

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

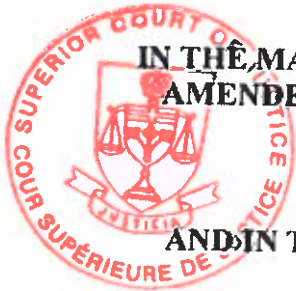
THE HONOURABLE

)
)
)
)

MONDAY, THE 23rd

MR. JUSTICE HAINEY

DAY OF NOVEMBER, 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.

**ORDER
(Distribution Plan Approval)**

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 (the "**Opt Out Investors**")) that have invested funds in a syndicated mortgage investment (the "**Mortgage**") administered by Hi-Rise Capital Ltd. ("**Hi-Rise**"), in respect of the proposed development known as the "Adelaide Street Lofts" (the "**Project**") at the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the "**Property**") and owned by Adelaide Street Lofts Inc. (the "**Company**"), was heard this day at the Court House, 330 University Avenue, Toronto, Ontario.

ON READING the Sixth Report of Representative Counsel dated November 6, 2020 (the "**Sixth Report**") and the Supplementary Sixth Report dated November 20, 2020 (the "**Supplementary Report**") and on hearing the submissions of Representative Counsel, counsel to

Hi-Rise, the Company, the Financial Services Regulatory Authority of Ontario, Meridian Credit Union Limited (“**Meridian**”), the Opt Out Investors, and Lanterra Developments Ltd. ↵

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPROVAL OF REPORT & CONDUCT

2. **THIS COURT ORDERS** that the Sixth Report and Supplementary Report of Representative Counsel and the activities and conduct of Representative Counsel, as disclosed therein, be and are hereby approved, provided that such approval is without prejudice to Objecting Investors (as such term is defined at paragraph 10(b) of the Sixth Report).

APPROVAL OF DISTRIBUTION PLAN

3. **THIS COURT ORDERS** that Representative Counsel be and it is hereby authorized (but not obligated) to implement and conduct the Distribution Plan (as defined in the Sixth Report) in respect of the Investors in accordance with the procedures described in the attached Schedule “A” (the “**Distribution Plan Procedures**”).

4. **THIS COURT ORDERS AND DECLARES** that all Investors whose investments in the Mortgage are held in trust by Community Trust Company (collectively, the “**Registered Investors**”) shall, for the purposes of the Distribution Plan and entitlements calculated thereunder, be treated *pari passu*, and shall share *pro rata* in a single class based on the amounts of investments (including accrued interest).

5. **THIS COURT ORDERS AND DECLARES** that, all Investors whose investments in the Mortgage are held in trust and administered by Hi-Rise (collectively, the “**Non-Registered Investors**”) shall, for the purposes of the Distribution Plan and entitlements calculated thereunder, be treated *pari passu*, and shall share *pro rata* in a single class based on the amounts of investments (including accrued interest), provided that the claims and entitlements of Objecting Investors

shall be determined in accordance with the Distribution Plan Procedures.

NOTICE OF PAYMENT AMOUNTS

6. **THIS COURT ORDERS** that the form of Investor Payment Notice (including the attached Objection Notice) attached as Schedule "B" hereto be and it is hereby approved.

7. **THIS COURT ORDERS** that, unless otherwise authorized by this Court, any Investor who does not file an Objection Notice with Representative Counsel during the Objection Period (as such terms are defined in the form of Investor Payment Notice attached as Schedule "B" hereto) shall be deemed to have: (i) accepted the Investor Claim Amount and the Investor Payment Amount set out in his or her Investor Payment Notice, and (ii) waived any further objection to the Investor Claim Amount and the Investor Payment Amount set out in his or her Investor Payment Notice or any further distribution amounts under the Distribution Plan.

RESOLUTION OF OBJECTIONS

8. **THIS COURT ORDERS AND DECLARES** that Representative Counsel is authorized to settle the claim of any Objecting Investor or any Investor who files an Objection Notice on such terms as are deemed reasonable and appropriate as determined by Representative Counsel and approved by the Official Committee.

NOTICES & COMMUNICATIONS

9. **THIS COURT ORDERS** that any notice or other communication to be given under this Order by an Investor to Representative Counsel shall be in writing in substantially the form provided for in this Order and will be sufficiently given only if given by mail, telecopier, courier or other means of communication addressed as set out in the Distribution Procedures. Representative Counsel shall be deemed to have received any document sent pursuant to this Order two (2) Business Days (as defined in the Distribution Procedures) after the document is sent by mail and one (1) Business Day after the document is sent by courier, e-mail or facsimile transmission.

facsimile transmission. An Investor shall be deemed to have received any document sent pursuant to this Order one (1) Business Day after the document is sent by any means.

