



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

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MR. )  
JUSTICE HAINEY )  
MONDAY, THE 27th  
DAY OF APRIL, 2020

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.

APPROVAL AND VESTING ORDER

THIS MOTION, made by Hi-Rise Capital Ltd. ("Hi-Rise") in its capacity as administrator and trustee in respect of a syndicated mortgage (the "**Syndicated Mortgage**") involving approximately 700 investors (the "**Investors**") that advanced funds to Adelaide Street Lofts Inc. ("**Adelaide**") and obtained security over the property known municipally as 263 Adelaide Street West, Toronto, Ontario and legally described in **Schedule H** attached hereto (the "**Property**"), for an order:

- (a) Approving a sale transaction (the "**Transaction**") contemplated by (i) the Minutes of Settlement dated December 20, 2019 as amended by Amending Agreement dated April 27, 2020 (collectively, the "**Minutes of Settlement**"), a copy of which is attached hereto as **Schedule A**, among Hi-Rise, Adelaide, 263 Holdings Inc. ("**263 Holdings**"), Jim Neilas, Miller Thomson LLP in its capacity as the Court-appointed representative counsel on behalf of Investors ("**Representative Counsel**"), and the members of the Official Committee constituted pursuant to the Order of the Honourable Mr. Justice Hainey dated

April 15, 2019 (the "**Official Committee**") and Lanterra Developments Ltd. ("**Lanterra**") (Hi-Rise, Adelaide, 263 Holdings, Jim Neilas, Representative Counsel, the Official Committee and Lanterra shall be referred to collectively as the "**Parties**"), and (ii) the Agreement of Purchase and Sale made as of December 20, 2019, between Adelaide and Lanterra as amended by Amending Agreement dated April 27, 2020 (collectively, the "**APS**"), a copy of which is attached hereto as **Schedule B**;

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

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

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

and the cross-motion of Lanterra to amend the Minutes of Settlement and the APS were heard on April 22 and 27, 2020 by videoconference in Toronto, Ontario.

**ON READING** the Affidavit of Noor Al-Awqati sworn April 1, 2020, the Affidavit of Service of Patricia Hoogenband sworn April 3, 2020, filed, the Fourth Report, Fifth Report, and the Supplemental Fifth Report of Representative Counsel dated, respectively, January 9, April 6, and April 21, 2020, and the Affidavit of Christopher J. Wein dated April 16, 2020, and on hearing the submissions of Representative Counsel and counsel for each of Hi-Rise, Adelaide, the Superintendent of Financial Services, Meridian Credit Union Limited ("**Meridian**"), Lanterra, David Pozo, and Nadeem and Uzma Ghorji, and other parties referred to on the counsel slip, no one else appearing for any other person on the service list,

1. **THIS COURT ORDERS** that all parties entitled to notice of this Motion have been served with the Motion Record of Hi-Rise, and that service of the Motion Record is

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

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

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

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

5. **THIS COURT ORDERS** that, on the Closing Date (as defined in the APS), Lanterra shall pay to Miller Thomson LLP in trust the Extension Period Interest (as defined in the Minutes of Settlement) in accordance with the Minutes of Settlement.

6. **THIS COURT ORDERS AND DECLARES** that upon delivery to Lanterra of (a) the certificate contemplated by paragraph 11 of the Minutes of Settlement substantially in the form attached as **Schedule C** hereto (the "**Certificate**"), or (b) the Representative Counsel's certificate substantially in the form attached as **Schedule D** hereto (the "**Representative Counsel Certificate**"), all of Adelaide's right, title and interest in and to the Purchased Assets (as defined in the APS) (and listed on **Schedule E** hereto) shall vest absolutely in Lanterra or its designee free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, encumbrances, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether

secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Orders of the Honourable Mr. Justice Hailey dated March 21, 2019 and September 17, 2019; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule F** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule G) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

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

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

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

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

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

12. **THIS COURT ORDERS, DECLARES AND DIRECTS** that the distribution of the Purchase Price in accordance with the Minutes of Settlement (the "**Distribution**") is hereby authorized and approved, with such minor amendments as the Parties may deem necessary. The Parties and CTC are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable to carry out the Distribution.

