

**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.**

**MOTION RECORD OF REPRESENTATIVE COUNSEL
(RETURNABLE APRIL 7, 2022)**

March 29, 2022

MILLER THOMSON LLP

40 King Street West
Suite 5800
Toronto Ontario
M5H 3S1, Canada

Gregory Azeff LSO#: 45324C

Tel: 416.595.2660 / Fax: 416.595.8695

Email: gazeff@millertomson.com

Stephanie De Caria LSO#: 68055L

Tel: 416.597.2652 / Fax: 416.595.8695

Email: sdecaria@millertomson.com

Representative Counsel

SERVICE LIST
(As of March 29, 2022)

TO: THORNTON GROUT FINNIGAN LLP
100 Wellington Street West Suite 3200
Toronto, Ontario
M5K 1K7

John L. Finnigan
Tel: 416-304-1616
Fax: 416-304-1313
Email: jfinnigan@tgf.ca

Tamara Markovic
Tel: 416-304-0601
Fax: 416-304-1313
Email: tmarkovic@tgf.ca

Lawyers for the Respondent,
Superintendent of Financial Services

AND TO: CASSELS BROCK & BLACKWELL LLP
40 King Street West, Suite 2100
Toronto, ON M5H 3C2

John N. Birch
Tel: 416-860-5225
Fax: 416-640-3057
Email: jbirch@casselsbrock.com

Stephanie Voudouris
Tel: 416-860-6617
Fax: 416-640-3057
Email: svoudouris@casselsbrock.com

Lawyers for the Applicant,
Hi-Rise Capital Ltd.

AND TO: NORTON ROSE FULBRIGHT
222 Bay Street, Suite 3000
Toronto, Ontario M5K 1E7

Jennifer Teskey
Tel: 416.216.2303
Email: jennifer.teskey@nortonrosefulbright.com

Lawyers for the Applicant,
Hi-Rise Capital Ltd

AND TO: **STIKEMAN ELLIOT LLP**
5300 Commerce Court West,
199 Bay Street
Toronto, ON
M5L 1B9

Ashley Taylor
Tel: 416.869.5236
Fax: 416.947.0866
Email: ataylor@stikeman.com

Eric Carmona
Tel: 416.869.5597
Fax: 416.947.0866
Email: ecarmona@stikeman.com

Sanja Sopic
Tel: 416.869.6825
Fax: 416.947.0866
Email: SSopic@stikeman.com

Lawyers for Lanterra Developments

AND TO: **MCCARTHY TÉTRAULT LLP**
TD Bank Tower
66 Wellington Street West, Suite 5300
Toronto, ON M5K 1E6

Geoff R. Hall (LSO #347010)
Tel: 416.601.7856
Fax: 416.868.0673
Email: ghall@mccarthy.ca

Junior Sirivar
Tel: 416.601-7750
Email: jsirivar@mccarthy.ca

Lawyers for Adelaide Street Lofts Inc.

AND TO: **YUNUSOV LAW PROFESSIONAL CORPORATION**
330 Bay Street, Suite 1400
Toronto, ON M5H 2S8

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

Lawyers for the Respondent,
David Pozo

AND TO: **AIRD & BERLIS LLP**
Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Canada M5J 2T9

Steven Graff
Tel: 416.865.7726
Fax: 416.863.1515
Email: sgraff@airdberlis.com

Lawyers for Meridian Credit Union

AND TO **RORY MCGOVERN PC**
133 Richmond St. West, Suite 200
Toronto, ON M5H 2L3

Rory P. McGovern (LSO# 65633H)
Tel: 416-938-7679
Fax: 647-559-9694
Email: rory@rorymcgovernpc.com

Lawyers for the respondents, Nadeem and Uzma Ghori

AND TO: **KAGAN SHASTRI LLP**
Lawyers
188 Avenue Road
Toronto ON M5R 2J1

Rahul Shastri (33475V)
Tel: (416) 368-2100 ext. 223
Fax: (416) 324-4200
Email: rshastri@ksllp.ca

Lawyers for the Respondent, Anoop Sayal

AND TO: **ALVAREZ & MARSAL CANADA INC.**
Royal Bank Plaza, South Tower
200 Bay Street, Suite 2900
Toronto, Ontario, M5J 2J1

Steve Ferguson
Tel: 416 847 5162
Fax: +1 416 847 5201
Email: sferguson@alvarezandmarsal.com

Court-appointed Information Officer

AND TO: **CANADA REVENUE AGENCY**
c/o Department of Justice
Ontario Regional Office
The Exchange Tower, Box 36
130 King Street West, Suite 3400
Toronto, Ontario M5X 1K6

Diane Winters

Tel: 416.952.8563

Email: diane.winters@justice.gc.ca

AND TO: **MINISTRY OF FINANCE**

Legal Services Branch

College Park, 777 Bay Street, 11th Floor

Toronto, Ontario M5G 2C8

Email: insolvency.unit@ontario.ca

AND TO: **QUESTRADE, INC.**

5700 Yonge St., Suite 1900

Toronto, Ontario M2M 4K2

Lawrence Horowitz

Tel: 416.993.1937

Fax: 1.888.767.1736

Email: lhowitz@questrade.com

Counsel to Community Trust

AND TO: **LANTERRA DEVELOPMENTS**

2811 Dufferin St.

Toronto, Ontario M6B 3R9

Email: tmwatson@lanterradev.com

AND TO: **MCCARTHY TÉTRAULT LLP**

TD Bank Tower

66 Wellington Street West, Suite 5300

Toronto, ON M5K 1E6

Anu Koshal (LSO #66338F)

Tel: 416.601.7991

Email: akoshal@mccarthy.ca

Lawyers for 263 Holdings Inc.

EMAIL SERVICE LIST:

jfinnigan@tgf.ca; tmarkovic@tgf.ca; jbirch@casselsbrock.com; svoudouris@casselsbrock.com;
jennifer.teskey@nortonrosefulbright.com; gianni.bianchi@nortonrosefulbright.com; ataylor@stikeman.com;
ecarmona@stikeman.com; SSopic@stikeman.com; ghall@mccarthy.ca; akoshal@mccarthy.ca;
jsirivar@mccarthy.ca; pulat@lawto.ca; sgraff@airdberlis.com; rory@rorymcgovernpc.com;
rshastri@ksllp.ca; john.salmas@dentons.com; robert.kennedy@dentons.com;
sferguson@alvarezandmarsal.com; diane.winters@justice.gc.ca; insolvency.unit@ontario.ca;
tmwatson@lanterradev.com; lhowitz@questrade.com; maja@lawto.ca; pozod33@gmail.com;
akoshal@mccarthy.ca

**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.**

I N D E X

Tab	Description
1	Notice of Motion, returnable April 7, 2022
2	Ninth Report of Representative Counsel dated March 29, 2022
Appendices	
A	Order and Endorsement of the Honourable Mr. Justice Hainey dated March 22, 2019
B	Order and Endorsement of Justice Hainey dated April 15, 2019
C	Minutes of Settlement
D	Approval and Vesting Order of Justice Hainey dated April 27, 2020
E	Order of Justice Hainey dated November 23, 2020
F	Initial Distribution Order of Justice Hainey dated March 17, 2021
G	Seventh Report dated March 10, 2021
H	Supplemental Seventh Report dated March 16, 2021
I	Eighth Report dated March 12, 2021
J	Mutual Release
K	Decision of Justice Dunphy dated May 13, 2021
L	Cost Award of Justice Dunphy dated June 24, 2021
M	Order of Justice Hainey dated Wednesday April 22, 2020
N	Sixth Report dated November 6, 2020
O	Supplemental Sixth Report dated November 20, 2020
P	Template Investor Payment Notice
Q	Initial Distribution Notice
R	Template letter Community Trust Company delivered to Registered Investors
S	Olympic Trust welcome letter and Declaration of Trust document
T	Trust Agreement and attached Schedule "A" Particulars of the Additional Security
U	Letter to the Outstanding Investors dated November 30, 2021

V	Representative Counsel's letter dated February 1, 2022
W	Email thread between Representative Counsel and counsel to Hi-Rise dated March 16, 2021
X	Final Distribution Notice
Y	Printout of the Miller Thomson LLP's Website
Z	Update on Distribution for Registered Investors dated March 10, 2021
AA	Update on the Eighth Report and Municipal Tax Motion dated March 12, 2021
BB	Update on Distribution from Registered Investors dated March 31, 2021
CC	Update on Distribution for Non-Registered Investors dated April 12, 2021
DD	Update on Final Distribution dated April 20, 2021
EE	Update on Municipal Tax Motion dated June 11, 2021
FF	Update on Final Distribution Payment dated August 17, 2021
GG	Update on Final Distribution and Final Distribution Motion dated March 7, 2022
HH	Update and Summary of Details on Final Distribution
II	Order of Justice Hainey dated September 17, 2019
JJ	Fee Affidavit of Gregory Azeff of Miller Thomson LLP sworn March 29, 2022
KK	First Report dated April 9, 2019
LL	Second Report dated September 13, 2019
MM	Third Report dated October 18, 2019
NN	Fourth Report dated January 9, 2020
OO	Fifth Report dated April 6, 2020
PP	Supplemental Fifth Report dated April 21, 2020
3	Draft Final Distribution Approval Order
4	Draft Ancillary Order
Confidential Appendices	
1	Confidential Settlement Brief
2	Confidential Appendix Brief
3	Confidential Missing Investor Brief

TAB 1

**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.**

NOTICE OF MOTION

The moving party, Miller Thomson LLP, in its capacity as Court-appointed Representative Counsel (in such capacity, “**Representative Counsel**”) appointed pursuant to the Order of the Honourable Mr. Justice Hainey dated March 21, 2019 (the “**Appointment Order**”) to represent the interests of all individuals and/or entities (the “**Investors**”, which term does not include persons who have opted out of such representation in accordance with the Appointment Order) that have invested funds in a syndicated mortgage investment (the “**Syndicated Mortgage**”) administered by Hi-Rise Capital Ltd. (“**Hi-Rise**”) in respect of the proposed development known as the “Adelaide Street Lofts” (the “**Project**”) at the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the “**Property**”) and owned by Adelaide Street Lofts Inc. (the “**Company**”), will make a motion to a Judge presiding over the Commercial List on April 7, 2022 at 11:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, 8th Floor, Toronto, Ontario M5G 1R7.

PROPOSED METHOD OF HEARING: The Motion is to be heard

[] In writing under subrule 37.12.1(1) because it is ;

- In writing as an opposed motion under subrule 37.12.1(4);
- In person;
- By telephone conference;
- By video conference.

at the following location

<https://millerthomson.zoom.us/j/86471325212?pwd=ekVEdUVIeGtaVEloYzVIZG92QS9Ddz09>

THE MOTION IS FOR

1. An Order substantially in the form of the draft Order attached at Tab 3 of the Motion Record (the “**Final Distribution Approval Order**”) for, among other things:

- (a) Abridging and validating the time and method of service of the Notice of Motion and Motion Record, so that the within Motion is properly returnable;
- (b) Approving the Final Claim Index (as defined below);
- (c) Approving the Final Distribution Amount and authorizing Representative Counsel to complete and deliver the Final Distribution to Remaining Investors in accordance with the Final Claim Index and the Final Distribution Notice (as such terms are defined below);
- (d) Approving the form and content of the Final Distribution Notice attached as Schedule “A” to the Final Distribution Approval Order;

- (e) Authorizing and directing Representative Counsel to transfer the Final Distribution Amount to the trust account maintained by the Distribution Agent (the “**Distribution Trust Account**”);
- (f) Authorizing and directing the Distribution Agent to distribute the Final Distribution Amount in the Distribution Trust Account to the Remaining Investors, on a *pro rata* basis, based upon the Final Claim Index;
- (g) Ordering and declaring that it is not open to any Investor or Opt-Out Investor to object to their Investor Claim Amount, classification and other information set out in his or her Investor Payment Notice, and any and all further objections are forever barred and permanently extinguished;
- (h) Declaring that the Settled Investors (as defined below) are exempt from participating in the Final Distribution and from receiving any portion of the Final Distribution Amount;
- (i) Declaring that the Registered Investors (as defined below) are exempt from participating in the Final Distribution and from receiving any portion of the Final Distribution Amount;
- (j) Ordering that the Honorarium (as defined below) is approved, and authorizing and directing Representative Counsel to pay the Honorarium to each of the four (4) members of the Official Committee in equal amounts;
- (k) Declaring that the Missing Investor (as defined below and as described in the Confidential Missing Investor Brief (as defined below), filed), is exempt from the

Initial Distribution and from participating in the Final Distribution, and that any claim of the Missing Investor in these proceedings under the Distribution Plan be forever extinguished and barred;

- (l) Declaring that the total amounts owing to the Missing Investor shall be treated and delivered in accordance with the Missing Investor Settlement Funds Payment Plan (as defined below and described in Schedule “B” to the Final Distribution Approval Order);
- (m) Ordering that upon the 6-month expiry of the delivery of the Final Distribution, any Investors that fail to cash their Final Distribution cheques shall be treated in accordance with the Missing Investor Final Distribution Funds Plan (as defined below and described in Schedule “C” to the Final Distribution Approval Order);
- (n) Ordering and directing the parties to the Minutes (as defined below) to execute the Final Mutual Release (as defined below) upon full and final completion of the Final Distribution in accordance with the proposed Final Distribution Approval Order;
- (o) Ordering that upon full and final completion of the Final Distribution in accordance with the proposed Final Distribution Approval Order and upon full execution of the Final Mutual Release, Representative Counsel may attend to one of the following in order to undertake its discharge in these proceedings:
 - (i) file a certificate in the form attached as Schedule “D” to the Final Distribution Order (the “**Discharge Certificate**”) with the Court, certifying that it has completed all other activities described in this Ninth Report; or

- (ii) if necessary, bring a motion to the Court to report on further matters that may arise, seek Court approval of its further conduct and activities, and seek a court-ordered discharge;

- (p) Ordering that upon the completion of filing a Discharge Certificate, Representative Counsel, each of the members of the Official Committee and the Distribution Agent shall be discharged in such respective capacities in this proceeding, provided however that notwithstanding said discharge: (a) Representative Counsel and the Distribution Agent shall remain in such capacities for the performance of such incidental duties as may be required to complete the administration of the Final Distribution, and (b) the Representative Counsel, the Distribution Agent and each of the members of the Official Committee shall continue to have the benefit of the provisions of all Orders made in this proceeding;
 - (i) Releasing and discharging Representative Counsel, each of the members of the Official Committee and the Distribution Agent from any and all liability while acting in said capacities within these proceedings, save and except for any gross negligence or wilful misconduct; and
 - (ii) Sealing the following private and confidential documents described herein:
 - (a) Confidential Missing Investor Brief; (b) Confidential Settlement Brief; and (c) the Final Claim Index at Confidential Appendix “8”.

2. An Order substantially in the form attached as Tab 4 to the Motion Record (the “**Ancillary Order**”) for, among other things:

- (a) Abridging and validating the time and method of service of the Notice of Motion and Motion Record, so that the within Motion is properly returnable;
- (b) Approving the conduct and activities of Representative Counsel as disclosed in its Eighth Report, and the activities and conduct of Representative Counsel and its Distribution Agent as disclosed in this Ninth Report;
- (c) Approving the fees and disbursements of Representative Counsel, including the fees and disbursements of the Distribution Agent, as disclosed in the Ninth Report;
- (d) Amending the Direction (as defined below) to authorize and direct Representative Counsel to rely on and comply with the Deceased Investor Procedure in respect of the Special Circumstance Deceased Investor (as defined below);
- (e) Sealing Confidential Appendices “1” to “7”; and
- (f) Such further and other Relief as to this Honourable Court may deem just.

THE GROUNDS FOR THIS MOTION ARE:

3. Full details and grounds in support of this motion are set out in the Ninth Report. Capitalized terms not otherwise defined herein have the meaning prescribed to them in the Ninth Report;

Appointment of Representative Counsel, Official Committee and Background on Investors

4. Pursuant to the Appointment Order, Miller Thomson LLP was appointed as Representative Counsel to represent the Investors, with the exception of the Opt-Out Investors;
5. The indebtedness owing by Adelaide to Hi-Rise was secured by way of a second mortgage registered on title to the Property, being the Syndicated Mortgage (the “**Second Mortgage**”);
6. There are two types of Investors in this proceeding:
 - (a) Registered Investors – Registered Investors are Investors that participated in the Second Mortgage through Community Trust Company (“**CTC**”) and made their investment through a registered plan such as a RRSP. Accordingly, as the Registered Investors participated in the Second Mortgage through CTC, their interest in the Second Mortgage ranks ahead of the Non-Registered Investors participating through Hi-Rise; and
 - (b) Non-Registered Investors – Non-Registered Investors are Investors that participated in the Second Mortgage through Hi-Rise and did not make their investment through a registered plan but rather, through a non-registered cash investment. Accordingly, as the Non-Registered Investors participated in the Second Mortgage through Hi-Rise, their interest in the Second Mortgage ranks behind the interests of Registered Investors that participated through CTC;
7. Pursuant to the Appointment Order, Representative Counsel was directed to establish an Official Committee of Investors (the “**Official Committee**”) in accordance with the process and procedure described in Schedule “B” attached to the Appointment Order;

8. Pursuant to the Order and Endorsement of Justice Hainey dated April 15, 2019, the Official Committee was approved and constituted. There are currently four (4) members of the Official Committee. Representative Counsel regularly consults with and takes instruction from the Official Committee;

Settlement and Minutes

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

10. The Judicial Mediation resulted in a settlement (the “**Settlement**”) memorialized in the Minutes of Settlement, as amended (the “**Minutes**”);

11. The Minutes and the Settlement contemplated, among other things, a sale of the Property to Lanterra (the “**Lanterra Transaction**”), and were subsequently approved by the Investors (by way of an Investor vote) and this Honourable Court pursuant to the Approval and Vesting Order of Justice Hainey dated April 27, 2020;

12. On November 16, 2020, the Lanterra Transaction closed, and the amount of \$46,074,666.27 of the proceeds (the “**Net Sale Proceeds**”) was delivered to Representative Counsel;

13. The Minutes contemplate that Representative Counsel shall be responsible for attending to the distribution of the Net Sale Proceeds to the Investors (the “**Distribution**”) and certain other parties set out in section 10 of the Minutes;

14. The Minutes provide that two releases are to be signed by the parties thereto. The parties have already signed the initial mutual release, and a further and final mutual release (the “**Final Mutual Release**”) is required to be signed upon the completion of the Distribution. Accordingly, Representative Counsel is seeking an Order directing the parties to the Minutes to execute the Final Mutual Release upon full and final completion of the Final Distribution in accordance with the proposed Final Distribution Approval Order;

Distribution Plan and Initial Distribution

15. Pursuant to the Order of Justice Hainey dated November 23, 2020, (the “**Distribution Plan Approval Order**”) Representative Counsel’s Distribution Plan and Distribution Plan Procedures were approved (the “**Distribution Plan**”);

