

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

B E T W E E N:

BRIDGING FINANCE INC., AS AGENT

Applicant

- and -

2607380 ONTARIO INC.

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c.B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C.43, AS AMENDED

APPLICATION RECORD

CHAITONS LLP

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Lawyers for Bridging Finance Inc.

Court File No.

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TAB 1

Court File No.

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NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing on Friday, March 6, 2020, at 11:00 a.m., before The Honourable Madam Justice Conway at 330 University Avenue, 8th Floor, Toronto, Ontario M5G 1R7.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date March 6, 2020 Issued by _____
Local Registrar

Address of Superior Court of Justice
court office: 330 University Avenue, 9th Floor
Toronto, Ontario M5G 1R7

TO: **2607380 ONTARIO INC.**
2388 Mohawk Trail
Campellville, Ontario L0P 1B0

APPLICATION

1. The Applicant, Bridging Finance Inc., as Agent (“**Bridging**”), makes application for:
 - (a) an order appointing msi Spergel Inc. (“**Spergel**”) as receiver (“**Receiver**”) of the property, assets and undertaking of 2607380 Ontario Inc. (the “**Debtor**”) pursuant to Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C 1985, c. B-3 (the “**BIA**”), and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (the “**CJA**”); and
 - (b) such further and other relief as this Honourable Court may deem just.

2. The grounds for the application are:
 - (a) The Debtor is an Ontario corporation that owns real property municipally known as 1295 North Service Road, Burlington, Ontario (the “**Nuvo Property**”). The Debtor manages and leases the rental spaces in the commercial building situated on the Nuvo Property (the “**Nuvo Building**”).
 - (b) On March 20, 2018, Bridging and the Debtor entered into a commitment letter (the “**Commitment Letter**”), pursuant to which Bridging agreed to loan \$2.5 million to the Debtor in connection with its purchase of the Nuvo Property.
 - (c) As security for payment of all indebtedness and the performance of all its obligations under the Commitment Letter, the Debtor granted in favour of Bridging, among other things, a third charge/mortgage on the Nuvo Property in the principal amount of \$3.25 million (the “**Third Mortgage**”) and a general security agreement (the “**GSA**”).

- (d) Pursuant to the Commitment Letter, the Third Mortgage and the GSA, upon the occurrence of an event of default, Bridging may appoint a receiver over the property and assets of the Debtor.
- (e) The Debtor has experienced difficulties in completing renovations of the Nuvo Property due to a lack of financing.
- (f) The Debtor has been in default under its loans from Meridian Credit Union Limited (“**Meridian**”) since early 2019. Meridian holds the first ranking charge/mortgage on the Nuvo Property. The Debtor entered into a number of forbearance and amendment agreements with Meridian, the last of which expired on October 31, 2019. As of January 31, 2020, the Debtor was indebted to Meridian in the amount of approximately \$17.3 million.
- (g) The Debtor has been in default under the Commitment Letter for non-payment of interest since July 2019. As at February 26, 2020, the outstanding balance was \$2,990,611.74 for principal and interest excluding costs.
- (h) The Debtor also is indebted to, among others, Crossroads Christian Communications Inc., which holds a \$4.5 million second ranking mortgage/charge over the Nuvo Property, and lien claimants that have registered construction liens against the Nuvo Property totaling approximately \$2.0 million.
- (i) On December 30, 2019, Bridging, through its lawyers, sent a letter to the Debtor demanding payment of the interest arrears.