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

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

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

other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

14. **THIS COURT ORDERS** that, subject to further order of the court, from the date of this order until the completion of the sale of the Property on the Closing Date (as defined in the APS), no person shall take any steps to enforce security or other claims against the Property or exercise any rights in respect of mortgages registered against the Property including the Meridian Mortgage (collectively, the "**Mortgages**") or against guarantors of the Mortgages.

15. **THIS COURT ORDERS** that the receivership application brought by Meridian against Adelaide in Court File No. CV-19-00628145-00CL be and is hereby adjourned to a 9:30 a.m. chambers appointment before Justice Hainey on November 20, 2020.



A handwritten signature in black ink, which appears to read "Hainey J." with a flourish at the end.

**Schedule A — Minutes of Settlement**

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

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

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

FIRST AMENDMENT TO MINUTES OF SETTLEMENT

WHEREAS on December 20, 2019, Lanterra Developments Ltd. ("Lanterra"), Jim Neilas, 263 Holdings Inc., Adelaide Street Lofts Inc., Hi-Rise Capital Ltd., Miller Thomson LLP, solely in its capacity as court appointed Representative Counsel, Vipin Berry, in his capacity as court appointed member of the Official Committee, Michael Singh, in his capacity as court appointed member of the Official Committee, Nick Tsakonacos, in his capacity as court appointed member of the Official Committee, and Marco Arquilla, in his capacity as court appointed member of the Official Committee (collectively, the "Parties"), entered into the minutes of settlement attached hereto as Schedule "A" (the "Minutes of Settlement");

AND WHEREAS the Parties have agreed to extend the Closing Date of the Transaction to November 16, 2020 and to amend the Minutes of Settlement on and subject to the terms and conditions specified herein;

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, the Parties hereby agree as follows:

1. The Parties agree that the above-noted recitals are true and accurate.
2. All capitalized terms used and not otherwise defined in this First Amendment to Minutes of Settlement (the "Amendment") shall have the respective meanings ascribed thereto in the Minutes of Settlement.



3. Section 3(a) of the Minutes of Settlement is hereby deleted in its entirety and replaced with the following:

“(a) Lanterra and Adelaide shall enter into an agreement of purchase and sale in respect of the Transaction (the “APS”), as amended, 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 November 16, 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;”

4. In consideration of the extension of the Closing Date, as provided for in Section 3 of this Amendment, Lanterra agrees to pay to Meridian the non-default interest due and owing by Adelaide to Meridian pursuant to the terms of the loan agreement dated April 2, 2018 (as may be or may have been subsequently amended, replaced, restated or supplemented from time to time, the “Meridian Loan Agreement”), for the period from May 15, 2020 to and including the Closing Date (the “Extension Period”), at the interest rate specified in the Meridian Loan Agreement, being the Prime Rate (as defined in the Meridian Loan Agreement) plus 2.00% per annum (the “Extension Period Interest”). The Extension Period Interest shall be compounded monthly during the Extension Period. On closing of the Transaction, in addition to the other amounts payable by Lanterra as specified in Section 9(d) of the Minutes of Settlement, Lanterra shall pay to Miller Thomson LLP in trust the Extension Period Interest. For greater certainty, this liability of Lanterra shall be in addition to the Purchase Price (as defined in the APS).

5. This Amendment shall be construed in accordance with the laws of the Province of Ontario. Any dispute arising from this Amendment 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.

6. This Amendment and every covenant, provision and term herein contained shall enure to the benefit of and be binding upon each of the Parties and their respective heirs, executors, administrators, assigns, agents, advisors, consultants and other representatives.

7. 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 this Amendment.

