



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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Electronically issued : 04-May-2022
Délivré par voie électronique : 04-May-2022
Toronto

THE HONOURABLE
JUSTICE MCEWEN

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THURSDAY THE 28th

DAY OF APRIL, 2022

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
(RE: APPROVAL OF FINAL DISTRIBUTION)**

THIS MOTION, made by Miller Thomson LLP, in its capacity 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**") 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 previously owned by Adelaide Street Lofts Inc. (the "**Adelaide**"), 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**") was heard this day by zoom web conference,

ON READING the Notice of Motion and the Ninth Report of Representative Counsel dated March 29, 2022 (the "**Ninth Report**") and the Supplementary Ninth Report of Representative Counsel dated April 26, 2022 (the "**Supplementary Ninth Report**") and on hearing the submissions of Representative Counsel, and upon being advised that there is no

opposition to the within motion by such other counsel present as indicated on the Counsel Slip or the Service List, and no other person attending although duly served as set out in the Affidavits of Service of Shallon Garrafa, sworn March 30, 2022 and April 27, 2022, filed,

SERVICE

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

DEFINITIONS

2. **THIS COURT ORDERS** that capitalized terms not otherwise defined in this Order shall have the meaning prescribed to them in the Ninth Report.

APPROVAL OF FINAL CLAIM INDEX AND FINAL DISTRIBUTION AMOUNT

3. **THIS COURT ORDERS AND DECLARES** that the Final Claim Index, filed as Confidential Appendix “8” to the Ninth Report, be and it is hereby approved.

4. **THIS COURT ORDERS** that Representative Counsel be and it is hereby authorized and directed to distribute (or cause to be distributed, as more particularly described herein) the amount of \$1,408,287.84 (the “**Final Distribution Amount**”) to the Remaining Investors in accordance with the Final Claim Index and the Distribution Plan (the “**Final Distribution**”), in full and final satisfaction of each of their claims.

5. **THIS COURT ORDERS AND DECLARES** that for greater certainty, the following Investors be and are hereby exempt from participating in the Final Distribution and from receiving any portion of the Final Distribution Amount:

- (a) the Missing Investor (as described in the Missing Investor Settlement Funds Payment Plan referred to in provision 12 of this Order and set out in Schedule “B” hereto, and in the Confidential Missing Investors Brief to the Ninth Report);

- (b) the four (4) Settled Investors (as described in the Confidential Settlement Brief to the Ninth Report); and
- (c) all Registered Investors in this proceeding.

APPROVAL OF FINAL INVESTOR DISTRIBUTION NOTICE

6. **THIS COURT ORDERS** that the form of Final Distribution Notice to be delivered to Remaining Investors participating in the Final Distribution, substantially in the form attached hereto as Schedule “A”, be and it is hereby approved.

7. **THIS COURT ORDERS** that Representative Counsel and the Distribution Agent shall be permitted to make such minor amendments to the form of Final Distribution Notice in advance of delivering same to the Remaining Investors participating in the Final Distribution, as they deem necessary or appropriate.

DISTRIBUTION OF FUNDS

8. **THIS COURT ORDERS** that Representative Counsel be and it is hereby authorized and directed to transfer the Final Distribution Amount to the Distribution Trust Account maintained by the Distribution Agent.

9. **THIS COURT ORDERS AND DIRECTS** that the Distribution Agent shall distribute amounts in the Distribution Trust Account to the Remaining Investors set out in the Final Claim Index, on a *pro rata* basis, based upon the Final Claim Index and in full and final satisfaction of their claims.

10. **THIS COURT ORDERS AND DECLARES** that any Investor who has not filed a Notice of Objection with Representative Counsel is deemed to have: (a) accepted the Investor Claim Amount, classification and other information set out in his or her Investor Payment Notice; and (b) waived any further objection to the Investor Claim Amount, classification and other information set out in his or her Investor Payment Notice. For greater certainty, 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.

APPROVAL OF HONORARIUM

11. **THIS COURT ORDERS AND DECLARES** that an Honorarium in the aggregate amount of \$13,081.26 payable to each of the four (4) members of the Official Committee in equal amounts (*i.e.*, the amount of \$3,270.31 each), be and it is hereby approved, subject to the terms of the Missing Investor Settlement Funds Payment Plan referenced in provision 12 of this Order and Schedule “B” hereto.