OTHER ADMINISTRATIVE MATTERS

11. **THIS COURT ORDERS** that the Dissolved Corporate Investor Procedure, the Incapacitated Investor Procedure and the Deceased Investor Procedure (as such terms are defined in the Sixth Report) be and they are hereby approved.

12. **THIS COURT ORDERS** that Representative Counsel is hereby authorized and entitled to adopt and implement any other procedures it deems necessary in its sole discretion as it relates to its implementation of the Distribution Plan.

13. **THIS COURT ORDERS** that Representative Counsel is entitled to rely on and comply with any assignment of claim, direction regarding payment of funds or other similar document signed by an Investor directing that an Investor Payment Amount (or any part thereof) be directed to a third-party, provided that an original of such signed document is delivered to Representative Counsel by a law firm.

GENERAL

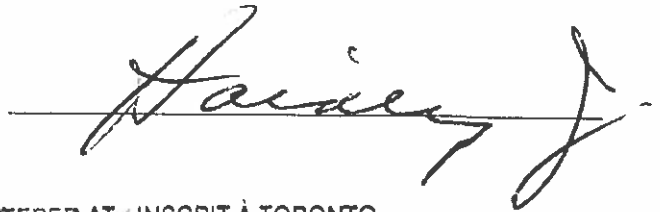
14. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist Representative Counsel and its agents in carrying out the terms of this Order. All courts,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

15. **THIS COURT ORDERS** that Representative Counsel be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order,

16. **THIS COURT ORDERS** that Representative Counsel may apply to this Court for advice and direction in connection with the discharge or variation of its powers and duties under this Order.

SEALING ORDER

17. **THIS COURT ORDERS** that Confidential Appendices 1 and 2 to the Sixth Report shall be permanently sealed and not form part of the public record.

A handwritten signature in black ink, appearing to read "Huscroft", written over a horizontal line.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

NOV 24 2020

PER / PAR:

A handwritten signature in black ink, appearing to be a stylized initial or name.

Schedule "A"

Distribution Plan Procedures

Hi-Rise Capital Ltd. and the Adelaide Street Lofts Project

Pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated March 21, 2019 (the "**Appointment Order**"), Representative Counsel was appointed to represent all individuals and/or entities ("**Investors**") that hold an interest in a syndicated mortgage administered by Hi-Rise Capital Ltd. ("**Hi-Rise**") in respect of the proposed development known as the "Adelaide Street Lofts" at the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the "**Property**") and owned by Adelaide Street Lofts Inc., 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.

A copy of the Appointment Order is available at <https://www.millerthomson.com/wp-content/uploads/2019/03/Representative-Counsel-Appointment-Order.pdf>

Overview of Distribution Plan

1. The Property was sold to Lanterra Developments Ltd. (the "**Lanterra Transaction**") on November 16, 2020. Pursuant to the Order of the Court dated April 27, 2020, Representative Counsel is authorized to distribute the net sale proceeds of the Lanterra Transaction to Investors.
2. Pursuant to an Order dated November 23, 2020 (the "**Distribution Plan Order**"), the Court approved the Distribution Plan described in the Sixth Report of Representative Counsel dated November 5, 2020 and the Supplemental Report of Representative Counsel dated November 19, 2020 (together, the "**Sixth Report**"). Copies of the Distribution Plan Order and the Sixth Report are available at <https://www.millerthomson.com/en/hirise/>
3. These Distribution Plan Procedures govern implementation and conduct of the Distribution Plan, under which Investors shall receive their distributions under the Minutes of Settlement (as amended by the Amending Agreement dated April 27, 2020 and the Second Amending Agreement dated November 13, 2020 (collectively, the "**Minutes**", a copy of which is included in the Sixth Report).

Classification of Investors

4. Investors shall be categorized as either: (1) Registered Investors, or (2) Non-Registered Investors, in accordance with the Master Index prepared by Hi-Rise and approved by the Court in the Distribution Plan Order.
5. Where an Investor is both a Registered Investor and a Non-Registered Investor, such Investor shall participate as both a Registered Investor and a Non-Registered Investor to the extent of his or her respective investments as such.

