beneficiaries' request for the same and undertakes and agrees to execute any and all documentation necessary to give effect to the same with all costs to be borne by the Beneficiaries;

THE PARTIES HERETO AGREE that this Agreement shall be binding upon the parties hereto, their successors and assigns.

IN WITNESS WHEREOF the parties hereto have herein set their hands and seals.

SIGNED, SEALED AND DELIVERED

WATERVIEW CAPITAL CORP., Trustee



Jim Neilas, Managing Director



DAVID POZO, Beneficiary



TRUST AGREEMENT

THIS AGREEMENT DATED the 29TH day of AUGUST, 2011

BETWEEN:

HI-RISE CAPITAL LTD.

of the City of Toronto, Province of Ontario  
(hereinafter called the "Trustee")

-AND-

DAVID POZO

of the City of MISSISSAUGA, Province of ONTARIO  
(hereinafter called the "Beneficiary" individually and the "Beneficiaries" collectively)

WHEREAS the Trustee will hold an interest in the second mortgage registered against 263 Adelaide Street West, Toronto (the "Investment") in the name of D. Sud and Sons Limited;

AND WHEREAS the Beneficiaries have paid and advanced the sum of SIX HUNDRED Thousand Dollars (\$600,000.00) as a portion of the Mortgage to the Trustee;

AND WHEREAS the Trustee holds the amount advanced by the Beneficiaries as trustee for the Beneficiaries;

AND WHEREAS the Beneficiaries have an undivided beneficial interest in the Investment to the extent of the portion advanced;

AND WHEREAS the rights and obligations of the parties are more particularly set out in the attached Loan Participation and Priority Agreement and the Beneficiary is known as the "Participant";

NOW THEREFORE this agreement witnesseth that in consideration of the mutual covenants and obligations contained herein, the parties agree as follows:

THE TRUSTEE ACKNOWLEDGES AND AGREES that he is the mortgagee and investor pursuant to the Investment as trustee for the Beneficiaries;

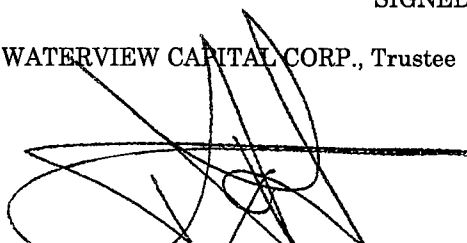
THE TRUSTEE UNDERTAKES AND AGREES to deliver a conveyance of the Beneficiaries' entire interest in the Investment upon the Beneficiaries' request for the same and undertakes and agrees to execute any and all documentation necessary to give effect to the same with all costs to be borne by the Beneficiaries;

THE PARTIES HERETO AGREE that this Agreement shall be binding upon the parties hereto, their successors and assigns.

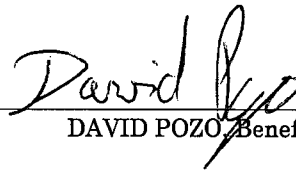
IN WITNESS WHEREOF the parties hereto have herein set their hands and seals.

SIGNED, SEALED AND DELIVERED

WATERVIEW CAPITAL CORP., Trustee



Jim Neilas, Managing Director



DAVID POZO, Beneficiary

\_\_\_\_\_, Beneficiary


x Richard Pozo

Witness: Print Name

x Richard Pozo

Witness: Signature

THIS IS EXHIBIT "H" REFERRED TO IN THE  
AFFIDAVIT OF DAVID POZO  
AFFIRMED BEFORE ME THIS  
20TH DAY OF APRIL 2020.

A handwritten signature in cursive script, appearing to read "P. Y. Yunes".

---

Commissioner for taking affidavits



**OPT-OUT NOTICE**

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

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

Attention: Stephanie De Caria

I/we, David Pozo, am/are Investor(s) that hold an interest in a syndicated mortgage ("**SMI**"), administered by Hi-Rise Capital Ltd. ("**Hi-Rise**"), in respect of the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the "**Project**") and the proposed development known as the "Adelaide Street Lofts".

Under paragraph 3 of the Order of the Honourable Mr. Justice Hainey dated March 21, 2019 (the "**Order**"), Investors who do not wish to be represented by Representative Counsel may opt out.

I/we hereby notify Representative Counsel that I/we do not wish to be represented by Representative Counsel and do not wish to be bound by the actions of Representative Counsel and will instead either represent myself or retain my own, individual counsel at my own expense, with respect to the SMI and the Project.

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

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

March 27, 2019  
Date

David Pozo  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

THIS IS EXHIBIT "I" REFERRED TO IN THE  
AFFIDAVIT OF DAVID POZO  
AFFIRMED BEFORE ME THIS  
20TH DAY OF APRIL 2020.

A handwritten signature in black ink, appearing to read "P. Yunes", written in a cursive style.

---

Commissioner for taking affidavits

**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.**

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

1. Pursuant to the Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 21, 2019 (the “**Appointment Order**”) Representative Counsel was appointed to represent all individuals and/or entities (“**Investors**”) that hold an interest in a syndicated mortgage administered by Hi-Rise Capital Ltd. (“**Hi-Rise**”) in respect of the 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 (the “**Opt Out Investors**”). A copy of the Appointment Order and Endorsement of Justice Hainey dated March 22, 2019 is attached as **Appendix “A”**.

2. While registered title to the Property is held by Adelaide, the main holding company and owner of Adelaide is 263 Holdings Inc. (“**Holdings**”, and together with Adelaide, the “**Company**”).

## PURPOSE OF REPORT

3. On November 27, 2019, Representative Counsel, members of the Official Committee (as defined below), Hi-Rise, Adelaide, Meridian Credit Union Limited (“**Meridian**”), Lanterra Developments Ltd. (“**Lanterra**”) and certain of the Opt Out Investors attended a Court-ordered mediation before the Honourable Mr. Justice McEwen (the “**Judicial Mediation**”).

4. The Judicial Mediation was successful insofar as the parties agreed upon a settlement (the “**Settlement**”), which Representative Counsel and the Official Committee recommends to the Investors. The Settlement is memorialized in the Minutes of Settlement (the “**Minutes**”) attached as **Appendix “B”** hereto.

5. The Settlement is subject to approval of the Investors and approval of the Court. Accordingly, Hi-Rise will be calling a second vote (the “**Vote**”) in order to allow the Investors to vote on the Minutes and the terms of the Settlement. Details of the Vote are set out below.

6. If approved by Investors and sanctioned by the Court, the Settlement would allow the Company to move forward with a sale of the Property to Lanterra (the “**Lanterra Sale**”) and the other transactions set out in the Minutes. If approved, the Lanterra Sale is expected to close on or before May 14, 2020 (the “**Closing Date**”).

7. Representative Counsel has filed this Fourth Report for the purpose of advising the Court and the Investors that Representative Counsel and the Official Committee recommend that the Investors vote in favour of the Settlement. In addition to the setting out the relevant background facts, this Fourth Report includes the following:

- (a) Details on the Lanterra Sale;
- (b) The terms of the Settlement;
- (c) The implications of the Settlement for Investors; and
- (d) The bases upon which Representative Counsel and the Official Committee have made their recommendation.

## **TERMS OF REFERENCE**

8. In preparing this Fourth Report and making the comments herein Representative Counsel has, where applicable, relied upon information prepared or provided by Hi-Rise and/or Adelaide, and information from other third-party sources (collectively, the “**Information**”). Certain of the information contained in this Fourth Report may refer to, or is based on, the Information. As the Information has been provided by third parties or has been obtained from documents filed with the Court in this matter, Representative Counsel has relied on the Information and, to the extent possible, has reviewed the Information for reasonableness. However, Representative Counsel has neither audited nor otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook and accordingly, the Representative Counsel expresses no opinion or other form of assurance in respect of the Information.

## **BACKGROUND TO PROCEEDING**

9. On March 21, 2019, Hi-Rise brought an application to the Court under section 60 of the *Trustee Act* (Canada) for, *inter alia*, the appointment of Representative Counsel, and a declaration that Hi-Rise has the power under the loan participation agreements (“**LPA**”) and mortgage participation agreements (“**MPA**”) with Investors to grant a discharge of the syndicated mortgage (the “**Syndicated Mortgage**”) held for the benefit of the Investors over the Property in the event the proceeds received from the completion of a contemplated transaction relating to the Property are insufficient to pay the full amounts under the Syndicated Mortgage. A copy of Hi-Rise’s Notice of Application is attached as **Appendix “C”**.

10. As further set out in Hi-Rise’s application, Hi-Rise is a mortgage broker and mortgage administrator licensed by the Superintendent of Financial Services of Ontario. Hi-Rise receives and advances, on behalf of Investors, funds to a variety of companies (each a “**Borrower**” and collectively the “**Borrowers**”), such as Adelaide, that undertake real property developments such as the Property. The terms on which Investors advance their funds and Hi-Rise administrators each Syndicated Mortgage are set out in the LPA and the MPA.

11. There are two mortgages registered on title to the Property. The first mortgage is registered in favour of Meridian Credit Union (“**Meridian**”), and the second mortgage (the “**Second Mortgage**”) is registered in favour of both Hi-Rise and Community Trust Company (“**Community Trust**”).
12. Investors invested in the Syndicated Mortgage through this Second Mortgage in one of two ways:
  - (a) **Registered Investors** participate in the Second Mortgage through Community Trust and hold their investments through registered plans including registered retirement savings plan; or
  - (b) **Non-Registered Investors** participate in the Second Mortgage through Hi-Rise.
13. Community Trust’s interest in the Second Mortgage ranks ahead of Hi-Rise’s interest. As such, in a liquidation scenario the Registered Investors are entitled to all of their unpaid principal and interest before Non-Registered Investors receive any payments.
14. The majority (*ie*, approximately 2/3, by both number and aggregate investment amount) of the Investors in the Syndicated Mortgage are Non-Registered Investors.

#### **ESTABLISHMENT OF OFFICIAL COMMITTEE**

15. Pursuant to the Appointment Order, Representative Counsel was directed to establish an Official Committee of Investors (the “**Official Committee**”) in accordance with the process and procedure described in Schedule “B” attached to the Appointment Order.
16. Pursuant to the Order of the Honourable Mr. Justice Haaney dated April 15, 2019, the Official Committee was approved and constituted (the “**Official Committee Approval Order**”, a copy of which is attached as **Appendix “D”**). There are currently 4 members of the Official Committee. Representative Counsel regularly consults with and takes instruction from the Official Committee.

## **APPOINTMENT OF INFORMATION OFFICER**

17. Pursuant to the Order of the Honourable Mr. Justice Hailey dated September 17, 2019 (the “**IO Order**”, a copy of which is attached as **Appendix “E”**), Alvarez & Marsal Canada Inc. was appointed as Information Officer (in such capacity, the “**Information Officer**”).

18. Pursuant to the IO Order, the Information Officer was authorized and empowered to, among other things, review and report to the Court and to all stakeholders, including but not limited to Representative Counsel, Hi-Rise, the Company, FSRA and Meridian, in respect of all matters relating to the Property, the Second Mortgage over the Property, and the Company’s proposed sale of the Property, including, but not limited to, the marketing and sales process undertaken in respect of the Property, all aspects of any and all proposed transactions in respect of the Property including a proposed joint venture with Lanterra (the “**Lanterra JV Transaction**”), and the financial implications of such proposed transactions (collectively, the “**Mandate**”).

19. The Information Officer’s findings were set out in a report dated October 7, 2019 (the “**IO Report**”, a copy of which is attached hereto, without appendices, as **Appendix “F”**). Both Representative Counsel and the Official Committee accept the facts and conclusions set out in the IO Report. To date, none of the parties to this proceeding have disputed the contents of the IO Report.

## **THE 1<sup>ST</sup> MEETING & VOTE**

20. In accordance with the terms of the Appointment Order, Hi-Rise called a meeting of Investors (the “**Meeting**”), in order to, among other things, allow Investors to vote on a proposed settlement that contemplated the Lanterra JV Transaction (the “**Original Settlement Proposal**”).

21. Full details in respect of the Lanterra JV Transaction and the Original Settlement Proposal are set out in the IO Report.

22. In advance of the Meeting, Representative Counsel issued its Third Report, a copy of which is attached as **Appendix “G”** (without appendices), to advise the Court and Investors of the Official Committee’s recommendation that Investors vote against the Original Settlement Proposal, among other things.

23. On October 20, 2019, Representative Counsel hosted a Town Hall Meeting at the offices of Miller Thomson LLP in Toronto, in order to provide Investors with legal advice and its recommendation to vote against the Original Settlement Proposal, as well as to provide Investors with the opportunity to ask questions of Representative Counsel and the Official Committee in person. Those Investors that could not attend the Town Hall Meeting in person were provided with the option to request a video recording of the Town Hall Meeting, which was only made available to Investors that requested same. A copy of the Notice of Town Hall Meeting is attached as **Appendix “H”**.

24. On October 21, 2019, at the request of many Investors, Representative Counsel also published and delivered a Communication to Investors, a copy of which is attached as **Appendix “I”**, which offered a summary of the mortgages on the Property, the Lanterra JV Transaction, the terms of the Original Settlement Proposal and its implications to Investors,

25. Thereafter, the Meeting and the vote on the Original Settlement Proposal took place on October 23, 2019. Approximately 70.6% of voting Investors (*ie*, 285 Investors representing \$24,542,125 in value) voted against the Original Settlement Proposal, and only 29.4% of voting Investors (*ie*, 119 Investors representing \$10,202,272 in value) voted in favour of it.

26. Accordingly, the vote on the Original Settlement Proposal failed.

#### **EVENTS FOLLOWING THE MEETING & VOTE**

27. On October 28, 2019, Meridian, the first mortgagee on the Property, served an application to appoint a receiver over the assets, undertakings and properties of Adelaide (the “**Receivership Application**”), returnable November 1, 2019.

28. Pursuant to the Endorsement of Justice McEwen dated November 1, 2019, a copy of which is attached as **Appendix “J”**, the Receivership Application was adjourned to December 12, 2019 and the Judicial Mediation was scheduled for November 27, 2019.

29. On November 6, 2019, *The Globe & Mail* published an article titled, “Small Investors face losses on Toronto developer’s debt woes”, regarding Hi-Rise, the Property and Project, and



another project owned by Mr. Jim Neilas in Oakville, Ontario. A copy of the article is attached as **Appendix “K”**.

30. On November 14, 2019, Lanterra delivered an unsolicited cash offer to acquire 100 percent of the Property for a purchase price of \$66 million dollars payable immediately at closing (the “**Lanterra Cash Offer**”). A copy of the Lanterra Cash Offer is attached as **Appendix “L”**.

31. On November 21, 2019, in response to the Lanterra Cash Offer, the Company proposed a new settlement to Investors (the “**November 21 Offer**”), which was similar to the joint venture transaction under the Lanterra JV Transaction, but offered cash on closing in the amount of approximately \$54,862,500 instead of the vendor-take back mortgage contemplated in the Original Settlement Proposal. The November 21 Offer also includes a debenture in the amount of \$17,137,500 carrying interest at a rate of 6% percent per annum. A copy of the November 21 Offer is attached as **Appendix “M”**.

## **JUDICIAL MEDIATION**

32. The parties attended the Judicial Mediation on November 27, 2019.

33. In the course of the Judicial Mediation, the parties were advised for the first time that Lanterra was no longer prepared to move forward with the Lanterra JV Transaction or any similar arrangement that contemplated the continuing involvement of the Company or its principal, Jim Neilas.

34. Lanterra advised that it was only prepared to move forward with a sale transaction in which it would acquire 100 percent of the Property. The parties reached a settlement agreement at the Judicial Mediation, which agreement is memorialized in the Minutes (previously attached as Appendix “B”) and described in further detail below.

35. As noted above, Registered Investors participate in the Second Mortgage through Community Trust. In order to give effect to the Minutes of Settlement, Representative Counsel obtained an Order from Justice Conway dated December 20, 2019, which authorized Representative Counsel to instruct Community Trust to provide its consent and sign certain documents in connection with the Settlement. A copy of said Order is attached as **Appendix “N”**.

## TERMS OF THE SETTLEMENT

36. The full terms and conditions of the Settlement are set out in the Minutes. The Minutes contemplate certain payments being made at the time of execution, and later at the Closing Date. The key terms and conditions are as follows:

- (a) Lanterra will pay the amount of \$69,000,000 (the “**Purchase Price**”) in respect of its purchase of 100 percent of the Property, and expects to close the transaction by the Closing Date (being May 14, 2020).
- (b) BMO has agreed to accept the amount of \$649,000 on account of the real estate commission payable to it (the “**BMO Commission**”), for undertaking the process to market and sell the Property (the “**BMO Sales Process**”) which will be paid as follows:
  - (i) Lanterra will contribute the amount of \$216,500 towards the BMO Commission;
  - (ii) Mr. Neilas will contribute the amount of \$216,000 towards the BMO Commission from the settlement amount payable to him under the Minutes (as further described below); and
  - (iii) Investors will contribute the amount of \$216,500 towards the BMO Commission from the settlement amount payable to them under the Minutes (as further described below).
- (c) Following the execution of the Minutes, the following occurred:
  - (i) Meridian was paid the amount of \$1.55 million owing to it under its first mortgage on the Property. Lanterra advanced these funds in the form of a loan to Meridian, and will be repaid on the Closing Date. This loan (the “**Interest Payment Loan**”) accrues interest at the rate of prime plus 2% per annum;

- (ii) Meridian was paid the amount of \$18,000 on account of a forbearance fee (*ie*, an amount payable in connection with Meridian's agreement to forbear from exercising its rights against the Company and/or the Property). Lanterra also advanced these funds in the form of a loan to Meridian, and will be repaid on the Closing Date. This loan (the "**Forbearance Fee Loan**") accrues interest at the rate of prime plus 2% per annum; and
  - (iii) As security for the Interest Payment Loan, Adelaide granted Lanterra a second-ranking mortgage on the Property (the "**Lanterra Mortgage**"). The Lanterra Mortgage ranks ahead of the Second Mortgage. In order to give effect to the Lanterra Mortgage, Hi-Rise agreed to subordinate the Second Mortgage to the Lanterra Mortgage and, in accordance with the Justice Conway Order, Representative Counsel instructed Community Trust to agree to the subordination.
- (d) On the Closing Date, the following payments will occur:
- (i) Meridian will be paid on account of its loan (including principal, interest and fees) owing as at that time under its first mortgage, estimated at approximately \$16,921,274.67;
  - (ii) Lanterra will be repaid for the Interest Loan Payment and the Forbearance Fee Payment;
  - (iii) the amount of \$4,000,000 will be paid to Mr. Jim Neilas (personally or through his corporation Neilas Inc.) in full satisfaction of any claims or interests in respect of the Property, less the \$216,000 contribution to the BMO Commission, for a total settlement amount of \$3,784,000;
  - (iv) Payment of professional fees secured by charges on title to the Property will be paid (*ie*, payment to Representative Counsel and the Information Officer). As set out below at paragraph 58, counsel to Hi-Rise will also be paid for its work in connection with the application under the *Trustee Act* and administering the Settlement. The aggregate amount of such

professional fees is estimated at approximately \$976,000 as of the expected Closing Date (which amount includes an estimated reserve for post-closing matters that will require the work of professionals after the Closing Date); and

- (v) The balance of the Purchase Price (*ie*, net of the payments described at subparagraphs (c)(i) to (iv) above and less the \$216,500 contribution to the BMO Commission (the “**Investor Settlement Amount**”) will be distributed to Investors and Opt Out Investors in the manner described in the Minutes, in full satisfaction of their claims. It is estimated that the Investor Settlement Amount available for distribution will be approximately \$45,495,298.33.