16. In accordance with its court-authority, Representative Counsel retained Alvarez & Marsal Canada Inc. (“**A&M**”) as its Distribution Agent in these proceedings (the “**Distribution Agent**”), to assist with undertaking the Distribution Plan;

17. Pursuant to the Order of Justice Hainey dated March 17, 2021 (the “**Initial Distribution Order**”), Representative Counsel was authorized to make an Initial Distribution of up to \$41,010,039.27 (representing the Initial Distribution Amount) to the Investors and the Opt-Out Investors in accordance with the Revised Claim Index, Investor Payment Notices and the Distribution Plan. Accordingly:

- (a) Representative Counsel delivered the total amount of \$23,762,243.67 to CTC, representing amounts owing to Registered Investors in full; and

- (b) Representative Counsel transferred the amount of \$17,247,846.37 to the Distribution Trust Account in respect of the Initial Distribution to be delivered to Non-Registered Investor and certain Opt-Out Investors, and the estimated banking fees of the Distribution Agent;

Notices of Objection Resolved under the Distribution Plan

18. The Distribution Plan provides a mechanism for which Investors were able to object to the details contained in their Investor Payment Notice, *i.e.*, their Investor Claim Amount (representing their total claim in these proceedings comprised of their principal and accrued and unpaid interest) and/or their Investor classification (as a Registered Investor or Non-Registered Investor);

19. Representative Counsel received twenty-two (22) Notices of Objection from Objecting Investors under the Distribution Plan;

20. Representative Counsel, with the assistance of the Official Committee and the Distribution Agent, undertook a lengthy process for resolution of Notices of Objection under the Distribution Plan, the results of which are as follows:

- (a) Representative Counsel determined that there was no basis for sixteen (16) of the Notices of Objection received, and same were marked as resolved/withdrawn;
- (b) Representative Counsel accepted the Notices of Objection of two (2) Objecting Investors, and rectified same; and
- (c) Representative Counsel settled with four (4) Objecting Investors, three (3) of which were settled by way of settlement agreements and one of which was resolved

through an arbitration before a Claims Officer (as prescribed by the Distribution Plan);

21. Full details of these Objecting Investors and the Settled Investors are set out in Confidential Appendices “1” and “2” to the Ninth Report, and the Confidential Settlement Brief to the Ninth Report;

Missing Investor, Proposed Missing Investor Settlement Funds Payment Plan & Proposed Honorarium

22. Despite repeated efforts, Representative Counsel has been unable to locate one (1) Investor in this proceeding. This Missing Investor has not cashed the Initial Distribution cheque. Full details of this Missing Investor are set out in the Confidential Missing Investor Brief to the Ninth Report;

23. The total amount owing to this Missing Investor on account of both the Initial Distribution and proposed Final Distribution is \$13,081.26 (the “**Missing Investor Settlement Funds**”);

24. Since this Missing Investor cannot be located, Representative Counsel recommends that this Court approve the the Missing Investor Settlement Funds Payment Plan attached as Schedule “B” to the proposed Final Distribution Approval Order, which provides as follows (the “**Missing Investor Settlement Funds Payment Plan**”):

- (a) The Missing Investor described in the Confidential Missing Investor Brief is exempt from receiving an Initial Distribution under the Initial Distribution Approval Order and from receiving a Final Distribution under the Final Distribution Approval Order, and that any amounts owing to the Missing Investor in these proceedings under the Distribution Plan be forever extinguished and barred;

- (b) The Missing Investor Settlement Funds, in the amount of \$13,081.26, shall be treated and delivered as follows:
- (i) the Missing Investor Settlement Funds shall be delivered to each of the members of the Official Committee in equal amounts, as an Honorarium (as defined below) for the gratuitous work performed by the Official Committee in connection with these proceedings; and
 - (ii) In the event the Missing Investor makes a claim to the Missing Investor Settlement Funds prior to the issuance of the Final Distribution Order, then Representative Counsel, with the assistance of the Distribution Agent, shall make payment to that Missing Investor on account of its Initial Distribution and proposed Final Distribution;

25. Representative Counsel is seeking Court approval of the proposed honorarium in the amount of \$13,081.26 (the “**Honorarium**”) payable to the four (4) members of the Official Committee in equal amounts (*i.e.*, the amount of \$3,270.31 each), representing the Missing Investor Settlement Funds noted above;

26. In Representative Counsel’s view, the members of the Official Committee have played a critical role in these proceedings since their appointment in April 2019 and in the success of the Settlement, ultimately to the benefit of each of the Investors. Representative Counsel is fortunate to have worked with the members of the Official Committee in this proceeding, and believe that their gratuitous work and the benefit that they have conferred to the Investors ought to be recognized;

27. The members of the Official Committee have not been given advance notice of the proposed Honorarium. The proposed Honorarium will not materially prejudice any of the Investors (as it represents monies that would otherwise be payable to the Missing Investor), and the Missing Investor Settlement Funds Payment Plan accounts for the possibility that the Missing Investor may revive and make a claim to the Distribution;

Proposed Final Distribution, Final Distribution Notice and Final Reserve

28. In support of the Final Distribution, the Distribution Agent has prepared the Final Claim Index, filed as Confidential Appendix “8” to the Ninth Report. The Final Claim Index sets out: (a) the name, address and investor number of each Investor participating in and receiving the Final Distribution, being the Non-Registered Investors and certain Opt-Out Investors (the “**Remaining Investors**”), excluding the Investors described below which are expressly excluded from the Final Claim Index; (b) the principal amount of each Remaining Investors’ investment; (c) the interest accrued thereon and outstanding; (d) each Remaining Investors’ Investor Claim Amount; and (e) each Remaining Investors’ Initial Distribution amount already received;

29. The Final Claim Index does not include the following Investors, and for greater certainty, the following Investors will not participate in the Final Distribution or receive a Final Distribution cheque under the Distribution Plan and are not Remaining Investors: (a) The Missing Investor described in the Confidential Missing Investor Brief, for the reasons set out therein; (b) the four (4) Settled Investors described in the Confidential Settlement Brief, for the reasons set out therein; and (c) the Registered Investors in this proceeding, as all Registered Investors have been paid in full through the Initial Distribution.

30. For the purposes of clarity and finality, Representative Counsel is seeking an Order declaring that the above-noted Investors are exempt from the Final Distribution;

31. Based on the Final Claim Index, the Remaining Investors' Investor Claim Amount totals \$47,855,070.94, inclusive of both principal and accrued and unpaid interest and the Initial Distribution amount already paid to the Remaining Investors totals \$16,529,141,16;

32. Representative Counsel currently has \$1,533,369.10 in hand (the "**Final Remaining Funds**");

33. Representative Counsel recommends that an amount of \$112,000.00 be held back from the Remaining Funds (the "**Final Reserve**"), which accounts for the anticipated fees and disbursements of both Representative Counsel and its Distribution Agent. The Final Reserve is required for the purposes of: (i) completing the Final Distribution; (ii) attending to any contingencies or matters that may arise from the Final Distribution; and (iii) attending to all matters that are required to be completed in advance of Representative Counsel's discharge;

34. After accounting for the Honorarium and the Final Reserve, Representative Counsel is proposing a Final Distribution in the amount of \$1,408,287.84 (the "**Final Distribution Amount**") to be distributed to the Remaining Investors *pro rata* based upon the Final Claim Index, or in other words, 2.94% of the Remaining Investors' Investor Claim Amount. Full details in respect of the Final Distribution are set out in the Distribution Summary prepared by the Distribution Agent in the Ninth Report;

Proposed Missing Investor Final Distribution Funds Plan

35. Representative Counsel recommends that a contingency plan be put in place in the event that there are additional missing Investors in the Final Distribution (*i.e.*, Remaining Investors participating in the Final Distribution that do not cash their Final Distribution cheque). In the event that Representative Counsel is unable to locate these Remaining Investors and the any of the Final Distribution cheques become stale-dated, Representative Counsel recommends that this Court approve the Missing Investor Final Distribution Funds Plan attached as Schedule “C” to the Final Distribution Approval Order, which provides as follows (the “**Missing Investor Final Distribution Funds Plan**”):

- (a) Upon the 6-month expiry from the date of delivery of the Final Distribution (*i.e.*, the date of mailing out of the Final Distribution cheques by the Distribution Agent), any Investors entitled to a Final Distribution that fail to cash their Final Distribution cheque (“**Missing Final Distribution Investors**”) are exempt from receiving an Final Distribution under the Final Distribution Plan Approval Order and any amounts owing to the Missing Final Distribution Investors under the Final Distribution Approval Order (the “**Missing Investor Final Distribution Funds**”) be forever extinguished and barred;
- (b) For greater certainty, after the six (6) month expiry from the date of delivery of the Final Distribution (*i.e.*, the date of mailing out of the Final Distribution cheques by the Distribution Agent), any and all Final Distribution Missing Investors shall be barred from seeking a reissued Final Distribution cheque from the Distribution

Agent, and the Distribution Agent shall not be required to reissue the Final Distribution cheque;

(c) Upon the 6-month expiry of the delivery of the Final Distribution (*i.e.*, the date of mailing out of the Final Distribution cheques by the Distribution Agent), the Missing Investor Final Distribution Funds shall be applied as follows:

- (i) the Missing Investor Final Distribution Funds shall be delivered to each of the members of the Official Committee in equal amounts, as a subsequent Honorarium (the “**Subsequent Honorarium**”) for the gratuitous worked performed by the Official Committee in connection with these proceedings, provided that the amount of the Missing Final Distribution Funds payable as the Subsequent Honorarium does not exceed \$40,000 (in other words, the amount of \$10,000 payable to each member of the Official Committee); and
- (ii) In the event that the amount of the Missing Investor Final Distribution Funds exceeds \$40,000, then Representative Counsel shall pay any amount above the \$40,000 into Court, on notice to the Missing Final Distribution Investors;

36. Representative Counsel and the Distribution Agent believe that the above-noted Missing Investor Final Distribution Funds Plan is a fair, reasonable and practical way to manage the possibility of uncashed cheques in the Final Distribution process. It will allow Representative Counsel and the Distribution Agent to distribute any unclaimed/uncashed funds appropriately, and it will eliminate the possibility of there being any delay to their respective discharges in these proceedings;

37. Representative Counsel believes that the maximum amount of \$40,000 is fair and reasonable as a Subsequent Honorarium. Representative Counsel also notes that the Subsequent Honorarium forms part of a contingency plan, and may never crystallize;

38. The members of the Official Committee have not been given advance notice of the potential Subsequent Honorarium. The Subsequent Honorarium will not materially prejudice the Remaining Investors as it represents monies otherwise payable to certain Remaining Investors under the Final Distribution and would not otherwise form part of the monies payable to all other Remaining Investors;

Representative Counsel Fees and Disbursements

39. Representative Counsel seeks approval of its fees and disbursements in respect of the Pre-Appointment Fee Period and Post-Appointment Fee Period, including the fees and disbursements of the Distribution Agent, as described in the Ninth Report;

40. In particular, Representative Counsel seeks approval of the amount of \$1,759,971.28 on account of its fees and disbursements. The full details and breakdown of the above-noted total fees in this proceeding are set out in the Fee Affidavit of Gregory Azeff sworn March 22, 2019, attached as Appendix “JJ” to the Ninth Report (the “**Fee Affidavit**”);

41. In light of the length and complexity of these proceedings, and the many court appearances and procedures undertaken in this proceeding, Representative Counsel is of the view that the fees and disbursements of Representative Counsel are fair and reasonable and respectfully request that same be approved by this Court;

Proposed Discharge

42. As further set out in the Ninth Report, Representative Counsel intends to complete the Final Distribution as well as certain other matters in this proceeding. Upon completion of same, Representative Counsel may attend to one of the following: (i) the filing of a Discharge Certificate certifying that it has completed said activities; or (ii) if necessary, bring a motion to the Court to report on further matters that may arise, seek Court approval of its further conduct and activities, and seek a Court-ordered discharge;

43. Representative Counsel seeks a Court order that upon the filing of the Discharge Certificate with the Court, Representative Counsel, each of the four (4) members of the Official Committee (being (Vipin Berry, Nick Tsakonacos, Marco Arquilla and Michael Singh) and the Distribution Agent shall be discharged in such respective capacities in this proceeding and shall be released from any and all liability while acting in said capacities, but shall be permitted to attend to certain prescribed matters and shall continue to have the benefit of the provision of all Orders in this proceeding;

Sealing Orders

44. In light of the private and confidential information contained in the Confidential Missing Investor Brief, Confidential Settlement Brief and the Confidential Appendices “1” to “8”, including the names and other identifiable information of Investors, Representative Counsel is seeking a sealing order in respect of same;

General

1. The Appointment Order, Distribution Plan Approval Order and all other relevant Orders made in this proceeding and attached to the Ninth Report;
2. Rule 1, 3, 10, 16 and 37 of the *Rules of Civil Procedure* R.R.O. 1990, Reg. 194, as amended;
3. Section 137(2) of the *Courts of Justice Act*, R.S.O. 1990, c. 43; and
4. Such further and other grounds as counsel may advise and as this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

1. Ninth Report and appendices thereto, including the Fee Affidavit;
2. Confidential Settlement Brief, Confidential Missing Investor Brief and Confidential Appendices “1” to “8” to the Ninth Report;
3. Court Orders issued in these proceedings and Court Reports of Representative Counsel filed in these proceedings; and
4. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

March 29, 2022

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

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

Stephanie De Caria LSO#: 68055L
Tel: 416.597.2652 / Fax: 416.595.8695
Email: sdecaria@millerthomson.com

Court-appointed Representative Counsel

TO: SERVICE LIST

RCP-E 37A (September 1, 2020)

SERVICE LIST
(As of March 12, 2021)

TO: THORNTON GROUT FINNIGAN LLP
100 Wellington Street West Suite 3200
Toronto, Ontario
M5K 1K7

John L. Finnigan
Tel: 416-304-1616
Fax: 416-304-1313
Email: jfinnigan@tgf.ca

Tamara Markovic
Tel: 416-304-0601
Fax: 416-304-1313
Email: tmarkovic@tgf.ca

Lawyers for the Respondent,
Superintendent of Financial Services

AND TO: CASSELS BROCK & BLACKWELL LLP
40 King Street West, Suite 2100
Toronto, ON M5H 3C2

John N. Birch
Tel: 416-860-5225
Fax: 416-640-3057
Email: jbirch@casselsbrock.com

Stephanie Voudouris
Tel: 416-860-6617
Fax: 416-640-3057
Email: svoudouris@casselsbrock.com

Lawyers for the Applicant,
Hi-Rise Capital Ltd.

AND TO: NORTON ROSE FULBRIGHT
222 Bay Street, Suite 3000
Toronto, Ontario M5K 1E7

Jennifer Teskey
Tel: 416.216.2303
Email: jennifer.teskey@nortonrosefulbright.com

Lawyers for the Applicant,
Hi-Rise Capital Ltd

AND TO: **STIKEMAN ELLIOT LLP**
5300 Commerce Court West,
199 Bay Street
Toronto, ON
M5L 1B9

Ashley Taylor
Tel: 416.869.5236
Fax: 416.947.0866
Email: ataylor@stikeman.com

Eric Carmona
Tel: 416.869.5597
Fax: 416.947.0866
Email: ecarmona@stikeman.com

Sanja Sopic
Tel: 416.869.6825
Fax: 416.947.0866
Email: SSopic@stikeman.com

Lawyers for Lanterra Developments

AND TO: **MCCARTHY TÉTRAULT LLP**
TD Bank Tower
66 Wellington Street West, Suite 5300
Toronto, ON M5K 1E6

Geoff R. Hall (LSO #347010)
Tel: 416.601.7856
Fax: 416.868.0673
Email: ghall@mccarthy.ca

Junior Sirivar
Tel: 416.601-7750
Email: jsirivar@mccarthy.ca

Lawyers for Adelaide Street Lofts Inc.

AND TO: **YUNUSOV LAW PROFESSIONAL CORPORATION**
330 Bay Street, Suite 1400
Toronto, ON M5H 2S8

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

Lawyers for the Respondent,
David Pozo

AND TO: **AIRD & BERLIS LLP**
Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Canada M5J 2T9

Steven Graff
Tel: 416.865.7726
Fax: 416.863.1515
Email: sgraff@airdberlis.com

Lawyers for Meridian Credit Union

AND TO **RORY MCGOVERN PC**
133 Richmond St. West, Suite 200
Toronto, ON M5H 2L3

Rory P. McGovern (LSO# 65633H)
Tel: 416-938-7679
Fax: 647-559-9694
Email: rory@rorymcgovernpc.com

Lawyers for the respondents, Nadeem and Uzma Ghori

AND TO: **KAGAN SHASTRI LLP**
Lawyers
188 Avenue Road
Toronto ON M5R 2J1

Rahul Shastri (33475V)
Tel: (416) 368-2100 ext. 223
Fax: (416) 324-4200
Email: rshastri@ksllp.ca

Lawyers for the Respondent, Anoop Sayal

AND TO: **ALVAREZ & MARSAL CANADA INC.**
Royal Bank Plaza, South Tower
200 Bay Street, Suite 2900
Toronto, Ontario, M5J 2J1

Steve Ferguson
Tel: 416 847 5162
Fax: +1 416 847 5201
Email: sferguson@alvarezandmarsal.com

Court-appointed Information Officer

AND TO: **CANADA REVENUE AGENCY**
c/o Department of Justice
Ontario Regional Office
The Exchange Tower, Box 36
130 King Street West, Suite 3400
Toronto, Ontario M5X 1K6

Diane Winters

Tel: 416.952.8563

Email: diane.winters@justice.gc.ca

AND TO: **MINISTRY OF FINANCE**

Legal Services Branch

College Park, 777 Bay Street, 11th Floor

Toronto, Ontario M5G 2C8

Email: insolvency.unit@ontario.ca

AND TO: **QUESTRADE, INC.**

5700 Yonge St., Suite 1900

Toronto, Ontario M2M 4K2

Lawrence Horowitz

Tel: 416.993.1937

Fax: 1.888.767.1736

Email: lhowitz@questrade.com

Counsel to Community Trust

AND TO: **LANTERRA DEVELOPMENTS**

2811 Dufferin St.

Toronto, Ontario M6B 3R9

Email: tmwatson@lanterradev.com

AND TO: **MCCARTHY TÉTRAULT LLP**

TD Bank Tower

66 Wellington Street West, Suite 5300

Toronto, ON M5K 1E6

Anu Koshal (LSO #66338F)

Tel: 416.601.7991

Email: akoshal@mccarthy.ca

Lawyers for 263 Holdings Inc.