Priority of Investor Claims

6. Amounts available to satisfy Investor claims shall be distributed in the following priority:

- First, to Registered Investors, for principal and interest to November 16, 2020; and
- Second, to Non-Registered Investors, *pro rata* for principal and interest to November 16, 2020.

Objections to Distribution Plan

7. Certain Investors have objected to the Distribution Plan and are thus deemed to be **Objecting Investors** (as defined in the Sixth Report).
8. The Objecting Investor Reserve (as defined in the Sixth Report) has been established in respect of the claims of Objecting Investors.
9. Pursuant to the Distribution Plan Order, Representative Counsel is authorized to settle any claim of an Objecting Investor on such terms as are deemed reasonable and appropriate by Representative Counsel and approved by the Official Committee.
10. In the event that Representative Counsel and the Objecting Investor are unable to reach an agreement, then Representative Counsel shall be entitled to refer the matter to the Court or a Claims Officer (as defined below) for resolution.

Determination of Investor Claims

11. Each individual Investor claim shall be determined and calculated based on the amount invested by the Investor plus interest accrued at the rate specified in such Investor's Loan Participation Agreement through the date of the closing of the Lanterra Transaction (*ie*, November 16, 2020), net of any amounts previously paid to the Investor (the "**Investor Claim Amount**").

Notice of Investor Payment Amounts

12. Pursuant to the Distribution Plan Order, Representative Counsel was authorized to provide each Investor with an Investor Payment Notice setting out the Investor Claim Amount and the anticipated *pro rata* amount that the Investor will receive based upon the Investor Claim Amount (the "**Investor Payment Amount**").

Objection to Investor Payment Amount

13. Any Investor who objects to the Investor Claim Amount or the Investor Payment Amount set out in an Investor Payment Notice has 14 days from the date of receipt (calculated in accordance with the Distribution Plan Order) of the Investor Payment Notice (the "**Objection Period**") to notify Representative Counsel of the objection to the Investor Claim Amount or the Investor Payment Amount by delivering to Representative Counsel a Notice of Objection in the form attached to the Investor Payment Notice.
14. Any Investor who does not deliver a Notice of Objection to Representative Counsel within the Objection Period shall be deemed to have accepted the Investor Claim Amount and the Investor Payment Amount set out in the Investor Payment Notice, and any further claims may be permanently extinguished.

15. Representative Counsel strongly recommends that any Investor who wishes to object to the Investor Claim Amount or the Investor Payment Amount immediately seek independent counsel.

Delivery of Investor Payment Amounts

16. Upon expiry of the Objection Period in respect of an Investor, Representative Counsel shall seek Court approval of the Investor Claim Amounts and the Investor Payment Amounts and authority to deliver same to the Investors in full and final satisfaction of their claims.
17. Investor Payment Amounts may be paid to the Investors in one or more tranches as deemed appropriate by Representative Counsel.

Resolution of Objections to Investor Claim Amounts or Investor Payment Amounts

18. Pursuant to the Distribution Plan Order, Representative Counsel is authorized to settle any Notice of Objection on such terms as are deemed reasonable and appropriate by Representative Counsel and approved by the Official Committee.
19. Upon receipt of a Notice of Objection during the Objection Period, Representative Counsel shall contact the Investor that delivered the Notice of Objection in order to determine the basis for the objection, with a view toward resolving same. In the event that Representative Counsel and the Investor resolve the objection, then the Payment Amount shall be the amount agreed between such parties.

Resolution by Claims Officer

20. In the event that Representative Counsel is unable to reach an agreement with an Objecting Investor or with any Investor objection to an Investor Payment Notice, then Representative Counsel shall be entitled to refer the matter to the Court or to a retired Judge of the Court appointed by Representative Counsel to act as claims officer (the "Claims Officer") for resolution.
21. In the event that Representative Counsel determines that it is appropriate to appoint a Claims Officer, such appointment shall be on such terms (including regarding compensation) as Representative Counsel and the Official Committee deem reasonable and appropriate.
22. Pursuant to the Distribution Plan Order and the Distribution Procedures, if appointed by Representative Counsel, the Claims Officer is authorized and directed to:
 - a. Establish rules for the determination process that incorporate or are otherwise consistent with the Distribution Plan Order and the Distribution Procedures,
 - b. Determine all procedural issues which may arise in the course thereof (including the manner in which evidence may be adduced),
 - c. Award costs in his or her discretion, and
 - d. Provide written reasons for his or her determinations (a "Claims Officer Decision").