MISSING INVESTOR SETTLEMENT FUNDS PAYMENT PLAN

12. **THIS COURT ORDERS AND DECLARES** that the Missing Investor Settlement Funds Payment Plan as described in Schedule “B” attached hereto, be and it is hereby approved. For greater certainty, the total amounts owing to the Missing Investor under the Distribution Plan (on account of the Initial Distribution and Final Distribution herein), shall be treated and delivered in accordance with the Missing Investor Settlement Funds Payment Plan.

13. **THIS COURT ORDERS AND DECLARES** that the Missing Investor described in the Confidential Missing Investor Brief to the Ninth Report and in the Supplementary Ninth Report and to which the Missing Investor Settlement Funds Payment Plan relates: (i) be and is hereby exempt from receiving the Initial Distribution or Final Distribution in these proceedings; (ii) any and all claims, liabilities, settlement amounts and other obligations owing to the Missing Investor in these proceedings under the Distribution Plan, be and they are hereby forever extinguished; and (iii) any and all claims to settlement amounts by the Missing Investor, or by any of his successors, heirs, executors, administrators, estate trustees, and assigns, be and they are hereby permanently barred.

MISSING INVESTOR FINAL DISTRIBUTION FUNDS PLAN

14. **THIS COURT ORDERS AND DECLARES** that the Missing Investor Final Distribution Funds Plan as described in Schedule “C” attached hereto, be and it is hereby approved.

15. **THIS COURT ORDERS AND DECLARES** that upon the 6-month expiry of the delivery of the Final Distribution by the Distribution Agent in accordance with the Final Claim

Index, any Remaining Investors that fail to cash their Final Distribution cheques shall be treated in accordance with the Missing Investor Final Distribution Funds Plan.

FINAL MUTUAL RELEASE UNDER THE MINUTES

16. **THIS COURT ORDERS AND DIRECTS** that upon the completion of the Final Distribution approved herein (including the completion of the Missing Investor Settlement Funds Plan and the completion of the Missing Investor Final Distribution Funds Plan, if such Missing Investor Final Distribution Funds Plan becomes necessary), each of the parties to the Minutes shall execute a further and final release in accordance with and in satisfaction of section 20 of the Minutes.

SEALING ORDER

17. **THIS COURT ORDERS** that the Confidential Missing Investor Brief, Confidential Settlement Brief and the Final Claim Index at Confidential Appendix “8” to the Ninth Report, be and they are hereby sealed and shall not form part of the public record, pending further Order of the Court, and a copy of same redacting the names, addresses and other identifiable information in respect of the Investors and Opt Out Investors shall be filed with the Court and form part of the public record.

DISCHARGE

18. **THIS COURT ORDERS AND DIRECTS** that upon the completion of the Final Distribution approved herein (including the completion of the Missing Investor Settlement Funds Plan and the completion of the Missing Investor Final Distribution Funds Plan, if such Missing Investor Final Distribution Funds Plan becomes necessary), Representative Counsel may attend to one of the following in order to complete its discharge in these proceedings:

- (a) file a certificate substantially in the form attached as Schedule “D” to the Final Distribution Order (the “**Discharge Certificate**”) with the Court, certifying that it has completed the Final Distribution and completed all other activities described in the 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.

19. **THIS COURT ORDERS** that Representative Counsel shall be permitted to make such minor amendments to the form of the Discharge Certificate, as it may deem necessary or appropriate.

20. **THIS COURT ORDERS** 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, 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 other minor administrative or incidental duties; (b) Representative Counsel and the Distribution Agent shall be permitted (but not required) to attend at Court and obtain Court Orders in this proceeding as may be necessary or advisable for the performance of such administrative or incidental duties and to complete the administration of the Final Distribution or any other matter in this proceeding; and (c) 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.

21. **THIS COURT ORDERS AND DECLARES** 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 released and discharged from any and all liability they now have or may hereafter have by reason of, or in any way arising out of, the acts or omissions of: (i) Miller Thomson LLP, while acting in its capacity as Representative Counsel herein; (ii) the individuals Vipin Berry, Nick Tsakonacos, Marco Arquilla and Michael Singh, each while acting in their capacity as members of the Official Committee; and (iii) Alvarez & Marsal Canada Inc., while acting in its capacity as Distribution Agent (collectively, the “**Released Parties**”), save and

except for any gross negligence or wilful misconduct on their respective parts. Without limiting the generality of the foregoing, the Released Parties are hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within proceedings, save and except for any gross negligence or wilful misconduct on the part of the Released Parties or any one of them.