EMAIL SERVICE LIST:

jfinnigan@tgf.ca; tmarkovic@tgf.ca; jbirch@casselsbrock.com; svoudouris@casselsbrock.com;
jennifer.teskey@nortonrosefulbright.com; gianni.bianchi@nortonrosefulbright.com; ataylor@stikeman.com;
ecarmona@stikeman.com; ssopic@stikeman.com; ghall@mccarthy.ca; akoshal@mccarthy.ca;
jsirivar@mccarthy.ca; pulat@lawto.ca; sgraff@airdberlis.com; rory@rorymcgovernpc.com;
rshastri@ksllp.ca; john.salmas@dentons.com; robert.kennedy@dentons.com;
sferguson@alvarezandmarsal.com; diane.winters@justice.gc.ca; insolvency.unit@ontario.ca;
tmwatson@lanterradev.com; lhowitz@questrade.com; maja@lawto.ca; pozod33@gmail.com;
akoshal@mccarthy.ca

ONTARIO
SUPERIOR COURT OF JUSTICE –
(COMMERCIAL LIST)

Proceeding commenced at Toronto

NOTICE OF MOTION

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

TAB 2

**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.**

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

March 29, 2022

MILLER THOMSON LLP

40 King Street West
Suite 5800
Toronto Ontario
M5H 3S1, Canada

Gregory Azeff LSO#: 45324C

Tel: 416.595.2660 / Fax: 416.595.8695

Email: gazeff@millერთhomson.com

Stephanie De Caria LSO#: 68055L

Tel: 416.597.2652 / Fax: 416.595.8695

Email: sdecaria@millერთhomson.com

Court-appointed Representative Counsel

TABLE OF CONTENTS

	Page
I. INTRODUCTION	3
II. BACKGROUND TO PROCEEDING.....	4
A. Details on the Syndicated Mortgage and Investors.....	4
B. Judicial Mediation and Settlement	5
C. Distribution by Representative Counsel to Investors.....	6
III. PURPOSE OF REPORT.....	7
IV. TERMS OF REFERENCE	12
V. RELEASE AGREEMENT PURSUANT TO MINUTES	12
A. Mutual Release.....	12
B. Further Mutual Release to be Executed	13
VI. TAX ARREARS MOTION.....	13
VII. STATUS OF THE DISTRIBUTION PLAN AND INITIAL DISTRIBUTION.....	15
A. Distribution Agent.....	15
B. Revised Claim Index	15
C. Key Terms of the Distribution Plan Approval Order and Distribution Plan Procedures	16
D. Administrative Procedures undertaken by Representative Counsel	19
<i>Incapacitated Investor Procedure</i>	19
<i>Deceased Investor Procedure</i>	20
E. Court Approval of Initial Distribution Amount	22
F. Delivery of Initial Distribution to Investors.....	24
<i>Delivery to Registered Investors</i>	24
G. Status of Registered Investors and New Trustee.....	25
H. Summary Notices of Objection Received under the Distribution Plan Procedure	26
I. Resolution of Objections.....	27
J. Special Circumstance Deceased Investor.....	30
K. Uncashed Initial Distribution Cheques and Missing Investor.....	33
L. Missing Investor Settlement Funds Plan.....	35
M. Requests for Investment Loss/Tax Documents.....	37
N. Claim by Objecting Investor against Hi-Rise	38
O. Attempted Objection by Another Investor.....	39
VIII. PROPOSED FINAL DISTRIBUTION AND FINAL CLAIM INDEX.....	39
A. Final Distribution Notice.....	39
B. Proposed Honorarium	40
C. Final Claim Index & Proposed Final Distribution	42
D. Potential Further Missing Investors and Proposed Missing Investor Final Distribution Funds Plan.....	44
IX. COMMUNICATIONS WITH INVESTORS	47
A. Website & Email Account.....	47
B. Communications.....	48
X. FEES AND DISBURSEMENTS.....	50
XI. SUMMARY OF MATTERS TO BE COMPLETED BY REPRESENTATIVE COUNSEL PRIOR TO DISCHARGE.....	52
XII. CONCLUSION.....	54

**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.**

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

I. INTRODUCTION

1. Pursuant to the Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 21, 2019 (the “**Appointment Order**”), Miller Thomson LLP was appointed as Representative Counsel to represent all individuals and/or entities (“**Investors**”) that hold an interest in a syndicated mortgage administered by Hi-Rise Capital Ltd. (“**Hi-Rise**”) in respect of the proposed development known as the “Adelaide Street Lofts” (the “**Adelaide Project**”) at the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the “**Property**”) and previously owned by Adelaide Street Lofts Inc. (“**Adelaide**”), in connection with the negotiation and implementation of a settlement with respect to such investments, except for those Investors who opted out of representation by Representative Counsel in accordance with the terms of the Appointment Order (the “**Opt Out Investors**”). Copies of the Appointment Order and Endorsement of the Honourable Mr. Justice Hainey dated March 22, 2019 are attached hereto as **Appendix “A”**.

2. Pursuant to the Appointment Order, Representative Counsel was directed to establish an Official Committee of Investors (the “**Official Committee**”) in accordance with the process and procedure described in Schedule “B” attached to the Appointment Order.

3. Pursuant to the Order and Endorsement of Justice Haaney dated April 15, 2019 (copies of which are attached hereto as **Appendix “B”**), the Official Committee was approved and constituted. There are currently four members of the Official Committee. Representative Counsel regularly consults with and takes instruction from the Official Committee.

II. BACKGROUND TO PROCEEDING

A. Details on the Syndicated Mortgage and Investors

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

5. At the time of making its application, Hi-Rise was a mortgage broker and mortgage administrator licensed by the Financial Services Regulatory Authority of Ontario. Hi-Rise receives and advances, on behalf of Investors, funds to a variety of companies (each a “**Borrower**” and collectively the “**Borrowers**”), such as Adelaide, that undertake real property developments such as the Property. The terms on which Investors advance their funds and Hi-Rise administrators each Syndicated Mortgage are set out in the LPA and the MPA.

6. The indebtedness owing by Adelaide to Hi-Rise was secured by way of a second mortgage registered on title to the Property, being the Syndicated Mortgage (the “**Second Mortgage**”).

7. Investments in Hi-Rise were first offered in 2011. At this time, the Second Mortgage was registered in favour of Hi-Rise, which held the sole interest in the Second Mortgage. Accordingly, at this time, there was only one way for Investors to participate in the Second Mortgage (*i.e.*, through Hi-Rise).

8. As of May 22, 2014 (the “**Registered Investment Eligibility Date**”), investments in Hi-Rise were offered either through Hi-Rise on a cash-investment basis or through Canadian Western Trust, now Community Trust Company (“**CTC**”), on a registered-investment basis (*e.g.*, through an RRSP). CTC held an interest in the Second Mortgage in the amount of \$24,500,000, which interest ranked ahead of Hi-Rise’s interest in the Second Mortgage.

9. Accordingly, after the Registered Investment Eligibility Date, there were two ways in which Investors could participate in the Second Mortgage:

(a) Registered Investors – Registered Investors are Investors that participated in the Second Mortgage through CTC and made their investment through a registered plan such as a RRSP. Accordingly, as the Registered Investors participated in the Second Mortgage through CTC, their interest in the Second Mortgage ranks ahead of the Non-Registered Investors participating through Hi-Rise.

(b) Non-Registered Investors – Non-Registered Investors are Investors that participated in the Second Mortgage through Hi-Rise and did not make their investment through a registered plan but rather, through a non-registered cash investment. Accordingly, as the Non-Registered Investors participated in the Second Mortgage through Hi-Rise, their interest in the Second Mortgage ranks behind the interests of Registered Investors that participated through CTC.

10. In light of the above-noted priorities within the Second Mortgage, Registered Investors receive priority treatment in respect of a return of their investments, and Non-Registered Investors rank subordinated to (and therefore receive payment after) the Registered Investors.

B. Judicial Mediation and Settlement

11. On November 27, 2019, Representative Counsel, members of the Official Committee, Hi-Rise, Adelaide, Meridian Credit Union Limited (“**Meridian**”), Lanterra Developments Ltd. (“**Lanterra**”) and certain of the Opt Out Investors attended a Court-ordered mediation before the Honourable Mr. Justice McEwen (the “**Judicial Mediation**”) for the purposes of negotiating a Transaction and settlement of the amounts owing under the Syndicated Mortgage.

12. The Judicial Mediation was successful insofar as the parties agreed upon a settlement (the “**Settlement**”) memorialized in the Minutes of Settlement dated December 20, 2019 as amended by Amending Agreement dated April 27, 2020 (collectively, the “**Minutes**”). The Minutes and the Settlement contemplated, among other things, a sale of the Property to Lanterra (the “**Lanterra Transaction**”), and were subsequently approved by the Investors (by way of an Investor vote) and this Court. A copy of the Minutes are attached hereto as **Appendix “C”**.

13. On April 27, 2020, Justice Hainey issued an Approval and Vesting Order (the “**Approval and Vesting Order**”) which, *inter alia*, approved the Lanterra Transaction and the Minutes, declared that Adelaide’s right, title and interest in and to the Purchased Assets (as defined in the Approval and Vesting Order) shall vest absolutely in Lanterra upon certain conditions being met, and directed that the Distribution of the Purchase Price in accordance with the Minutes be approved. Pursuant to the First Amendment to the Minutes of Settlement, the Closing Date was extended to November 16, 2020. A copy of the Approval and Vesting Order is attached hereto as **Appendix “D”**

C. Distribution by Representative Counsel to Investors

14. On November 16, 2020, the Lanterra Transaction closed, and in accordance with the Minutes, the amount of \$46,074,666.27 of the proceeds (the “**Net Sale Proceeds**”) was delivered to Representative Counsel, representing the balance of the purchase price after certain payments contemplated in the Minutes were made.

15. The Minutes contemplate that Representative Counsel shall be responsible for attending to the distribution of the Net Sale Proceeds to the Investors (the “**Distribution**”) and certain other parties set out in section 10 of the Minutes.

16. Accordingly, and pursuant to the Order of Justice Hainey dated November 23, 2020 (the “**Distribution Plan Approval Order**”) Representative Counsel’s Distribution Plan and Distribution Plan Procedures were approved (the “**Distribution Plan**”). A copy of the Distribution Plan Approval Order is attached hereto as **Appendix “E”**.

17. As further described below, Representative Counsel retained Alvarez & Marsal Canada Inc. (“**A&M**”) as its Distribution Agent in these proceedings (the “**Distribution Agent**”), to assist with undertaking the Distribution Plan.

18. After the issuance of the Distribution Plan Approval Order, Representative Counsel, together with its Distribution Agent, attended to certain matters in preparation for a Distribution to Investors in accordance with the Distribution Plan.

19. Pursuant to the Order of Justice Hainey dated March 17, 2021 (the “**Initial Distribution Order**”), the Court approved and authorized an initial distribution from the Net Sale Proceeds (the “**Initial Distribution**”) to Investors. A copy of the Initial Distribution Order is attached hereto as **Appendix “F”**.

20. In support of the Initial Distribution Order, Representative Counsel prepared and filed a Seventh Report dated March 10, 2021 (the “**Seventh Report**”) and Supplemental Seventh Report dated March 16, 2021 (the “**Supplemental Seventh Report**”), copies of which (without appendixes) are attached hereto as **Appendix “G”** and “**H**”, respectively. The Seventh Report and Supplemental Seventh Report are the last reports approved by this Court.

III. PURPOSE OF REPORT

21. As further described in this Ninth Report, Representative Counsel is now at the point that it is prepared to make a second and final distribution (the “**Final Distribution**”) to the Remaining Investors (as defined below) in respect of the remaining Net Sale Proceeds it has in hand, as well as seek its discharge upon completion of the Final Distribution and other ancillary matters.

22. This Ninth Report of Representative Counsel (the “**Ninth Report**”) is prepared and filed for the purposes of:

- (a) Updating the Court on the activities of Representative Counsel since the Seventh Report and Supplemental Seventh Report, including among other things:
 - (i) Matters related to Representative Counsel’s obligation to enter into a release agreement under the Minutes;

- (ii) Representative Counsel’s completion of the Initial Distribution to Investors under the Initial Distribution Plan Order and continued undertaking of the Distribution Plan under the Distribution Plan Approval Order, including discussions with Investors, negotiations and settlements of Notices of Objection (as defined below), and participating in an arbitration;
 - (iii) The outcome of the Tax Arrears Motion (as defined below) before Justice Dunphy heard May 13, 2021 in respect of a dispute that arose between Representative Counsel and 263 Holdings Inc. (“**263 Holdings**”) under the Minutes in respect of which Representative Counsel prepared and filed its Eighth Report dated March 12, 2021 (the “**Eighth Report**”, a copy of which is attached hereto as **Appendix “I**”);
 - (iv) Discussions with CTC and Olympia Trust Company in respect of the accounts held for Registered Investors; and
 - (v) Certain communications prepared and issued to Investors by email and by posting on Representative Counsel’s website at the following URL: <https://www.millerthomson.com/en/hirise/> (the “**Website**”);
- (b) Updating the Court on the activities of A&M in its capacity as Distribution Agent, in respect of assisting Representative Counsel with the Distribution Plan and in connection with the delivery of the Initial Distribution to Investors; and
 - (c) Supporting the relief sought by Representative Counsel in its motion returnable April 7, 2022.

23. Representative Counsel files this Ninth Report in support of its motion for the following relief:

- (a) An Order, substantially in the draft form attached as Schedule “A” to the Motion Record (the “**Final Distribution Approval Order**”), *inter alia*:
 - (i) Approving the Final Claim Index;

- (ii) Approving the Final Distribution Amount (as defined below) and authorizing Representative Counsel to complete and deliver the Final Distribution to Remaining Investors in accordance with the Final Claim Index and the Final Distribution Notice (as such terms are defined below);
- (iii) Approving the form and contents of the Final Distribution Notice attached as Schedule “A” to the Final Distribution Approval Order;
- (iv) Authorizing and directing Representative Counsel to transfer the Final Distribution Amount to the trust account maintained by the Distribution Agent (the “**Distribution Trust Account**”);
- (v) Authorizing and directing the Distribution Agent to distribute the Final Distribution Amount in the Distribution Trust Account to the Remaining Investors, on a *pro rata* basis, based upon the Final Claim Index;
- (vi) Ordering and declaring that it is not open to any Investor or Opt-Out Investor to object to their Investor Claim Amount, classification and other information set out in his or her Investor Payment Notice, and any and all further objections are forever barred and permanently extinguished;
- (vii) Declaring that the Settled Investors (as defined below) are exempt from participating in the Final Distribution and from receiving any portion of the Final Distribution Amount;
- (viii) Declaring that the Registered Investors (as defined below) are exempt from participating in the Final Distribution and from receiving any portion of the Final Distribution Amount;
- (ix) Ordering that the Honorarium (as defined below) is approved, and authorizing and directing Representative Counsel to pay the Honorarium to each of the four (4) members of the Official Committee in equal amounts;
- (x) Declaring that the Missing Investor (as defined below) and as described in the Confidential Missing Investor Brief (as defined below), filed, is exempt

from the Initial Distribution and from participating in the Final Distribution, and that any amounts owing to the Missing Investor in these proceedings under the Distribution Plan be forever extinguished and barred;

- (xi) Declaring that the total amounts owing to the Missing Investor shall be treated and delivered in accordance with the Missing Investor Settlement Funds Payment Plan (as defined below and described in Schedule “B” to the Final Distribution Approval Order);
- (xii) Ordering that upon the 6-month expiry of the delivery of the Final Distribution, any Investors that fail to cash their Final Distribution cheques shall be treated in accordance with the Missing Investor Final Distribution Funds Plan (as defined below and described in Schedule “C” to the Final Distribution Approval Order);
- (xiii) Ordering and directing the parties to the Minutes (as defined below) to execute the Final Mutual Release (as defined below) upon full and final completion of the Final Distribution in accordance with the proposed Final Distribution Approval Order;
- (xiv) Ordering that upon full and final completion of the Final Distribution in accordance with the proposed Final Distribution Approval Order and upon full execution of the Final Mutual Release, Representative Counsel may attend to one of the following in order to undertake its discharge in these proceedings:
 - (A) file a certificate in the form attached as Schedule “D” to the Final Distribution Order (the “**Discharge Certificate**”) with the Court, certifying that it has completed all other activities described in this Ninth Report; or
 - (B) if necessary, bring a motion to the Court to report on further matters that may arise, seek Court approval of its further conduct and activities, and seek a court-ordered discharge;

- (xv) Ordering that upon the completion of filing a Discharge Certificate, Representative Counsel, each of the members of the Official Committee and the Distribution Agent shall be discharged in such respective capacities in this proceeding, provided however that notwithstanding said discharge: (a) Representative Counsel and the Distribution Agent shall remain in such capacities for the performance of such incidental duties as may be required to complete the administration of the Final Distribution, and (b) the Representative Counsel, the Distribution Agent and each of the members of the Official Committee shall continue to have the benefit of the provisions of all Orders made in this proceeding;
- (xvi) Releasing and discharging Representative Counsel, each of the members of the Official Committee and the Distribution Agent from any and all liability while acting in said capacities within these proceedings, save and except for any gross negligence or wilful misconduct; and
- (xvii) Sealing the following private and confidential documents described herein: (a) Confidential Missing Investor Brief; (b) Confidential Settlement Brief; and (c) the Final Claim Index at Confidential Appendix “8”.

24. an Order, substantially in the form attached as Schedule “B” to the Notice of Motion (the “**Ancillary Order**”), *inter alia*:

- (a) Approving the conduct and activities of Representative Counsel as disclosed in its Eight Report, and the activities and conduct of Representative Counsel and its Distribution Agent as disclosed in this Ninth Report;
- (b) Approving the fees and disbursements of Representative Counsel, including the fees and disbursements of the Distribution Agent, as disclosed in this Ninth Report;
- (c) Amending the Direction (as defined below) to authorize and direct Representative Counsel to rely on and comply with the Deceased Investor Procedure in respect of the Special Circumstance Deceased Investor (as defined below); and

- (d) Sealing Confidential Appendices “1” to “7”.

IV. TERMS OF REFERENCE

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

26. All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Appointment Order, the Distribution Plan Approval Order, the Distribution Plan or the Initial Distribution Order.

V. RELEASE AGREEMENT PURSUANT TO MINUTES

A. Mutual Release

27. Pursuant to provision 20 of the Minutes, previously attached hereto as Appendix “C”, *inter alia*, each of the parties to the Minutes shall execute a full and final release in a form to be mutually agreed upon between counsel, which release 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 (as defined in the Minutes) (the “**Release Provision**”).

28. In accordance with the Release Provision, in or around November 2020 each of the parties thereto, being Representative Counsel, Hi-Rise, Adelaide Street Lofts Inc., 263 Holdings Inc., Jim Neilas, Lanterra, and the individual members of the Official Committee (Vipin Berry, Nick

Tsackonacos, Marco Arquilla and Michael Singh) executed a Mutual Release (the “**Mutual Release**”). A copy of the Mutual Release is attached hereto as **Appendix “J”**.

B. Further Mutual Release to be Executed

29. Pursuant to the Release Provision and upon the final completion of the Distribution, each of Lanterra and the parties to the Minutes shall execute a further full and final release in a form substantially similar to the Mutual Release (the “**Final Mutual Release**”).

30. Accordingly, upon delivery of the Final Distribution contemplated in this Report, Representative Counsel intends circulate a draft Final Mutual Release to counsel to the parties in the Minutes, including Lanterra, for review and execution. The draft Final Mutual Release will be in substantially the same form as the executed Mutual Release.