### **IMPACT OF THE SETTLEMENT ON INVESTORS**

37. Following closing of the Lanterra Sale, the Investor Settlement Amount shall be distributed among the Investors and Opt Out Investors as follows:

- (a) Registered Investors will be paid the full amount of their principal and interest claims. The aggregate amount of the claims of Registered Investors is estimated at approximately \$22,810,717.84 as of the expected Closing Date, composed of the amounts of \$17,133,872.86 in respect of principal and \$5,676,844.98 in respect of accrued and unpaid interest; and
- (b) Non-Registered Investors will receive the remaining balance of the Investor Settlement Amount on a *pro rata* basis. The aggregate amount of the claims of Non Registered Investors is estimated at approximately \$48,235,032.06 as of the expected Closing Date, composed of the amounts of \$34,973,891.58 in respect of principal and \$13,261,140.48 in respect of accrued and unpaid interest.

38. Based on the foregoing, it is anticipated that Non-Registered Investors will receive an aggregate amount of \$22,684,580.49 in respect of their claims, equal to 64.86 percent of the amount of their principal investments and 47.03 percent of the amount of their principal investments and accrued and unpaid interest.

39. A summary (the “**Distribution Summary**”) of the use of funds and estimated distributions under the Settlement is set out at **Appendix “O”**. The Distribution Summary is based on projected estimations only and has been calculated based on the current prime rate, and therefore, is subject to change. The Distribution Summary was prepared to provide Investors and the Court with an estimate of the expected distribution amounts following the Closing Date. The distribution will be subject to ordinary closing adjustments as at the Closing Date, and accordingly, the estimated numbers contained in the Distribution Summary are not final.

## **VOTE**

40. As noted above, the Settlement is still subject to approval of the Investors and Opt Out Investors and approval of the Court.

41. Accordingly, Hi-Rise will be calling a second Vote. Representative Counsel understands that Hi-Rise will not call an in-person meeting like the first Meeting. Instead, Hi-Rise intends to deliver a voting form, which will permit Investors to submit their votes by mail or by fax only. Representative Counsel agrees with this proposed voting process, which will save significant costs.

42. Representative Counsel understands that the deadline for Investors to submit their votes had been scheduled for January 13, 2020, although this may be extended by Hi-Rise.

## **CUBE INVESTORS**

43. Representative Counsel is advised that certain investors (the “**Cube Investors**”) in another syndicated loan structure administered by Hi-Rise in connection with a development project on College Street in Toronto (the “**Cube Project**”) were granted a beneficial interest in the Second Mortgage. Representative Counsel has been provided with sample documentation pursuant to which such interests were granted.

44. As a condition of the Settlement, Hi-Rise and Adelaide required that the Minutes be clear that the Cube Investors will be entitled to receive their respective entitlements to the Investor Settlement Amount and that the Cube Investors will be included in the release provided for by the Minutes. Representative Counsel does not act for the Cube Investors in respect of their investments in the Cube Project or any guarantees granted to them by Hi-Rise.

45. Hi-Rise has advised Representative Counsel that the Cube Investors who were granted a beneficial interest in the Second Mortgage are owed an amount of \$884,305.12, composed of the amounts of \$533,264.44 in respect of principal and \$351,040.68 in respect of interest.

### **RECOMMENDATION REGARDING SETTLEMENT**

46. The Official Committee recommends that Investors approve the Minutes and the Settlement. In reaching its conclusion, the Official Committee considered factors which included the following:

- (a) The findings and conclusions set out in the IO Report;
- (b) The potential benefits, costs and risks associated with alternative courses of action including the potential outcome of the Receivership Application and a sale of the Property through a Court-appointed receiver;
- (c) The results of the BMO Sales Process. The Lanterra Sale is superior to any of the offers received through the BMO Sale Process;
- (d) The quantum of “priority claims” asserted by Jim Neilas, Neilas Inc., the Company and their affiliates (collectively, the “**Neilas Entities**”) as being payable in priority to the Investors. In this regard, the Neilas Entities claimed an approximate amount of \$10,000,000 in such “priority claims”. While to date, the veracity of the “priority claims” has not been tested, the Settlement settles these claims of the Neilas Entities for \$4 million (*ie*, 40 cents on the dollar) and avoids the considerable costs, uncertainty and delay associated with resolving the “priority claims” through litigation. In addition, the prospect of lengthy litigation could have threatened the viability of the Lanterra Sale, and in any event, would delayed recoveries to Investors;
- (e) Lanterra’s agreement at the Judicial Mediation to increase the proposed Purchase Price of the Property from \$66 million under the Lanterra Cash Offer to \$69 million;

- (f) Lanterra's experience, size, reputation and resources, and the resulting reduction in "closing risk" associated with the Lanterra Sale; and
- (g) The quantum, certainty and speed of recoveries available for Investors under the Settlement. In particular, Investors will receive their distributions within a matter of a few short months, rather than the years contemplated in earlier settlement proposals.

47. It is possible that a sale of the Property through a Court-appointed receiver could generate a higher price than the Lanterra Sale. However, it is also possible that a receivership sale could generate a substantially lower price. A receivership could also bring significant delay, and further erosions to Investor recoveries as a result of receivership costs, ongoing interest accrual, and the "priority claims" of the Neilas Entities.

48. In light of the foregoing, the Official Committee is of the view that the Lanterra Sale, Settlement and the Minutes should be supported by the Investors.

49. Given that the Official Committee and Representative Counsel support the Lanterra Sale and the details of same are set out in this Fourth Report, Representative Counsel will not be calling a second Town Hall meeting. However, Representative Counsel will take inquiries from Investors and provide further communications to Investors as necessary.

## **PROFESSIONAL FEES**

### *Representative Counsel*

50. Pursuant to paragraph 17 of the Appointment Order, Representative Counsel shall be paid by Adelaide its reasonable fees, consisting of fees from and after the date of the Appointment Order incurred in its capacity as Representative Counsel (the "**Post-Appointment Fees**") up to a maximum amount of \$200,000, or as may otherwise be ordered by this Court, which amount shall exclude the disbursements incurred by Representative Counsel (the "**Rep Counsel Charge**").

51. Pursuant to paragraph 18 of the Appointment Order, Representative Counsel was granted the Rep Counsel Charge on the Property as security for its Post-Appointment Fees, to rank in

priority to the Hi-Rise Mortgage, but subordinate to the first mortgage held by Meridian (updated amounts owing in respect of each are set out above).

52. Pursuant to the Order of the Honourable Mr. Justice Hainey dated September 7, 2019, the Rep Counsel Charge in respect of its Post-Appointment Fees was increased to a maximum of \$400,000, or as may otherwise be ordered by the Court.

53. At such time, the Rep Counsel Charge was increased on the basis that Representative Counsel's mandate had continued for much longer and had been much more complex and confrontational with the Company than originally anticipated. The increase was required to fund Representative Counsel through the first Meeting in October 2019 and the first vote.

54. The first Meeting and vote were conducted on October 23, 2019. Since that period, Representative Counsel has continued to act for the benefit of the Investors, and has performed various tasks in connection with its mandate, including but not limited to, a considerable volume of communications with Investors as well as preparing materials for and attending the Judicial Mediation. Following the Judicial Mediation, Representative Counsel worked extensively with the parties toward finalizing the Minutes, negotiating ancillary documents and resolving remaining issues (including obtaining the Justice Conway Order). In addition, Representative Counsel anticipates continuing to communicate with Investors regarding the contents of this Fourth Report and the Settlement pending the Vote.

55. In the event that the Settlement is accepted, Representative Counsel expects to provide services to and on behalf of Investors including with respect to the following:

- (a) Ongoing communications and assistance;
- (b) Implementation of the terms of the Minutes;
- (c) Assistance in the closing of the Lanterra Sale;
- (d) Assistance in determining Investor claim amounts; and
- (e) Distribution of funds to Investors.



56. In light of the foregoing, Representative Counsel respectfully requests that the amount of the Rep Counsel Charge be increased to a maximum of \$600,000, or as may otherwise be ordered by the Court.

Information Officer

57. Pursuant to the IO Order, the Information Officer was granted a charge (the “**IO Charge**”) in the maximum amount of \$100,000. Despite effectively completing its Mandate by delivering the IO Report, the Information Officer has continued to provide information and assistance to Representative Counsel, the Official Committee and the Investors, and has incurred total fees and disbursements (including those of its legal counsel) in the approximate amount of \$125,000. Representative Counsel acknowledges the value of the assistance that the Information Officer has continued to provide in respect of this matter despite exceeding the amount of the IO Charge.

Counsel to Hi-Rise

58. The within application under the *Trustee Act* was commenced by Cassels Brock & Blackwell LLP (“**Cassels**”) on behalf of its client, Hi-Rise. In its Notice of Application, a copy of which is previously attached as Appendix “C”, Hi-Rise sought payment to secure the fees of counsel to Hi-Rise (the “**Company Charge**”) in priority to all other charges except the existing first mortgage in favour of Meridian.

59. As further set out in the Notice of Application, the Company Charge was sought on the basis that “...section 8(ii) of the LPA provides that, in the event of a default under the Syndicate Mortgage, Hi-Rise is entitled to retain the services of various professionals, including lawyers and, pursuant to section 4 of the LPA, such charges are to be paid out of monies recovered from Adelaide prior to the distribution of net proceeds to Investors.”

60. Accordingly, payment to Cassels is included in the Minutes. Such payment is in respect of the work it has performed under the *Trustee Act* application that added value and benefit to Investors. Further, the Minutes contemplate payment on a go-forward in respect of Cassels services in fulfillment of Hi-Rise’s duties as trustee under the Syndicated Mortgage structure through closing of the Lanterra Sale and the ultimate distribution to Investors.

Distribution of Proceeds

61. As contemplated by the Minutes, if the Settlement is approved then Representative Counsel will be heavily involved in the claims verification process and distribution of proceeds to Investors. Representative Counsel seeks authority (with the prior approval of the Official Committee) to obtain the assistance of an accounting firm, consultant or other third-party professional in connection with same, with a view to maximizing effectiveness and cost-efficiency.

**CONCLUSION**

62. For all of the foregoing reasons, Representative Counsel and the Official Committee recommend that Investors approve the Settlement, and that this Honourable Court grant the remaining relief requested herein.

All of which is respectfully submitted at Toronto, Ontario this 9<sup>th</sup> day of January, 2020.



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



**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.

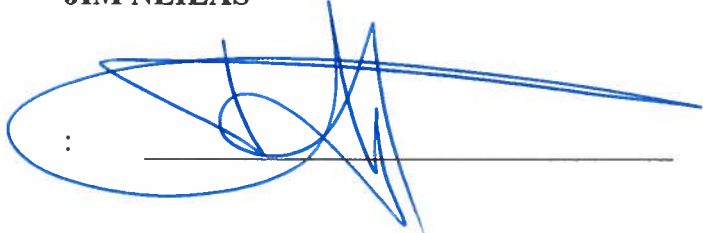
**LANTERRA DEVELOPMENTS LTD.**

Per: \_\_\_\_\_  
Name:  
Title:  
*(I have authority to bind the corporation)*

DATED AT Toronto this 20<sup>th</sup> day of December, 2019.

Witness:   
Geoff L. Hall

**JIM NEILAS**

  
: \_\_\_\_\_

DATED AT Toronto this 20<sup>th</sup> day of December, 2019.

**263 HOLDINGS INC.**

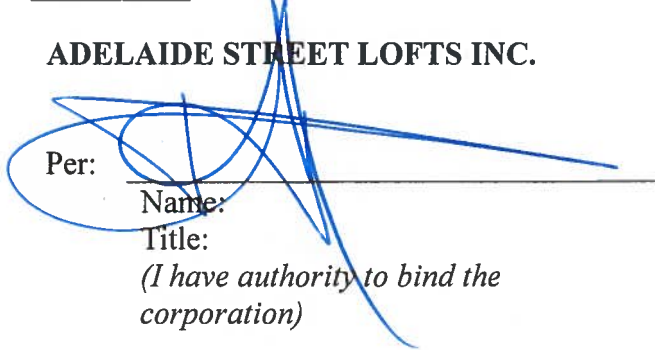
Per: \_\_\_\_\_  
Name:  
Title:  
*(I have authority to bind the corporation)*



DATED AT Toronto this 20<sup>th</sup> 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 23<sup>rd</sup> 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.

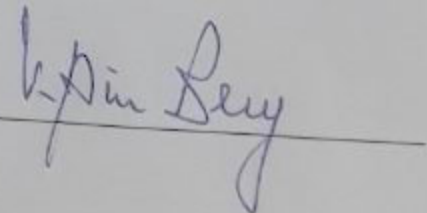
**MILLER THOMSON LLP, solely in its capacity as court-appointed Representative Counsel**

Per: \_\_\_\_\_  
Name:  
Title:  
*(I have authority to bind the limited liability partnership)*

DATED AT this 23<sup>rd</sup> day of December, 2019.

Witness: 

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



DATED AT Toronto, ON this 20<sup>th</sup> 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.

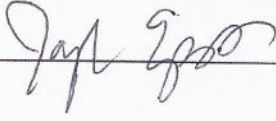
Witness: \_\_\_\_\_

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

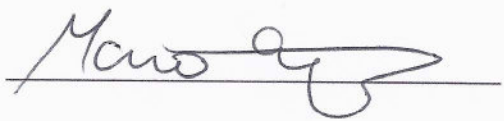
\_\_\_\_\_

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

Witness: Jay G...



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

Per: 

DATED AT \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

Witness: \_\_\_\_\_

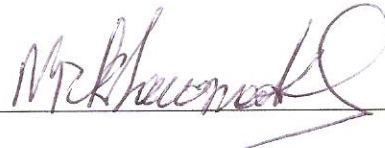
**MICHAEL SINGH, in his capacity as  
court-appointed member of the Official  
Committee**

\_\_\_\_\_

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.

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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

THIS IS EXHIBIT "K" REFERRED TO IN THE  
AFFIDAVIT OF DAVID POZO  
AFFIRMED BEFORE ME THIS  
20TH DAY OF APRIL 2020.

A handwritten signature in black ink, appearing to read "P. Y. Yumurov". The signature is written in a cursive style with a long, sweeping underline.

---

Commissioner for taking affidavits



January 13, 2020

### **Important Update on Recommendation Regarding Settlement**

Pursuant to the Order of the Honourable Mr. Justice Haaney of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated March 21, 2019 (the "**Order**") Miller Thomson LLP ("**Representative Counsel**") was appointed to represent all individuals and/or entities ("**Investors**") that hold an interest in a syndicated mortgage, administered by Hi-Rise Capital Ltd. ("**Hi-Rise**"), in respect of the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the "**Property**") owned by Adelaide Street Lofts Inc. ("**Adelaide**") and the proposed development known as the "Adelaide Street Lofts", in connection with the negotiation and implementation of a settlement with respect to such investments. A copy of the Order can be found on the 'Documents' section of Representative Counsel's website (the "**Website**"), available at <https://www.millerthomson.com/en/hirise/>.

In accordance with the Order, Representative Counsel established an Official Committee of Investors (the "**Official Committee**"), with which Representative Counsel consults regularly and from which it takes instruction in respect of this matter.

Representative Counsel writes this update further to our communication dated December 2, 2019 entitled "Important Update on Judicial Mediation and Settlement" (the "**Last Update**"), a copy of which is posted on the 'Communications' section of the Website, and to provide Investors with the following status update on this proceeding.

### **Delivery of Representative Counsel's Fourth Report**

1. As you may know, Representative Counsel delivered its Fourth Report dated January 9, 2019 (the "**Fourth Report**") to all Investors.
2. A copy of the Fourth Report is posted under the 'Documents' section of the Website.
3. A hard copy of the Fourth Report will also be delivered to all Investors by regular mail. You can expect to receive a hard copy of the Fourth Report in the week of January 13, 2020.
4. Please read the Fourth Report for full details regarding the Settlement, Lanterra Transaction and the Minutes (as such terms are defined in the Fourth Report).

### **Hi-Rise Vote on the Settlement**

1. Since delivering the Fourth Report, we have received numerous inquiries from Investors regarding the next vote to be conducted by Hi-Rise in respect of the Settlement described in the Fourth Report.

2. Please be advised as follows:

- (a) Hi-Rise expects to circulate an information package and details regarding the vote (the "**Voting Package**") to all Investors in the week of January 20, 2020. This means that you can expect to receive the Voting Package from Hi-Rise during the week of January 20, 2020.
- (b) The Voting Package will provide you with details of the Settlement and details/instructions on how to submit your vote.
- (c) At this time, Hi-Rise expects to set the voting deadline for January 31, 2020. Details regarding the deadline will also be set out in the Voting Package delivered to Investors by Hi-Rise.
- (d) Once Representative Counsel receives a copy of the Voting Package, we will post a copy of same on our Website. We will also address any questions you may have regarding the voting procedure.

#### **Registered vs. Non-Registered Investors**

Since delivering the Fourth Report, we have received numerous inquiries from Investors regarding the difference between Registered vs. Non-Registered Investors, and inquiries as to why Registered Investors will be paid in full where as Non-Registered Investors will not be receiving full repayment on closing of the Lanterra Transaction. The reasons for this are as follows.