8. Each of the Parties acknowledges and agrees that:

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

9. In the case of any conflict between the terms and conditions of the Minutes of Settlement and the terms or conditions of this Amendment, the terms and conditions of this Amendment will prevail.

10. On and after the date of this Amendment, any reference to "these Minutes of Settlement" in the Minutes of Settlement and any reference to the Minutes of Settlement in any other agreements will mean the Minutes of Settlement, as amended by this Amendment. Except as specifically amended by this Amendment, the provisions of the Minutes of Settlement remain in full force and effect.

11. This Amendment 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. This Amendment becomes effective when executed by all of the Parties. After that time, it will be binding upon and enure to the benefit of the Parties and their respective heirs, executors, administrators, assigns, agents, advisors, consultants and other representatives.

12. This Amendment, the Minutes of Settlement and the documents attached thereto, together with the executed Full and Final Mutual Release, represent the entire agreement among the Parties.

*[signature page follows]*

DATED this 27th day of April, 2020.

**LANTERRA DEVELOPMENTS LTD.**

Per: 

*(I have authority to bind the corporation)*

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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

**JIM NEILAS**

;

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**263 HOLDINGS INC.**

Per: \_\_\_\_\_

*(I have authority to bind the corporation)*

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**ADELAIDE STREET LOFTS INC.**

Per: \_\_\_\_\_

*(I have authority to bind the corporation)*

*[signature continues on next page]*

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**LANTERRA DEVELOPMENTS LTD.**

Per: \_\_\_\_\_

*(I have authority to bind the corporation)*

DATED this 27th day of April, 2020.

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

**JIM NEILAS**

: \_\_\_\_\_

DATED this 27th day of April, 2020.

**263 HOLDINGS INC.**

Per: \_\_\_\_\_

*(I have authority to bind the corporation)*

DATED this 27th day of April, 2020.

**ADELAIDE STREET LOFTS INC.**

Per: \_\_\_\_\_

*(I have authority to bind the corporation)*

*[signature continues on next page]*

DATED this 27th day of April, 2020.

**HI-RISE CAPITAL LTD.**

Per: \_\_\_\_\_



*(I have authority to bind the corporation)*

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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

Per: \_\_\_\_\_

*(I have authority to bind the limited  
liability partnership)*

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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

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

\_\_\_\_\_

*[signature continues on next page]*

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**HI-RISE CAPITAL LTD.**

Per: \_\_\_\_\_

*(I have authority to bind the corporation)*

DATED this 27th day of April, 2020.

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



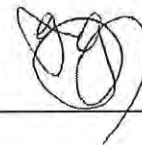
Per: \_\_\_\_\_

*(I have authority to bind the limited liability partnership)*

DATED this 27th day of April, 2020.

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

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



Per: \_\_\_\_\_

*[signature continues on next page]*

DATED this 29<sup>th</sup> day of April, 2020.

Witness: 

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



DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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

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

\_\_\_\_\_

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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

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

Per: \_\_\_\_\_



DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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

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

\_\_\_\_\_

DATED this 1st day of May, 2020.

Witness: Nick Tsakonacos

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

Nick Tsakonacos

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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

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

Per: \_\_\_\_\_

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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

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

\_\_\_\_\_

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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

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

\_\_\_\_\_

DATED this 30 day of April, 2020.

Witness: Jay Esp

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

Per: Marco Arquilla

SCHEDULE "A"

Minutes of Settlement

See attached.

**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 Hainey of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 21, 2019 (the “**Appointment Order**”), Miller Thomson LLP was appointed as Representative Counsel (in such capacity, “**Representative Counsel**”) 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.

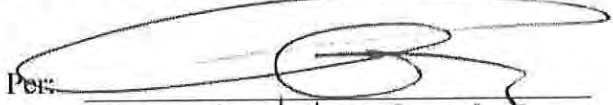
26. These Minutes of Settlement may be executed in counterparts, and by facsimile or electronic mail, each of which shall be deemed to be an original, all such separate counterparts shall together constitute one and the same instrument.