31. Given the passage of time and given that many parties to the Minutes are no longer an active part of this proceeding at this stage, Representative Counsel requests that this Court grant an Order directing all parties to execute the Final Mutual Release upon the completion of the Final Distribution in accordance with the Final Distribution Plan Approval Order. This will permit Representative Counsel to rely on this Order and efficiently and effectively complete this outstanding obligation under the Release Provision.

VI. TAX ARREARS MOTION

32. Prior to the closing of the Lanterra Transaction, Adelaide was the registered owner of the Property. Adelaide is wholly owned by 263 Holdings. Mr. Jim Neilas (“**Neilas**” together with Adelaide and 263 Holdings, the “**Neilas Parties**”) executed the Minutes on behalf of the Neilas Parties.

33. Following the closing of the Lanterra Transaction that occurred on November 16, 2020, a dispute arose between Representative Counsel and the Neilas Parties under the Minutes, with respect to liability for payment of unpaid municipal tax arrears owing in respect of the Property in the amount of \$914,793.40 as at November 16, 2020 (the “**Tax Arrears**”).

34. In light of the dispute, the amount of the Tax Arrears was held back from the amounts distributed to 263 Holdings under the Minutes, and same was held by counsel to the Neilas Parties

pending a motion to determine the payment liability of the Tax Arrears (the “**Tax Arrears Motion**”).

35. Although the Tax Arrears were paid from the closing funds, Representative Counsel’s position was that such liability ought to have been paid by Adelaide, and that the amount of the Tax Arrears should therefore be deducted from the amount otherwise payable to 263 Holdings under the Minutes and remitted to Representative Counsel for Distribution to the Investors.

36. The Neilas Parties’ took the opposite position. In essence, the Neilas Parties position was that because Adelaide had stop paying municipal taxes in respect of the Property prior to the date of the execution of the Minutes, it was not liable for same and that the amount of the Tax Arrears should be remitted to 263 Holdings.

37. The Tax Arrears Motion was brought by 263 Holdings, and was heard on May 13, 2021 before Justice Dunphy. Representative Counsel opposed the relief sought by 263 Holdings. In support of same, Representative Counsel prepared and filed its Eighth Report (a copy of which is previously attached hereto as Appendix “I”), which sets out non-disputed facts in respect of the Tax Arrears and the above-noted position of Representative Counsel in further detail.

38. At the Tax Arrears Motion, Justice Dunphy ultimately decided in favour of 263 Holdings and granted its relief sought (the “**Decision**”) Attached hereto as **Appendix “K**” is a copy of the Decision. In light of the Decision, the amount of the Tax Arrears was released from counsel’s trust account and remitted to 263 Holdings.

39. Following the release of the Decision, 263 Holdings and Representative Counsel exchanged submissions on the issue of costs of the Tax Arrears Motion. In its respective submissions, 263 Holdings sought elevated costs on a full indemnity scale and Representative Counsel sought to pay partial indemnity costs.

40. In his Reasons for Decisions on Costs dated June 24, 2021 (the “**Cost Decision**”), Justice Dunphy accepted the submissions of Representative Counsel and ultimately awarded 263 Holdings its costs on a partial indemnity basis in the amount of \$42,313.64 (the “**Cost Award**”). A copy of the Cost Award is attached hereto as **Appendix “L**”.

41. Thereafter, Representative Counsel delivered the amount of the Cost Award to counsel to 263 Holdings from the amount of the Net Sale Proceeds in hand at the time.

VII. STATUS OF THE DISTRIBUTION PLAN AND INITIAL DISTRIBUTION

A. Distribution Agent

42. Pursuant to the Order of Justice Hainey dated April 22, 2020, a copy of which is attached hereto as **Appendix “M”**, Representative Counsel was granted Court authority to obtain the assistance of an accounting firm, consultant or other third-party professional as agent to Representative Counsel in connection with the Distribution of the Investor Settlement Amount (as such terms are defined in the Minutes).

43. In this regard, Representative Counsel engaged A&M as Distribution Agent. This Ninth Report also summarizes the conduct and activities of the Distribution Agent in connection with undertaking the Distribution Plan.

B. Revised Claim Index

44. In advance of Representative Counsel’s motion for the Distribution Plan Approval Order, Hi-Rise provided Representative Counsel and the Distribution Agent with an index (the “**Master Index**”) that sets out, among other things, (a) the name of each Investor, (b) the priority of the Investors’ respective investments (*i.e.*, whether the Investor is recorded as a Registered Investor or a Non-Registered Investor in Hi-Rise’s records), (c) the number of LPAs that each Investor executed, and (d) the amount of his or her investment.

45. Representative Counsel and the Distribution Agent worked with Hi-Rise and CTC to verify the amounts contained in the Master Index.

46. Thereafter and in advance of the Initial Distribution motion, the Distribution Agent prepared a revised index (the “**Revised Claim Index**”), a copy of which has been filed as a sealed confidential appendix to the Seventh Report.

47. The Revised Claim Index set out: (a) each Investor’s name, address, and investor number; (b) each Investor’s classification (*i.e.* whether the Investor is a Registered Investor or Non-Registered Investor) (the “**Investor Classification**”); (c) the principal amount of each Investor’s

investment; (d) the interest accrued thereon and outstanding; and (e) the total amount of the Investor's claim in these proceedings (*i.e.*, principal plus accrued and unpaid interest).

C. Key Terms of the Distribution Plan Approval Order and Distribution Plan Procedures

48. In support of its motion for the Distribution Plan Approval Order, Representative Counsel prepared and filed its Sixth Report dated November 6, 2020 (the "**Sixth Report**") and its Supplemental Sixth Report dated November 20, 2020 (the "**Supplemental Sixth Report**") copies of which (without appendixes) are attached hereto as **Appendix "N"** and "**O**", respectively. These Court reports have already been approved by the Court pursuant to the Distribution Plan Approval Order, and are attached hereto in order to provide background/context in respect of the Distribution Plan, as necessary.

49. The key terms of the Distribution Plan Approval Order are as follows:

- (a) all Investors whose investments in the Second Mortgage are held in trust by CTC, (*i.e.*, the Registered Investors), shall for the purposes of the Distribution Plan and entitlement calculations thereunder, be treated *pari passu* and share *pro rata* in a single class based on the amounts of investments (and accrued interest);
- (b) all Investors whose investments in the Second Mortgage are held in trust and administered by Hi-Rise (*i.e.*, the Non-Registered Investors) shall, for the purposes of the Distribution Plan and entitlement calculations thereunder, be treated *pari passu* and share *pro rata* in a single class based on the amounts of investments (and accrued interest), provided that the claims and entitlements of Objecting Investors (as defined below), shall be determined in accordance with the Distribution Plan;
- (c) the form of Investor Payment Notice (including the Objection Notice), as attached as Schedule "B" to the Distribution Plan Approval Order, was approved;
- (d) unless otherwise authorized by the Court, any Investor who does not file an Objection Notice with Representative Counsel during the Objection Period (as defined below) shall be deemed to have:

- (i) accepted the Investor Claim 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.
- (e) Representative Counsel is authorized to settle the claim of any Objecting Investor or any Investor who files a Notice of Objection (as defined below) on such terms as are deemed reasonable and appropriate as determined by Representative Counsel and approved by the Official Committee;
- (f) the Dissolved Corporate Investor Procedure, the Incapacitated Investor Procedure and the Deceased Investor Procedure (as such terms are defined in the Sixth Report, and further described below) was approved; and
- (g) Representative Counsel is authorized and entitled to adopt and implement any other procedures it deems necessary in its sole discretion as it relates to the implementation of the Distribution Plan.

50. The key terms of the Distribution Plan, as approved by the Distribution Plan Approval Order, are as follows:

- (a) Amounts available to satisfy Investor claims shall be distributed in the following priority:
 - (i) First, to Registered Investors, for principal and interest to November 16, 2020; and
 - (ii) Second, to Non-Registered Investors, pro rata for principal and interest to November 16, 2020;
- (b) Each individual Investor claim shall be determined and calculated based on the amount invested by the Investor plus interest accrued at the rate specific in such Investor's LPA through the date of the closing of the Lanterra Transaction (*i.e.*,

November 16, 2020), net of any amounts previously paid to the Investor (the “**Investor Claim Amount**”);

- (c) Representative Counsel is 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**”);
- (d) Any Investor who objects to the Investor Claim Amount or the Investor Payment Amount set out in the Investor Payment Notice (an “**Objecting Investor**”) has 14 days from the date of receipt of the Investor Payment Notice (the “**Objection Period**”) to notify Representative Counsel of its objection by delivering a completed Notice of Objection in the form attached thereto (the “**Notice of Objection**”);
- (e) 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 Investor Payment Amount, and any further claims are permanently extinguished;
- (f) Upon the expiry of the Objection Period, Representative Counsel shall seek Court approval of the Investor Claim Amounts and the Investor Payment Amounts;
- (g) Representative Counsel is authorized to settle any Notice of Objection received. In the event that Representative Counsel and the Objecting Investor resolve the objection, then the Investor Payment Amount shall be the amount agreed between such parties; and
- (h) In the event that Representative Counsel is unable to reach an agreement with an Objecting Investor, then Representative Counsel shall be entitled to refer the matter to the Court or to a retired Judge of the Court to act as claims officer (the “**Claims Officer**”) for resolution and on such terms as Representative Counsel and the Official Committee deem reasonable and appropriate.

51. In accordance with the terms of the Distribution Plan Approval Order and Distribution Plan, Representative Counsel and the Distribution Agent attended to delivering Investor Payment Notices to all Investors, which were based on the information contained in the Revised Claim Index. Such Investor Payment Notices were delivered to Investors in or around February 2021. A copy of a template Investor Payment Notice is attached hereto as **Appendix “P”**. Full details in respect of same are set out in the Seventh Report.¹

52. Representative Counsel received certain Notices of Objection from Objecting Investors to the details contained in their Investor Payment Notices. Instead of delaying the Distribution process in order to resolve all Notices of Objection, Representative Counsel reserved certain monies to account for the Notices of Objection, proceeded with delivering an Initial Distribution, including to Objecting Investors, and thereafter attended to the resolution of the Notices of Objection received. Full details are described below.

D. Administrative Procedures undertaken by Representative Counsel

53. As noted above, the Distribution Plan Approval Order authorized and directed Representative Counsel to undertake certain administrative procedures for the purposes of Distribution.

Incapacitated Investor Procedure

54. The Court-approved Incapacitated Investor Procedure (the “**Incapacitated Investor Procedure**”) requires that in the case of an incapacitated Investor, the individual(s) provided with power of attorney for personal property will provide Representative Counsel with (i) a true notarized copy of the Power of Attorney for Personal Property; (ii) satisfactory evidence of evidence incapacitation (*i.e.*, a letter from a doctor); and (iii) copies of two pieces of government-issued identification of the individual holding the power of attorney(s). Pursuant to the Incapacitated Investor Procedure, Representative Counsel may, at its discretion, require that a person holding a power of attorney(s) make themselves available for identification, and may contact the doctor that authors the medical note for verification. Representative Counsel will then

¹ See paragraph 36 of the Seventh Report.

issue the Distribution funds payable to the name of the Investor, but will deliver the cheque to the address of the power of attorney.

55. A total of two (2) individual powers of attorney to incapacitated Investors contacted Representative Counsel and complied with the Incapacitated Investor Procedure. Representative Counsel provided these details to its Distribution Agent.

56. Accordingly, for the purposes of the Initial Distribution described below and Representative Counsel's records, the Revised Claim Index was updated to reflect the address of the power of attorney(s) of the incapacitated Investor. Further, the Initial Distribution cheque was delivered to the power of attorney and made payable to "[Incapacitated Investor] c/o [power of attorney]".

Deceased Investor Procedure

57. The Court-approved Deceased Investor Procedure (the "**Deceased Investor Procedure**") requires that in the case of a deceased Investor, the individual or individuals named as the executor of the deceased Investor's estate will provide Representative Counsel with: (i) a copy of the Death Certificate of the deceased Investor; (ii) a true notarized copy of the last will of the deceased Investor or other proof of appointment as executor; and (iii) two copies of government issued identification of the executor(s). Pursuant to the Deceased Investor Procedure, Representative Counsel may, at its discretion, require that the executor(s) make themselves available for identification. Representative Counsel will then issue the Distribution funds payable to the executor(s) on behalf of the estate of the deceased Investor, and will deliver the cheque to the address of the executor (or in the case of more than one executor, to the agreed-upon address confirmed by each executor).

58. A total of fourteen (14) individual executors to deceased Investors contacted Representative Counsel and complied with the Deceased Investor Procedure. Representative Counsel provided these details to its Distribution Agent.²

² An additional executor to a deceased Investor has complied with the Deceased Investor Procedure, however the Initial Distribution has not been delivered to this deceased Investor's estate as certain other court-ordered requirements

59. Accordingly, for the purposes of the Initial Distribution and Representative Counsel's records, the Revised Claim Index was updated to reflect the address of the executor(s) of the deceased Investor. Further, the Initial Distribution cheque was delivered to the executor and made payable to the "Estate of the [deceased Investor] c/o [executor(s)]" or in some circumstances, to the "Estate of the [deceased Investor] and [executor(s)]".

Dissolved Corporate Investor Procedure

60. Certain Investors invested in Hi-Rise through a corporation, in which case the Investor listed on the LPA is the corporation (a "**Corporate Investor**").

61. At the time of preparing the Sixth Report, Representative Counsel was advised by one (1) Corporate Investor that the corporation had dissolved and no longer exists. Accordingly, Representative Counsel sought court-approval of a Dissolved Corporation Investor Procedure ("the "**Dissolved Corporate Investor Procedure**")" which requires: (a) the Corporate Investor to file articles of revival and reinstates the corporation. In such case, Representative Counsel will require proof of same, and will conduct corporation profile searches in order to satisfy itself on the active status of the company. Once confirmed, Representative Counsel will issue the Distribution cheque to the revived Corporate Investor; or (b) Representative Counsel will hold back the amount of the Distribution to the Corporate Investor, and the individual that believes he/she is entitled to receive the Distribution cheque on behalf of the dissolved company will bring a motion to the Court in these proceedings and obtain a Court Order directing Representative Counsel to issue the cheque accordingly.

62. Thereafter, the above-noted Corporate Investor (through the individual that signed the LPA on its behalf) advised Representative Counsel that the Corporate Investor's bookkeeper/accountant clarified that it had not dissolved and had actually amalgamated with another company. Accordingly, this specific Corporate Investor is still in existence. For the purposes of the Initial Distribution and Representative Counsel's records, no changes were required to the Revised Claim Index and the Initial Distribution was made payable to and delivered to the Corporate Investor.

have not been fulfilled. The details related to this deceased Investor is set out later in this Ninth Report, in the section entitled "Special Circumstance Deceased Investor".

63. No other Corporate Investors advised Representative Counsel of dissolution.

Address Change Procedure

64. In accordance with its authority to adopt and implement any other procedure it deems necessary, Representative Counsel implemented an address change procedure (the “**Address Change Procedure**”) in order to properly record new addresses for those Investors that have moved residences since entering into their investment. The Address Change Procedure requires that any Investor who has changed his or her address must: (a) email Representative Counsel to advise of the new address; and (b) provide proof of new address, such as a copy of a utility bill with the Investor’s name and new address listed.

65. A total of eighty-four (84) Investors have contacted Representative Counsel and complied with the Address Change Procedure. Representative Counsel provided these details to its Distribution Agent.

66. Accordingly, for the purposes of the Initial Distribution and Representative Counsel’s records, the Revised Claim Index was updated to reflect the new address of each Investor and the Initial Distribution cheques were delivered to these Investors at their newly recorded address.

E. Court Approval of Initial Distribution Amount

67. In accordance with the Distribution Plan Procedures, upon the expiry of the Objection Period, Representative Counsel scheduled a motion for approval of an initial distribution to Investors. In support of this motion, Representative Counsel filed its Seventh Report and Supplemental Seventh Report and provided a summary of distribution of the Net Sale Proceeds (the “**Distribution Summary**”).³

68. The expiry of the Objection Period allowed Representative Counsel and the Distribution Agent to determine the amount of funds that ought to be reserved from the Initial Distribution in order to account for Representative Counsel’s resolution discussions and potential settlement

³ The final Distribution Summary filed with the Court in support of the Initial Distribution Order is set out at paragraph 12 of the Supplemental Seventh Report.

payments to Objecting Investors (the “**Objection Reserve**”), which was based upon the Objections Summary filed as a confidential appendix to the Supplemental Seventh Report.⁴

69. In addition to the Objection Reserve, Representative Counsel reserved the amount of \$1,100,000 to account for the outcome of the Municipal Tax Motion, incurred but unpaid professional fees, and future professional fees (the “**General Reserve**”).

70. In accordance with the terms of the Distribution Plan, Registered Investors were entitled to receive payment first in respect of their Investor Payment Amount given that they held a priority interest in the Second Mortgage. As set out in the Distribution Summary, there were sufficient funds from the Net Sale Proceeds to pay all Registered Investors in full (on account of their principal and accrued and unpaid interest).

71. In accordance with the terms of the Distribution Plan, Non-Registered Investors were entitled to receive payment second in respect of their Investor Payment Amount given that they held a subordinated interest to Registered Investors in the Second Mortgage.

72. As set out in the Distribution Summary, there were insufficient funds from the Net Sale Proceeds to pay all Non-Registered Investors in full. Accordingly, Representative Counsel and the Distribution Agent recommended to the Court that for the purposes of the Initial Distribution, the amount of 34.54% of each Non-Registered Investor’s Investor Claim Amount (*i.e.*, an Initial Distribution recovery of 34.54% of their respective principal and accrued and unpaid interest) be delivered to each Non-Registered Investor.

73. Accordingly, and pursuant to the Initial Distribution Order, Representative Counsel was authorized to make an Initial Distribution of up to \$41,010,039.27 (representing the Initial Distribution Amount) to the Investors and the Opt-Out Investors in accordance with the Revised Claim Index, Investor Payment Notices and the Distribution Plan.

74. The Initial Distribution Order further provides that unless otherwise authorized by the Court, any Investor who has not filed a Notice of Objection with Representative Counsel is deemed

⁴ Details in respect of the Objections Summary and Objections Reserve are set out at paragraphs 9 to 11 of the Supplemental Seventh Report.

to have: (i) accepted the Investor Claim Amount, classification and other information set out in his or her Investor Claim Notice, and (ii) waved any further objection to the Investor Claim Amount, classification and other information set out in his or her Investor Claim Notice.

F. Delivery of Initial Distribution to Investors

Delivery to Registered Investors

75. Pursuant to the Initial Distribution Order, Representative Counsel was authorized and directed to transfer the portion of the Initial Distribution Amount payable to Registered Investors directly to CTC for the purposes of its distribution to Registered Investors.