- 1. There is a second mortgage registered on title to the Property in favour of both Hi-Rise and Community Trust Company (originally Canadian Western Trust) (the "**Second Mortgage**").
- 2. Community Trust Company's interest in the Second Mortgage ranks ahead of Hi-Rise Capital Ltd.'s interest.
- 3. At the time that you entered into this investment, there were two ways in which you could have invested. In other words, Investors participate through this Second Mortgage in two different ways, as follows:

#### **Registered Investors**

- (a) Registered Investors – these are Investors that participate in the Second Mortgage through Community Trust Company and hold their investments through a registered plan such as an RRSP. If you are a Registered Investor, your Loan Participation Agreement with Hi-Rise will indicate as follows, among other things:

"As a registered investor, you participate in this second mortgage through Canadian Western Trust. As between the second mortgagees, Hi-Rise Capital Ltd. is subordinated to Canadian Western Trust. In the event of an insolvency

or liquidation of the borrower, the claims of Canadian Western Trust will rank senior to the claims of Hi-Rise Capital Ltd.”

- (b) An example of a Loan Participation Agreement in respect of a Registered Investor is attached as **Appendix “A”** to this Communication, with the relevant excerpts highlighted.
- (c) This means that at the time of entering into the Loan Participation Agreement and investing in Hi-Rise, you agreed that your claim in Hi-Rise, and specifically, the return of your investment in a liquidation/insolvency scenario would receive priority treatment over Non-Registered Investors (described below).
- (d) In light of these proceedings and the current liquidation scenario, Registered Investors will be paid first from the Settlement proceeds. Given that there are sufficient Settlement proceeds to pay all of the Registered Investors’ claims, Registered Investors will be repaid in full on account of their investments.

#### **Non-Registered Investors**

- (e) Non-Registered Investors – these are Investors that participate in the Second Mortgage through Hi-Rise Capital Ltd. If you are a Non-Registered Investor, your Loan Participation Agreement with Hi-Rise will indicate that you are a “Subordinated Investor”, and specifically states, among other things:

“As a non-registered investor, you participate in this second mortgage through Hi-Rise Capital Ltd. As between the second mortgagees, Hi-Rise Capital Ltd. is subordinated to Canadian Western Trust. In the event of an insolvency or liquidation of the borrower, the claims of Hi-Rise Capital Ltd. will rank junior to the claims of Canadian Western Trust.”

- (f) An example of a Loan Participation Agreement in respect of a Non-Registered Investor is attached as **Appendix “B”** to this Communication, with the relevant excerpts highlighted.
- (g) This means that at the time of entering into the Loan Participation Agreement and investing in Hi-Rise, you did not invest in Hi-Rise through a registered plan such as a RRSP. As a Non-registered Investor, you agreed to subordinate your claim in Hi-Rise, and specifically, the return of your investment in a liquidation/insolvency scenario, to the claims of Registered Investors. In other words, you agreed to rank behind (or receive payment after) Registered Investors in a liquidation scenario.
- (h) In light of these proceedings and the current liquidation scenario, Non-Registered Investors will be paid after Registered Investors from the Settlement proceeds. After Registered Investors are paid, there are not enough Settlement proceeds left to pay all of the Non-Registered Investors in full. Accordingly, Non-Registered

Investors will share from the balance of the Settlement proceeds equally on closing, but, will not receive full payment.

**Recommendation of Representative Counsel**

Notwithstanding that Non-Registered Investors will not be paid in full, Representative Counsel still recommends that all Investors (both Registered and Non-Registered) vote in favour of the Settlement for the reasons set out in the Fourth Report.

All Investors will receive payment after closing of the transaction. This means that there will not be a long waiting period for Investors to receive payment.

**Communications to Representative Counsel**

We understand that since receiving the Fourth Report, many Investors will have questions regarding the Settlement and the Vote. Representative Counsel has been receiving many emails and telephone calls from Investors directly, and many Investors have the same questions.

In order to manage the volume of inquiries and to effectively respond to all Investors, we ask that all Investors submit inquiries to Representative Counsel through email at [HiRiseCapital@millერთhompson.com](mailto:HiRiseCapital@millერთhompson.com).

Representative Counsel reviews all emails received through this email address, and will respond to inquiries through further communications to Investors (which will be emailed to all Investors and posted on the Website). Thank you.

Yours Truly,

Miller Thomson LLP,  
solely in its capacity as  
Representative Counsel

# APPENDIX "A"

## LOAN PARTICIPATION AGREEMENT

Participation Agreement #10-1010

## THIS PARTICIPATION AGREEMENT MADE

BETWEEN

HI-RISE CAPITAL LTD.  
(hereinafter called "HRC")

OF THE FIRST PART

-AND-

PERSON(S) AND/OR ENTITY AS PER THE MORTGAGE ADMINISTRATION AGREEMENT  
TO WHICH THIS AGREEMENT IS ATTACHED  
(hereinafter called the "Participant")

OF THE SECOND PART

WHEREAS HRC has given to the Participant the opportunity to participate in a certain loan which is a participating loan, (hereinafter called the "Loan") made or to be made to the borrower hereinafter set out (hereinafter called the "Borrower") upon the terms set out in the Participant's Participation documentation between the Borrower and HRC;

AND WHEREAS HRC and the Participant agree that the relationship between HRC and the Participant shall be governed by the following terms and conditions:

Name of Borrower: Adelaide Street Lofts Inc.

Participant's Participation: Amount set out in the Mortgage Administration Agreement

Participating Lender: Hi-Rise Capital Ltd.

Priority in Mortgage Loan: *There is a second mortgage registered against the subject property in the name of both Hi-Rise Capital Ltd. and Canadian Western Trust. Canadian Western Trust will hold an interest of \$9,500,000.00 ahead of Hi-Rise Capital Ltd. As a registered investor, you participate in this second mortgage through Canadian Western Trust. As between the second mortgagees, Hi-Rise Capital Ltd. is subordinated to Canadian Western Trust. In the event of an insolvency or liquidation of the borrower, the claims of Canadian West Trust, will rank senior to the claims of Hi-Rise Capital Ltd..*

Project Name: Adelaide Street Lofts (the "Project")

Security: *2<sup>nd</sup> Mortgage  
I understand that during the course of this investment, the Borrower anticipates obtaining additional construction financing for the Property which is expected to take priority. I hereby understand, consent, and agree that other charges/ mortgages and/or development agreement may be registered in priority to the charge of the Property.*

Prior Mortgages: 1<sup>st</sup> Mortgage (Refer to Disclosure Documents)

Amount of Loan: \$40,000,000  
*(I understand that the mortgage shall be initially registered indicating a face value of \$40,000,000 and from time to time, the loan amount will increase upon the completion of certain development and construction milestones on the Property by the Borrower, eventually replaced by construction/project financing).*

Term of the Mortgage/Investment: 4 Years  
*Maturity Date: (February 1, 2018) - At the Borrower's option (to be exercised in writing not less than one (1) month prior to Maturity Date); the Borrower may extend the Maturity Date by twenty-four (24) additional months.*

Initial 



# APPENDIX "B"

## LOAN PARTICIPATION AGREEMENT

Participation Agreement #10-1010

## THIS PARTICIPATION AGREEMENT MADE

BETWEEN

HI-RISE CAPITAL LTD.  
(hereinafter called "HRC")

OF THE FIRST PART

-AND-

PERSON(S) AND/OR ENTITY AS PER THE MORTGAGE ADMINISTRATION AGREEMENT  
TO WHICH THIS AGREEMENT IS ATTACHED  
(hereinafter called the "Participant")

OF THE SECOND PART

WHEREAS HRC has given to the Participant the opportunity to participate in a certain loan which is a participating loan, (hereinafter called the "Loan") made or to be made to the borrower hereinafter set out (hereinafter called the "Borrower") upon the terms set out in the Participant's Participation documentation between the Borrower and HRC;

AND WHEREAS HRC and the Participant agree that the relationship between HRC and the Participant shall be governed by the following terms and conditions:

Name of Borrower: Adelaide Street Lofts Inc.

Participant's Participation: Amount set out in the Mortgage Administration Agreement

Participating Lender: Hi-Rise Capital Ltd.

Priority in Mortgage Loan: Subordinated Investor  
*There is a second mortgage registered against the subject property in the name of both Hi-Rise Capital Ltd. and Canadian Western Trust. Canadian Western Trust will hold an interest of \$9,500,000.00 ahead of Hi-Rise Capital Ltd.  
As a non-registered investor, you participate in this second mortgage through Hi-Rise Capital Ltd. As between the second mortgagees, Hi-Rise Capital Ltd. is subordinated to Canadian Western Trust. In the event of an insolvency or liquidation of the borrower, the claims of Hi-Rise Capital Ltd. will rank junior to the claims of Canadian Western Trust.*

Project Name: Adelaide Street Lofts (the "Project")

Security: 2<sup>nd</sup> Mortgage  
*I understand that during the course of this investment, the Borrower anticipates obtaining additional construction financing for the Property which is expected to take priority. I hereby understand, consent, and agree that other charges/ mortgages and/or development agreement may be registered in priority to the charge of the Property.*

Prior Mortgages: 1<sup>st</sup> Mortgage (Refer to Disclosure Documents)

Amount of Loan: \$40,000,000  
*(I understand that the mortgage shall be initially registered indicating a face value of \$40,000,000 and from time to time, the loan amount will increase upon the completion of certain development and construction milestones on the Property by the Borrower, eventually replaced by construction/project financing).*

Term of the Mortgage/Investment: 4 Years  
*Maturity Date: (February 1, 2018) - At the Borrower's option (to be exercised in writing not less than one (1) month prior to Maturity Date); the Borrower may extend the Maturity Date for twenty-four (24) additional months.*

Initial



THIS IS EXHIBIT "L" REFERRED TO IN THE  
AFFIDAVIT OF DAVID POZO  
AFFIRMED BEFORE ME THIS  
20TH DAY OF APRIL 2020.

A handwritten signature in cursive script, appearing to read "P. Y. Yunes", written in black ink.

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Commissioner for taking affidavits



# HI-RISE CAPITAL LTD.

## Re: 263 Adelaide Street West 2<sup>nd</sup> Mortgage Amendment – Acknowledgment

This attachment to the File Review letter outlines and explains the second mortgage.

The second mortgage in the amount of \$40,000,000 registered against title to the property municipally known as 263 Adelaide Street West, Toronto is in the name of D. Sud & Sons Limited.

Hi-Rise Capital Ltd (formerly known as Waterview Capital Corp.) is a co-lender with D. Sud & Sons Limited in the second mortgage. However, Hi-Rise Capital Ltd.'s interests are temporarily subordinated to, and held in trust by, D. Sud & Sons Limited.

Additional financing was secured for closing and we were required to change the nature, scope and terms of the second mortgage for the following reasons:

1. The vendor of the property took an unreasonable position and refused to permit any further encumbrances from the purchaser to be registered on title other than one mortgage;
2. As a form of short term lending facility, D. Sud & Sons Limited in the amount of \$2,000,000, with an equity conversion option, was registered on title. On October 1, 2011, a principal payment of \$1,000,000 will be due, and the balance of the loan will be paid out by February 23, 2012.

Once the D. Sud & Sons Limited loan is paid in full, the entire mortgage will be transferred to, and will be assumed by Hi-Rise Capital Ltd. at which point there will be no further postponements regarding the second mortgage in favour of Hi-Rise Capital Ltd. except those postponements required for construction financing and bonding.

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*I / we, the undersigned, acknowledge and accept the amendments to the second mortgage as outlined above.*

*David Pozo*

Print Name

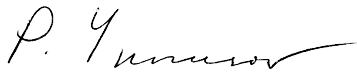
*David Pozo*

Signature

Print Name

Signature

THIS IS EXHIBIT "M" REFERRED TO IN THE  
AFFIDAVIT OF DAVID POZO  
AFFIRMED BEFORE ME THIS  
20TH DAY OF APRIL 2020.



---

Commissioner for taking affidavits

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

THE HONOURABLE )  
 )  
MR. JUSTICE HAINEY ) THURSDAY, THE 21st  
 ) DAY OF MARCH, 2019

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

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

**ORDER**

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

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

**SERVICE**

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

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

#### **APPOINTMENT OF REPRESENTATIVE COUNSEL**

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

#### **INVESTOR INFORMATION**

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

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

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

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

### FEES OF COUNSEL

*which amount shall exclude disbursements incurred by Representative Counsel*

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

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

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

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

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

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

#### **GENERAL**

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

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

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

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

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

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

Attention: Gregory Azeff & Stephanie De Caria

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

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

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

**INVESTOR AND COURT APPROVAL**

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

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

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

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

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

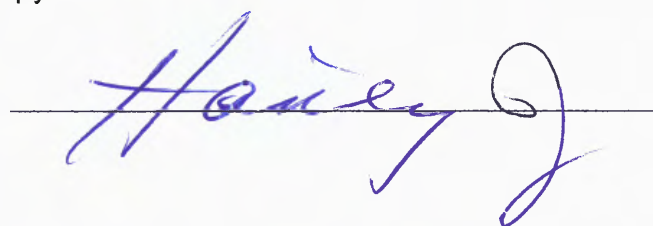
31. **THIS COURT ORDERS** that if at the Meeting a majority in number of the investors representing two-thirds in value present and voting either in person or by proxy cast votes in favour of the proposed Transaction and Distribution, Hi-Rise may proceed to bring a motion to this court, on a date to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

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

#### **NOTICE TO INVESTORS**

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

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

A handwritten signature in blue ink, appearing to read "Honey", is written over a horizontal line. The signature is cursive and extends to the right of the line.

**Schedule "A"**

**OPT-OUT NOTICE**

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

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

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

Attention: Stephanie De Caria

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

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

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

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

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

If the Investor is a corporation, please execute below:

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



## Schedule "B"

### Official Committee Establishment Process

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

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

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

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

#### Establishment of the Official Committee

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

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

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

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

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

(a) all of the interviews will follow the same structure and will be approximately the same length (about half an hour); and

(b) substantially similar questions will be posed to each interviewee.

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

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

## Schedule "C"

### Official Committee Protocol

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

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

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

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

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

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

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

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

HI-RISE CAPITAL LTD.  
Applicant

SUPERINTENDENT OF FINANCIAL SERVICES *et. al.*  
Respondents

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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**ORDER**

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Stephanie Voudouris LSO #: 65752M

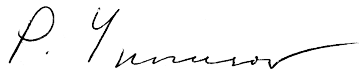
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[svoudouris@casselsbrock.com](mailto:svoudouris@casselsbrock.com)

Lawyers for the Applicant, Hi-Rise Capital Ltd.

THIS IS EXHIBIT "N" REFERRED TO IN THE  
AFFIDAVIT OF DAVID POZO  
AFFIRMED BEFORE ME THIS  
20TH DAY OF APRIL 2020.



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Commissioner for taking affidavits

---

**RE: In the Matter of Ho-Rise Capital Ltd. and in the Matter of Adelaide Street Lofts Inc. (Court File No CV-19-616261-00CL) [MTDMS-Legal.FID7573766]**

2 messages

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**De Caria, Stephanie** <sdecaria@millerthomson.com>

Mon, Jan 13, 2020 at 4:22 PM

To: Rory McGovern <rory@rorymcgovernpc.com>, Pulat Yunusov <pulat@lawto.ca>, "Azeff, Gregory" <gazeff@millerthomson.com>

Cc: Rahul Shastri <rshastri@ksllp.ca>

Hi Rory – the Appointment Order of Justice Hainey sets out that all Investors, including Opt-Outs, are to vote and are bound by the ultimate voting results. Accordingly, the Minutes need not reflect this. Your clients will be provided with voting ballot/instructions and will be included in the distributions. I will pass this email along to Hi-Rise as well.

Steph

**STEPHANIE DE CARIA**

Associate

**Miller Thomson LLP**

Scotia Plaza

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Toronto, Ontario M5H 3S1

**Direct Line:** +1 416.595.2652

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**Email:** sdecaria@millerthomson.com

**millerthomson.com**



**MILLER THOMSON**  
AVOCATS | LAWYERS

Please consider the environment before printing this email.

---

**From:** Rory McGovern [mailto:rory@rorymcgovernpc.com]

**Sent:** Monday, January 13, 2020 11:27 AM

**To:** Pulat Yunusov <pulat@lawto.ca>; Azeff, Gregory <gazeff@millerthomson.com>; De Caria, Stephanie <sdecaria@millerthomson.com>

**Cc:** Rahul Shastri <rshastri@ksllp.ca>

**Subject:** [\*\*EXT\*\*] RE: In the Matter of Ho-Rise Capital Ltd. and in the Matter of Adelaide Street Lofts Inc. (Court File No CV-19-616261-00CL)

**WITHOUT PREJUDICE**



THIS IS EXHIBIT "O" REFERRED TO IN THE  
AFFIDAVIT OF DAVID POZO  
AFFIRMED BEFORE ME THIS  
20TH DAY OF APRIL 2020.



---

Commissioner for taking affidavits

---

**In the Matter of Ho-Rise Capital Ltd. and in the Matter of Adelaide Street Lofts Inc.  
(Court File No CV-19-616261-00CL)**

---

**Pulat Yunusov** <pulat@lawto.ca>

Thu, Jan 9, 2020 at 5:40 PM

To: "Azeff, Gregory" <gazeff@millerthomson.com>, "De Caria, Stephanie" <sdecaria@millerthomson.com>

Cc: Rory McGovern <rory@rorymcgovernpc.com>, Rahul Shastri <rshastri@ksllp.ca>

WITHOUT PREJUDICE

Greg, I have a question about the fourth report. Paragraph 36(d)(v) of the report says that proceeds will be distributed to "Investors and Opt Out Investors in the manner described in the Minutes, in full satisfaction of their claims."

But the minutes specifically exclude opt-out investors from distribution by using only the term "Investors" in paragraph 10(e). The minutes define this term to exclude opt-outs (see the second whereas clause).

Besides the obvious contradiction, there is also the claim in the report that the distribution to opt-outs will be "in full satisfaction of their claims," which implies some sort of release. But opt-outs are not parties to the settlement and rep counsel cannot bind them according to the appointment order.

Could you clarify this please? Will any proceeds be distributed to opt-out investors if this deal is approved and does this settlement purport to bind opt-out investors with some kind of a release?

Thank you,

Pulat Yunusov  
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[Quoted text hidden]

THIS IS EXHIBIT "P" REFERRED TO IN THE  
AFFIDAVIT OF DAVID POZO  
AFFIRMED BEFORE ME THIS  
20TH DAY OF APRIL 2020.