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 S. Wynn  
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.

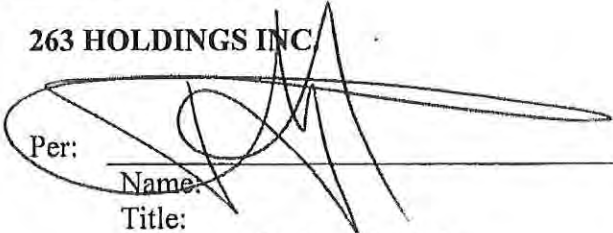
Witness:   
Geoff K. Hall

**JIM NEILAS**

  
Per: \_\_\_\_\_

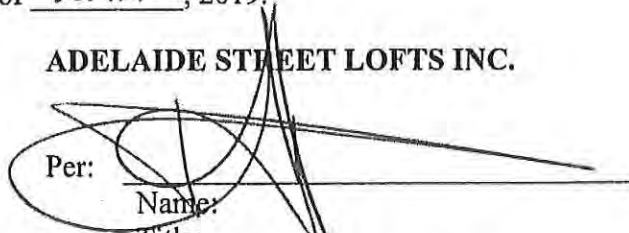
DATED AT Toronto this 20<sup>th</sup> day of December, 2019.

**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: NOOR AL-RUWFATI  
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.

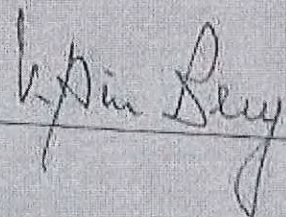
**MILLER THOMSON LLP, solely in its capacity as court-appointed Representative Counsel**

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 Dhanrajan



**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

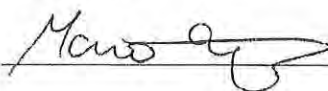
\_\_\_\_\_

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

Witness: Jeff Egan



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

Per:   
\_\_\_\_\_

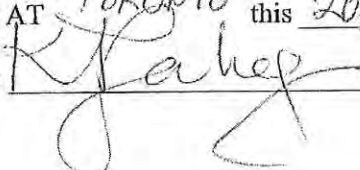
DATED AT \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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

**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.

and

SUPERINTENDENT OF FINANCIAL  
SERVICES et. al.  
Respondents

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

Applicant

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

Proceeding commenced at Toronto

**MINUTES OF SETTLEMENT**

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

**Greg Azeff LSO#: 45324C**  
gazeff@millerthomson.com  
Tel: 416.595.2660/Fax: 416.595.8695

**Stephanie De Caria LSO#: 68055L**  
sdecaria@millerthomson.com  
Tel: 416.595.2652/Fax: 416.595.8695

Court-appointed Representative Counsel

**Schedule B — Agreement of Purchase and Sale**

## AGREEMENT OF PURCHASE AND SALE

**THIS AGREEMENT** is made as of the 20<sup>th</sup> day of December, 2019

**BETWEEN:**

**ADELAIDE STREET LOFTS INC.**  
(the "**Vendor**")

- and -

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

### RECITALS

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

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

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

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

### SECTION 1 – INTERPRETATION

#### 1.1 Definitions.

In this Agreement:

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

(3) **"Approval and Vesting Order"** means an Order of the Court providing for, among other things, the vesting in the Purchaser of all of the right, title and interest of the Vendor in and to the Purchased Assets, free and clear of all liens, charges and encumbrances, except Permitted Encumbrances;

(4) **"Business Day"** means any day of the year, other than a Saturday, Sunday or any day on which Canadian chartered banks are closed in Toronto, Ontario, Canada;

(5) **"Court"** has the meaning set forth in Recital A;

(6) **"Closing"** means the completion of the Transaction;

(7) **"Closing Date"** means May 14, 2019;

(8) **"Closing Time"** means 2:00 p.m. Toronto time on the Closing Date;