76. Accordingly, on or about March 31, 2021, Representative Counsel delivered the total amount of \$23,762,243.67 to CTC, representing amounts owing to Registered Investors in full.

77. Representative Counsel understands from CTC that the amounts payable to each Registered Investor in accordance with the Revised Claim Index were posted and delivered to the Registered Investors' accounts.

Delivery to Non-Registered Investors

78. Pursuant to the Initial Distribution Order, among other things, (i) the Distribution Agent was authorized and directed to open a trust account (the "**Distribution Trust Account**"), (ii) Representative Counsel was authorized and directed to transfer the remaining Initial Distribution Amount (after payment to CTC was delivered) to the Distribution Trust Account, and (iii) the Distribution Agent was ordered to distribute the amounts in the Distribution Trust Account to the Non-Registered Investors, on a *pro rata* basis based upon the Revised Claim Index.

79. In accordance with the Initial Distribution Order, the Distribution Agent opened the Distribution Trust Account and on April 5, 2021, Representative Counsel transferred the amount of \$17,247,846.37 to the Distribution Trust Account in respect of the Initial Distribution to be delivered to Non-Registered Investor and certain Opt-Out Investors, and the estimated banking fees of the Distribution Agent.

80. Thereafter, the Distribution Agent prepared notices of an Initial Distribution (the “**Initial Distribution Notice**”) and accompanying Initial Distribution cheques, and delivered same to the Non-Registered Investors at the addresses recorded in the Revised Claim Index.

81. The Initial Distribution Notice, a sample copy of which is attached hereto as **Appendix “Q”**, sets out the Investor’s: (a) principal investment amount; (b) accrued interest; (c) total Investor Claim Amount (as set out in the Investor Payment Notice previously delivered to Investors); and (d) the Initial Distribution Amount (based on the court-approved Initial Distribution of 34.54% the Investor Claim Amount).

G. Status of Registered Investors and New Trustee

82. As noted above, Registered Investors received payment in full on account of their principal and accrued and unpaid interest under the Distribution made pursuant to the Initial Distribution Order. In other words, they received a 100% recovery of the amounts owing to them by Hi-Rise. Accordingly, there are no further amounts owing to Registered Investors in this proceeding and they will not be included in the proposed Final Distribution.

83. In late 2021, Representative Counsel learned from CTC that it moved its registered account portfolio in respect of Hi-Rise (*i.e.*, the accounts of Registered Investors) to Olympia Trust Company (“**OTC**”) and appointed OTC as successor trustee. The reason for this transfer is that CTC closed its business line of maintaining self-directed registered plan portfolios.

84. CTC advised that the effective date of CTC’s transfer to OTC was November 5, 2021. CTC further advised Representative Counsel that in advance of this transfer, CTC notified all Registered Investors of same in the summer of 2021. Attached hereto as **Appendix “R”** is a template letter CTC delivered to Registered Investors (which was provided by CTC to Representative Counsel).

85. Representative Counsel has engaged in discussions with OTC regarding these proceedings. Upon accepting the transfer of the registered plan portfolio from CTC, OTC delivered a welcome letter and Declaration of Trust document to all Registered Investors. Attached hereto as **Appendix “S”** are copies of the template letters that OTC delivered to the Registered Investors (which was provided by OTC to Representative Counsel).

86. Representative Counsel understands that given that all amounts owing to Registered Investors were paid/posted by CTC to Registered Investors' accounts prior to its portfolio transfer, OTC is not managing this specific asset (as there is nothing further for the trustee to do).

H. Summary Notices of Objection Received under the Distribution Plan Procedure

87. In total, Representative Counsel received and reviewed twenty-four (24) Notices of Objection from Investors who objected to either the Investor Classification (*i.e.*, as a Registered or Non-Registered Investor) and/or their Investor Claim Amount contained in their Investor Payment Notice.

88. Of those twenty-four (24) Objecting Investors, two (2) Investors withdrew their objections shortly thereafter, leaving twenty-two (22) Notices of Objection to be resolved. A full list of Objecting Investors is set out in **Confidential Appendix "1"**.

89. The basis for the Notices of Objection can be summarized as follows:

- (a) Certain Objecting Investors that invested in Hi-Rise before the Registered Investment Eligibility Date objected to their Investor Classification as a Non-Registered Investor (and their Investor Claim Amount), on the basis that they made their investment at a time where the option to invest as a Registered Investor did not exist and their interests should therefore not be subordinated;
- (b) Certain Objecting Investors objected to their Investor Classification on the basis that they believed they were Registered Investors as opposed to Non-Registered Investors;
- (c) Certain Objecting Investors objected to their Investor Claim Amount on the basis that there was an incorrect calculation method, *i.e.*, an incorrect interest rate and/or interest start-date;
- (d) Certain Objecting Investors objected to their Investor Claim Amount on the basis that the amounts provided in the Trust Statements from CTC set out a different amount owing to them; and

- (e) Certain Objecting Investors that originally invested in another Hi-Rise project known as the 799 College Street Project (the “**Cube Project**”), objected to their Investor Claim Amount and Investor Classification on the basis that they believed their priority interest in the Cube Project was transferred to the Adelaide Project with the same priority status.

I. Resolution of Objections

90. From the summer of 2021 to January of 2022, Representative Counsel attended to the resolution of all Notices of Objection received under the Distribution Plan. Representative Counsel worked closely alongside the Distribution Agent throughout this entire process. Throughout this process, and as more fully particularized below, Representative Counsel also reported to and sought the advice and direction of its Official Committee. This resolution process required a great deal of time and effort to complete.

91. In accordance with its authority under the Distribution Plan to settle any Notice of Objection received by Objecting Investors, Representative Counsel scheduled without prejudice settlement conference calls with Objecting Investors over the course of June and July 2021. The purpose of these conference calls was to discuss the basis of each Objecting Investors’ Notice of Objection, provide each Objecting Investor with Representative Counsel’s views/position on the Notice of Objection, and arrive at a settlement of the Notices of Objection.

92. In some instances and where necessary, Representative Counsel requested additional supporting documentation from an Objecting Investor in order to further substantiate the basis of the objection. Upon receipt of such additional information and/or documentation, Representative Counsel reviewed same with the assistance of the Distribution Agent in order to reconcile the objections and determine whether the information contained in the Investor Payment Notices were correct.

93. In order to reconcile the Notices of Objection received, Representative Counsel also conducted its own due diligence, including among other things, (i) reviewing and analyzing the LPA and related investment documentation of each Objecting Investor, (ii) corresponding with Hi-Rise in certain circumstances where necessary, (iii) reviewing the details contained in the

Master Index and Revised Claim Index; (iv) reviewing the calculation breakdown of the Investor Claim Amounts and reconciling same against the calculations provided by Objecting Investors, and (v) corresponding with Objecting Investors on matters that required further clarification.

94. Upon conducting its own due diligence, and through further communications with certain Objecting Investors, Representative Counsel determined that:

- (a) Certain Objecting Investors required information with respect to their LPA in order to properly understand the contents of their Investor Payment Notice, which were properly prepared by the Distribution Agent;
- (b) Certain Objecting Investors were unable to provide any further documentation to substantiate their assertion that their Investor Classification or Investor Claim Amount was incorrect;
- (c) With respect to conflicting information provided in CTC statements, such discrepancy was due to the fact that CTC was calculating interest at a compounded rate as opposed to simple interest as properly prescribed in the Objecting Investors' LPAs;
- (d) With respect to disputes on the calculation method (*i.e.*, interest start-date and interest calculation rates), that the calculation breakdown and method used by Distribution Agent to prepare the Investor Payment Notices were correct;⁵ and
- (e) With respect to the Investors in the Cube Project, Hi-Rise entered into Trust Agreements with these investors in the Cube Project. Hi-Rise did not effect a transfer of the Objecting Investors' investment into the Adelaide Project, but instead and pursuant to the Trust Agreements, granted these Objecting Investors "additional security" in the Adelaide Project on a subordinated basis. Accordingly, these Investors are properly recorded as Non-Registered Investors for the purposes of their Investor Payment Notices. A copy of a redacted sample Trust Agreement

⁵ With the exception of two (2) Objecting Investors for which Representative Counsel and the Distribution Agent did recognize a calculation error, and rectified same.

and attached Schedule “A” Particulars of the Additional Security is attached hereto as **Appendix “T”**.

95. In respect of sixteen (16) Notices of Objection received, Representative Counsel determined that there was no basis for same and therefore no settlement to be made. Representative Counsel communicated the above-noted determinations to the applicable Objecting Investors by way of email or telephone calls, and in some instances, both. In particular, Representative Counsel advised these Objecting Investors that for the applicable above-noted reason, it wholly disallowed the Objecting Investor’s Notice of Objection and asked the Objecting Investor if it wished to pursue same in light of the disallowance/to confirm their withdrawal of same. Each of these Objecting Investors confirmed their withdrawal. The names of these sixteen (16) Objecting Investors and the details of their disallowances/withdrawals are set out in the list located in **Confidential Appendix “1”**.

96. Upon corresponding with, and receiving and reviewing the supporting documentation of two (2) Objecting Investors, Representative Counsel and the Distribution Agent determined that there was in fact an Investor Claim Amount calculation error in respect of their Investor Payment Notices.

97. Accordingly, Representative Counsel agreed to rectify these Notices of Objection by delivering the additional Investor Claim Amount to each of these two (2) Objecting Investors from the Objection Reserve. As these two (2) Objecting Investors are Registered Investors, the amounts payable were delivered to CTC in accordance with the Initial Distribution Order. Representative Counsel has confirmed with both CTC and these Objecting Investors that the additional Investor Claim Amount funds have been received in their accounts. Full details of this matter, including the Objecting Investor names and amounts paid to them, are set out in **Confidential Appendix “2”**.

98. With respect to the remaining four (4) Objecting Investors, Representative Counsel consulted with, and sought the advice and instruction of the members of the Official Committee. The Official Committee was instrumental in resolving the remaining Notices of Objection and in providing timely direction and approval of Representative Counsel’s recommended course of action.

99. Accordingly, in respect of these remaining four (4) Objecting Investors (collectively referred to as the “**Settled Investors**”):

- (a) Representative Counsel entered into confidential settlement agreements with three (3) Objecting Investors; and
- (b) Representative Counsel retained the Honourable Mr. Justice Campbell as Claims Officer in accordance with the court-ordered Distribution Plan, and attended at a confidential arbitration hearing before the Claims Officer with one (1) Objecting Investor for which it was unable to arrive at a settlement.

100. Full details and copies of all relevant documents in respect of these four (4) Objecting Investors are set out in the **Confidential Settlement Brief** to this Ninth Report.

101. Representative Counsel is seeking a sealing order in respect of the Confidential Settlement Brief, and Confidential Appendices “1” and “2” as they contain identifiable and confidential information in respect of all Objecting Investors as well as the terms of the confidential settlements.

J. Special Circumstance Deceased Investor

102. For the purposes of the relief sought in paragraph 23 herein, the Investor described in this section of the Ninth Report is the “**Special Circumstance Deceased Investor**”.

103. As more fully particularized in the Sixth Report, Representative Counsel was contacted by a law firm that represents a creditor of an Investor. The law firm delivered an Authorization and Direction (the “**A&D**”) jointly signed by the Investor and the Investor’s spouse (the “**Spouse**”) directing Representative Counsel to deliver the Distribution to the law firm instead of to the Investor (in order for same to be paid to the Investor’s creditor).

104. Representative Counsel sought the Court’s approval to deliver this Investor’s Distribution funds to the law firm in trust. Accordingly, the Distribution Plan Order provided Representative Counsel with the authority 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 Claim amount be delivered to a third-party.

105. However, Representative Counsel learned that this specific Investor is now deceased, that the Investor executed the A&D before death, and that the Spouse and co-signor to the A&D is this Investor's executor. A copy of the A&D is attached hereto in **Confidential Appendix "3"**.

106. The Spouse, in his capacity as executor, completed and satisfied the Deceased Investor Procedure, which would entitle the Distribution to be paid to the Estate of the deceased Investor.

107. In light of the conflict between the pre-existing A&D requiring the Distribution to be delivered to a law firm and the Deceased Investor Procedure requiring that the Distribution funds be delivered to the executor, Representative Counsel determined that it required advice and direction from the Court on how to proceed with this particular Distribution.

108. Accordingly, Representative Counsel attended at a chambers attendance on May 12, 2021 before Justice Hainey. At such time, the Court ordered that in light of the A&D, the Spouse/executor was required to provide Representative Counsel with a notarized copy of the Certificate of Appointment of Estate Trustee in respect of the Investor's Estate in order for Representative Counsel to release the Initial Distribution to the executor (the "**Direction**"). A copy of said endorsement is attached as **Confidential Appendix "4"**.

109. Thereafter, and by way of letters, emails and telephone calls, Representative Counsel made many attempts to contact the Spouse/executor to comply with the Direction. Despite repeated attempts and efforts, the Spouse initially continued to comply with the Deceased Investor Procedure as opposed to the Direction (*i.e.*, the Spouse never provided Representative Counsel with a notarized copy of the Certificate of Appointment of Estate Trustee), and then ultimately stopped responding to Representative Counsel all together.

110. In an effort to locate the Spouse and have him comply with the Direction, in February 2022 Representative Counsel contacted the law firm listed on the A&D. Counsel at the law firm directed Representative Counsel to a lawyer that was previously acting for the deceased Investor and the Spouse/executor. A copy of the Direction was provided to this counsel.

111. At the end of February 2022, Representative Counsel contacted previous counsel to the Spouse, who confirmed that he has acted for the Spouse in the past and would be in contact with

the Spouse regarding this matter and the Direction. A copy of the Direction was provided to this counsel.

112. In early March 2022, counsel advised that he would be assisting the Spouse through this process, and further advised that a Certificate of Appointment was never obtained as all earlier steps in dealing with the deceased Investor's estate did not require this formality. In light of same, he requested if the Direction could be amended to allow for the Distribution to be made to the Spouse without a Certificate of Appointment. A copy of an email dated March 1, 2022 from counsel assisting the Spouse is attached hereto as **Confidential Appendix "5"**.

113. Thereafter, Representative Counsel requested from counsel that the Spouse provide written confirmation/authorization to correspond with counsel on the Spouse's behalf.

114. On or about March 24, 2022, the Spouse contacted Representative Counsel by email to confirm that the above-noted counsel is assisting him with this matter. A copy of said email is attached hereto as **Confidential Appendix "6"**.

115. The Distribution Agent is still holding the amount of this Investor's Initial Distribution, which is \$3,995.37.

116. Representative Counsel recommends that the Court amend the Direction to authorize Representative Counsel to rely on the Deceased Investor Procedure and deliver the funds to the Spouse c/o the deceased Investor's estate, given that:

- (a) the amount of the Distribution is modest;
- (b) a Certificate of Appointment was not required for the Spouse to otherwise administer the deceased Investor's estate, which has been completed;
- (c) the Spouse has complied with and satisfied the Deceased Investor Procedure; and
- (d) there is significant time and costs associated with obtaining a Certificate of Appointment, which would only be required for the purposes of complying with the Direction and for no other purpose required for the administration of the estate.

117. In order to assist the Spouse, Representative Counsel may deliver the Distribution cheques to office of the counsel (in order to ensure that said cheque is received by the Spouse). Representative Counsel seeks Court authority and approval of same.

118. Representative Counsel is seeking a sealing Order in respect of Confidential Appendices “3” to “6” as same contains identifiable and confidential information in respect of this Special Circumstance Deceased Investor and the Spouse.

K. Uncashed Initial Distribution Cheques and Missing Investor

119. In or around November 2021, the Distribution Agent provided Representative Counsel with a summary chart of all the outstanding Initial Distribution cheques that were delivered to Investors but remained uncashed (“**Uncashed Cheques**”). The summary indicated that as at November 24, 2021, there were a total of twelve (12) Uncashed Cheques, two (2) of which were addressed to the same Investor (the “**Missing Investors**”). As at that time, the aggregate amount of Uncashed Cheques was \$298,384.72.

120. Representative Counsel, with the assistance of the Distribution Agent, took various steps in order to locate the Missing Investors and provide them with their Initial Distribution cheque (*i.e.*, the Uncashed Cheques), which can be summarized as follows:

- (a) On November 30, 2021, Representative Counsel delivered a letter to each of the Missing Investors by email and registered mail (to the address listed on the Revised Claim Index), advising that their Initial Distribution cheque remains uncashed and to contact Representative Counsel with their address and delivery information so that the Distribution Agent can re-issue a new Initial Distribution Payment. Attached as **Appendix “U”** is a copy of the letter to the Outstanding Investors dated November 30, 2021;
- (b) Representative Counsel received a response to its above-noted letter from three (3) Missing Investors. In or around December 2021, the Distribution Agent reissued and delivered the Initial Distribution cheques to these three (3) Investors;

- (c) Representative Counsel received two (2) bounce back emails to the above-noted letter, as well as a total of six (6) returned letters by mail;
- (d) By various phone calls that took place on December 7, 2021, January 14, 2022 and January 17, 2022, Representative Counsel attempted to contact the remaining Missing Investors. Through this effort, Representative Counsel was able to locate two (2) Missing Investors by telephone. In or around December 2021, the Distribution Agent reissued and delivered the Initial Distribution cheques to these two (2) Investors;
- (e) On January 17, 2022, Representative Counsel emailed the Financial Advisors/Brokers recorded on file for the remaining six (6) remaining Outstanding Investors for assistance in locating these remaining Missing Investors. Representative Counsel received two (2) responses from brokers that were able to provide assistance. In or around early February 2022, the Distribution Agent reissued and delivered the Initial Distribution cheques to these two (2) Investors;
- (f) On January 21, 2022, Representative Counsel conducted a driver's licence search (the "**DL Search**") in an effort to locate the four (4) remaining Missing Investors. As a result, the DL Search reported four (4) different addresses for these remaining Missing Investors;
- (g) On February 1, 2022, Representative Counsel delivered a letter to each of the four (4) remaining Missing Investors by registered mail and to the addresses that were obtained through the DL Search. A redacted copy of Representative Counsel's letter dated February 1, 2022 is attached hereto as **Appendix "V"**. Thereafter:
 - (i) Representative Counsel received a response from two (2) of these Investors to said letter;
 - (ii) In or around February 2022, the Distribution Agent reissued and delivered the Initial Distribution cheques to these two (2) Investors;

- (iii) In or around March 14, 2022, Representative Counsel received a response from the power of attorney of one of the Investors. The power of attorney advised that the Investor resides in a care facility and provided the proof of address for same. At Representative Counsel's request, the Investor complied with the Address Change Procedure (by way of signed letter dated March 25, 2022, enclosing the proof of the care facility as the new address); and
- (iv) This Investor's power of attorney sent an electronic copy of said letter and enclosure by email to Representative Counsel, and advised that the original signed letter is in the process of being delivered to the offices of Representative Counsel by registered mail. Representative Counsel intends to reissue the Initial Distribution cheque to the new address, and will deliver the proposed Final Distribution cheque to this Investor at the new address; and
- (h) The remaining one (1) Missing Investor has not responded to Representative Counsel and has not been in contact with Representative Counsel.