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Commissioner for taking affidavits

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## Hi-Rise (File 19080)

---

**Birch, John** <jbirch@cassels.com>

Thu, Apr 16, 2020 at 5:56 PM

To: Rahul Shastri <rshastri@ksllp.ca>

Cc: Rory McGovern <rory@rorymcgovernpc.com>, Pulat Yunusov <pulat@lawto.ca>, "De Caria, Stephanie" <sdecaria@millerthomson.com>, "Azeff, Gregory" <gazeff@millerthomson.com>, "ghall@mccarthy.ca" <ghall@mccarthy.ca>, "Voudouris, Stephanie" <svoudouris@cassels.com>

I am afraid that I do not understand the basis for your concern.

The term "Investors" is defined in the Minutes of Settlement as "all individuals and/or entities... holding an interest in the Syndicated Mortgage". . This definition is in the second paragraph of the recitals to the Minutes. That would include Opt-Out Investors. This is also made clear at the end of the second paragraph of the recitals where the term Opt-Out Investors is defined. That definition makes it clear that the Opt-Outs are merely a subset of "Investors" not a different group.

Paragraph 13 does not change the definition of "Investors".

The definition of Investor Settlement Amount also refers to the amounts owing to Investors.

So I still do not understand the issue that you have raised. I also do not know what change to the order you are asking for. Could you clarify?

Perhaps you are hung up on the fact that Rep Counsel is overseeing the distribution. If that is the case, I believe that the intention was for Rep Counsel to oversee the distribution to the Opt-Out Investors, too. In any event, for those who are Registered Investors, it is likely that one large cheque—covering all Registered Investors' interests—will be provided to Community Trust, along with a list of what amounts are allocable to which investor.

**Cassels**

**JOHN BIRCH**

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e: [jbirch@cassels.com](mailto:jbirch@cassels.com)

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Toronto, ON [M5H 3C2](#) Canada

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THIS IS EXHIBIT "Q" REFERRED TO IN THE  
AFFIDAVIT OF DAVID POZO  
AFFIRMED BEFORE ME THIS  
20TH DAY OF APRIL 2020.



---

Commissioner for taking affidavits

---

## Hi-Rise (File 19080)

---

**Pulat Yunusov** <pulat@lawto.ca>

Fri, Apr 17, 2020 at 12:55 PM

To: "Birch, John" <jbirch@cassels.com>

Cc: Rahul Shastri <rshastri@ksllp.ca>, Rory McGovern <rorymcgovernpc.com>, "De Caria, Stephanie" <sdecaria@millerthomson.com>, "Azeff, Gregory" <gazeff@millerthomson.com>, "ghall@mccarthy.ca" <ghall@mccarthy.ca>, "Voudouris, Stephanie" <svoudouris@cassels.com>

I want to thank Mr. Birch and Stephanie for confirmations that opt-outs will be paid out of the sale proceeds on part with opt-ins subject to any priorities within the entire group of the investors. Rep counsel has confirmed this before and it is good to know that Hi-Rise does not have an issue with it.

My concern is with Mr. Birch's position that opt-out investors are a subset of "Investors" for the purposes of the Minutes of Settlement. If this position relates only to the payout of the sale proceeds, that is not an issue.

But if this position is understood more broadly to mean that the Minutes bind opt-out investors, I disagree with it. Paragraph 10(e) of the Minutes provides for a payout to "Investors" and it provides that such payout is "in full satisfaction of all claims each Investor may have in relation to the Property and the Project." This appears to be a full release by the "Investors" with a broad scope of the "Property and the Project".

Opt-out investors are not parties to the Minutes. Hi-Rise did not seek such release in its notice of application. Rep counsel cannot bind opt-outs. The appointment order is very clear on this. There is no legal basis for opt-outs to lose their claims because third parties entered into an agreement. The court cannot approve the Minutes that purport to disentitle opt-out investors of substantive legal rights without notice to opt-out investors. The only notice of prejudice to their rights that opt-outs received was the notice of application which sought the power to discharge the security for less the full outstanding amount. Everything else is either between rep counsel, Hi-Rise and third parties or off the table where opt-outs are concerned.

We have not opposed Hi-Rise's motion in reliance on the language of the Minutes which specifically excludes opt-out investors from the term "Investors" and consequently from the term that the payout is "in full satisfaction of all claims each Investor may have in relation to the Property and the Project." In the second WHEREAS clause of the Minutes, "Investors" are defined as "all individuals and/or entities" that "Miller Thomson LLP was appointed as Representative Counsel ... to represent." This definition then expressly excludes opt-out investors: "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")."

This is the first time we learned of a potential issue that Hi-Rise may be seeking a release of all claims by opt-out investors in addition to the discharge of their security. If this is actually the case, we will seek an adjournment of Hi-Rise's motion so we can prepare a response. The adjournment shouldn't be an issue as Lanterra is seeking to move the closing date forward anyway.

Please confirm what your position on the above is.

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416-628-5521  
647-933-1171 (fax)

[Quoted text hidden]

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## Response to Mr. Yusunov's email

7 messages

**Birch, John** <jbirch@cassels.com>

Fri, Apr 17, 2020 at 3:13 PM

To: Pulat Yunusov <pulat@lawto.ca>

Cc: Rahul Shastri <rshastri@ksllp.ca>, Rory McGovern <rorymcgovernpc.com>, "De Caria, Stephanie" <sdecaria@millerthomson.com>, "Azeff, Gregory" <gazeff@millerthomson.com>, "ghall@mccarthy.ca" <ghall@mccarthy.ca>, "Voudouris, Stephanie" <svoudouris@cassels.com>

Dear Mr. Yusunov,

Although the Opt-Out Investors are not parties to the Minutes of Settlement, it has been apparent from the materials filed by Hi-Rise both on this current motion and going right back to the initial hearing of this application, that Hi-Rise has been seeking relief that binds all investors, including Opt-Out investors, to a disposition of the property on specified terms and a compromise of Investors' claims on that basis.

In addition, Hi-Rise and other parties provided consideration that allowed a settlement to be reached, in the form of the waiver of claims worth millions of dollars in respect of money spent to preserve the property and ready it for development, as well as fees waived by these parties. This consideration will cause the net pot of money available for investors (including Opt-Outs) to be increased materially to the benefit of all investors.

There is no need for Hi-Rise or Mr. Hall's clients to ask for a release. If the court grants Hi-Rise's motion, that will confirm—in respect of all Investors including the Opt-Outs—that the transaction can be completed, the mortgages will be discharged, and that it is appropriate for the syndicated mortgage to be discharged even though not all investors will be paid in full. In short, the court will conclude that this resolution of the mortgage and the claims of Investors are appropriate. The process by which the Lanterra offer was obtained and the terms of the Lanterra offer are squarely before the court on this motion.

Your assertion that the Opt-Out Investors are not part of or bound by the settlement is not accurate. Opt-Out Investors were given the chance to vote on the terms of the transaction and did, in fact, vote on it. In fact, I specifically remember that counsel for the Opt-Out Investors demanded that their clients have the right to vote and the Opt-Out Investors did vote or consciously chose not to vote.

If the transaction is approved, proceeds will be distributed to all investors, including the Opt-Out Investors, in satisfaction of their claims. There is no room for Investors to accept the benefits of the settlement but still try to preserve any claims.

You say that you have relied on the language in the Minutes of Settlement defining "Investors" and believe that this excludes the Opt-Out Investors. The plain wording of the Minutes contradicts your assertion. Further, it is "Investors" that will receive the net proceeds of the sale, and that includes the Opt-Outs. The Opt-Out investors cannot try to accept the benefits of the Minutes (i.e., the proceeds) while then trying to argue that the same term "Investors" has a different meaning in other parts of the Minutes.

You have now been in possession of the Hi-Rise motion record for 16 days. Hi-Rise intentionally gave much more than the required notice of this motion to allow all parties the time to consider the materials. We also asked that any objections be made by no later than April 16. I heard nothing from you until today, April 17.

From the date of service of the motion record on April 1 to the hearing date on April 22 will be a full three weeks. That gave your client and all other parties on the service list plenty of time to review the materials and file a response if they wished. Hi-Rise is not prepared to consent to any adjournment of its motion.

In conclusion, I urge you to look at this practically. Registered Investors are going to get paid in full. As such, I cannot understand what possible claim they could have since they will have experienced no loss. Non-Registered Investors have always borne the risk that their recovery would be whatever could be obtained from realization on the real property and subject to prior encumbrances. The sale to Lanterra is on the best terms available in the circumstances. If, for example, your client opposes Hi-Rise's motion and Hi-Rise's motion is dismissed, then Meridian Credit Union will bring back on its receivership application and will sell the property. That will almost certainly result in lower recoveries for investors both because the purchase price will certainly not be any higher than the Lanterra offer but also because there will be additional delays that will increase the interest claim of the registered investors and thereby reduce the overall recovery of non-registered investors.

Your client can choose what submissions it wishes to have you make at the hearing next week but I cannot see how opposing the relief sought helps your client or any other Investors.

**Cassels**

**JOHN BIRCH**

t: +1 416 860 5225

e: [jbirch@cassels.com](mailto:jbirch@cassels.com)

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**From:** Pulat Yunusov <[pulat@lawto.ca](mailto:pulat@lawto.ca)>

**Sent:** Friday, April 17, 2020 12:56 PM

**To:** Birch, John <[jbirch@cassels.com](mailto:jbirch@cassels.com)>

**Cc:** Rahul Shastri <[rshastri@ksllp.ca](mailto:rshastri@ksllp.ca)>; Rory McGovern <[rory@rorymcgovernpc.com](mailto:rory@rorymcgovernpc.com)>; De Caria, Stephanie <[sdecaria@millerthomson.com](mailto:sdecaria@millerthomson.com)>; Azeff, Gregory <[gazeff@millerthomson.com](mailto:gazeff@millerthomson.com)>; [ghall@mccarthy.ca](mailto:ghall@mccarthy.ca); Voudouris, Stephanie <[svoudouris@cassels.com](mailto:svoudouris@cassels.com)>

**Subject:** Re: Hi-Rise (File 19080)

I want to thank Mr. Birch and Stephanie for confirmations that opt-outs will be paid out of the sale proceeds on part with opt-ins subject to any priorities within the entire group of the investors. Rep counsel has confirmed this before and it is good to know that Hi-Rise does not have an issue with it.

My concern is with Mr. Birch's position that opt-out investors are a subset of "Investors" for the purposes of the



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## Response to Mr. Yusunov's email

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**Pulat Yunusov** <pulat@lawto.ca>

Fri, Apr 17, 2020 at 4:20 PM

To: "Birch, John" <jbirch@cassels.com>

Cc: "Azeff, Gregory" <gazeff@millertthomson.com>, "De Caria, Stephanie" <sdecaria@millertthomson.com>, Rahul Shastri <rshastri@ksllp.ca>, Rory McGovern <rory@rorymcgovernpc.com>, "Voudouris, Stephanie" <svoudouris@cassels.com>, "ghall@mccarthy.ca" <ghall@mccarthy.ca>

Thank you for your email. What my client is giving up for the payout is the discharge of his mortgage for less than what is owed. This is not a freebie. If other investors chose to provide other consideration, it is between them and the other parties to their settlement. And of course, if opt-outs didn't get paid on par with others under any settlement, it's unlikely the court would approve it.

Hi-Rise and others chose not to include opt-out investors in the settlement agreement so it and others could not reasonably expect anything from opt-out investors in return for Hi-Rise's and others' contribution to the settlement (other than the mortgage discharge). The appointment order expressly insulates opt-out investors from such third-party agreements.

Hi-Rise's application is for leave to discharge the mortgage for less than the outstanding balance and for an approval of a transaction disposing of the property. Only the former applies to opt-out investors because they are not parties to the transaction. The court cannot approve parties to a deal purporting to bind a stranger who had no notice of any offers and did not participate in the negotiations.

If Hi-Rise and others now find that they should have settled with opt-out investors on claims beyond what will be paid out of the sale proceeds, they cannot backdoor this settlement through court approval of language that is at best ambiguous (and so it should be interpreted in the opt-out investors' favour as they had nothing to do with drafting it).

It is everyone's good luck that this was caught. It is not fair and reasonable to bury terms purporting to significantly prejudice opt-out investors in the minutes of settlement instead of putting them squarely before the court in the notice of application, notice of motion or the draft order. It's irrelevant when you served the motion record if it did not contain proper notice of an issue relevant to opt-out investors.

[Quoted text hidden]

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It is everyone's good luck that this was caught. It is not fair and reasonable to bury terms purporting to significantly prejudice opt-out investors in the minutes of settlement instead of putting them squarely before the court in the notice of application, notice of motion or the draft order. It's irrelevant when you served the motion record if it did not contain proper notice of an issue relevant to opt-out investors.

[Quoted text hidden]

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**Pulat Yunusov** <pulat@lawto.ca>  
To: "Birch, John" <jbirch@cassels.com>

Fri, Apr 17, 2020 at 4:30 PM

Mr. Birch, I have two questions that I want to ask in connection with this situation.

The first concerns my client's action where you recently removed yourself from the record. Would it be your position that if Hi-Rise's draft order is signed next week, it will be a defence to that action with respect to all defendants?

Also, my client did not invest through Community Trust but he also was an early investor who did not sign the subordination, an example of which Hi-Rise filed in this application. Is it Hi-Rise's position that my client should be treated as an unregistered investor for purposes of distribution of the sale proceeds?

**Pulat Yunusov**  
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<https://lawto.ca/>  
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647-933-1171 (fax)

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**Birch, John** <jbirch@cassels.com>  
To: Pulat Yunusov <pulat@lawto.ca>

Fri, Apr 17, 2020 at 4:31 PM

Cc: "Azeff, Gregory" <gazeff@millerthomson.com>, "De Caria, Stephanie" <sdecaria@millerthomson.com>, Rahul Shastri <rshastri@ksllp.ca>, Rory McGovern <rory@rorymcgovernpc.com>, "Voudouris, Stephanie" <svoudouris@cassels.com>, "ghall@mccarthy.ca" <ghall@mccarthy.ca>

As I indicated in my previous email, the motion record clearly set out what relief is being sought. If you previously read the motion record incorrectly, I am pleased that you now understand what is before the court.

It would not serve any purpose to debate this matter further with you. If Mr. Pozo chooses to oppose the approve of the sale and he is successful in opposing it, then the transaction will be at an end and Hi-Rise and Mr. Hall's clients will retain their significant monetary claims, and the project will likely go into receivership. If Mr. Pozo believes that he is likely to get more money by having a receivership and being able to retain claims and pursue them, he is certainly entitled to his opinion.

I leave it to your client to instruct you as he deems appropriate.

[Quoted text hidden]

---

**Birch, John** <jbirch@cassels.com>  
To: Pulat Yunusov <pulat@lawto.ca>  
Cc: "Voudouris, Stephanie" <svoudouris@cassels.com>, "Byers, Kate" <kbyers@cassels.com>, "Azeff, Gregory" <gazeff@millerthomson.com>, "De Caria, Stephanie" <sdecaria@millerthomson.com>, "ghall@mccarthy.ca" <ghall@mccarthy.ca>

Fri, Apr 17, 2020 at 4:38 PM

I cannot answer your first question because I am no longer counsel of record in that other matter and thus I cannot comment on what position Hi-Rise will take in such proceeding. It would not be proper for me to do so.

In regard to your second question, that is a distribution issue that is not being dealt with on this motion. Rep Counsel has been considering that issue and how to deal with distributions of certain investors who do not neatly fit into the registered or non-registered categories. Feel free to contact Rep Counsel to discuss their thinking on this matter. I expect that a separate motion will be brought in the near future to deal with this issue. You are welcome to take whatever position you deem appropriate at that motion.

Since your second question is of interest to Rep Counsel, I have copied them on this, along with Mr. Hall, who represents Adelaide.

**Cassels**

**JOHN BIRCH**

t: +1 416 860 5225

e: [jbirch@cassels.com](mailto:jbirch@cassels.com)

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**From:** Pulat Yunusov <pulat@lawto.ca>  
**Sent:** Friday, April 17, 2020 4:31 PM  
**To:** Birch, John <jbirch@cassels.com>  
**Subject:** Re: Response to Mr. Yusunov's email

Mr. Birch, I have two questions that I want to ask in connection with this situation.

[Quoted text hidden]

[Quoted text hidden]

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**Pulat Yunusov** <pulat@lawto.ca>  
To: "Birch, John" <jbirch@cassels.com>  
Cc: "Azeff, Gregory" <gazeff@millerthomson.com>, "De Caria, Stephanie" <sdecaria@millerthomson.com>, Rahul Shastri <rshastri@ksllp.ca>, Rory McGovern <rory@rorymcgovernpc.com>, "Voudouris, Stephanie" <svoudouris@cassels.com>, "ghall@mccarthy.ca" <ghall@mccarthy.ca>

Fri, Apr 17, 2020 at 5:01 PM

Mr. Birch, I did not previously read your motion record incorrectly. The record is inadequate and by coincidence we teased out an issue that wasn't in your record. I thought I'd clarify this.

Pulat Yunusov  
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**Birch, John** <[jbirch@cassels.com](mailto:jbirch@cassels.com)>

Fri, Apr 17, 2020 at 5:03 PM

To: Pulat Yunusov <[pulat@lawto.ca](mailto:pulat@lawto.ca)>

Cc: "Azeff, Gregory" <[gazeff@millerthomson.com](mailto:gazeff@millerthomson.com)>, "De Caria, Stephanie" <[sdecaria@millerthomson.com](mailto:sdecaria@millerthomson.com)>, Rahul Shastri <[rshastri@ksllp.ca](mailto:rshastri@ksllp.ca)>, Rory McGovern <[rory@rorymcgovernpc.com](mailto:rory@rorymcgovernpc.com)>, "Voudouris, Stephanie" <[svoudouris@cassels.com](mailto:svoudouris@cassels.com)>, "ghall@mccarthy.ca" <[ghall@mccarthy.ca](mailto:ghall@mccarthy.ca)>

You and I obviously disagree but further email exchanges will not be productive.

[Quoted text hidden]

THIS IS EXHIBIT "R" REFERRED TO IN THE  
AFFIDAVIT OF DAVID POZO  
AFFIRMED BEFORE ME THIS  
20TH DAY OF APRIL 2020.