(9) **"Deposit"** has the meaning set forth in Section 3.2(1);

(10) **"ETA"** means the Excise *Tax Act* (Canada);

(11) **"Governmental Authority"** means any Canadian federal, provincial, state, municipal or local, or other government, governmental, regulatory or administrative authority, agency or commission or any court, tribunal or judicial or arbitral body having jurisdiction over the Purchased Assets;

(12) **"HST"** means taxes, interest, penalties and fines imposed under Part IX of the ETA;

(13) **"Lease"** means, with respect to the Property, any offer or promise to lease, agreement to lease, lease, sublease, renewal of lease and other right or licence granted by or on behalf of the Vendor or any of its predecessors in title which entitle a Person to possess or occupy or lease space in the Property, now or hereafter, together with all security, guarantees and indemnities of the tenant's, subtenant's and licensee's obligations thereunder, in each case as amended, renewed or otherwise varied.

(14) **"Minutes of Settlement"** means the Minutes of Settlement dated December ●, 2019 among Jim Neilas, 263 Holdings, Adelaide, Hi-Rise, the Representative Counsel, Vipin Berry, in his capacity as court-appointed member of the Official Committee and Michael Singh, in his capacity as court-appointed member of the Official Committee;

(15) **"Person"** means a natural person, partnership, limited liability partnership, corporation, joint stock company, trust, unincorporated association, joint venture or other entity or Governmental Authority, and pronouns have a similarly extended meaning;

(16) **"Permitted Encumbrances"** means the liens and encumbrances set forth on Schedule B;

(17) **"Purchase Price"** has the meaning set forth in Section 3.1;

(18) **"Purchased Assets"** has the meaning set forth in Section 2.1;

(19) **"Real Property"** means the real property described in the legal description attached hereto as Schedule A, including any and all improvements, tenements, hereditaments and

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

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

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

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

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

## **1.2 Headings and References.**

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

## **1.3 Extended Meanings.**

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

## **1.4 Statutory References.**

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

## **1.5 Schedules.**

The following are the Schedules to this Agreement:

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

## **SECTION 2– PURCHASE AND SALE**

### **2.1 Purchase and Sale of Purchased Assets.**

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

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

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

## **2.2 Excluded Assets.**

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

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

## **SECTION 3 – PURCHASE PRICE**

### **3.1 Purchase Price and Deposit.**

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

### **3.2 Deposit**

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

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

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

### **3.3 Satisfaction of Purchase Price**

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

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

### **3.4 Adjustment of Purchase Price**

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

### **3.5 Taxes.**

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

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

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

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

## **SECTION 4 – REPRESENTATIONS AND WARRANTIES**

### **4.1 Vendor's Representations.**

- (1) The Vendor represents and warrants to the Purchaser that:
  - (a) the Vendor has good and sufficient power, authority and right to enter into and deliver this Agreement and complete the transactions contemplated hereunder,

subject to the Minutes of Settlement;

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

#### **4.2 Purchaser's Representations.**

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



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

#### **4.3 "As is, Where is"**

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

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

### **SECTION 5 – CONDITIONS TO CLOSING**

#### **5.1 Conditions for the Benefit of the Purchaser.**

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

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

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

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

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

## **5.2 Conditions for the Benefit of the Vendor.**

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

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

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

## **5.3 Termination Rights**

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

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

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

#### **5.4 Effect of Exercise of Termination Rights**

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

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

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

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

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

### **SECTION 6 – CLOSING**

#### **6.1 Closing.**

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

#### **6.2 Vendor's Deliveries on Closing.**

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

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

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<sup>1</sup> Parties to consider escrow of all vendor closing documentation.