121. Accordingly, there is only one (1) Missing Investors whom Representative Counsel has been unable to locate. Full details in respect of this Missing Investor is set out in the Confidential Missing Investor Brief, which includes the name of the Missing Investor , a detailed summary of Representative Counsel's efforts to locate this Missing Investor, as well as copies of all correspondence and the DL Search results (the "**Confidential Missing Investor Brief**").

122. Representative Counsel is seeking a sealing order in respect of the Confidential Missing Investor Brief as same contains identifiable and confidential information in respect of the remaining Missing Investor, and seeks approval to only share the contents of the Confidential Missing Investor Brief with this Missing Investor.

L. Missing Investor Settlement Funds Plan

123. The total amount of the remaining Uncashed Cheque is \$12,053.57 on account of the above-noted Missing Investor's Initial Distribution.

124. As Representative Counsel is unable to locate this Missing Investor described in the Confidential Missing Investor Brief despite its concerted efforts to do so, it is not feasible to continue to delay these proceedings or the Final Distribution.

125. Further, and given that Representative Counsel has not received any communication from this Missing Investor to date, and the Uncashed Cheque remains outstanding, Representative Counsel reasonably anticipates that this Missing Investor will not cash the proposed Final Distribution cheque either, which will only delay the completion of these proceedings and Representative Counsel's discharge.

126. If this Missing Investor was to participate in the Final Distribution along with all other Investors, the amount of the Missing Investor's Final Distribution cheque would be \$1,027.69.

127. Accordingly, the total amount of this Missing Investor's Distribution under the Distribution Plan on account of both the Initial Distribution and proposed Final Distribution is \$13,081.26 (the "**Missing Investor Settlement Funds**").

128. For the above-noted reasons, Representative Counsel recommends that this Court approve the Missing Investor Settlement Funds Payment Plan attached as Schedule "B" to the proposed Final Distribution Approval Order, which provides as follows (the "**Missing Investor Settlement Funds Payment Plan**"):

- (a) The Missing Investor described in the Confidential Missing Investor Brief is exempt from receiving an Initial Distribution under the Initial Distribution Approval Order and from receiving a Final Distribution under the Final Distribution Approval Order, and that any amounts owing to the Missing Investor in these proceedings under the Distribution Plan be forever extinguished and barred;
- (b) The Missing Investor Settlement Funds, in the amount of \$13,081.26, shall be treated and delivered as follows:
 - (i) the Missing Investor Settlement Funds shall be delivered to each of the members of the Official Committee in equal amounts, as an Honorarium (as defined below and as approved in the Final Distribution Approval Order)

for the gratuitous work performed by the Official Committee in connection with these proceedings; and

- (ii) In the event the Missing Investor makes a claim to the Missing Investor Settlement Funds prior to the issuance of the Final Distribution Order, then Representative Counsel, with the assistance of the Distribution Agent, shall make payment to that Missing Investor on account of its Initial Distribution and proposed Final Distribution, if approved herein.

129. Further details on the proposed Honorarium are set out below. Representative Counsel and the Distribution Agent believe that the Missing Investor Settlement Funds Payment Plan is both fair and reasonable in the circumstances.

M. Requests for Investment Loss/Tax Documents

130. Since the date of the Initial Distribution, Representative Counsel has received certain inquiries from Investors requesting that Representative Counsel issuing certain tax documents to indicate the loss on the Investor's investment for tax purposes.

131. Representative Counsel has responded to each of these inquiring Investors and has advised that since the Distribution payments represent settlement monies in this proceeding, and since Representative Counsel is not the investment vehicle, it is unable to issue any form of tax documents to Investors. Representative Counsel has advised these Investors that they ought to make this request of Hi-Rise.

132. In March 2022, Hi-Rise advised Representative Counsel that Hi-Rise is capable of issuing certain documentation to requesting Investors, but in order to do so, it will require information from Representative Counsel in respect of the amount of the Distributions delivered. Representative will be in a position to deliver the total Distribution amounts to Hi-Rise once the proposed Final Distribution is complete.

133. Accordingly, to the extent that any Investors wish to request such documentation on a go-forward, Representative Counsel will: (i) direct the Investor to Hi-Rise as the proper entity to prepare and issue the requested documents; and, (ii) advise the Investor that Representative

Counsel will be providing Hi-Rise with his or her final Distribution information/amounts for the purposes of same.

134. Representative Counsel intends to contact each of the Investors that have already made this request, in order to provide them with this updated information.

N. Claim by Objecting Investor against Hi-Rise

135. During the week of March 14, 2022, Representative Counsel learned from counsel to Hi-Rise that one of the Objecting Investors in this proceeding has attempted to either initiate a claim or continue a pre-existing claim against Hi-Rise for additional monies above what this Investor received under the court-approved Distribution Plan. Representative Counsel understands this Investor is one of the Opt-Out Investors and is represented by counsel in these proceedings.

136. On March 16, 2021, Representative Counsel and counsel to Hi-Rise had a telephone call to discuss this matter, and the terms of the Distribution Plan and the Minutes. Thereafter, Representative Counsel delivered an email to counsel to Hi-Rise summarizing same, for which counsel to Hi-Rise confirmed. A copy of the email thread between Representative Counsel and counsel to Hi-Rise is attached hereto as **Appendix “W”**, for which the name of the above-noted Opt-Out Investor is redacted.

137. As set out in in the above-noted email, from Representative Counsel’s perspective, this particular dispute/claim against Hi-Rise by the Opt-Out Investor has nothing to do with Representative Counsel and has no impact on the proposed Final Distribution. Representative Counsel has not had any contact with the Opt-Out Investor, or his regarding this matter.

138. However, Representative Counsel understands from counsel to Hi-Rise that it may need to address this matter with the Court. Accordingly, Representative Counsel has offered counsel to Hi-Rise an opportunity to use ten (10) minutes to speak to this matter at the motion on April 7, 2022, if necessary.

O. Attempted Objection by Another Investor

139. By email dated March 26, 2022, a certain Investor advised Representative Counsel that it received an Initial Distribution, and also believed additional funds were owing on account of this Investor's investment.

140. By responding email dated March 28, 2022, Representative Counsel advised this Investor, *inter alia*, that: (i) the period to file a Notice of Objection under the Distribution Plan has expired (over one (1) year ago); (ii) the process for resolving Notices of Objection under the Distribution Plan has been fully completed; and (iii) in light of the court-ordered expiry to filing a Notice of Objection, Representative Counsel is not accepting any further objections/claims to additional funds. A copy of said email exchange is attached as **Confidential Appendix "7"**.

141. Representative Counsel is seeking a sealing order in respect of Confidential Appendix "7" as same contains identifiable and confidential information in respect of this Investor.

VIII. PROPOSED FINAL DISTRIBUTION AND FINAL CLAIM INDEX

A. Final Distribution Notice

142. As noted above, the Distribution Agent delivered an Investor Payment Notice to each Investor setting out their Investor Claim Amount. Thereafter, the Distribution Agent delivered an Initial Distribution Notice that accompanied the Initial Distribution cheques, which provided a breakdown of the Initial Distribution.

143. As noted above, only the Non-Registered Investors are participating in the Final Distribution since Registered Investors have already been paid out in full.

144. For the purposes of the proposed Final Distribution described below, Representative Counsel/the Distribution Agent intends to provide each Investor with a Final Distribution Notice, in the form substantially attached hereto as **Appendix "X"** and as attached as Schedule "A" to the proposed Final Distribution Approval Order. Representative Counsel is seeking Court approval of same.

145. The Final Distribution Notice sets out (a) the principal amount of the Investor's investment; (b) the accrued interest on said principal; (c) the total Investor Claim Amount; (d) the amount

already received by the Investor under the Initial Distribution; (e) the percentage of the Final Distribution (i.e., the recovery percentage of the Investor Claim Amount on a percentage basis); and (f) the Final Distribution Amount; and (g) the total Distribution received by the Investor as a settlement in these proceedings (i.e., the Initial Distribution Amount plus the Final Distribution Amount).

146. Items (a) to (c) above were already provided to each Investor in their initial Investor Payment Notices, and item (d) above was already provided to each Investor in their Initial Distribution Notice. However, these details are reiterated in the Final Distribution Notice for summary purposes and to provide each Investor with a breakdown of their entire Distribution.

147. Given that under the Initial Distribution Order, any Investor that had not filed a Notice of Objection is deemed to have accepted the Investor Claim Amount and waive any further objections thereto, the process for objections under the Distribution Plan is now complete and there is no reason to include information regarding disputes to the amounts contained in the Final Distribution Notice.

148. In Representative Counsel's view, and in accordance with the Initial Distribution Order, it is not open to any Investor to now dispute the Investor Claim Amount or any portion of their Distribution. Accordingly, the proposed Final Distribution Notice sets out that the amounts contained therein are final and not open to objection.

B. Proposed Honorarium

149. Representative Counsel is seeking Court approval of the proposed honorarium in the amount of \$13,081.26 (the "**Honorarium**") to the four (4) members of the Official Committee in equal amounts (i.e., the amount of \$3,270.31 each). The proposed Honorarium represents the Missing Investor Settlement Funds noted above and referred to in the proposed Missing Investor Settlement Funds Payment Plan.

150. The Official Committee was appointed by the Court in April 2019 (one month after Representative Counsel's appointment), and have worked closely and diligently with Representative Counsel through each step in this proceeding on a gratuitous basis over the last three (3) years.

151. In addition to providing general instruction and advice to Representative Counsel on a timely basis at the request of Representative Counsel, the members of the Official Committee have: (i) partaken in countless conference calls regarding various steps in this proceeding, and have deliberated to discuss issues amongst themselves and provide Representative Counsel with instruction that resulted in many Court Orders; (ii) participated in town hall meetings with Investors in respect of the vote process undertaken by Hi-Rise in accordance with the Appointment Order; (iii) communicated with Investors; (iv) reviewed court reports and various motion materials in this proceeding in order to provide Representative Counsel with advice and direction; (v) appeared at various Court attendances; (vi) attended at and participated in the Judicial Mediation; (vii) assisted Representative Counsel in negotiating the Settlement and Lanterra Transaction; (viii) reviewed, approved and executed the Minutes and Mutual Release; and (v) heavily participated in the process to resolve Notices of Objection, and provided Representative Counsel with advice and settlement instruction, among many other things. In summary, the members of the Official Committee have spent countless hours relentlessly discharging their court-appointed duties.

152. In Representative Counsel's view, the members of the Official Committee have played a critical role in these proceedings and in the success of the Settlement, ultimately to the benefit of each of the Investors. Representative Counsel is fortunate to have worked with the members of the Official Committee in this proceeding, and believe that their gratuitous hard work and the benefit that they have conferred to the Investors ought to be recognized.

153. The members of the Official Committee have not been given advance notice of the proposed Honorarium. Rather, service of this Ninth Report on the Official Committee along with all other Investors, will represent the first time each of the members learn of same. Accordingly, they are not advocating for the proposed Honorarium.

154. The proposed Honorarium will not materially prejudice any of the Investors (as it represents monies that would otherwise be payable to the Missing Investor), and the Missing Investor Settlement Funds Payment Plan accounts for the possibility that the Missing Investor may revive and make a claim to the Distribution.

C. Final Claim Index & Proposed Final Distribution

155. In support of the Final Distribution, the Distribution Agent has prepared the Final Claim Index, a copy of which is attached hereto as **Confidential Appendix “8”**. The Final Claim Index is an updated version of the Revised Claim Index that was filed in support of the Initial Distribution.

156. The Final Claim Index sets out: (a) the name, address and investor number of each Investor participating in and receiving the Final Distribution, being the Non-Registered Investors and certain Opt-Out Investors (the “**Remaining Investors**”), excluding the Investors described in paragraph 157 of this Ninth Report which are expressly excluded from the Final Claim Index; (b) the principal amount of each Remaining Investors’ investment; (c) the interest accrued thereon and outstanding; (d) each Remaining Investors’ Investor Claim Amount; and (e) each Remaining Investors’ Initial Distribution already received.

157. As noted above, the Final Claim Index does not include the following Investors. For greater certainty, the following Investors will not participate in the Final Distribution or receive a Final Distribution cheque under the Distribution Plan and are not Remaining Investors:

- (a) The Missing Investor described in the Confidential Missing Investor Brief, for the reasons set out therein;
- (b) The four (4) Settled Investors referred to in paragraph 99 of this Ninth Report, and described in the Confidential Settlement Brief, for the reasons set out therein; and
- (c) The Registered Investors in this proceeding, as all Registered Investors have been paid in full through the Initial Distribution.

158. For the purposes of clarity and finality, Representative Counsel is seeking an Order declaring that the above-noted Investors are exempt from the Final Distribution.

159. The Final Claim Index contains private and sensitive information related to the Investors including names, addresses and investment details. Accordingly, Representative Counsel is seeking a sealing Order in respect of the Revised Claim Index.

160. Based on the Final Claim Index, the Remaining Investors' Investor Claim Amount totals \$47,855,070.94, inclusive of both principal and accrued and unpaid interest and the Initial Distribution amount already paid to the Remaining Investors totals \$16,529,141,16.

161. As at the date of the Ninth Report, Representative Counsel currently has \$1,533,369.10 in hand (the “**Final Remaining Funds**”). Accordingly, the following distribution summary (the “**Distribution Summary**”) provides estimates of the expected Final Distribution from the Final Remaining Funds:

Purchase Price	69,000,000.00
Less: Tax Arrears	(914,793.40)
Less: Closing Adjustments	(68,801.94)
Less: Meridian Mortgage	(16,751,924.01)
Less: 263 Holdings Settlement Amount	(3,724,000.00)
Less: Lanterra Interest Loan and Forbearance Fee Payment	(1,465,814.38)
Funds Received By Miller Thomson In Trust	<u>\$46,074,666.27</u>
Funds Received By Miller Thomson In Trust	\$46,074,666.27
Less: BMO Commission	(649,000.00)
Less: Professional Fees to Date	
Representative Counsel	(1,578,644.07)
Counsel to Hi-Rise	(298,548.30)
Information Officer	(115,513.76)
Counsel to the Information Officer	(26,199.08)
Distribution Agent	(181,403.15)
Cost Award	(42,313.64)
Other Costs	(7,780.35)
	<u>(2,250,402.35)</u>
Less: Amounts Owning to Registered Investors (Per Revised Claim Index)	(23,762,243.67)
Less: Initial Distribution to Non-Registered Investors, excluding the Missing Investor	(17,234,792.45)
Less: Payments to Settled Investors	(644,858.70)
Final Remaining Funds	<u>\$1,533,369.10</u>
Less: Final Reserve	(112,000.00)
Less: Missing Investor Settlement Funds / Honorarium	(13,081.26)
Final Distribution Amount	<u>\$1,408,287.84</u>
Total Non-Registered Investor Claims	49,932,965.76
Less: Missing Investor and Settled Investors Claims	(2,077,894.82)
Remaining Investors' Investor Claim Amount	<u>\$47,855,070.94</u>
<i>Initial Distribution Percentage</i>	<i>34.54%</i>
Initial Distribution Amount for Remaining Investors	\$16,529,141.16
<i>Final Distribution Percentage</i>	<i>2.94%</i>
Final Distribution Amount	\$1,408,287.84
<i>Estimated Remaining Investor Total Recovery %</i>	<i>37.48%</i>

162. Given that all Notices of Objection have been fully resolved and all other Investors are deemed to have accepted their Investor Claim Amount, there is no need to account for or reserve any funds for this purpose and the only required reserve is in respect of professional fees and disbursements.

163. Accordingly, Representative Counsel recommends that an amount of \$112,000.00 be held back from the Remaining Funds (the “**Final Reserve**”), which accounts for the anticipated fees and disbursements of both Representative Counsel and its Distribution Agent. The Final Reserve is required for the purposes of: (i) completing the Final Distribution; (ii) attending to any contingencies or matters that may arise from the Final Distribution; and (iii) attending to all matters that are required to be completed in advance of Representative Counsel’s discharge, further described below.

164. After accounting for the Honorarium and the Final Reserve, Representative Counsel is proposing a Final Distribution in the amount of \$1,408,287.84 (the “**Final Distribution Amount**”) to be distributed *pro rata* based upon the Final Claim Index, or in other words, 2.94% of the Remaining Investors’ Investor Claim Amount.

165. Representative Counsel is seeking a sealing Order in respect of the Final Claim Index filed as Confidential Appendix “8”, as same contains the names and other identifiable information of certain Investors contained therein, as well as the Final Distribution amounts payable to said Investors.

D. Potential Further Missing Investors and Proposed Missing Investor Final Distribution Funds Plan

166. As noted above, there were originally twelve (12) Missing Investors in the Initial Distribution process that resulted in the Uncashed Cheques. Given that approximately one (1) year has passed since the delivery of the Initial Distribution, Representative Counsel and the Distribution Agent anticipate that there may be additional Investors that do not cash their Final Distribution cheques (defined as the Missing Final Distribution Investors, above) and accordingly, there may be uncashed Final Distribution funds (defined as the Missing Investor Final Distribution Funds, above).

167. Representative Counsel and the Distribution Agent are hopeful that this will not be the case, but believe that a court-ordered plan for this contingency ought to be in place.

168. The Distribution Agent has advised Representative Counsel that the Final Distribution cheques will be stale-dated upon six (6) months after issuance if they are not cashed. With this in mind, Representative Counsel and the Distribution Agent intend to deliver letters and attempt to contact Investors that fail to cash their Final Distribution Cheque within the three (3) months after delivery. Representative Counsel and the Distribution Agent intend to take the same steps it took with respect to the original Missing Investors noted above (*i.e.*, deliver letters, attempt to contact by telephone calls, conduct further searches including driver's license searches, etc.).

169. However, in the event that Representative Counsel and the Distribution Agent are unsuccessful in the above-noted efforts and any of the Final Distribution cheques become stale-dated, Representative Counsel recommends that this Court approve the Missing Investor Final Distribution Funds Plan attached as Schedule "C" to the Final Distribution Approval Order, which provides as follows (the "**Missing Investor Final Distribution Funds Plan**"):

- (a) Upon the 6-month expiry from the date of delivery of the Final Distribution (*i.e.*, the date of mailing out of the Final Distribution cheques by the Distribution Agent), any Investors entitled to a Final Distribution that fail to cash their Final Distribution cheque ("**Missing Final Distribution Investors**") are exempt from receiving an Final Distribution under the Final Distribution Plan Approval Order and any amounts owing to the Missing Final Distribution Investors under the Final Distribution Approval Order (the "**Missing Investor Final Distribution Funds**") be forever extinguished and barred;
- (b) For greater certainty, after the six (6) month expiry from the date of delivery of the Final Distribution (*i.e.*, the date of mailing out of the Final Distribution cheques by the Distribution Agent), any and all Final Distribution Missing Investors shall be barred from seeking a reissued Final Distribution cheque from the Distribution Agent, and the Distribution Agent shall not be required to reissue the Final Distribution cheque;

- (c) Upon the 6-month expiry of the delivery of the Final Distribution (*i.e.*, the date of mailing out of the Final Distribution cheques by the Distribution Agent), the Missing Investor Final Distribution Funds shall be applied as follows:
- (i) the Missing Investor Final Distribution Funds shall be delivered to each of the members of the Official Committee in equal amounts, as a subsequent Honorarium (the “**Subsequent Honorarium**”) for the gratuitous work performed by the Official Committee in connection with these proceedings, provided that the amount of the Missing Final Distribution Funds payable as the Subsequent Honorarium does not exceed \$40,000 (in other words, the amount of \$10,000 payable to each member of the Official Committee); and
 - (ii) In the event that the amount of the Missing Investor Final Distribution Funds exceeds \$40,000, then Representative Counsel shall pay any amount above the \$40,000 into Court, on notice to the Missing Final Distribution Investors.