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Commissioner for taking affidavits

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**RE: Hi-Rise (File 19080) [MTDMS-Legal.FID7573766]**

1 message

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**De Caria, Stephanie** <sdecaria@millerthomson.com>

Fri, Apr 17, 2020 at 10:47 AM

To: Rahul Shastri <rshastri@ksllp.ca>

Cc: Rory McGovern <rory@rorymcgovernpc.com>, Pulat Yunusov <pulat@lawto.ca>, "Azeff, Gregory" <gazeff@millerthomson.com>, "ghall@mccarthy.ca" <ghall@mccarthy.ca>, "Voudouris, Stephanie" <svoudouris@cassels.com>, "Birch, John" <jbirch@cassels.com>

Hi Rahul – I have reviewed your email:

1. Yes I can confirm that all the Investor Settlement Amount (as defined in para. 10(e) of the Minutes) which will be in the hands of Rep Counsel to effect the Distribution, will be distributed to both Investors and Opt-Out Investors in accordance with their respective entitlements. While the Minutes do not specifically spell out “Opt-Out Investors”, note that section 27 of the Appointment Order of Justice Hainey dated March 21, 2019 includes both Investors and Opt Out Investors re: the vote to approve a transaction and distribution of proceeds therefrom.

2. Yes, I can also confirm that Opt-Out Investors will have the ability to challenge the their distributions if they do not agree with same, however this matter will only become relevant later at the distribution stage. This was confirmed by Rep Counsel in person at the March 16 hearing date, and by Justice Hainey in the teleconference. However, to give you further comfort, Rep Counsel has alerted the Court to this issue, specifically that certain Opt Out Investors have concerns, and so Rep Counsel’s recommendation is based on the approval of Hi-Rise’s motion being without prejudice to the respective distribution entitlements of Investors and Opt-Out Investors at a later date:

a. See para. 29 of Rep Counsel’s Notice of Motion: “Representative Counsel also recommends that the granting of the Approval Motion be made without prejudice to the rights of any of the Investors or Opt Out Investors in respect of the Distribution and the amounts to which they may be entitled thereunder”

b. See paras. 52 and 53 of Rep Counsel’s Fifth Report: “As further set out below, Representative Counsel has identified certain matters it must later address in respect of its Distribution of the Investor Settlement Amounts (as such terms are defined below). Further, Representative Counsel has been advised by certain of the Opt Out Investors of their concerns related to the later Distribution.... Representative Counsel respectfully recommends that the Honourable Court approve the Minutes and the Settlement, and the transactions contemplated thereunder. Representative Counsel also recommends that the granting of the Approval Motion be made without prejudice to the rights of any of the Investors or Opt Out Investors in respect of the Distribution and the amounts to which they may be entitled thereunder.”

We intend on speaking to this at the teleconference hearing next week and will ask that our recommendation be included in the Endorsement for greater certainty, and you of course may also raise it.

I hope this clarifies.

Steph

**STEPHANIE DE CARIA**

**Associate**

**Miller Thomson LLP**

Scotia Plaza

40 King Street West, Suite 5800

P.O. Box 1011

Toronto, Ontario M5H 3S1

**Direct Line:** +1 416.595.2652

**Fax:** +1 416.595.8695

**Email:** [sdecaria@millerthomson.com](mailto:sdecaria@millerthomson.com)

**millerthomson.com**



**MILLER THOMSON**  
AVOCATS | LAWYERS

**Please consider the environment before printing this email.**

Our COVID-19 preparedness and support commitment

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**From:** Birch, John [mailto:[jbirch@cassels.com](mailto:jbirch@cassels.com)]

**Sent:** Thursday, April 16, 2020 5:57 PM

**To:** Rahul Shastri <[rshastri@ksllp.ca](mailto:rshastri@ksllp.ca)>

**Cc:** 'Rory McGovern' <[rory@rorymcgovernpc.com](mailto:rory@rorymcgovernpc.com)>; Pulat Yunusov <[pulat@lawto.ca](mailto:pulat@lawto.ca)>; De Caria, Stephanie <[sdecaria@millerthomson.com](mailto:sdecaria@millerthomson.com)>; Azeff, Gregory <[gazeff@millerthomson.com](mailto:gazeff@millerthomson.com)>; [ghall@mccarthy.ca](mailto:ghall@mccarthy.ca); Voudouris, Stephanie <[svoudouris@cassels.com](mailto:svoudouris@cassels.com)>

**Subject:** [**\*\*EXT\*\***] RE: Hi-Rise (File 19080)

I am afraid that I do not understand the basis for your concern.

The term "Investors" is defined in the Minutes of Settlement as "all individuals and/or entities... holding an interest in the Syndicated Mortgage". . This definition is in the second paragraph of the recitals to the Minutes. That would include Opt-Out Investors. This is also made clear at the end of the second paragraph of the recitals where the term Opt-Out Investors is defined. That definition makes it clear that the Opt-Outs are merely a subset of "Investors" not a different group.

Paragraph 13 does not change the definition of "Investors".

The definition of Investor Settlement Amount also refers to the amounts owing to Investors.

So I still do not understand the issue that you have raised. I also do not know what change to the order you are

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**RE: Response to Mr. Yusunov's email [MTDMS-Legal.FID7573766]**

1 message

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**De Caria, Stephanie** <sdecaria@millerthomson.com>

Fri, Apr 17, 2020 at 3:59 PM

To: "Birch, John" <jbirch@cassels.com>, Pulat Yunusov <pulat@lawto.ca>

Cc: Rahul Shastri <rshastri@ksllp.ca>, Rory McGovern <rory@rorymcgovernpc.com>, "Azeff, Gregory" <gazeff@millerthomson.com>, "ghall@mccarthy.ca" <ghall@mccarthy.ca>, "Voudouris, Stephanie" <svoudouris@cassels.com>

All - we agree that the Opt Out Investors share in the settlement with the rest of the Investors, notwithstanding that the language in the Minutes doesn't specifically include "Opt Out Investors" with respect to Distribution. It was always contemplated in the Appointment Order that all Investors, whether they are opted in or out of Rep Counsel's representation, would be included in the vote re: a settlement and transaction, in the tabulation of the vote, and ultimately, in the distributions arising therefrom.

As for the issue related to the release, this is a matter between Opt Outs and Hi Rise/Adelaide directly, and has nothing to do with Rep Counsel. We are taking no position on this.

Steph

**STEPHANIE DE CARIA**

Associate

**Miller Thomson LLP**

Scotia Plaza

40 King Street West, Suite 5800

P.O. Box 1011

Toronto, Ontario M5H 3S1

**Direct Line:** +1 416.595.2652

**Fax:** +1 416.595.8695

**Email:** sdecaria@millerthomson.com

**millerthomson.com**



**Please consider the environment before printing this email.**

Our COVID-19 preparedness and support commitment

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**From:** Birch, John [mailto:jbirch@cassels.com]

**Sent:** Friday, April 17, 2020 3:13 PM

**To:** Pulat Yunusov <pulat@lawto.ca>

**Cc:** Rahul Shastri <rshastri@ksllp.ca>; Rory McGovern <rory@rorymcgovernpc.com>; De Caria, Stephanie



THIS IS EXHIBIT "S" REFERRED TO IN THE  
AFFIDAVIT OF DAVID POZO  
AFFIRMED BEFORE ME THIS  
20TH DAY OF APRIL 2020.

A handwritten signature in black ink, appearing to read "P. Y. Yumurov". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

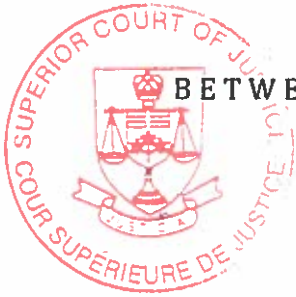
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Commissioner for taking affidavits

Court file no:

CU-17-582615

ONTARIO  
SUPERIOR COURT OF JUSTICE



BETWEEN:

**David Pozo**

Plaintiff

and

**Hi-Rise Capital Ltd.; Jim Neilas aka Dimitrios Neilas; Adelaide Street Lofts Inc.; Neilas Inc.; AW General Contractors Inc. aka Skypoint Hi-Rise Ltd.; 2272318 Ontario Inc. aka Neilas Development Partners Inc.; Adelaide Street Lofts General Partner Inc.; Adelaide Street Lofts Limited Partnership; Storey Living Inc.; Peter Neilas; 799 College Street Inc.; 1249 Queen E. Inc.**

Defendants

NOTICE OF ACTION

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the statement of claim served with this notice of action.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this notice of action is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

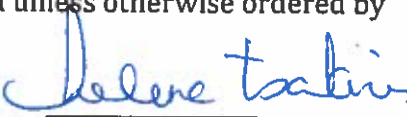
IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO

PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$1,000.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date 13 September 2017

Issued by   
Local registrar

Address of  
court office: 393 University Ave.  
10th floor  
Toronto, Ontario  
M5G 1E6

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

AND TO: Jim Neilas  
200 Adelaide Street West  
Suite 401  
Toronto, Ontario M5H 1W7

AND TO: Adelaide Street Lofts Inc.  
200 Adelaide Street West  
Suite 401  
Toronto, Ontario M5H 1W7

AND TO: Neilas Inc.  
200 Adelaide Street West  
Suite 401  
Toronto, Ontario M5H 1W7

AND TO: AW General Contractors Inc.  
200 Adelaide Street West  
Suite 401  
Toronto, Ontario M5H 1W7

- AND TO: 2272318 Ontario Inc.  
200 Adelaide Street West  
Suite 401  
Toronto, Ontario M5H 1W7
- AND TO: Adelaide Street Lofts General Partner Inc.  
200 Adelaide Street West  
Suite 401  
Toronto, Ontario M5H 1W7
- AND TO: Adelaide Street Lofts Limited Partnership  
200 Adelaide Street West  
Suite 401  
Toronto, Ontario M5H 1W7
- AND TO: Storey Living Inc.  
263 Adelaide Street West  
Suite 503  
Toronto, Ontario M5H 3G2
- AND TO: Peter Neilas  
200 Adelaide Street West  
Suite 401  
Toronto, Ontario M5H 1W7
- AND TO: 799 College Street Inc.  
200 Adelaide Street West  
Suite 401  
Toronto, Ontario M5H 1W7
- AND TO: 1249 Queen E. Inc.  
200 Adelaide Street West  
Suite 401  
Toronto, Ontario M5H 1W7

#### CLAIM

The plaintiff's claim is for \$1,000,000.00 in damages from all defendants jointly and severally. Damages include damages for breach of fiduciary duty and breach of trust, damages for breach of contract, damages from negligent misrepresentation, and special damages. The plaintiff also seeks an oppression remedy under *Business Corporations Act*, RSO 1990, c B.16. Damages arise out of the defendants' actions and omissions related to the following properties and financing projects in Toronto:

- 799 College Street
- 1249 Queen Street East/1251 Queen Street East

- 705 Ellesmere Road/707 Ellesmere Road
- 263 Adelaide Street West

13 September 2017

**YUNUSOV LAW  
PROFESSIONAL CORPORATION**  
330 Bay Street, Suite 1400  
Toronto, Ontario M5H 2S8

**Pulat Yunusov (LSUC # 60014U)**  
Tel: 416-628-5521  
Fax: 647-933-1171  
Email: pulat@lawto.ca

Lawyer for the plaintiff

RCP-E 14C (June 9, 2014)

David Pozo  
PLAINTIFF

- and -

Hi-Rise Capital Ltd. et al  
DEFENDANTS  
Court file no.

CV-17-582615

*ONTARIO*  
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

NOTICE OF ACTION

**YUNUSOV LAW  
PROFESSIONAL CORPORATION**  
330 Bay Street, Suite 1400  
Toronto, Ontario M5H 2S8

**Pulat Yunusov (LSUC # 60014U)**  
Tel: 416-628-5521  
Fax: 647-933-1171  
Email: pulat@lawto.ca

Lawyer for the plaintiff

AMENDED THIS JUNE 28/2018 PURSUANT TO  
MODIFIÉ CE \_\_\_\_\_ CONFORMÉMENT À  
LA RÈGLE 26.02 ( 1A )

THE ORDER OF \_\_\_\_\_  
L'ORDONNANCE DU \_\_\_\_\_  
DATED / FAIT LE \_\_\_\_\_

Court file no: CV-17-582615

Honley Malli  
LOCAL REGISTRAR / GREFFIER LOCAL \_\_\_\_\_  
SUPERIOR COURT OF JUSTICE / COUR SUPÉRIEURE DE JUSTICE \_\_\_\_\_  
ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN:

**David Pozo**

Plaintiff

and

**Hi-Rise Capital Ltd.; Jim Neilas aka Dimitrios Neilas; Adelaide Street Lofts Inc.; Neilas Inc.; AW General Contractors Inc. ~~aka Skypoint Hi-Rise Ltd.; 2272318 Ontario Inc. aka Neilas Development Partners Inc.; Adelaide Street Lofts General Partner Inc.; Adelaide Street Lofts Limited Partnership; Storey Living Inc. Corp.; Peter Neilas; 799 College Street Inc.; 1249 Queen E. Inc.~~**

Defendants

Amended AMENDED STATEMENT OF CLAIM

Notice of action issued on September 13, 2017

1. The plaintiff claims:
  - a. \$1,000,000.00 in damages from all defendants;
  - b. an oppression remedy against all defendants as a creditor under *Business Corporations Act*, RSO 1990, c B.16.
  - c. leave to issue and register a certificate of pending litigation on properties identified below as 263 Adelaide W, 799 College Street, 1249 Queen E, and 705/707 Ellesmere Rd;
  - d. leave to register a mortgage in the plaintiff's name on the title to the properties identified below as 263 Adelaide W, 799 College Street, 1249 Queen E, and 705/707 Ellesmere Rd in the amount to be determined before or at the trial of this action;

- e. interim, interlocutory, and permanent injunction prohibiting the defendants from disposing or transferring any of the funds attributable to Pozo's share in the principal of and interest accrued on mortgages identified below and to the fees and commissions charged on Pozo's account as pleaded below;
- f. accounting and disgorgement of profits and property interests unjustly received from Pozo without juristic reason, from all defendants;
- g. costs;
- h. applicable taxes;
- i. post- and pre-judgment interest on any award;
- j. any other relief as the plaintiff may request and the court may permit.

### **Parties**

2. The plaintiff, David Pozo ("Pozo") is an individual. He lives in Mississauga, Ontario.
3. The following defendants are Ontario corporations: Hi-Rise Capital Ltd.; Adelaide Street Lofts Inc.; Neilas Inc.; AW General Contractors Inc. aka Skypoint Hi-Rise Ltd.; 2272318 Ontario Inc. aka Neilas Development Partners Inc.; Adelaide Street Lofts General Partner Inc.; Storey Living Inc. Corp.; 799 College Street Inc.; 1249 Queen E. Inc.



4. Defendants Jim Neilas aka Dimitrios Neilas ("Jim Neilas") and Peter Neilas ("Peter Neilas") are individuals. They live in Ontario, in Toronto or in the Greater Toronto Area.
5. Jim Neilas is also known as Dimitrios Neilas.
6. Jim Neilas and Peter Neilas are brothers or other close relatives.
7. Jim Neilas is the sole director of the following corporate defendants: Hi-Rise Capital Ltd.; Adelaide Street Lofts Inc.; Neilas Inc.; AW General Contractors Inc. ~~aka Skypoint Hi-Rise Ltd.~~; 2272318 Ontario Inc. ~~aka Neilas Development Partners Inc.~~; Adelaide Street Lofts General Partner Inc.; Storey Living ~~Inc. Corp.~~; 1249 Queen E. Inc. (collectively, "Jim Neilas Companies").
8. Jim Neilas is the sole shareholder of Jim Neilas Companies.
9. Jim Neilas is the sole guiding mind of Jim Neilas Companies.
10. Jim Neilas was the sole guiding mind, shareholder, officer, and director of 799 College Street Inc. at all material times and specifically as of November 12, 2010.
11. Adelaide Street Lofts Limited Partnership is a limited partnership registered in Ontario under *Limited Partnerships Act*, RSO 1990, c L.16.
12. Jim Neilas was a partner and principal of Adelaide Street Lofts Limited Partnership at all material times.
13. Jim Neilas took part in the control of the business of Adelaide Street Lofts Limited Partnership.
14. Adelaide Street Lofts General Partner Inc. is a general partner in the Adelaide Street Lofts Limited Partnership.

15. Hi-Rise Capital Ltd. is a mortgage broker and mortgage administrator licensed under the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, SO 2006, c 29 ("MBLA").
16. At all material times until August 18, 2011, the corporate name of Hi-Rise Capital Ltd. was Waterview Capital Corp.
17. Jim Neilas is the principal broker of Hi-Rise Capital Ltd. and a principal broker licenced under the MBLA.
18. Peter Neilas is a broker of Hi-Rise Capital Ltd. and a broker licenced under the MBLA.
19. Adelaide Street Lofts Inc. is a registered owner of a real property in Toronto, Ontario municipally known as 263 Adelaide Street West and having a legal description of 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 3PLAN 66R29363 AS IN ES61223; CITY OF TORONTO with a PIN 21411-0294 ("263 Adelaide W").
20. Neilas Inc. is a real estate developer.
21. AW General Contractors Inc. is a general contractor.
22. Until November 2, 2015, the corporate name of AW General Contractors Inc. was Skypoint Hi-Rise Ltd.
23. 2272318 Ontario Inc. is a real estate developer.
24. Until December 4, 2012, the corporate name of 2272318 Ontario Inc. was Neilas Development Partners Inc.
25. Storey Living ~~Inc.~~ Corp. is a real estate developer.

26. 799 College Street Inc. at all material times until August 1, 2014 was a registered owner of a real property in Toronto, Ontario municipally known as 799 College Street and having a legal description of PART OF LOTS 3 AND 4, PLAN 973 CITY WEST; PART OF LOT 17, PLAN 302 CITY WEST; PART OF COLLEGE ST, PLAN 302/311 CITY WEST (CLOSED BYLAW BC1811), DESIGNATED AS PART 1, PLAN 66R25264 LOTS 5 AND 6, PLAN 973 CITY WEST; PART OF LOT 4, PLAN 973 CITY WEST; PART OF COLLEGE ST, PLAN 302/311 CITY WEST (CLOSED BYLAW BC1811), DESIGNATED AS PART 2, PLAN 66R25264; SUBJECT TO AN EASEMENT OVER PART 1, PLAN 66R25264 IN FAVOUR OF ROGERS CABLE COMMUNICATIONS INC. AS IN AT2296537; SUBJECT TO AN EASEMENT OVER PART 2, PLAN 66R25264 IN FAVOUR OF ROGERS CABLE COMMUNICATIONS INC. AS IN AT2296537; CITY OF TORONTO with a PIN 21273-0422 ("799 College Street").

27. 1249 Queen E. Inc. at all material times until August 10, 2017 was a registered owner of a real property in Toronto, Ontario municipally known as 1249 Queen East and having a legal description of PT LT 33 PL 214 TORONTO AS IN ES43770; CITY OF TORONTO with a PIN 21391-0073 ("1249 Queen E").