23. Within ten (10) days of receiving notice of a Claims Officer Decision, an affected party may appeal such Claims Officer Decision by delivering a notice of appeal to the Court. If no affected party appeals the Claims Officer decision within the ten (10) day period then the Claims Officer Decision is final and binding, without further right of appeal, review or recourse to the Court.

Communications & Notices

24. All communications sent to Representative Counsel must be delivered as follows:

Miller Thomson LLP, as Representative Counsel
Scotiabank Plaza, Suite 5800
40 King Street West
Toronto, ON M5H 3S1

Attention: Gregory Azeff / Stephanie De Caria
Email: gazeff@millerthomson.com / sdecaria@millerthomson.com

Schedule "B"
Investor Payment Notice

**Notice of Proposed Distribution Plan and Treatment of Investors
in Hi-Rise Capital Ltd. and the Adelaide Street Lofts Project**

Pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated March 21, 2019 (the "Appointment Order"), Representative Counsel was appointed to represent all individuals and/or entities ("Investors") that hold an interest in a syndicated mortgage administered by Hi-Rise Capital Ltd. ("Hi-Rise") in respect of the proposed development known as the "Adelaide Street Lofts" at the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the "Property") and owned by Adelaide Street Lofts Inc., 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.

Unless otherwise defined herein, capitalized terms in this Investor Payment Notice are as defined in the Appointment Order, a copy of which is available at <https://www.millerthomson.com/wp-content/uploads/2019/03/Representative-Counsel-Appointment-Order.pdf>

Purpose of Notice

The purpose of this Notice is to notify you of the estimated amount (the "Investor Payment Amount") to which you are entitled under the Distribution Plan described in the Sixth Report of Representative Counsel dated November 6, 2020 (the "Sixth Report") and the Supplemental Report dated November 20, 2020 (the "Supplemental Report"), as approved by the Order of the Court dated November 23, 2020 (the "Distribution Plan Approval Order").

A copy of the Sixth Report, the Supplemental Report and Representative Counsel's Motion Record returnable November 23, 2020 are available at <https://www.millerthomson.com/en/hirise/>. A copy of the Distribution Plan Approval Order is available at <https://www.millerthomson.com/en/hirise/>.

Your Classification & Investor Payment Amount

Under the Distribution Plan, Investors are treated as either Registered Investors or Non-Registered Investors unless they are Objecting Investors (as defined in the Distribution Plan Approval Order and the Sixth Report).

Class:	Registered Investor / Non-Registered Investor
Principal Investment Amount:	\$•
Accrued Interest:	\$•
Total Claim:	\$•
Recovery Percentage:	\$•
Investor Payment Amount:	\$•

If you agree with your Investor Payment Amount then there is nothing further for you to do.

Objections

Investors who wish to object to the Investor Payment Amount set out above must deliver a Notice of Objection in the form attached as **Schedule "A"** to Representative Counsel within 14 days of the date of this Investor Payment Notice (the "**Objection Period**").

Representative Counsel intends to seek Court approval of the Investor Payment Amounts as soon as possible following expiry of the objection period.

Note that an Order approving the Payment Amounts will be binding on all Investors including with respect to the proposed treatment of Non-Registered Investors. Investors who do not deliver a Notice of Objection to Representative Counsel within the Objection Period shall be deemed to have waived any right to challenge the Investor Payment Amount set out herein.

Representative Counsel strongly recommends that Non-Registered Investors who wish to object to the Payment Amount immediately seek independent counsel.

DATE: December 9, 2020

Schedule "A"

Investor Payment Objection Notice

I, _____, an Investor in a 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 (the "Property"), hereby give notice that I object to the Investor Payment Amount set out in my Investor Payment Notice dated November 9, 2020.

I acknowledge that Representative Counsel recommends that Investors who wish to object to their Investor Payment Amount immediately seek independent counsel. I understand that Representative Counsel will not represent me or provide me with legal advice in connection with my objection.

Below or on a separate attached page please briefly described the basis for your objection:

Name: _____
Date: _____
Signature: _____

HI-RISE CAPITAL LTD.
Applicant

and
SUPERINTENDENT OF
FINANCIAL SERVICES et. al.
Respondents

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

ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST

Proceeding commenced at Toronto

DISTRIBUTION PLAN 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