170. Representative Counsel and the Distribution Agent believe that the above-noted Missing Investor Final Distribution Funds Plan is a fair, reasonable and practical way to manage the possibility of further uncashed cheques in the Final Distribution process. It will allow Representative Counsel and the Distribution Agent to distribute any unclaimed/uncashed funds appropriately, and it will eliminate the possibility of there being any delay to their respective discharges in these proceedings.

171. Representative Counsel believes that the maximum amount of \$40,000 is fair and reasonable as a Subsequent Honorarium. From the perspective of all Investors participating in the Final Distribution, this amount represents an approximate additional return of \$92 on account of each of their investments, which would have to be completed by way of a third Distribution. From a practical and costs perspective, a third distribution would not be feasible.

172. Representative Counsel also notes that the Subsequent Honorarium forms part of a contingency plan, and may never crystallize. However, the Subsequent Honorarium is proposed to

account for this contingency at this juncture, and eliminate the possibility of having to spend the time and costs associated with returning to Court to further deal with this matter, should it arise.

173. The members of the Official Committee have not been given advance notice of the potential Subsequent Honorarium. Rather, service of this Ninth Report on the Official Committee along with all other Investors, will represent the first time each of the members learn of same. Accordingly, they are not advocating for the proposed Subsequent Honorarium.

174. The Subsequent Honorarium will not materially prejudice the Remaining Investors as it represents monies otherwise payable to certain Remaining Investors under the Final Distribution and would not otherwise form part of the monies payable to all other Remaining Investors.

IX. COMMUNICATIONS WITH INVESTORS

A. Website & Email Account

175. Representative Counsel maintains a public website at the following URL: <https://www.millerthomson.com/en/hirise/> (the “**Website**”), where it regularly posts information related to this proceeding including communications prepared by Representative Counsel, Court Reports and motion materials, and Orders issued in these proceedings. The Website is up to date and contains all relevant information related to the status of this proceeding. A copy of a printout of the Website is attached as **Appendix “Y”**.

176. Representative Counsel maintains an email address for Investors to submit inquiries to Representative Counsel: HiRiseCapital@millerthomson.com (the “**Email Account**”). Representative Counsel continues to regularly monitor inquiries submitted by Investors to the Email Account on a daily basis.

177. Despite its repeated requests that all Investor email inquiries be directed to the Email Account, Representative Counsel continues to receive a high volume of telephone calls and emails directed to individual lawyers. This has resulted in Representative Counsel spending additional time and costs to attend to such matters.

178. These emails are mainly comprised of: (a) Investors seeking a personal update on the proceedings and Final Distribution; (b) Investors seeking clarification or assistance on matters

related to their Initial Distribution; and (c) investors in other projects of Hi-Rise seeking information from Representative Counsel regarding Hi-Rise and their investment. Representative Counsel has provided assistance to Investors, as necessary. For investors in other projects, Representative Counsel has responded to advise that it does not represent any other investors in Hi-Rise and has directed such correspondence to Hi-Rise.

B. Communications

179. Since the date of the Seventh Report, Representative Counsel has prepared the following written communications to Investors (the “**Communications**”), emailed same to Investors for which it has an email address, and has posted a copy of same to its Website:

- (a) “Update on Distribution for Registered Investors” dated March 10, 2021, a copy of which is attached hereto as **Appendix “Z”**, to advise Investors of, *inter alia*, the date of the Initial Distribution motion returnable March 17, 2021 and provide a link to the Seventh Report;
- (b) “Update on the Eighth Report and Municipal Tax Motion” dated March 12, 2021, a copy of which is attached hereto as **Appendix “AA”** to advise Investors of, *inter alia*, (i) the dispute between Representative Counsel and 263 Holdings regarding the issue of liability of the Tax Arrears; (ii) Representative Counsel’s position on the Tax Arrears Motion; and (ii) the date of the Tax Arrears Motion return date and to provide a link to the 263 Holdings’ motion materials and the Eight Report in respect of same;
- (c) “Update on Distribution from Registered Investors” dated March 31, 2021, a copy of which is attached hereto as **Appendix “BB”**, to advise Registered Investors that, *inter alia*, in accordance with the terms of the Initial Distribution Order, Representative Counsel delivered the portion of the Initial Distribution Amount payable to Registered Investors directly to CTC, for the purposes of CTC’s distribution to the Registered Investors;
- (d) “Update on Distribution for Non-Registered Investors dated April 12, 2021, a copy of which is attached hereto as **Appendix “CC”**, to advise Non-Registered

Investors, *inter alia*, that in accordance with the Initial Distribution Order, the Distribution Agent prepared and delivered the Initial Distribution cheques to all Non-Registered Investors by mail and to alert Non-Registered Investors that they could expect to receive same within a couple of weeks from the communication date;

- (e) “Update on Final Distribution” dated April 20, 2021, a copy of which is attached hereto as **Appendix “DD”**, to *inter alia*, address inquiries received from many Investors regarding the next distribution after the Initial Distribution. In particular, Representative Counsel advised that it has held back funds while it resolves certain matters, including the Notices of Objection received as well as the Tax Arrears Motion, and that it would provide a further update once contingencies are resolved;
- (f) “Update on Municipal Tax Motion” dated June 11, 2021, a copy of which is attached hereto as **Appendix “EE”**, to, *inter alia*, advise Investors on the outcome of the Tax Arrears Motion and the Decision;
- (g) “Update on Final Distribution Payment” dated August 17, 2021, a copy of which is attached hereto as **Appendix “FF”**, to advise Investors that, *inter alia*, (i) it is still in the process of undertaking resolution discussions in respect of the Notices of Objection and in accordance with its authority under the Distribution Plan Approval Order and (ii) once all Notices of Objection have been resolved, Representative Counsel will be in a position to finalize the Final Distribution amounts to be delivered to Non-Registered Investors; and
- (h) “Update on Final Distribution and Final Distribution Motion” dated March 7, 2022, a copy of which is attached hereto as **Appendix “GG”**, to advise Investors, among other things, of the date of the within motion, that the process for resolving all Notices of Objections is complete, and that Representative Counsel and the Distribution Agent are in the process of working on the Final Distribution.

180. Upon service of this Ninth Report, Representative Counsel intends to deliver a further communication to Investors entitled “Update and Summary of Details on Final Distribution”, substantially in the form attached hereto as **Appendix “HH”**.

X. FEES AND DISBURSEMENTS

181. In terms of the fees and disbursements of Representative Counsel, the Appointment Order provides as follows:

- (a) Representative Counsel shall be paid by the Borrower its reasonable fees consisting of fees from and after the date of this Order (the “**Post-Appointment Fees**”) up to a maximum amount of \$200,000 or as may otherwise be ordered by the Court;
- (b) Representative Counsel shall obtain the approval of its fees and disbursements from the Court on notice to the Official Committee;
- (c) Representative Counsel was granted a charge on the Property (the “**Rep Counsel Charge**”) as security for its Post-Appointment Fees, in priority to the Second Mortgage, but subordinated to the first mortgage in favour of Meridian Credit Union Limited.

182. Pursuant to the Order of Justice Hainey dated September 17, 2019, a copy of which is attached here to as **Appendix “II”**, the maximum amount of the Rep Counsel Charge was increased to \$400,000.

183. Pursuant to the Order of Justice Hainey dated April 22, 2020, a copy of which was previously attached hereto as Appendix “M”, *inter alia*: (i) the maximum amount of the Post-Appointment Fees, to which the Rep Counsel Charge relates, was removed; (ii) the Post-Appointment Fees and Rep Counsel Charge were ordered to include the disbursements of Representative Counsel from and after the date of the Appointment Order; and (iii) the Rep Counsel Charge was ordered to include all fees and disbursements incurred by Miller Thomson LLP prior to the date of the Appointment Order.

184. Accordingly, the following fees and disbursements of Representative Counsel (which includes payments to the Distribution Agent as a disbursement) are set out in full detail in the

Affidavit of Gregory Azeff of Miller Thomson LLP sworn March 29 2022 (the “**Fee Affidavit**”), a copy of which is attached hereto as **Appendix “JJ”**:

- (a) Fees from the date of May 29, 2019 to March 21, 2019 (the “**Pre-Appointment Fee Period**”);
- (b) Fees from the date of March 21, 2019 to March 24, 2022 (the “**Post-Appointment Fee Period**”);
- (c) The fees and disbursements of the Distribution Agent for the period from December 10, 2020 to March 19, 2021 (the “**Distribution Agent Fee Period**”).

185. The total fees and disbursements (including HST) of Representative Counsel in this proceeding amount to \$1,859,971.28, for which the amount of \$100,000 has been paid by Hi-Rise, and therefore the total amount of fees and disbursements for which Representative Counsel is seeking court approval is \$1,759,971.28. Said amount is broken down as follows, and the full details of which are more particularly described in the Fee Affidavit:

- (a) The total amount of \$128,474.24 (inclusive of HST) in respect of the Pre-Appointment Fee Period;
- (b) The total amount of \$1,450,093.89 (inclusive of HST) in respect of the Post-Appointment Fee Period; and
- (c) The total amount of \$181,403.15 (inclusive of HST) in respect of the Distribution Agent Fee Period.

186. In light of the various steps taken prior to this proceeding through to the date of the Ninth Report, Representative Counsel is of the view that its fees and disbursements, and the fees and disbursements of the Distribution Agent, are reasonable in the circumstances, and respectfully requests that the Court approve said fees.

187. For the purposes of the fees and disbursements that it is seeking in this proceeding, Representative Counsel attaches the following Court Reports (without appendixes) as **Appendices “KK” to “PP”**, respectively:

- (a) First Report dated April 9, 2019;
- (b) Second Report dated September 13, 2019;
- (c) Third Report dated October 18, 2019;
- (d) Fourth Report dated January 9, 2020; and
- (e) Fifth Report dated April 6, 2020 and Supplemental Fifth Report dated April 21, 2020.

188. The activities and conduct of Representative Counsel as described in the First Report were approved by the Order of Justice Hainey dated April 15, 2019.

189. The activities and conduct of Representative Conduct as described in the above-noted Second Report, Third Report, Fourth Report, Fifth Report and Supplemental Fifth Report, were approved by the Order of Justice Hainey April 22, 2020, a copy of which is previously attached hereto as Appendix “M”.

190. Representative Counsel’s Sixth Report, Supplemental Sixth Report, Seventh Report, Supplemental Seventh Report and Eighth Report were previously attached hereto as Appendices “N”, “O”, “G”, “H” and “I”, respectively.

XI. SUMMARY OF MATTERS TO BE COMPLETED BY REPRESENTATIVE COUNSEL PRIOR TO DISCHARGE

191. To summarize the contents of this Ninth Report, Representative Counsel and the Distribution Agent intend to complete the following remaining matters in this proceeding:

- (a) Prepare the Final Distribution Notice and accompanying Final Distribution cheques to each Investor;
- (b) Attend to the mailing and delivery of the Final Distribution cheque and Final Distribution Notice to each Investor;
- (c) Provide Distribution information to Hi-Rise in respect of Investor’s that request investment loss/tax related documents;

- (d) Deliver payment to the members of the Official Committee on account of the proposed Honorarium;
- (e) Monitor the Distribution Trust Account, and if necessary, deliver correspondence to Investors that do not cash their Final Distribution cheque and make attempts to contact these Investors;
- (f) If necessary, undertake the Missing Investor Settlement Funds Payment Plan; and
- (g) Enter into the Final Mutual Release in accordance with the Release Provision in the Minutes and the proposed Ancillary Order.

192. Thereafter, Representative Counsel intends to file the Discharge Certificate certifying that it has completed the above-noted activities, Representative Counsel, each of the members of the Official Committee and the Distribution Agent shall be discharged in such respective capacities in this proceeding, provided however that notwithstanding said discharge, (a) Representative Counsel and the Distribution Agent shall remain in such capacities for the performance of such incidental duties as may be required to complete the administration of the Final Distribution, and (b) the Representative Counsel, the Distribution Agent and each of the members of the Official Committee shall continue to have the benefit of the provisions of all Orders made in this proceeding.

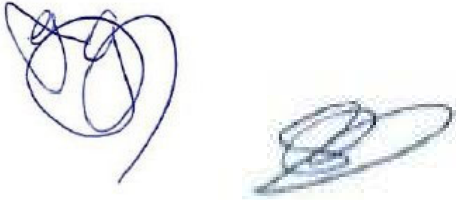
193. In respect of such discharge, Representative Counsel seeks an order releasing and discharging Representative Counsel, each of the members of the Official Committee and the Distribution Agent from any and all liability while acting in said capacities within these proceedings, save and except for any gross negligence or wilful misconduct, upon the filing of the Discharge Certificate.

194. However, in the event that any matters arise throughout the course of the Final Distribution or the remainder of these proceedings, Representative Counsel may instead bring a motion to Court for advice and direction, as necessary or advisable, and at such time may also seek further direction with respect to its discharge and release and the discharge and release of the Distribution Agent and members of the Official Committee.

XII. CONCLUSION

195. For all of the reasons stated above, Representative Counsel seeks approval of the Final Distribution Approval Order and the Ancillary Order described in paragraph 23 of this Ninth Report.

All of which is respectfully submitted at Toronto, Ontario this 29th day of March, 2022.

Two handwritten signatures in blue ink. The signature on the left is more complex and circular, while the one on the right is simpler and more horizontal.

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

APPENDIX A



9:30 A.M

H

COUNSEL - SLIP

COURT FILE NO. CV-19-616261-00CL

DATE: MAR 22, 2019

No. ON LIST 4A

TITLE OF PROCEEDING

HI-RISE CAPITAL LTD.

COUNSEL FOR:

Plaintiff (s)
Applicant (s)
Petitioner (s)

Stephanie Vautour's counsel for
Hi-Rise

Phone & Fax No

416-860-0617
416-642-7144

COUNSEL FOR:

Defendant (s)
Respondent (s)

Phone & Fax No

Stephanie DeCarla
~~Counsel~~ proposed Rep Counsel
(T) 416-595-2452
(F) 416-595-8675

(T) 416-304-0558

(F) 416-304-1313

JOHN FINNIGAN
for Financial Services Commission Ontario
(FSRO)

March 22, 2019

The attached order
shall issue on the

Consent of The Parties,
2-hour hearing scheduled
with Me on April 4/19
@ 70507.

Harris

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

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

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

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

ORDER

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

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

SERVICE

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

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

APPOINTMENT OF REPRESENTATIVE COUNSEL

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

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

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

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

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

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

TERMINATION OF EXISTING ADVISORY COMMITTEE

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

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

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

APPOINTMENT OF OFFICIAL COMMITTEE

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

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

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

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

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

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

INVESTOR INFORMATION

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

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

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

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

FEES OF COUNSEL

which amount shall exclude disbursements incurred by Representative Counsel

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

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

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

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

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

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

GENERAL

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

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

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

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

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

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

Attention: Gregory Azeff & Stephanie De Caria

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

POWERS OF HI-RISE CAPITAL LTD.

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

INVESTOR AND COURT APPROVAL

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

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

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

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

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

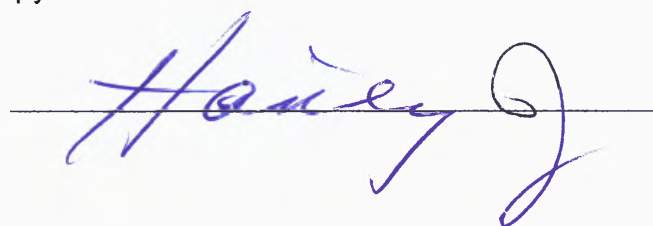
31. **THIS COURT ORDERS** that if at the Meeting a majority in number of the investors representing two-thirds in value present and voting either in person or by proxy cast votes in favour of the proposed Transaction and Distribution, Hi-Rise may proceed to bring a motion to this court, on a date to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

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

NOTICE TO INVESTORS

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

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

A handwritten signature in blue ink is written over a horizontal line. The signature is cursive and appears to read "Honey".

Schedule "A"

OPT-OUT NOTICE

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

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

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

Attention: Stephanie De Caria

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

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

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

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

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

Date

Signature

Date

Signature

If the Investor is a corporation, please execute below:

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

Schedule "B"

Official Committee Establishment Process

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

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

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

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

Establishment of the Official Committee

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

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

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

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

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

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

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

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

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

Schedule "C"

Official Committee Protocol

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

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

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

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

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

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

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

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

HI-RISE CAPITAL LTD.
Applicant

SUPERINTENDENT OF FINANCIAL SERVICES *et. al.*
Respondents

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**PROCEEDING COMMENCED AT
TORONTO**

ORDER

Cassels Brock & Blackwell LLP
2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

John N. Birch LSO #: 38968U
Tel: 416.860.5225
Fax: 416.640.3057
jbirch@casselsbrock.com

Stephanie Voudouris LSO #: 65752M
Tel: 416.860.6617
Fax: 416.642.7145
svoudouris@casselsbrock.com

Lawyers for the Applicant, Hi-Rise Capital Ltd.

APPENDIX B



COUNSEL = SLIP

COURT FILE NO. CV-19-00616261-00CL

DATE: APR 15 2019

No. ON LIST 8

TITLE OF PROCEEDING Hi-Rise Capital Ltd v. Superintendent of Financial Services et al

COUNSEL FOR: Stephanie De Caria Phone & Fax No
 Plaintiff (s) as ~~attorney~~ Representative Counsel
 Applicant (s) (T) 416-595-2652
 Petitioner (s) (F) 416-595-8695
(e) sdecaria@miller-thompson.com Email: forry@rorymegovernpc.com

COUNSEL FOR: Phone & Fax No
 Defendant (s) ph 416-938-7679
Respondent (s) Nadeem Ghori and Uzma Ghori fax 647-559-9694
 Email: rory@rorymegovernpc.com

PULAT YUNUSOV FOR DAVID POZO PULAT@LAWTO.ZA
416-628-5521
647-933-1171 (fax)
 Respondent: Superintendent of Financial Services
Tamara Markovic twarkovic@tjgf.ca
416-304-0601
416-304-1313 (fax)

April 15, 2019

I am satisfied that the attached order should remain on

The Terms of the attached
Para. 6 of my order
does not preclude
any official Committee
members from seeking
and obtaining independent
legal advice ..