**Relationship with Hi-Rise Capital Ltd. and Jim Neilas**

28. In or about November 2010, Pozo and Hi-Rise Capital Ltd. entered into a agreement on terms that included the following:

- a. Pozo will tender \$1,000,000.00 to Hi-Rise Capital Ltd.

- b. Hi-Rise Capital Ltd. will lend \$1,000,000.00 to mortgagors on behalf of Pozo in the form of mortgages secured by real property.
- c. The mortgages will support profitable condominium projects.
- d. Hi-Rise Capital Ltd. will, on behalf of Pozo as his trustee:
  - i. enter into mortgage agreements with mortgagors and charge a certain interest rate agreed with Pozo;
  - ii. register the mortgage in its name;
  - iii. administer the mortgage;
  - iv. hold interest in the mortgage;
  - v. collect mortgage interest and principal payments from mortgagors;
  - vi. forward mortgage interest and principal payments to Pozo in accordance with a time schedule;
  - vii. enforce the mortgage if necessary to protect Pozo's interest in the mortgage;
  - viii. return Pozo's mortgage interest to Pozo on demand.
- e. Hi-Rise Capital Ltd. will owe Pozo a duty of good faith.
- f. Hi-Rise Capital Ltd. will provide material disclosure and reporting about the mortgages and the underlying projects to Pozo on demand and on a regular basis;
- g. Hi-Rise Capital Ltd. will charge Pozo any fees only if the projects financed by Pozo funds were successful.

29. Hi-Rise Capital Ltd. owed Pozo a fiduciary duty at all material times.

30. Hi-Rise Capital Ltd. and Jim Neilas personally and on behalf of Hi-Rise Capital Ltd. dealt in mortgages and administered mortgages with respect to Pozo as a lender or investor. They engaged in and held themselves out as engaging in all activities listed in ss. 2 and 5 of the MBLA and its regulations falling under the definition of dealing in mortgages and administering mortgages.
31. Jim Neilas owed Pozo a duty of care and a fiduciary duty as a principal broker of Hi-Rise Capital Ltd. and a mortgage broker dealing in and administering mortgages in respect of Pozo.
32. Hi-Rise Capital Ltd. owed Pozo a duty of care and a fiduciary duty as a mortgage brokerage dealing in and administering mortgages in respect of Pozo.

**Mortgages, properties, and projects**

33. Pozo tendered \$1,000,000.00 to Hi-Rise Capital Ltd. in accordance with the agreement in November 2010.
34. Hi-Rise Capital Ltd. and Jim Neilas advanced Pozo's funds to all or some of the following mortgagors (collectively, "Mortgagors") on behalf of Pozo:
- a. Adelaide Street Lofts Inc.
    - i. Property: 263 Adelaide W.
  - b. 799 College Street Inc.
    - i. Property: 799 College Street.
  - c. 1249 Queen E. Inc.
    - i. Property: 1249 Queen E.

35. At all material times and as early as in 2010, Hi-Rise Capital Ltd. and Jim Neilas represented to Pozo that profitable condominium projects would be developed on properties identified here as 263 Adelaide W, 799 College Street, and 1249 Queen E.
36. Jim Neilas, Adelaide Street Lofts Inc., 799 College Street Inc., and 1249 Queen E. Inc. hired the following contractors controlled and owned by Jim Neilas to develop the condominium projects: Storey Living Corp., Neilas Inc., AW General Contractors Inc. aka Skypoint Hi-Rise Ltd., and 2272318 Ontario Inc. aka Neilas Development Partners Inc. (“Contractors”).
37. Hi-Rise Capital Ltd. and Jim Neilas also advanced Pozo’s funds to the following mortgagors on behalf of Pozo:
- a. Anthony Egi and Christiana Egi
    - i. Property: 705 and 707 Ellesmere Rd, Toronto (legal description: 06307 - 0010 LT, PART LOT 24, PLAN 3473, PT 3 64R12300 SCARBOROUGH , CITY OF TORONTO and 06307 - 0142 LT, PT LOT 24 PL 3473 AS IN C899087 EXCEPT PT 3 PL 66R22403; CITY OF TORONTO, T/W ROW OVER PT 3 PL 66R22403 (UNTIL DEDICATED AS PUBLIC HIGHWAY) AS IN AT1145809) (“705/707 Ellesmere Rd”)

### **Defendants’ breaches**

38. Hi-Rise Capital Ltd. and Jim Neilas breached their duty of care and fiduciary duty owed to Pozo.

39. Hi-Rise Capital Ltd. breached the contract with Pozo.

40. Hi-Rise Capital Ltd. and Jim Neilas engaged in a conflict of interest by preferring interests of Mortgagors and Contractors (all of which were controlled by Jim Neilas) and of Hi-Rise Capital Ltd. and Jim Neilas themselves to interests of Pozo. In particular, they:

- a. chose to give forbearance to Mortgagors when they failed to make due mortgage payments, at Pozo's cost;
- b. paid or allowed Mortgagors to pay fees to Contractors or third parties for services that they have not provided or provided inadequately or unnecessarily, or undisclosed, unauthorized, or secret fees and commissions to Contractors or third parties, at Pozo's cost;
- c. paid themselves fees that they have not earned, that they have not disclosed to Pozo, and that they charged improperly, at Pozo's cost;
- d. failed to recommend that Pozo obtain independent legal advice;
- e. received remuneration contrary to the MBLA and its regulations;
- f. committed other acts and omissions.

41. Hi-Rise Capital Ltd. and Jim Neilas negligently or with reckless disregard for their obligations failed to administer Pozo mortgages properly and failed to meet the standard of a competent mortgage administrator, broker, and brokerage. In doing so, Hi-Rise Capital Ltd. also breached its contract with Pozo. In particular, they:

- a. failed to take reasonable steps to ensure that any mortgage or investment in a mortgage that they presented for the consideration of Pozo is suitable for Pozo having regard to his needs and circumstances, contrary to the MBLA and its regulations;
- b. failed to collect payments from mortgagors or to forward the payments to Pozo;
- c. did not register mortgages on title to properties on time;
- d. did not enter into mortgage agreements with mortgagors on time;
- e. improperly postponed and deferred mortgages they held on Pozo's behalf in favour of third parties and without sufficient notice to Pozo;
- f. failed to provide material documents and documents required by law, disclosure and reporting to Pozo on demand and on a regular basis, contrary to the MBLA and its regulations
- g. provided misleading information in their public relations materials that misrepresented the profitability of projects, their duration, the extent of control by Jim Neilas of all aspects of projects and mortgages—all contrary to the MBLA and its regulations;
- h. failed to advise Pozo at the earliest opportunities of the fact that they had reason to doubt the accuracy of information contained in a borrower's mortgage application or in a document



- submitted in support of an application, contrary to the MBLA and its regulations;
- i. failed to disclose all conflicts of interest and potential conflicts of interest to Pozo, contrary to the MBLA and its regulations;
  - j. received money from Pozo in connection with the mortgage projects before an application had been made for a mortgage on the specific properties and before an existing mortgage was available on the specific properties, contrary to the MBLA and its regulations;
  - k. failed to provide a receipt for trust funds required by s. 39 of the *Mortgage Brokerages: Standards of Practice*, O Reg 188/08;
  - l. engaged in other businesses concurrently with carrying on the business of administering mortgages pleaded here and allowed the other business to jeopardize their integrity, independence or competence when carrying on the business of administering mortgages, contrary to the MBLA and its regulations;
  - m. used information obtained in the course of carrying on business for any purpose other than that for which the information was obtained, without the written consent of the person or entity who is the subject of the information, contrary to the MBLA and its regulations;
  - n. committed other breaches of the MBLA, *Mortgage Administrators: Standards of Practice*, O Reg 189/08, *Mortgage Brokerages: Standards of Practice*, O Reg 188/08, *Mortgage*

*Brokers and Agents: Standards of Practice*, O Reg 187/08,

*Principal Brokers: Eligibility, Powers and Duties*, O Reg 410/07;

- o. committed other acts and omissions that fell below the standard of a competent mortgage administrator, broker, and brokerage (or were also in breach of the contract with Pozo in the case of Hi-Rise Capital Ltd.).

### **Ellesmere Road property and Peter Neilas**

42. Hi-Rise Capital Ltd. and Jim Neilas negligently or with reckless disregard for their obligations failed to administer the Pozo mortgage with respect to 705/707 Ellesmere Rd properly. In doing so, Hi-Rise Capital Ltd. also breached its contract with Pozo. Particulars are the same as in paragraph 41 above. In addition, they:

- a. transferred Pozo's mortgage interest to Peter Neilas for nominal consideration
  - i. without Pozo's consent and without notice to Pozo;
  - ii. with knowledge by Peter Neilas of Pozo's interest in the mortgage interest.

### **Liability of contractors**

43. Jim Neilas, Hi-Rise Capital Ltd., and Contractors owed duties to Pozo with respect to services provided by Contractors to the projects. They performed these services negligently or failed to perform them and breached their duties to Pozo as follows:

- a. failed to properly investigate zoning and other municipal, building code, or other regulatory issues that delayed, harmed, or defeated the projects;
- b. failed to properly investigate the market potential of the projects;
- c. fail to market, sell, or lease all or enough units within the projects within reasonable or requisite time;
- d. failed to begin and complete construction within reasonable or requisite time;
- e. failed to give Pozo adequate notice of regulatory, legal, construction and marketing issues;

### **Alternatives**

44. In the alternative, Hi-Rise Capital Ltd. and Jim Neilas agreed to repay Pozo's funds including the principal and interest in instalments according to a schedule specified in a document entitled "Release" and executed by Pozo on November 23, 2015, and Hi-Rise Capital Ltd. and Jim Neilas failed to make payments when due and acknowledged the debt, which remains outstanding.

45. In the alternative, all funds advanced by Pozo to Hi-Rise Capital Ltd. were a loan by Pozo to Hi-Rise Capital Ltd. and Jim Neilas, which they failed to repay when due, which they acknowledged as debt, and which remains outstanding and due from Hi-Rise Capital Ltd. and Jim Neilas.

46. In the alternative, Hi-Rise Capital Ltd. and Jim Neilas held all funds advanced by Pozo in trust on condition that the funds accrue interest and be returned on demand and failed to return the funds to Pozo on demand.

47. In the alternative, Pozo became a partner in Adelaide Street Lofts Limited Partnership in November 2010, and the partnership, Jim Neilas, and Adelaide Street Lofts General Partner Inc. as general partners participated in the breaches pleaded here and are liable to Pozo for his resulting damages.

#### **A bad-faith and unfair structure**

48. Of the three condominium projects, only the 799 College Street project has been completed. As of the time of commencement of this claim, construction has not started on 263 Adelaide W (Adelaide Street Lofts Inc. acquired the property on June 24, 2011), and 1249 Queen E was sold to a third party in 2017 without starting any construction.

49. Jim Neilas and companies he controlled were integral to all projects in all respects: financing, development, marketing, sale and leasing of units. Jim Neilas and all corporate defendants knew this fact and knew that security of Pozo's funds depended on good faith, care, attention, and competence of Jim Neilas and the companies he controlled: Hi-Rise Capital Ltd., Mortgagors, and Contractors.

50. Jim Neilas stood to gain through at least some elements of the corporate structure he created around the projects, whether the projects were successful or not. If projects were not successful, all or some of Hi-Rise

Capital Ltd., Mortgagors, and Contractors would and did collect fees and commissions from the projects.

51. Funds of lenders like Pozo financed the projects. Jim Neilas created a structure where (1) formally Pozo bore the risk of mortgages, (2) only one element of the structure would formally be liable to Pozo—Hi-Rise Capital Ltd.—and it would have no assets of its own other than assets held in trust for others, and (3) other elements of the structure: Mortgagors, Contractors and ultimately Jim Neilas would benefit from the projects made possible by Pozo funds with little risk, as envisaged by Jim Neilas.
52. The defendants acted in bad faith and did not disclose this scheme to Pozo. It is unfair to Pozo and it led the defendants to be negligent or reckless with respect to duties they owed Pozo. This scheme and its inherent conflict of interest constitutes a breach of the duty of good faith the defendants owed Pozo directly or through Hi-Rise Capital Ltd. and Jim Neilas.

### **Losses**

53. As a result of defendants' breaches, Pozo suffered damages as follows:
- a. part of the principal he advanced and some accrued interest;
  - b. profit he would have earned had he been paid back on time and in full or had he received due notice of issues and allocated funds elsewhere;
  - c. loss of property value he would have gained had the defendants enforced the mortgages;
  - d. the value of property interests as pleaded here;

- e. special damages including fees for investigation and advice;
- f. other damages to be particularized before the trial of this action.

**YUNUSOV LAW  
PROFESSIONAL CORPORATION**  
330 Bay Street, Suite 1400  
Toronto, Ontario M5H 2S8

**Pulat Yunusov (LSUC # 60014U)**  
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Lawyer for the plaintiff

David Pozo  
PLAINTIFF

- and -

Hi-Rise Capital Ltd. et al  
DEFENDANTS  
Court file no. CV-17-582615

*ONTARIO*  
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

AMENDED STATEMENT OF CLAIM

YUNUSOV LAW  
PROFESSIONAL CORPORATION  
330 Bay Street, Suite 1400  
Toronto, Ontario M5H 2S8

Pulat Yunusov (LSUC # 60014U)  
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Lawyer for the plaintiff

**CASSELS BROCK**  
LAWYERS.

DATE June 20, 2018

FROM Kate Byers

PHONE 416.860.6759

FAX 416.640.3193

E-MAIL kbyers@casselsbrock.com

Please report any  
problems with the receipt  
of this transmission to Isla  
Warren at 416.860.5226

FILE # 048912-00015

LAWYER # 05668

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PAGES (inclusive) 25

TO

Mr. Pulat Yunosov

PULAT YUNUSOV

FAX

647.933.1171

PHONE

416.628.5521

Re: Hi-Rise Capital Ltd. et al. ats David Pozo

Please see attached.

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**CASSELS BROCK**  
LAWYERS

June 20, 2018

PULAT YUNUSOV  
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M5H 2S8

kbyers@casselsbrock.com  
tel: 416.860.6759  
fax: 416.640.3193  
file # 048912-00015

Attention: Mr. Pulat Yunosov

Dear Mr. Yunosov:

**Re: Hi-Rise Capital Ltd. et al. ats David Pozo**

Enclosed and served upon you, pursuant to the *Rules of Civil Procedure*, is a copy of our Statement of Defence.

If you have any questions, please contact me.

Yours very truly,

**Cassels Brock & Blackwell LLP**

Per:

for Kate Byers

KB/iw  
Enclosure

Court File No. CV-17-582516

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

DAVID POZO

Plaintiff

- and -

HI-RISE CAPITAL LTD., JIM NEILAS, ADELAIDE STREET LOFTS INC.,  
NEILAS INC., AW GENERAL CONTRACTORS INC., 2272318 ONTARIO  
INC., ADELAIDE STREET LOFTS GENERAL PARTNER INC., ADELAIDE  
STREET LOFTS LIMITED PARTNERSHIP, STOREY LIVING CORP.,  
PETER NEILAS, 799 COLLEGE STREET INC. and 1249 QUEEN E. INC.

Defendants

**STATEMENT OF DEFENCE**

1. The Defendants admit none of the allegations contained in any of the paragraphs of the Amended Statement of Claim (the "**Statement of Claim**").
2. The Defendants deny the allegations contained in each and every paragraph of the Statement of Claim, except as otherwise admitted herein.
3. The Defendants have no knowledge in respect of the allegations contained in paragraph 2 of the Statement of Claim.

**Parties**

4. At various times, the Plaintiff, David Pozo ("**Pozo**" or the "**Plaintiff**"), was an investor in development projects at 705 and 707 Ellesmere Road, Scarborough, Ontario (the "**Ellesmere Project**"), 799 College Street in Toronto, Ontario (the "**Cube Project**"),

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and 263 Adelaide Street West in Toronto, Ontario (the "**Adelaide Project**", and together with the Ellesmere Project and the Cube Project, the "**Projects**"). The Plaintiff is a highly sophisticated individual with significant experience in finance and investing.

5. Hi-Rise Capital Ltd. ("**HRC**") is a mortgage brokerage firm and the mortgage administrator of a subordinated mortgage over the Adelaide Project, in which the Plaintiff is an investor (the "**Adelaide Subordinated Mortgage**", as defined below).

6. Neilas Inc. is a corporation incorporated in accordance with the laws of Ontario. Neilas Inc. is a real estate development company.

7. Storey Living Corp. ("**Storey**") is a corporation incorporated in accordance with the laws of Ontario. Storey is a real estate development company.

8. AW General Contractors Inc. ("**AWGC**") is a corporation incorporated in accordance with the laws of Ontario. AWGC is a construction management company.

9. 2272318 Ontario Inc. ("**227 Corp.**") is a corporation incorporated in accordance with the laws of Ontario. 227 Corp. is a real estate development company.

10. Jim Neilas is an individual.

11. Peter Neilas is an individual.

12. Adelaide Street Lofts Inc. ("**Adelaide Lofts**") is a corporation incorporated in accordance with the laws of Ontario. Adelaide Lofts is special-purpose company which is developing the Adelaide Project. Adelaide Lofts owns the land on which the Adelaide Project sits and it is the developer of the Adelaide Project.

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13. Adelaide Street Lofts Limited Partnership ("**Adelaide Lofts LP**") was a limited partnership which was dissolved in or about November 2015.

14. Adelaide Street Lofts General Partner Inc. ("**Adelaide Lofts GP**") was a corporation which was the general partner of Adelaide Street Lofts Limited Partnership.

15. 799 College Street Inc. ("**799 College**") is a corporation incorporated in accordance with the laws of Ontario. 799 College is special-purpose company which was developing the Cube Project. 799 College previously owned the land on which the Cube Project sits.

16. 1249 Queen E. Inc. ("**1249 Queen**") is a corporation incorporated in accordance with the laws of Ontario. 1249 Queen is special-purpose company which intended to develop a six-storey condominium project tentatively named "Stage East" (the "**Queen Project**"). 1249 Queen previously owned the land on which a project being developed at 1249 Queen Street East, Toronto, Ontario sits. In or about August 2017, 1249 Queen sold the land on which the Queen Project would have been built to an arm's-length party and paid the proceeds of sale to creditors of 1249 Queen (including syndicated mortgage investors) in accordance with their priority. Accordingly, 1249 Queen no longer holds any property or assets.