SCHEDULE "A"

FORM OF FINAL INVESTOR DISTRIBUTION NOTICE

MILLER THOMSON
AVOCATS | LAWYERSMILLER THOMSON LLP
SCOTIA PLAZA
40 KING STREET WEST, SUITE 5800
P.O. BOX 1011
TORONTO, ON M5H 3S1
CANADAT 416.595.8500
F 416.595.8695

MILLERTHOMSON.COM

[Date]

[Investor Name]

[Address 1]

[Address 2]

**Re: Final Distribution Notice
Investment Number**

As you are aware, pursuant to the Order 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 ("**Representative Counsel**") to represent all individuals and/or entities ("**Investors**") that hold an interest in a syndicated mortgage administered by Hi-Rise Capital Ltd. 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 previously owned by Adelaide Street Lofts Inc., in connection with the negotiation and implementation of a settlement with respect to such investments, except for those Investors who opted out of representation by Representative Counsel in accordance with the terms of the Appointment Order (the "**Opt-Out Investors**").

Unless otherwise defined herein, capitalized terms in this Final Distribution Notice are as defined in the Ninth Report of Representative Counsel dated March 29, 2022 (the "**Ninth Report**") or the Order of Justice McEwen dated April 7, 2022 (the "**Final Distribution Approval Order**"), copies of which are available on Representative Counsel's website at <https://www.millerthomson.com/en/hirise>.

This Final Distribution Notice is delivered to you further to the Final Distribution Order, and further to the Order of Justice Hailey dated November 23, 2020 (the "**Distribution Plan Approval Order**") and the court-approved Distribution Plan (the "**Distribution Plan**").

Details of Your Investor Claim Amount

Pursuant to the Distribution Plan, Alvarez & Marsal Canada Inc. in its capacity as Distribution Agent in these proceedings (the "**Distribution Agent**") delivered an Investor Claim Notice to you, which included the following details regarding your investment. For ease of reference, we reiterate the details your Investor Claim Notice here:

Investment Number	\$ •
Principal Investment Amount:	\$ •
Accrued Interest:	\$ •
Total Investor Claim Amount:	\$ •

Details of Your Initial Distribution

As you may recall, and pursuant to the Order of Justice Hailey dated March 17, 2021 (the "**Initial Distribution Approval Order**"), Representative Counsel was authorized by the Court to make an Initial Distribution of funds to the Investors and Opt-Out Investors.

In accordance with the Initial Distribution Order, the Distribution Agent has made an Initial Distribution to you and you have already received your Initial Distribution under the Initial Distribution Approval Order.

For ease of reference, your Initial Distribution was in the amount of \$• representing a recovery of approximately 34.45% of your Investor Claim Amount.

Final Distribution

Pursuant to the Final Distribution Approval Order, Representative Counsel was authorized by the Court to deliver a Final Distribution of funds in accordance with the court-approved Final Claim Index.

In accordance with the Final Distribution Approval Order, enclosed please find a Final Distribution cheque payable to you in the amount of \$•, which represents an additional recovery of %• of your Investor Claim Notice.

This Final Distribution represents the FINAL and LAST Distribution that you will receive in these proceedings, in full and final satisfaction of your claim(s).

Summary of Total Distribution Received by You in these Proceedings

For the purposes of completeness and clarity, we wish to summarize the total Distributions you have received in this proceeding and your total recovery on your Investor Claim Amount. The details are as follows:

Principal Investment Amount:	\$ •
Accrued Interest:	\$ •
Total Investor Claim Amount:	\$ •
Initial Distribution Percentage:	\$ •
Initial Distribution Amount:	\$ •
Final Distribution Percentage:	\$ •
Final Distribution Amount:	\$ •
Total and Final Distribution Percentage:	\$ •
<i>(i.e., Initial Distribution Percentage + Final Distribution Percentage)</i>	
Total and Final Distribution Amount:	\$ •
<i>(i.e., Initial Distribution Amount + Final Distribution Amount)</i>	

In light of the terms of the Distribution Plan, all of the amounts contained above, including your Final Distribution, are final and are not open to any objection.