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

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

### **6.3 Purchaser's Deliveries on Closing**

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

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

### **6.4 Operation Before Closing**

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

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

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

#### **6.5 Risk.**

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

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

#### **6.6 Possession of Purchased Assets.**

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

#### **6.7 Tender.**

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

### **SECTION 7 – GENERAL**

#### **7.1 Notices.**

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

- (a) in the case of the Purchaser:

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

Attention: Christopher Wein  
Email: cwein@lanterradev.com

Attention: Tim Watson  
Email: twatson@lanterradev.com

Attention: Christopher Wein  
Email: [cwein@lanterradev.com](mailto:cwein@lanterradev.com)

with a copy to:

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

Attention: Eric Carmona  
Email: [ecarmona@stikeman.com](mailto:ecarmona@stikeman.com)

Attention: Ashley Taylor  
Email: [ataylor@stikeman.com](mailto:ataylor@stikeman.com)

(b) in the case of the Vendor:

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

Attention: Jim Neilas  
Email: [jim@storeyliving.com](mailto:jim@storeyliving.com)

with a copy to:

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

Attention: Geoff Hall  
Email: [ghall@mccarthy.ca](mailto:ghall@mccarthy.ca)

Attention: Charlene Schafer  
Email: [cschafer@mccarthy.ca](mailto:cschafer@mccarthy.ca)

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

## **7.2 Time of Essence.**

Time shall be of the essence for every provision hereof.

### **7.3 Expenses.**

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

### **7.4 Third Party Beneficiaries.**

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

### **7.5 Commission.**

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

### **7.6 Further Assurances.**

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

### **7.7 Entire Agreement.**

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

### **7.8 Amendments.**

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

### **7.9 Waiver.**

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

### **7.10 Governing Law.**

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

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

**7.11 Benefit of Agreement.**

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

**7.12 Severability.**

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

**7.13 Paramountcy.**

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

**7.14 Counterparts and Electronic Delivery.**

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

**7.15 Assignment and Enurement.**

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

**[signature page follows]**



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

**263 ADELAIDE LOFTS INC.**

Per: \_\_\_\_\_

Name:

Title:

**LANTERRA DEVELOPMENTS LTD., in trust**

Per: \_\_\_\_\_

Name:

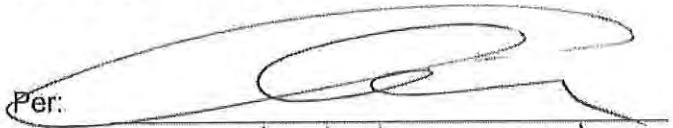
Title:

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

**263 ADELAIDE LOFTS INC.**

Per: \_\_\_\_\_  
Name:  
Title:

**LANTERRA DEVELOPMENTS LTD., in trust**

Per:   
Name: Christopher J. Wern  
Title: Chief Operating officer

**Schedule A  
Real Property**

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

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

**Schedule B**  
**Permitted Encumbrances**

**General**

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

**Specific**

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

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

## FIRST AMENDING AGREEMENT

THIS FIRST AMENDING AGREEMENT (the "Agreement") made effective as of the 27<sup>th</sup> day of April, 2020,

### BETWEEN:

ADELAIDE STREET LOFTS INC.  
(the "Vendor")

- and -

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

### RECITALS:

- (a) The Vendor and the Purchaser entered into an agreement of purchase and sale dated December 20, 2019 (the "Purchase Agreement"), wherein the Vendor agreed to sell and the Purchaser agreed to purchase all of the right, title and interest of the Vendor in and to the Purchased Assets; and
- (b) The Purchaser and the Vendor wish to amend the Purchase Agreement on and subject to the terms and conditions provided in this Agreement.

In consideration of the above, the mutual covenants and agreements set out in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties agree as follows:

#### Section 1 Capitalized Terms.

All capitalized terms used in this Agreement and not otherwise defined herein shall have the respective meanings ascribed thereto in the Purchase Agreement.

#### Section 2 Amendments to the Purchase Agreement.

The definition of "Closing Date" in Section 1.1(7) of the Purchase Agreement is hereby amended by deleting the words "May 14, 2019" and replacing them with "November 16, 2020".