#### **Plaintiff's Initial Investment With HRC**

17. In or about the fall of 2010, the Plaintiff approached HRC and expressed interest in investing in one of the syndicated mortgages which HRC administered in Toronto. Specifically, the Plaintiff was interested in investing \$1,000,000.00 in a syndicated

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mortgage loan in relation to the Adelaide Project, which was still pending. Due to delays associated with the purchase of the land on which the Adelaide Project was planned to sit and accordingly, with the commencement of the development of the Adelaide Project, an investment in that project was not possible at that time. In particular, HRC could not apply investors' funds to a subordinated mortgage in respect of the land until it had acquired the land because the Plaintiff intended to invest upon the security of real property.

18. Accordingly, and as more particularly set out below, in or about November, 2010, the Plaintiff instead elected to invest \$400,000.00 into a subordinated mortgage in respect of the Ellesmere Project and \$600,000.00 into a subordinated mortgage in respect of the Cube Project, with the intention that the funds he had invested in those projects would later be transferred to an investment in relation to the Adelaide Project. In the interim, the Plaintiff would be able to earn interest from HRC in respect of the funds he ultimately intended to invest in the Adelaide Project.

19. Pursuant to a Loan Participation Agreement dated November 12, 2010, the Plaintiff participated in a syndicated mortgage loan in relation to the Ellesmere Project (the "**Ellesmere Loan**"). As more particularly set out below, the funds pertaining to the Plaintiff's investment in the Ellesmere Loan were subsequently transferred, with his consent and direction, to a syndicated mortgage loan in relation to the Adelaide Project.

20. Pursuant to a Loan Participation Agreement dated November 20, 2010, the Plaintiff participated in a syndicated mortgage loan to 799 College and 1249 Queen in respect of the Cube Project (the "**Cube Loan**") that was secured by a second mortgage granted by 799 College and 1249 Queen (the "**Cube Subordinated Mortgage**") to HRC

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as trustee on behalf of participants in the Subordinated Mortgage, including the Plaintiff. The Cube Subordinated Mortgage was subordinate in priority to a first mortgage in favour of a commercial lender. As more particularly set out below, the funds pertaining to the Plaintiff's investment in the Ellesmere Project were subsequently transferred, with his consent and direction, to the Adelaide Project.

21. The Plaintiff did earn interest from, and otherwise benefit from, his investments in the Ellesmere Subordinated Mortgage and the Cube Subordinated Mortgage. More specifically, the Plaintiff received \$33,895.43 in interest in respect of the Ellesmere Subordinated Mortgage and \$30,00.00 in interest in respect of the Cube Subordinated Mortgage, for a total of \$63,895.43 in respect of those investments.

#### **Plaintiff's Investment In The Adelaide Project**

22. Approximately seven months later, in or about June 2011, the delays associated with the commencement of the development of the Adelaide Project had been resolved and financing was being arranged. Accordingly, on or about June 23, 2011, pursuant to a Letter of Direction and Authorization from the Plaintiff, the \$400,000.00 representing the Plaintiff's participation in the Ellesmere Subordinated Mortgage was transferred to a subordinated mortgage in respect of the Adelaide Project, described below.

23. Specifically, on or about June 15, 2011, the Plaintiff and HRC executed a Loan Participation Agreement, pursuant to which the Plaintiff participated in a syndicated mortgage loan to Adelaide Lofts in respect of the Adelaide Project (the "**Adelaide Loan**") that was secured by a second mortgage granted by Adelaide Lofts (the "**Adelaide Subordinated Mortgage**") to HRC as trustee on behalf of participants in the

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Subordinated Mortgage, including the Plaintiff. The Adelaide Subordinated Mortgage was subordinate in priority to a first mortgage in favour of a commercial lender.

24. On or about October 1, 2011, pursuant to a Letter of Direction and Authorization from the Plaintiff, the \$600,000.00 representing the Plaintiff's participation in the Cube Subordinated Mortgage was transferred to the Adelaide Subordinated Mortgage. As such, after such date, 799 College and 1249 Queen no longer had any liability to the Plaintiff given that he agreed that all of such invested funds would be lent to the Adelaide Project instead.

25. The Plaintiff remains invested in the Adelaide Project to this date. As of the date of pleading, the Plaintiff has received \$515,587.58 in interest in respect of his investment in the Adelaide Subordinated Mortgage, and has received back \$675,000.00 of his principal in respect of his \$1,000,000.00 investment. These amounts are in addition to the interest received by the Plaintiff in respect of his investments in the Ellesmere Subordinated Mortgage and the Cube Subordinated Mortgage, which total \$63,895.43, for a total of \$579,483.01 in interest payments alone.

### **Mortgage Disclosure Statements**

26. At the time that the Plaintiff signed each of the three Loan Participation Agreements (collectively, the "**Loan Participation Agreements**"), he was also provided with, and signed, corresponding mortgage disclosure forms provided for under Ontario law, namely a Form 1—Investor/Lender Disclosure Statement for Brokered Transactions and a Form 1.1—Investor/Lender Disclosure Statement for Brokered Transactions—Addendum for Construction and Development Loans (collectively, the

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"Disclosure Statements" and together with the Loan Participation Agreements, the "Agreements").

27. The Disclosure Statements set out, in detailed and plain language, numerous relevant aspects of the Ellesmere Subordinated Mortgage, the Cube Subordinated Mortgage, and the Adelaide Subordinated Mortgage (collectively, the "**Subordinated Mortgages**" and each a "**Subordinated Mortgage**"), and the parties involved, including the following:

- (a) in respect of the Cube Subordinated Mortgage, the relationship among HRC, 799 College, 1249 Queen, and other corporations involved in the relevant projects;
- (b) in respect of the Adelaide Subordinated Mortgage, the relationship among HRC, Adelaide Lofts, and other corporations involved in the relevant projects;
- (c) details of each of the subordinated mortgages and the number of participants; and
- (d) that there were inherent risks associated with investing in syndicated mortgages.

28. The Disclosure Statements also included a section titled "Caution" which cautioned investors about the inherent risks of a syndicated mortgage, including the risk that the mortgage brokerage would not be able to continue to make payments if the borrower defaulted, advised inexperienced investors against participating in mortgage



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investments, and strongly encouraged investors to obtain independent legal advice before committing to invest in the Subordinated Mortgages.

29. It was apparent on the face of the Agreements and the Disclosure Statements that the full recovery of funds lent by the Plaintiff in respect of each of the Loan Participation Agreements was dependent on the successful development or refinancing of the relevant Projects and the generation of sufficient proceeds to pay the prior-ranking mortgage(s) and then the Subordinated Mortgage.

30. The Plaintiff is a highly sophisticated individual with significant experience in finance and investing. According to investor profile documentation that the Plaintiff submitted to HRC before signing the Agreements, the Plaintiff makes his living as an investor, including by investing in mortgages and/or real estate and in the stock and bond market, and has done so since at least 2008. The Plaintiff made an informed choice to take on the risks associated with his investments in the Projects.

31. The Plaintiff was also aware that each investment was a loan to the relevant special purpose investment company such as 799 College, Adelaide Lofts, or 1249 Queen and not to HRC. HRC acts administrator of the mortgages but has no personal liability for the mortgage funds advanced. Each of the Loan Participation Agreements that the Plaintiff signed clearly state that the investment was not a loan to HRC and that HRC has no obligation for funds invested and that the obligation to repay is solely that of the developer of the relevant project. The Plaintiff consciously accepted such terms.

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**Plaintiff's Principal In Ellesmere And Cube Subordinated Mortgages Has Been Returned**

32. The Ellesmere Project was never developed, and was never intended to be developed by any of the Defendants. The Ellesmere Subordinated Mortgage was only taken out to secure an obligation of the owner of the land on which the Ellesmere Project sits.

33. As referred to above at paragraph 18, the Plaintiff only participated in the Ellesmere Subordinated Mortgage and the Cube Subordinated Mortgage so that his funds could earn interest while he awaited the opportunity to invest in the Adelaide Subordinated Mortgage. As referred to above at paragraph 21, he achieved this objective and received interest of \$63,895.43 for the seven month period as a result of his investments in the Ellesmere Subordinated Mortgage and the Cube Subordinated Mortgage. The Plaintiff's funds were transferred to the Adelaide Subordinated Mortgage at his specific direction.

34. Accordingly, the Defendants plead that the Plaintiff suffered no losses or damages in connection with his investment in the Ellesmere Subordinated Mortgage and the Cube Subordinated Mortgage, and that no cause of action can accrue in respect of his participation in those Subordinated Mortgages.

35. The Ellesmere Subordinated Mortgage was paid out and discharged on or about July 18, 2011. The Cube Project was completed and all but one of the condominium units in that project have been sold and transferred to purchasers. In any event, 799 College had fully repaid the Plaintiff well before the Cube Project was completed.

### **Plaintiff Has Released HRC Regarding Adelaide Subordinated Mortgage**

36. The Adelaide Project remains active. For the first few years of his investment in the Adelaide Subordinated Mortgage, the Plaintiff received interest in accordance with his investment. However, development stalled due to market and other forces beyond the control of either HRC or Adelaide Lofts, and Adelaide Lofts, as borrower, was not able to fulfil its obligations under its first mortgage or under the Adelaide Subordinated Mortgage. Accordingly, there were no available funds that Adelaide Lofts could pay to the Plaintiff or to other investors. In the Adelaide Project, as with other projects funded with syndicated mortgages, the repayment of syndicated mortgage investors depends on the borrower being able to source construction financing and complete the project. This very risk was disclosed to investors in the Adelaide Subordinated Mortgage, including the Plaintiff, in the Disclosure Statements for that mortgage, as set out at paragraphs 29 and 31, above.

37. In 2015, the Plaintiff sought to exit his investment in the Adelaide Subordinated Mortgage and retained counsel to negotiate that exit.

38. From approximately November 2015 until April 2016, HRC and the Plaintiff engaged in discussions regarding the Plaintiff's desire to exit the Adelaide Subordinated Mortgage. In the course of these discussions, HRC explained that due to the non-liquid nature of the Adelaide Subordinated Mortgage, the Plaintiff could not receive the return of his principal unless another investor replaced him in that Subordinated Mortgage. No such investor was ever identified or agreed to participate.

39. Despite being under no obligation to do so under the terms of the Loan Participation Agreement for the Adelaide Subordinated Mortgage, as a good faith

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gesture, a proposal was made to return the Plaintiff's principal of \$1,000,000.00 to him in installments in accordance with a payment schedule. On November 23, 2015, Pozo executed and delivered a release in favour of HRC and number of related companies and their respective officers, directors, and employees (the "Release"). HRC denies that it has any legal obligation to the Plaintiff or that it has breached such obligation.

40. As one of the terms of the Release, the Plaintiff released HRC from, *inter alia*, all claims, causes of action, suits, damages, obligations, agreements, and contracts connected to the Plaintiff's having made investments with HRC in respect of an interest in the Adelaide Subordinated Mortgage. Accordingly, the Plaintiff released any claims arising out of the Agreements in respect of the Adelaide Subordinated Mortgage, which is the only one of the Projects in which he remains invested.

41. Accordingly, the allegations in the Statement of Claim that HRC owed the Plaintiff any contractual duties under the Loan Participation Agreement for the Adelaide Subordinated Mortgage, or other duties in law or equity relating to the Adelaide Subordinated Mortgage which predated the Release, cannot form the basis of an Action against HRC.

42. More specifically, the following claims asserted in the Statement of Claim have been released by the Plaintiff and cannot form the basis of an action against HRC with respect to the Plaintiff's interest in the Adelaide Subordinated Mortgage:

- (a) any claims arising out of paragraph 30 of the Statement of Claim that HRC engaged in or held themselves out as engaging in activities listed in

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sections 2 and 5 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, SO 2006, c 29, or breached such duties;

- (b) the claims in paragraph 32, 38, and 43 of the Statement of Claim that HRC owed and/or breached a duty of care and a fiduciary duty in respect of the Plaintiff;
- (c) any claims arising out of the allegations in paragraph 35 of the Statement of Claim that HRC made certain representations to the Plaintiff;
- (d) any claims arising out of the allegations in paragraph 37 of the Statement of Claim that HRC advanced the Plaintiff's funds to any third party on his behalf;
- (e) any claims arising out of the allegations in paragraph 40 of the Statement of Claim that HRC engaged in a conflict of interest;
- (f) the claims in paragraphs 28, 39 and 41-42 of the Statement of Claim that HRC owed or breached any contractual obligations to the Plaintiff;
- (g) any claims arising out of the allegations in paragraph 41 of the Statement of Claim that HRC acted negligently or with reckless disregard for the interests of the Plaintiff, or failed to meet the standard of a competent mortgage administrator, brokerage, or broker; and

-13-

(h) any claims arising out of the allegations in paragraph 45-46 of the Statement of Claim that HRC borrowed and failed to repay funds from the Plaintiff, or held funds advanced by the Plaintiff in trust.

43. In the alternative and in any event, HRC does not have any liability to the Plaintiff under the Agreements or at common law, as further set out below.

#### **No Liability Of HRC**

44. In any event, even prior to the Release, HRC had no contractual liability to the Plaintiff under the Agreements, which is made clear by the Agreements' specific terms.

45. The Plaintiff did not lend any money to HRC. Instead, the Agreements clearly provide that the "Investee Company" in respect of the Ellesmere Subordinated Mortgage is Anthony Egi and Christiana Egi (who are not party to this action), that the "Investee Company" in respect of the College/Queen Subordinated Mortgage are 799 College and 1249 Queen, and that the "Borrower" in respect of the Adelaide Subordinated Mortgage is Adelaide Lofts (together with Anthony Egi, Christiana Egi, 799 College, and 1249 Queen, the "Borrowers").

46. HRC only acts as administrator of the mortgage and is only responsible for passing along to the Plaintiff (and other participants in the Subordinated Mortgages) any interest or principal that HRC itself receives from the Borrowers. In the event that the Borrowers fail to make payments of interest or principal to HRC, HRC is under no obligation to make payment of such amounts to the Plaintiff out of its own pocket.

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47. The fact that HRC is not a borrower or obligor is set out in the Agreements, which state the following in relevant part:

It is expressly understood and agreed that the Participant's Participation is in no way to be deemed an investment in [HRC], or any of its affiliates, subsidiaries, employees, or officers, or a borrowing by [HRC] or any of its affiliates, subsidiaries, employees or officers from the Participant, and repayment of the Participant's Participation is in no way, either directly or indirectly, guaranteed by [HRC] or any of its affiliates, subsidiaries, employees or officers.

48. Further, since the Subordinated Mortgages were second mortgages, the rights of investors in the Subordinated Mortgages were limited and subject to the rights of the first mortgagee and the contractual restrictions imposed by the first mortgagee on the ability of subsequent mortgagees to enforce their security.

49. The only duties that HRC owed to the Plaintiff were those set out in the Agreements and the Release. HRC complied with its contractual duties at all times. At no time did HRC owe any other duties to the Plaintiff, including fiduciary duties, a duty of care, a duty to abstain from a conflict of interest, or duties with respect to services provided by contractors. In the alternative, if such other duties were owed to the Plaintiff (which is denied), HRC did not negligently perform or otherwise breach any such duties.

#### **No Liability Of Defendants Other Than HRC**

50. The only legal relationship that existed between the Plaintiff and any of the defendants was a contractual relationship between the Plaintiff and HRC as provided for by the Agreements.

51. Storey, Jim Neilas, Peter Neilas, Adelaide Lofts, AWGC, 227, Adelaide Street Lofts Limited Partnership, and Adelaide Street Lofts General Partner Inc. (collectively, the "Other Defendants") are not party to the Agreements, or any other document or

-15-

agreement with the Plaintiff and accordingly, at no time did the Other Defendants owe the Plaintiff any contractual duty.

52. Further, at no time did the Other Defendants owe the Plaintiff any other duty including fiduciary duties, a duty of care, a duty to abstain from a conflict of interest, duties with respect to services provided by contractors, or any other duties. As such, the Other Defendants cannot be, and are not, liable to the Plaintiff. In the alternative, if such other duties were owed to the Plaintiff (which is denied), the Other Defendants did not negligently perform or otherwise breach any such duties.

53. There is no basis on which to pierce the corporate veil or otherwise impose liability on either Jim Neilas (who simply executed the Agreements on behalf of HRC) or Peter Neilas personally. At all times, Jim Neilas and Peter Neilas were merely acting within their roles as officers, directors, and/or employees of HRC and they never accepted personal liability to the Plaintiff (nor could any such liability be imposed).

54. 799 College, 1249 Queen, and Adelaide Lofts acknowledge that they are or were obligors under the Subordinated Mortgages administered by HRC and, to the extent that the Plaintiff participated in any syndicated mortgage administered by HRC, the Plaintiff would have an entitlement to his proportionate share of proceeds realized from such mortgages. However, given the terms of the Release, the Plaintiff has released his right to commence any claim or action asserting such entitlement. Further and in any event, given the terms of the Agreements, the Plaintiff has agreed that he has no direct right of action against 799 College, 1249 Queen, or Adelaide Lofts and therefore cannot sue and of those corporations if any of the Subordinated Mortgages go into default. The terms of the



-16-

Subordinated Mortgages also provided that HRC (as trustee and administrator of those mortgages on behalf of investors) could not enforce the security without the consent of the first mortgagee on each project, which consent the first mortgagee has failed to provide. This is a normal standstill/subordination arrangement that is common in both the syndicated mortgage and the commercial mortgage markets.

55. Jim Neilas, Adelaide Lofts LP, and Adelaide Lofts GP deny that they were ever in partnership with the Plaintiff, including as of November, 2010, as alleged at paragraph 47 of the Statement of Claim. Jim Neilas, Adelaide Lofts LP, and Adelaide Lofts GP state that the only relationship between the Plaintiff and any of the Defendants in November 2010, or otherwise, was a contractual one between the Plaintiff and HRC, by virtue of his entering the first of the Agreements in respect of the Ellesmere Project (which in any event did not concern Adelaide Lofts LP, Adelaide Lofts GP, Jim Neilas personally, or the Adelaide Project).

**No Negligence, Negligent Misrepresentation, Or Breach Of Fiduciary Or Other Duties**

56. Neither HRC nor the Other Defendants made misrepresentations, negligent or otherwise, to the Plaintiff. To the contrary, HRC made a number of disclosures to the Plaintiff in the Disclosure Statements regarding the risks of his investment and the nature of its liability to the Plaintiff. The Plaintiff voluntarily assumed all of such risks.