- (j) To date, Bridging has received no payments from the Debtor in response to the demand for payment.
 - (k) On February 25, 2020, the Debtor obtained protection from its creditors under the *Companies' Creditors Arrangement Act* ("CCAA") pursuant to the Initial Order of Justice Conway. The application was made on inadequate notice to Bridging and others.
 - (l) It is in the best interests of Bridging and the Debtor's creditors generally that a Receiver be appointed to take control over and realize on the Debtor's property and assets, including the Nuvo Property, for the benefit of all of the Debtor's stakeholders.
 - (m) It is just and convenient in the circumstances to appoint a Receiver.
 - (n) Bridging proposes that Spergel be appointed as Receiver. Spergel has agreed to accept the appointment.
 - (o) Section 243 of the BIA, and Section 101 of the CJA.
 - (p) Rules 1.04(1), 1.05, 2.01, 2.03, 3.02, and 38 of the *Rules of Civil Procedure*.
 - (q) Such further and other grounds as the lawyers may advise.
3. The following documentary evidence will be used at the hearing of the application:
- (a) the Affidavit of Shawn Saulnier sworn February 24, 2020 and the exhibits thereto, the Affidavit of Robert Cacovic sworn March 5, 2020 and the exhibits thereto, and the Affidavit of Shawn Saulnier sworn March 4, 2020 and the exhibits thereto, each

of which was filed in the Debtor's CCAA proceeding bearing Court File No. CV-20-00636875-00CL; and

- (b) such further and other evidence as the lawyers may advise and this Honourable Court may permit.

March 6, 2020

CHAITONS LLP
5000 Yonge Street, 10th Floor
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Lawyers for the Applicant

BRIDGING FINANCE INC., AS AGENT

-and-

2607380 ONTARIO INC.

Applicant

Respondent

Court File No.

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

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF APPLICATION

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Lawyers for the Applicant

TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
2607380 ONTARIO INC. (the "**Applicant**")

AFFIDAVIT OF ROBERT CACOVIC

I, Robert Cacovic, of the City of Vancouver, in the Province of British Columbia, MAKE OATH AND SAY AS FOLLOWS:

1. I am a Senior Managing Director at Bridging Finance Inc. ("**Bridging**") and have held that position since September 2017.
2. In my position as Senior Managing Director, I am responsible for managing the loan made by Bridging, acting as agent, to the Applicant, 2607380 Ontario Inc. ("**260**"). My colleague, Yannick Adair, a Credit Analyst at Bridging, handles the day-to-day administration of the loan account. In preparing this affidavit, I have spoken with Mr. Adair and others at Bridging, where necessary. Where I have relied upon information received from others, I verily believe such information to be true.
3. This affidavit is made in opposition to the application by 260 for relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("**CCAA**") and in support of the application by Bridging for the appointment of a receiver over the property and assets of 260.
4. 260 is a real estate holding company beneficially owned by Mr. Shawn Saulnier, which owns the Nuvo Property and the Nuvo Building (each as defined in the affidavit of Shawn Saulnier sworn February 24, 2020 (the "**Saulnier Affidavit**")).
5. In or about March 2018, I was approached by Mr. Paul Simpson of Norton McMullen Corporate Finance, a financial consultant to Mr. Saulnier and 260, with a request to provide 260 a \$2.5 million

mortgage loan to assist in the acquisition of the Nuvo Property. The loan was required as Meridian had reduced the amount of the first mortgage loan it was prepared to make to 260 for such purpose.

6. It was represented that the loan requested from Bridging would be repaid upon completion of the renovations to the Nuvo Building when takeout mortgage financing would be available.

7. Meridian had provided 260 with a commitment for takeout financing for \$20 million, which was sufficient to pay out the Meridian construction financing and the requested Bridging third mortgage loan. However, as set out at paragraph 33 of the Saulnier Affidavit, the takeout financing facility was subsequently removed.

The Loan

8. Pursuant to a commitment letter dated March 20, 2018 (the "**Commitment Letter**"), a copy of which is attached hereto as **Exhibit "A"**, Bridging, acting as agent, made a loan to 260 in the amount of \$2.5 million to finance the purchase of the Nuvo Property (the "**Loan**"). As a credit inducement for Bridging to make the Loan, the Loan was guaranteed by Mohawk Inn & Suites Management Inc. ("**Mohawk**") and 2348587 Ontario Inc. ("**234**") and by Mr. Saulnier personally (collectively, the "**Guarantors**"). I was advised by Mr. Saulnier that Mohawk owns approximately 120 acres of land adjacent to the Woodbine Mohawk Park located near Milton, Ontario which could be made available as security to provide additional liquidity, if required. The Woodbine Mohawk Park includes the Mohawk Racetrack and the Woodbine Casino.