We trust that the foregoing is satisfactory. If you have any questions, please contact Representative Counsel by email to HiRiseCapital@millerthomson.com

Yours truly,

MILLER THOMSON LLP, IN ITS CAPACITY
AS COURT-APPOINTED REPRESENTATIVE COUNSEL.



SCHEDULE "B"

MISSING INVESTOR SETTLEMENT FUNDS PAYMENT PLAN

1. This Missing Investors Settlement Funds Plan is in reference to the Missing Investor described in the Confidential Missing Investor Brief to the Ninth Report and in the Supplementary Ninth Report.
2. The total amount of this Missing Investor's Distribution under the Distribution Plan on account of both the Initial Distribution and Final Distribution is \$13,081.26 (the "**Missing Investor Settlement Funds**").
3. The Missing Investor Settlement Funds, and for greater certainty, any and all claims, liabilities, settlement amounts and other obligations owing to the Missing Investor in these proceedings under the Distribution Plan are forever extinguished and any and all claims to settlement amounts by the Missing Investor, or by any of his successors, heirs, executors, administrators, estate trustees, and assigns, are permanently barred.
4. Accordingly, the Missing Investor Settlement Funds, in the amount of \$13,081.26, shall be treated and delivered as follows:
 - (a) The Missing Investor Settlement Funds shall be delivered to each of the four (4) members of the Official Committee in equal amounts (*i.e.*, the amount of \$3,270.31 each), as an Honorarium for the gratuitous worked performed by the Official Committee in connection with these proceedings; and
 - (b) In the event the Missing Investor makes a claim to the Missing Investor Settlement Funds prior to the issuance of this Order (re: Approval of Final Distribution), then Representative Counsel, with the assistance of the Distribution Agent, shall make payment to that Missing Investor on account of its Initial Distribution and Final Distribution.

SCHEDULE "C"

MISSING INVESTOR FINAL DISTRIBUTION FUNDS PLAN

1. Upon the 6-month expiry from the date of delivery of the Final Distribution in accordance with the Final Claim Index (*i.e.*, the date of mailing out of the Final Distribution cheques by the Distribution Agent), any Remaining 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 this Order (re: Approval of Final Distribution) and any Final Distribution amounts owing to the Missing Final Distribution Investors under this Order (re: Approval of Final Distribution) (the "**Missing Investor Final Distribution Funds**") be and are hereby forever extinguished and any and all claims by Missing Final Distribution Investors to a Final Distribution be and are hereby permanently barred.
2. For greater certainty, after the six (6) month expiry from the date of delivery of the Final Distribution in accordance with the Final Claim Index (*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.
3. Upon the 6-month expiry of the delivery of the Final Distribution in accordance with the Final Claim Index (*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:
 - (a) 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
 - (b) In the event that the amount of the Missing Investor Final Distribution Funds exceeds \$40,000, then Representative Counsel shall be permitted to either: (a)

attend at Court at a 9:30 Chambers' attendance to address the issue of the excess Missing Investor Final Distribution Funds; or, (b) pay any amount above the \$40,000 into Court, on notice to the Missing Final Distribution Investors.

SCHEDULE "D"

DISCHARGE CERTIFICATE

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

DISCHARGE CERTIFICATE

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**").

2. Pursuant to the Order of the Honourable Mr. Justice McEwen of the Court dated April * 2022, the Court approved a Final Distribution in these proceedings to the Non-Registered Investors and applicable Opt-Out Investors set out in the Court-approved Final Claim Index.

REPRESENTATIVE COUNSEL CERTIFIES THE FOLLOWING:

3. Representative Counsel and the Distribution Agent have undertaken the Final Distribution in accordance with the Final Distribution Order.

4. Representative Counsel has completed all other matters set out in its Ninth Report dated March 29, 2022.

THIS CERTIFICATE WAS DELIVERED BY REPRESENTATIVE COUNSEL AT ____
[TIME] ON ____ [DATE]

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

Per: _____

Name:

Title:

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

ORDER

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Court-appointed Representative Counsel