57. The only duties owed by HRC to the Plaintiff are those under the Agreements, which HRC complied with at all times. In any event, the Plaintiff released claims in respect of those obligations pursuant to the Release. As set out above, HRC did not owe or

-17-

breach any independent duty of care or fiduciary duty to the Plaintiff, and no duties of care were owed or breached by the Other Defendants.

58. The Defendants specifically deny that any of them acted in bad faith or otherwise acted unfairly, negligently, or recklessly towards the Plaintiff. The Defendants further specifically deny the allegations regarding unfairness and impropriety with respect to any of the Defendants' corporate structures set out at paragraphs 48 to 52 of the Statement of Claim. At no time did HRC, or any of the Other Defendants, commit any breach of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29 or any of the regulations thereto, or otherwise commit any acts or omissions that were improper or that fell below the standard of a competent mortgage administrator, broker, or brokerage. The Defendants specifically deny the allegations to the contrary at paragraph 41 of the Statement of Claim.

59. Contrary to the allegations at paragraph 46 of the Statement of Claim, there is no express or constructive trust as between any of the Defendants and the Plaintiff.

#### **No Entitlement To Certificates Of Pending Litigation Or Mortgage On Lands**

60. The Defendants plead that the Plaintiff is not entitled to a certificate of pending litigation (a "CPL"), or to receive leave to register a mortgage in the Plaintiff's name on title, in respect of the properties on which any of the Projects sit.

61. In respect of the land at 799 College Street East, Toronto, Ontario, the Defendants plead that:

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- (a) all except one of the condominium units have been sold by 799 College, prior to the commencement of the action, to arm's-length buyers;
- (b) as set out above at paragraph 34, even before the sales, the Plaintiff received full value for his investment from 799 College, and surrendered his interest in the mortgage;
- (c) the Plaintiff has no investment or other interest in the Cube Project;
- (d) an interest in the land is not in question in the within action and the Plaintiff has no interest in the property of 799 College; and
- (e) accordingly, the Plaintiff is not entitled to a CPL in respect of that land.

62. In respect of the land at 1249 Queen Street East, Toronto, Ontario, the Defendants plead that:

- (a) 1249 Queen sold the land to arm's-length buyers, which sale predated the within action, and accordingly, it is not owned by any of the Defendants to this Action;
- (b) the Plaintiff received full value for his investment that was secured by the interest in 1249 Queen, and surrendered his interest in the mortgage;
- (c) the Plaintiff has no investment or other interest in any project being developed on this land;
- (d) an interest in the land is not in question in the within action and the Plaintiff has no interest in the property of 1249 Queen; and
- (e) accordingly, the Plaintiff is not entitled to a CPL in respect of that land.

63. In respect of the land at 705 and 707 Ellesmere Road, Toronto, Ontario, the Defendants plead that:

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- (a) the land is not, and has never been, owned by any of the Defendants to this Action;
- (b) the Plaintiff has no investment or other interest in any project being developed on this land;
- (c) an interest in the land is not in question in the within action and the Plaintiff has no interest in such property; and
- (d) accordingly, the Plaintiff is not entitled to a CPL in respect of that land.

64. In respect of the land at 263 Adelaide Street West, Toronto, Ontario, the Defendants plead that:

- (a) the Plaintiff released Adelaide Lofts from liability in respect of the Adelaide Project including any liability under the mortgage;
- (b) an interest in the land is not in question in the within action and, in any event, the Plaintiff does not have an interest in the relevant land; and
- (c) accordingly, the Plaintiff is not entitled to a CPL in respect of that land.

65. The Defendants plead that the only real relief claimed in this action is damages, being the amount that the Plaintiff alleged that he lent to certain of the defendants, and thus the Plaintiff has admitted in the Statement of Claim that damages are a completely adequate remedy.

### **No Oppression**

66. The Defendants deny that the Plaintiff is entitled to relief from oppression or otherwise entitled to relief under the provisions of the Ontario *Business Corporations Act*, RSO 1990, c B.16. Specifically, the Defendants plead that the Plaintiff lacks standing to

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bring an action for oppression against the Defendants (and particularly, the individual Defendants). In any event, the Defendants deny that any of their acts or omissions were oppressive or unfairly prejudicial or unfairly disregarded the interests or the legitimate expectations of the Plaintiff.

### **No Entitlement To Injunction**

67. The Defendants deny that the Plaintiff is entitled to any injunctive relief in respect of any of the allegations in the Statement of Claim. The Defendants further deny that the Plaintiff has suffered any harm, irreparable or otherwise, due to the aforementioned allegations made against any of the Defendants, and further plead that there is no urgency to the action. In the alternative, to the extent the Plaintiff suffered any harm (which is denied), the Defendants plead that such harm is compensable in damages. As such, the Plaintiff is not entitled to the injunctive relief sought in the prayer for relief.

### **No Damages**

68. In the event that any of the Defendants have liability to the Plaintiff (which is not admitted but is vigorously denied), the damages claimed are excessive and remote and are not recoverable at law, and the Plaintiff has failed to mitigate them, or alternatively, has successfully done so, in whole or in part.

69. As more particularly set out at paragraph 25, HRC pleads that the Plaintiff has profited from his investments in the various Projects. The Defendants deny that the Plaintiff has suffered any of the monetary damages claimed and puts it to strict proof thereof.

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70. The Defendants plead that the Plaintiff is not entitled to special damages.

### **Limitations**

71. The Defendants plead that all of the claims made by the Plaintiff are statute-barred. The Plaintiff issued its Notice of Action on September 13, 2017.

72. At all times, the Plaintiff was aware of facts, events, and circumstances giving rise to a claim on the date that such facts, events, and circumstances occurred. Accordingly, any portion of the Plaintiff's claim that is based on facts, acts, or circumstances occurring prior to September 13, 2015, which includes all or substantially all of the allegations made in the Statement of Claim (including all of the allegations relating to the Plaintiff's investment in the Ellesmere Project or the Cube Project), are statute-barred.

73. The defendants plead and rely on the *Limitations Act, 2002*, S.O. 2002, c. 24, Sch. B, as amended.

### **Conclusion**

74. The defendants ask that this action be dismissed with costs on a full indemnity basis.

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June 20, 2018

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Lawyer for the plaintiff

DAVID POZO  
Plaintiff

and HI-RISE CAPITAL LTD. et al.  
Defendants

Court File No. CV-17-582516

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
  
PROCEEDING COMMENCED AT  
TORONTO

**STATEMENT OF DEFENCE**

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ONTARIO  
SUPERIOR COURT OF JUSTICE

B E T W E E N:

**David Pozo**

Plaintiff

and

**Hi-Rise Capital Ltd.; Jim Neilas aka Dimitrios Neilas; Adelaide Street Lofts Inc.; Neilas Inc.; AW General Contractors Inc.; 2272318 Ontario Inc.; Adelaide Street Lofts General Partner Inc.; Adelaide Street Lofts Limited Partnership; Storey Living Corp.; Peter Neilas; 799 College Street Inc.; 1249 Queen E. Inc.**

Defendants

REPLY

1. The plaintiff admits those allegations of fact in the statement of defence that he pleaded in the statement of claim, as amended. The plaintiff denies all other allegations of fact in the statement of defence except as expressly admitted in this reply.
2. The plaintiff is a proper complainant within the meaning of the *Business Corporations Act*, RSO 1990, c B.16.
3. The plaintiff denies releasing any parties to this action from any liability or claims at any time.
4. The plaintiff signed a document entitled "Release" on November 23, 2015 ("Document"). This document reduced to writing the following agreement between the plaintiff and the defendants:
  - a. The defendants and in particular defendant Hi-Rise Capital Ltd. will pay the plaintiff all outstanding principal and interest in

accordance with the terms in and the schedule to the Document,  
by March 31, 2016.

b. If and only if the above condition is fulfilled, the plaintiff will  
release the defendants from certain claims (or the release will  
become effective).

5. The defendants did not pay the plaintiff all outstanding principal and  
interest in accordance with terms in and the schedule to the Document, by  
March 31, 2016.
6. Any obligation of the plaintiff to release any defendants became void and of  
no effect (or any release did not become effective) due to the defendants'  
breach of the fundamental condition of the agreement to pay the plaintiff in  
full.
7. The plaintiff denies that any limitation period applicable to any of his  
claims expired.
8. The plaintiff did not discover his claim until 2016.
9. The defendants acknowledged their liquidated debt including interest to  
the plaintiff in the amounts specified in the Document in or about  
November 2015, before the expiry of any applicable limitation period,  
under *Limitations Act, 2002*, SO 2002, c 24, Sch B.
10. The defendants made part payments of their liquidated debt to the plaintiff  
in or about November 2015 and later, which had the same effect as the  
acknowledgment of their debt, under *Limitations Act, 2002*, SO 2002, c 24,  
Sch B.

11. The defendants are estopped from relying on a limitations defence or the defendants have waived the operation of the applicable limitation period during any settlement negotiations between them and the plaintiff, which took place.
12. The plaintiff and the defendant entered into an agreement to suspend or extend the applicable limitation period, and the limitation period did not begin until 2016.
13. In the alternative to the *Limitations Act, 2002*, SO 2002, c 24, Sch B, the *Real Property Limitations Act*, RSO 1990, c L.15 applies to this action as this is an action to recover interest in land and the ten-year limitation period has not yet expired.

June 28, 2018

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Lawyers for the defendants

**David Pozo**  
PLAINTIFF

- and -

**Hi-Rise Capital Ltd. et al**  
DEFENDANTS  
Court file no. CV-17-582615

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***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

**Proceeding commenced at Toronto**

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**REPLY**

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Lawyer for the plaintiff

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

DAVID POZO

Plaintiff

- and -

HI-RISE CAPITAL LTD., JIM NEILAS, ADELAIDE STREET LOFTS INC.,  
NEILAS INC., AW GENERAL CONTRACTORS INC., 2272318 ONTARIO  
INC., ADELAIDE STREET LOFTS GENERAL PARTNER INC., ADELAIDE  
STREET LOFTS LIMITED PARTNERSHIP, STOREY LIVING CORP.,  
PETER NEILAS, 799 COLLEGE STREET INC. and 1249 QUEEN E. INC.

Defendants

**DEMAND FOR PARTICULARS**

The defendants demand particulars of the following allegations in your Statement of Claim:

1. Particulars of the allegations at paragraph 38 that Hi-Rise Capital Ltd. and Jim Neilas owed the plaintiff a duty of care, including but not limited to the nature of the alleged duty of care owed and particulars of the alleged conduct which breached the alleged duty of care.
2. Particulars of the allegation in paragraph 40 that Hi-Rise Capital Ltd. and Jim Neilas “engaged in a conflict of interest by preferring interests of Mortgagors and Contractors and...themselves to interests of Pozo”, including but not limited to when these alleged preferences were made, which services the mortgagors and contractors were allegedly paid for despite their alleged failure to provide them, and the fees the

defendants allegedly paid themselves. Further, please provide particulars of the allegation in paragraph 40(b) that fees were paid to contractors or third parties “for services that they have not provided or provided inadequately or unnecessarily, or undisclosed, unauthorized, or secret fees and commissions to Contractors or third parties”, including details of each specific payment, to whom it was made, and the basis for the assertion that the payment was for no services, inadequate services, or for secret commissions.

3. Particulars of the allegation in paragraph 41(b) that Hi-Rise Capital Ltd. and Jim Neilas “failed to collect payments from mortgagors or to forward the payments to Pozo”, including but not limited to particulars of when or from whom the alleged payments ought to have been collected.

4. Particulars of the allegation in paragraph 41(f) that Hi-Rise Capital Ltd. and Jim Neilas “failed to provide material documents and documents required by law, disclosure and reporting to Pozo”, including but not limited to which documents ought to have been provided but were not.

5. Particulars of the allegation in paragraph 41(g) that Hi-Rise Capital Ltd. and Jim Neilas “provided misleading information in their public relations materials that misrepresented [information] contrary to the [*Mortgage Brokerages, Lenders and Administrators Act*] and its regulations”, including but not limited to which information allegedly constituted any misrepresentations, and the particular legislative and/or regulatory provisions which were allegedly contradicted.

6. Particulars of the allegation in paragraph 41(h) that Hi-Rise Capital Ltd. and Jim Neilas failed to advise Mr. Pozo “that they had reason to doubt the accuracy of information contained in a borrower’s mortgage application or in a document”, including but not limited to what information the plaintiff alleges the defendants had reason to doubt was accurate (and on what basis), and when such reason to doubt actually, or ought to have, materialized.

7. Particulars of the allegation in paragraph 41(m) that Hi-Rise Capital Ltd. and Jim Neilas used “information obtained in the course of carrying on business for any purpose other than that for which the information was obtained”, including but not limited to the nature of the information referred to, when or how the information was allegedly used, and for what alleged improper purpose.

8. Particulars of the allegation in paragraph 43 that Hi-Rise Capital Ltd., Jim Neilas, and the Contractors “owed duties to Pozo” and “failed to properly investigate zoning and other municipal, building code, or other regulatory issues that delayed, harmed, or defeated the projects”, including but not limited to the nature of the alleged duties owed, the regulatory issues which ought to have been investigated and when, and the alleged delay or harm to the projects.

9. Particulars of the specific legal duties that Neilas Inc., 2272318 Ontario Inc., Storey Living Corp., and AW General Contractors Inc. are alleged to owe to the plaintiff, including the type of duty and the legal basis for the duty.

10. Particulars of the facts supporting the allegations that Neilas Inc., 2272318 Ontario Inc., Storey Living Corp., and AW General Contractors Inc. owed contractual or other



duties to the plaintiffs, given that the plaintiff does not have any contractual or other legal relationship with such defendants. Further, please provide particulars of any facts supporting the allegation by the plaintiff that such defendants breaches those duties.

11. Particulars of the lost profit, property value, and value of property interests claimed in paragraphs 53(b), (c), and (d) of the Statement of Claim.

12. Particulars of the special damages including fees for investigation and advice claimed in paragraph 53(e) of the Statement of Claim, and, if payment of fees for legal advice is being sought over and above costs as provided for in Rule 57 of the *Rules of Civil Procedure*, please provide the legal and factual basis for such claims for the costs of “advice”.

March 23, 2018

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Lawyer for the plaintiff

DAVID POZO  
Plaintiff

and HI-RISE CAPITAL LTD. et al.  
Defendants

Court File No. CV-17-582516

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
  
PROCEEDING COMMENCED AT  
TORONTO

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**DEMAND FOR PARTICULARS**

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Lawyers for the defendants

*ONTARIO*  
SUPERIOR COURT OF JUSTICE

B E T W E E N:

**David Pozo**

Plaintiff

and

**Hi-Rise Capital Ltd.; Jim Neilas aka Dimitrios Neilas; Adelaide Street Lofts Inc.; Neilas Inc.; AW General Contractors Inc.; 2272318 Ontario Inc.; Adelaide Street Lofts General Partner Inc.; Adelaide Street Lofts Limited Partnership; Storey Living Corp.; Peter Neilas; 799 College Street Inc.; 1249 Queen E. Inc.**

Defendants

REPLY TO DEMAND FOR PARTICULARS

Paragraph numbers below correspond to paragraph numbers in the defendants' demand for particulars dated March 23, 2018 and revised on April 6, 2018. The statement of claim is referred to below as amended.

1. For duty of care, see paragraphs 15, 17, 30, 31, 32 of the statement of claim.  
For breaches of the duty of care, see paragraphs 38-42.
2. Paragraph 40 of the statement of claim contains a list of particulars. See also paragraphs 48-52. The dates of preferences are between November 2010 and the present and in any case are within the knowledge of the defendants. The rest of the facts are also within the knowledge of the defendants.
3. The payments ought to have been collected from all mortgagors on due dates that are within the knowledge of the defendants.
4. Disclosure, reporting, and required and material documents that Hi-Rise Capital Ltd. and Jim Neilas failed to provide to the plaintiff are within the

knowledge of the defendants. In any case, Hi-Rise Capital Ltd. and Jim Neilas failed to provide any disclosure, reporting, and required and material documents to the plaintiff.

5. All information about profitability, duration, and Jim Neilas's control contained misrepresentations. All provisions of the MBLA and its regulations governing disclosure to and communication with the plaintiff were breached.
6. Jim Neilas controlled all Mortgagors and was familiar with the facts underlying their mortgage applications. He and Hi-Rise Capital Ltd. had reason to doubt accuracy of the mortgage applications at the time of the applications. What information was inaccurate is within the defendants' knowledge.
7. This refers to all information about the plaintiff's relationship with Hi-Rise Capital Ltd. and Jim Neilas, which they used to advance Jim Neilas's business interests in the corporate defendants that he controlled, throughout the relationship between the plaintiff and Hi-Rise Capital Ltd. and Jim Neilas.
8. Hi-Rise Capital Ltd. (as a mortgage broker and administrator), Jim Neilas (as a mortgage broker and administrator and as the sole director and the guiding mind of all of the corporations referred to in this paragraph), Neilas Inc. (as a real estate developer), AW General Contractors Inc. (as a general contractor), 2272318 Ontario Inc. (as a real estate developer), and Storey Living Corp. (as a real estate developer) owed the plaintiff a duty of care. The duty is based on these defendants' work on and responsibility for, in

their respective capacities, the condominium projects referred to in the statement of claim, their knowledge of the plaintiff's investment in the projects and of the plaintiff's dependence on their involvement in the projects, the profit and other benefits they obtained from the plaintiff's investment in the projects, their relationship among themselves and other facts pleaded in the statement of claim. Regulatory issues and delay or harm to the projects have been sufficiently particularized in the statement of claim and, in any case, are within the knowledge of the defendants.

9. See para. 8.

10. See para. 8.

11. The statement of claim contains sufficient particulars, and in any case, the particulars are within the knowledge of the defendants.

12. Particulars of special damages will be provided before trial. The plaintiff is seeking costs of this action in accordance with the *Rules of Civil Procedure*.

May 7, 2018

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**David Pozo**  
PLAINTIFF

- and -

**Hi-Rise Capital Ltd.** et al  
DEFENDANTS  
Court file no. CV-17-582615

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***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

**Proceeding commenced at Toronto**

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**REPLY TO DEMAND FOR  
PARTICULARS**

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HI-RISE CAPITAL LTD.  
Applicant

and

SUPERINTENDED OF FINANCIAL  
SERVICES et al. - 11 -  
Respondents

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

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HI-RISE CAPITAL LTD.  
Applicant

and

SUPERINTENDED OF FINANCIAL SERVICES et al.  
Respondents

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**MOTION RECORD OF THE RESPONDENT,  
DAVID POZO  
(Motion Returnable April 22, 2020)**

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