#### Section 3 Time of the Essence.

Except as amended by this Agreement, all other terms and conditions of the Purchase Agreement shall remain unchanged and time shall remain of the essence.

#### Section 4 Paramountcy.

In the case of any conflict between the terms and conditions of the Purchase Agreement and the terms or conditions of this Agreement, the terms and conditions of this Agreement will prevail.

**Section 5 Reference to and Effect on the Purchase Agreement.**

On and after the date of this Agreement, any reference to "this Agreement" in the Purchase Agreement and any reference to the Purchase Agreement in any other agreements will mean the Purchase Agreement, as amended by this Agreement. Except as specifically amended by this Agreement, the provisions of the Purchase Agreement remain in full force and effect.

**Section 6 Successors and Assigns.**

This Agreement becomes effective when executed by all of the parties. After that time, it will be binding upon and enure to the benefit of the parties and their respective successors and permitted assigns.

**Section 7 Governing Law.**

This Agreement is governed by, and will be interpreted and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein.

**Section 8 Electronic Delivery.**

This Agreement may be executed by the parties and transmitted by fax or other electronic means and if so executed and transmitted this Agreement will be for all purposes as effective as if the parties had executed and delivered an original agreement.

**Section 9 Counterparts.**

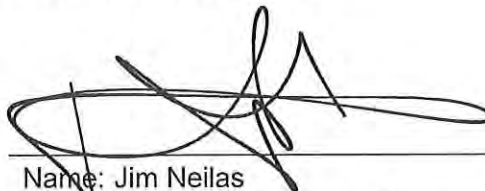
This Agreement may be executed in any number of original counterparts, with the same effect as if all the parties had signed the same document and will become effective when one or more counterparts have been signed by all of the parties and delivered to each of the other parties. All counterparts will be construed together and evidence only one agreement, which, notwithstanding the dates of execution of any counterparts, will be deemed to be dated the date first above written.

*(signature page follows)*

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

**ADELAIDE STREET LOFTS INC.**

Per:



\_\_\_\_\_  
Name: Jim Neilas  
Title: Authorized Signing Officer  
I have authority to bind the corporation

**LANTERRA DEVELOPMENTS LTD., in trust**

Per:

\_\_\_\_\_  
Name: Christopher Wein  
Title: Authorized Signing Officer  
I have the authority to bind the corporation



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

**ADELAIDE STREET LOFTS INC.**

Per: \_\_\_\_\_

Name: Jim Neilas

Title: Authorized Signing Officer

I have authority to bind the corporation

**LAN TERRA DEVELOPMENTS LTD., in trust**

Per: \_\_\_\_\_

  
Name: Christopher Wein

Title: Authorized Signing Officer

I have the authority to bind the corporation

[Signature Page – First Amending Agreement]

**Schedule C**

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

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

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

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

**CERTIFICATE**

**RECITALS**

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

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

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

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

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

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

**AIRD & BERLIS LLP**

Per: \_\_\_\_\_

Name:

Title:

**STIKEMAN ELLIOTT LLP**

Per: \_\_\_\_\_

Name:

Title:

**MCCARTHY TETRAULT LLP**

Per: \_\_\_\_\_

Name:

Title:

**MILLER THOMSON LLP**

Per: \_\_\_\_\_

Name:

Title:

**Schedule D**

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

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

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

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

**REPRESENTATIVE COUNSEL CERTIFICATE**

**RECITALS**

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

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

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

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

REPRESENTATIVE COUNSEL CERTIFIES the following:

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

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

Per: \_\_\_\_\_  
Name:  
Title:

### **Schedule E — Purchased Assets**

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

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

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

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



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

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

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

**Schedule H — Legal Description of the Property**

**PIN 21411-0294 (LT)**

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

HI-RISE CAPITAL LTD.  
Applicant/Moving Party

SUPERINTENDENT OF FINANCIAL SERVICES *et. al.*  
Respondents

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

**ORDER**

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