Hairy J

There shall be a sealing
ordered on the terms of
para 7 of the order

Hairy J

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

)
)
)
)

MONDAY THE 15th

JUSTICE HAINEY

DAY OF APRIL, 2019

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



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

ORDER

THIS MOTION, made by Miller Thomson LLP, in its capacity Court-appointed Representative Counsel in this proceeding (in such capacity, "**Representative Counsel**"), was heard this day at the Court House, 330 University Avenue, Toronto, Ontario,

ON READING the Notice of Motion and the First Report of Representative Counsel dated April 9, 2019 (the "**First Report**"), and on hearing the submissions of Representative Counsel and such other counsel as were present as indicated on the Counsel Slip, no one appearing for any other person on the Service List, although properly served as it appears from the Affidavit of Shallon Garrafa sworn April 10, 2019, filed,

1. **THIS COURT ORDERS** that the time and method for service of the Notice of Motion and Motion Record is hereby abridged and validated, such that this Motion is properly returnable today, and further service of the Notice of Motion and the Motion Record is hereby dispensed with.
2. **THIS COURT ORDERS** that the activities and conduct of Representative Counsel, as disclosed in the First Report, be and are hereby approved.

3. **THIS COURT ORDERS** that the Official Committee (as defined in the First Report) be and is hereby constituted.
4. **THIS COURT ORDERS** that the Short List Candidates (as defined in the First Report) in respect of the Official Committee, be and are hereby approved.
5. **THIS COURT ORDERS** that the Official Committee members shall not disclose any information or communication that Representative Counsel advises is confidential or privileged.
6. **THIS COURT ORDERS** that the Official Committee members shall be required to advise Representative Counsel forthwith of any communication he or she receives from Investors (as defined in the First Report) or any other persons.
7. **THIS COURT ORDERS** that Confidential Appendix "1" to the First Report, be and is hereby sealed, pending further Order of the Court.

A handwritten signature in blue ink, appearing to read "Halsey J.", is written over a horizontal line.

ENTERED AT THE OFFICE OF THE REGISTRAR
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

APR 15 2019

PER / PAR:

A small handwritten signature in blue ink, possibly initials, is written next to the "PER / PAR:" label.

HI-RISE CAPITAL LTD.

Applicant

and

SUPERINTENDENT OF FINANCIAL
SERVICES et. al.
Respondents

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

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

Proceeding commenced at Toronto

**ORDER
(April 15, 2019)**

MILLER THOMSON LLP

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

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

APPENDIX C

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

MINUTES OF SETTLEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DATED AT this _____ day of _____, 2019.

LANTERRA DEVELOPMENTS LTD.

Per: 

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

DATED AT this _____ day of _____, 2019.

Witness: _____

JIM NEILAS

: _____

DATED AT this _____ day of _____, 2019.

263 HOLDINGS INC.

Per: _____

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

DATED AT this _____ day of _____, 2019.

ADELAIDE STREET LOFTS INC.

Per: _____

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

DATED AT _____ this _____ day of _____, 2019.

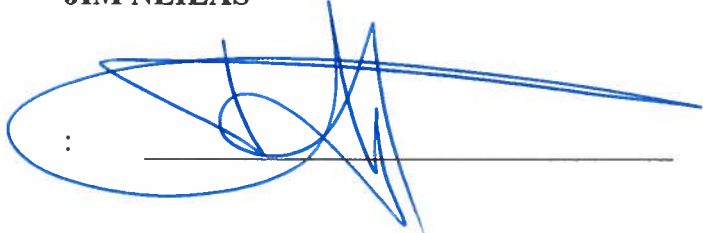
LANTERRA DEVELOPMENTS LTD.

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

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

Witness: 
Geoff L. Hall

JIM NEILAS


: _____

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

263 HOLDINGS INC.

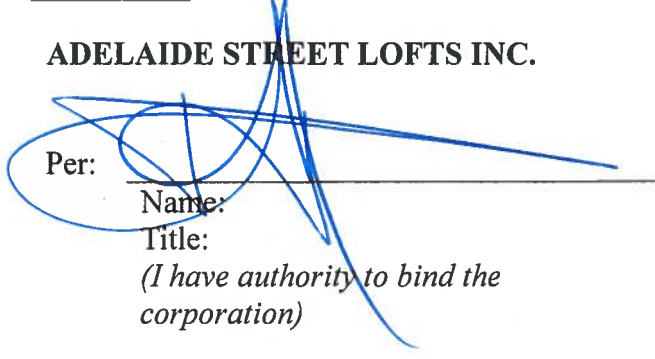
Per: _____
Name:
Title:
(I have authority to bind the corporation)



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

ADELAIDE STREET LOFTS INC.

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



DATED AT this _____ day of _____, 2019.

HI-RISE CAPITAL LTD.

Per: _____

Name: MOOR AL-RWQATI

Title: COO

(I have authority to bind the corporation)

DATED AT this _____ day of _____, 2019.

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

Per: _____

Name:

Title:

(I have authority to bind the limited liability partnership)

DATED AT this _____ day of _____, 2019.

Witness: _____

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

DATED AT this _____ day of _____, 2019.

HI-RISE CAPITAL LTD.

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

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

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



Per: _____
Name: Gregory R. Azeff
Title: Partner
(I have authority to bind the limited liability partnership)

DATED AT this _____ day of _____, 2019.

Witness: _____

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

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

DATED AT this _____ day of _____, 2019.

HI-RISE CAPITAL LTD.

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

DATED AT this _____ day of _____, 2019.

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

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

DATED AT this 23rd day of December, 2019.

Witness: [Signature]

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

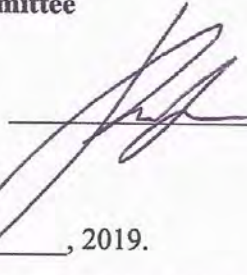
[Signature: Vipin Berry]

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

Witness: Nima Dgharian



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



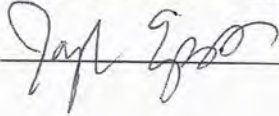
DATED AT _____ this _____ day of _____, 2019.

Witness: _____

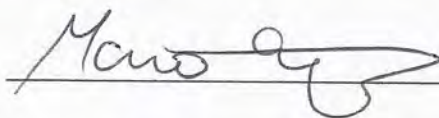
NICK TSAKONACOS, in his capacity as court-appointed member of the Official Committee

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

Witness: Jeff Goss



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

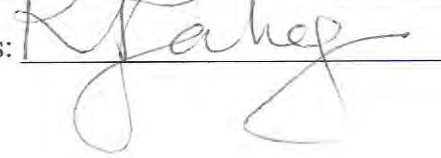
Per: 

DATED AT _____ this _____ day of _____, 2019.

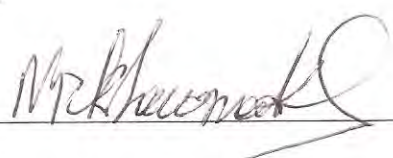
Witness: _____

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

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

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

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

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

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

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

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

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

Proceeding commenced at Toronto

ORDER

MILLER THOMSON LLP

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

Greg Azeff LSO#: 45324C

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

Stephanie De Caria LSO#: 68055L

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

Court-appointed Representative Counsel

HI-RISE CAPITAL LTD.

Applicant

and

SUPERINTENDENT OF FINANCIAL
SERVICES et. al.
Respondents

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

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

Proceeding commenced at Toronto

MINUTES OF SETTLEMENT

MILLER THOMSON LLP

Scotia Plaza

40 King Street West, Suite 5800

P.O. Box 1011

Toronto, ON Canada M5H 3S1

Greg Azeff LSO#: 45324C

gazeff@millerthomson.com

Tel: 416.595.2660/Fax: 416.595.8695

Stephanie De Caria LSO#: 68055L

sdecaria@millerthomson.com

Tel: 416.595.2652/Fax: 416.595.8695

Court-appointed Representative Counsel

**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.

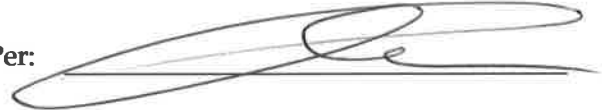
12. This Amendment, the Minutes of Settlement and the documents attached thereto, together with the executed Full and Final Mutual Release, represent the entire agreement among the Parties.

[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.

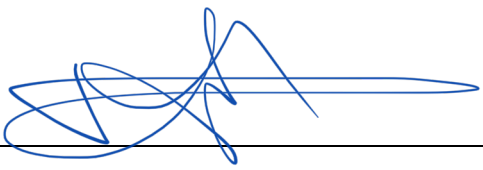
Per: _____

(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 29th day of April, 2020.

Witness: [Signature]

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

[Signature]

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 EMB

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DATED AT this _____ day of _____, 2019.

LANTERRA DEVELOPMENTS LTD.

Per: 

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

DATED AT this _____ day of _____, 2019.

Witness: _____

JIM NEILAS

: _____

DATED AT this _____ day of _____, 2019.

263 HOLDINGS INC.

Per: _____

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

DATED AT this _____ day of _____, 2019.

ADELAIDE STREET LOFTS INC.

Per: _____

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

DATED AT _____ this _____ day of _____, 2019.

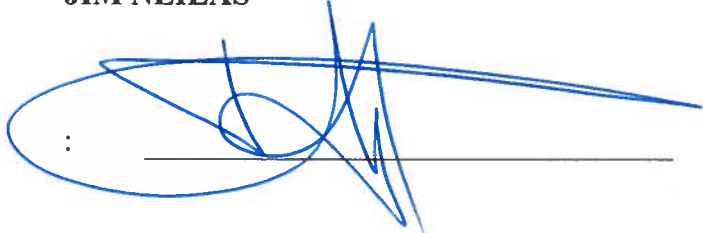
LANTERRA DEVELOPMENTS LTD.

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

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

Witness: _____
Goeff L. Hall

JIM NEILAS

Per: _____


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

263 HOLDINGS INC.

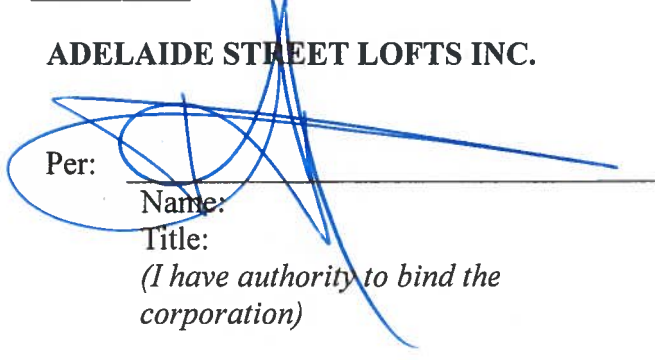
Per: _____
Name:
Title:
(I have authority to bind the corporation)



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

ADELAIDE STREET LOFTS INC.

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



DATED AT this _____ day of _____, 2019.

HI-RISE CAPITAL LTD.

Per: _____

Name: MOOR AL-RWQATI

Title: COO

(I have authority to bind the corporation)

DATED AT this _____ day of _____, 2019.

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

Per: _____

Name:

Title:

(I have authority to bind the limited liability partnership)

DATED AT this _____ day of _____, 2019.

Witness: _____

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

DATED AT

this _____ day of _____, 2019.

HI-RISE CAPITAL LTD.

Per: _____

Name:

Title:

(I have authority to bind the corporation)

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

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



Per: _____

Name: Gregory R. Azeff

Title: Partner

(I have authority to bind the limited liability partnership)

DATED AT

this _____ day of _____, 2019.

Witness: _____

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

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

DATED AT this _____ day of _____, 2019.

HI-RISE CAPITAL LTD.

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

DATED AT this _____ day of _____, 2019.

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

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

DATED AT this 23rd day of December, 2019.

Witness: [Signature]

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

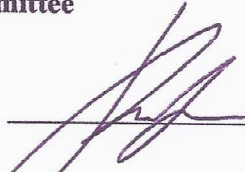
[Signature: Vipin Berry]

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

Witness: Nima Ghanian



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



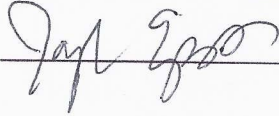
DATED AT _____ this _____ day of _____, 2019.

Witness: _____

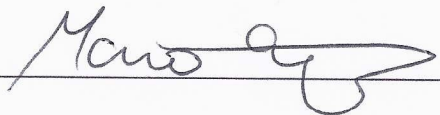
NICK TSAKONACOS, in his capacity as court-appointed member of the Official Committee

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

Witness: Jay Goo



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

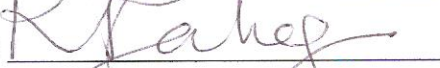
Per: 

DATED AT _____ this _____ day of _____, 2019.

Witness: _____

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

DATED AT TORONTO this 20th day of December 2019.

Witness: 

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



DATED AT _____ this _____ day of _____, 2019.

Witness: _____

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

Per: _____

APPENDIX "A"

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

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

ORDER

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

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

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

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

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

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

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

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

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

Proceeding commenced at Toronto

ORDER

MILLER THOMSON LLP

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

Greg Azeff LSO#: 45324C

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

Stephanie De Caria LSO#: 68055L

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

Court-appointed Representative Counsel

HI-RISE CAPITAL LTD.

Applicant

and

SUPERINTENDENT OF FINANCIAL
SERVICES et. al.
Respondents

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

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

Proceeding commenced at Toronto

MINUTES OF SETTLEMENT

MILLER THOMSON LLP

Scotia Plaza

40 King Street West, Suite 5800

P.O. Box 1011

Toronto, ON Canada M5H 3S1

Greg Azeff LSO#: 45324C

gazeff@millerthomson.com

Tel: 416.595.2660/Fax: 416.595.8695

Stephanie De Caria LSO#: 68055L

sdecaria@millerthomson.com

Tel: 416.595.2652/Fax: 416.595.8695

Court-appointed Representative Counsel

APPENDIX D



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 Ghori, 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:

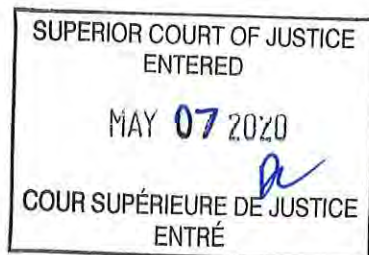
- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of Adelaide and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made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

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.

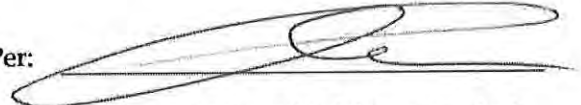
12. This Amendment, the Minutes of Settlement and the documents attached thereto, together with the executed Full and Final Mutual Release, represent the entire agreement among the Parties.

[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 29th day of April, 2020.

Witness: [Signature]

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

[Signature]

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 Ezz

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.

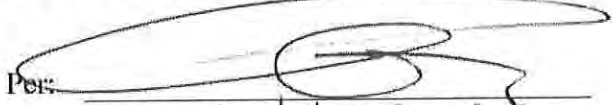
26. These Minutes of Settlement may be executed in counterparts, and by facsimile or electronic mail, each of which shall be deemed to be an original, all such separate counterparts shall together constitute one and the same instrument.

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. Wong
Title: Chief Operating Officer
(I have authority to bind the corporation)

DATED AT this _____ day of _____, 2019.

Witness: _____

JIM NEILAS

: _____

DATED AT this _____ day of _____, 2019.

263 HOLDINGS INC.

Per: _____

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

DATED AT this _____ day of _____, 2019.

ADELAIDE STREET LOFTS INC.

Per: _____

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

DATED AT _____ this _____ day of _____, 2019.

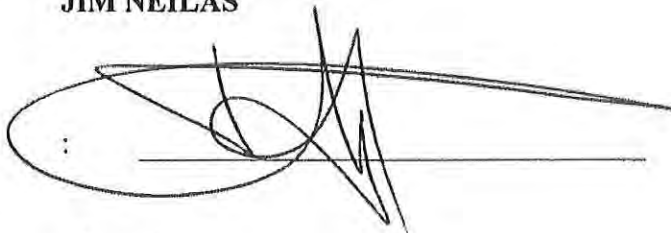
LANTERRA DEVELOPMENTS LTD.

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

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

Witness: 
Geoff K. Hall

JIM NEILAS


Per: _____

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

263 HOLDINGS INC

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

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

ADELAIDE STREET LOFTS INC.

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

DATED AT this _____ day of _____, 2019.

HI-RISE CAPITAL LTD.

Per: 
Name: 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 23rd day of December, 2019.

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



Per: _____

Name: Gregory R. Azeff

Title: Partner

(I have authority to bind the limited liability partnership)

DATED AT this _____ day of _____, 2019.

Witness: _____

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

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

DATED AT this _____ day of _____, 2019.

HI-RISE CAPITAL LTD.

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

DATED AT this _____ day of _____, 2019.

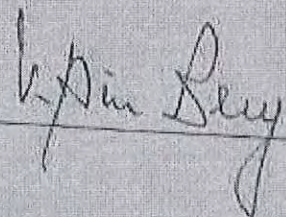
MILLER THOMSON LLP, solely in its capacity as court-appointed Representative Counsel

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

DATED AT this 23rd day of December, 2019.

Witness: 

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




DATED AT Toronto, ON this 20th 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: _____

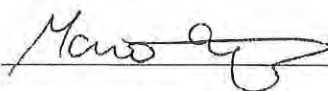
NICK TSAKONACOS, in his capacity as
court-appointed member of the Official
Committee

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

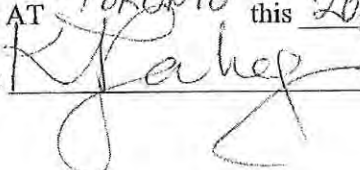
Per: 

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.
-

Applicant

**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 20th day of December, 2019

BETWEEN:

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

- and -

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

RECITALS

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

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

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

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

SECTION 1 – INTERPRETATION

1.1 Definitions.

In this Agreement:

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

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

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

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

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

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

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

1.2 Headings and References.

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

1.3 Extended Meanings.

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

1.4 Statutory References.

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

1.5 Schedules.

The following are the Schedules to this Agreement:

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

SECTION 2– PURCHASE AND SALE

2.1 Purchase and Sale of Purchased Assets.

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

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

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

2.2 Excluded Assets.

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

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

SECTION 3 – PURCHASE PRICE

3.1 Purchase Price and Deposit.

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

3.2 Deposit

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

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

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

3.3 Satisfaction of Purchase Price

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

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

3.4 Adjustment of Purchase Price

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

3.5 Taxes.

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

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

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

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

SECTION 4 – REPRESENTATIONS AND WARRANTIES

4.1 Vendor's Representations.

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

subject to the Minutes of Settlement;

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

4.2 Purchaser's Representations.

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

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

4.3 "As is, Where is"

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

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

SECTION 5 – CONDITIONS TO CLOSING

5.1 Conditions for the Benefit of the Purchaser.

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

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

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

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

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

5.2 Conditions for the Benefit of the Vendor.

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

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

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

5.3 Termination Rights

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

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