9. The Loan had an outside maturity date of March 23, 2020, which was to coincide with the completion of the renovations to the Nuvo Building and the refinancing of the Nuvo Property by Meridian or another lender.

10. The Loan bears interest at the Bank of Montreal prime rate from time to time plus 11.80% per annum. At the time of the Commitment Letter, the interest rate applicable to the Loan was 15.25% per annum. Interest accrued and was capitalized from the date of the advance of the Loan to September 30, 2018. Thereafter, 260 was to pay interest only monthly until maturity.

11. As security for the Loan, Bridging holds, among other instruments:

(a) a third Mortgage/Charge on the Nuvo Property in the amount of \$3.25 million, a copy of which is attached hereto as **Exhibit "B"**;

(b) a General Security Agreement, a copy of which is attached as Exhibit “L” to the Saulnier Affidavit;

(c) a General Assignment of Leases and Rents; and

(d) an Undertaking and Agreement by 260 and the Guarantors to fund cost overruns and service debt.

12. Each of the Commitment Letter, the Mortgage and the General Security Agreement provide that, upon default, Bridging may appoint a receiver over the property and assets of 260 including the Nuvo Property.

Default

13. Interest on the loan for the months of May and June 2019, were paid late. Interest on the loan has not been paid since June 2019 and continues to accrue.

14. In June 2019, Mr. Saulnier advised me that he was in discussions with alternate lenders to obtain financing to payout Meridian and Bridging and provide financing to complete the renovations of the Nuvo Building. According to Mr. Saulnier, he anticipated a term sheet within a week.

15. In August 2019, Mr. Simpson advised me by email that he was continuing to work on takeout financing for Meridian and Bridging, and although no term sheet had yet been received, he expected one over the next couple of weeks. A copy of the email is attached hereto as **Exhibit “C”**.

16. No term sheet from an alternative lender to refinance Meridian and Bridging was provided despite the representations of Mr. Saulnier and Mr. Simpson that one would be delivered.

17. In approximately August 2019, when Mr. Saulnier was unable to secure any commitment to refinance the Meridian and Bridging loans, he proposed to refinance Mohawk to obtain funds to continue with the renovations at the Nuvo Building, which had stopped by then due to lack of funding.

18. On September 26, 2019, Mr. Saulnier advised me that he had listed the Mohawk property for sale with CBRE. As at the date of this affidavit, the Mohawk property has not been sold nor am I aware of any offers that have been made to purchase the property.

Appointment of a Receiver

19. 260 has been in default under the Loan for non-payment of interest since July 2019. As at February 26, 2020, the outstanding balance of the Loan was \$2,990,611.74 for principal and interest excluding costs.

20. On December 30, 2019, our lawyers sent a letter to 260 demanding payment of the interest arrears. A copy of the letter is attached as Exhibit “V” to the Saulnier Affidavit.

21. Based on the information contained in the Saulnier Affidavit, the amounts owing by 260 under the Meridian, CCCI and Bridging mortgages total approximately \$25 million. There are also unpaid construction liens which have been registered against the Nuvo Property totalling approximately \$2.0 million and unpaid property taxes of more than \$200,000.

22. At the request of Meridian, in August 2019, 260 retained Intrepid Quantity Surveying Inc. (“**Intrepid**”) to determine the cost to complete the renovations at the Nuvo Building. An overall budget issued by Intrepid on August 20, 2019 estimated the cost to complete at approximately \$3.7 million. According to Mr. Saulnier, the Intrepid estimate was overly conservative and the actual cost to complete was approximately \$3.0 million. Copies of the Intrepid budget and the 260 budget are attached hereto as **Exhibits “D” and “E”** respectively.

23. Despite having more than 6 months to do so, 260 has been unable to obtain financing to service the Meridian and Bridging loans and to complete the renovations at the Nuvo Building.

24. According to the Saulnier Affidavit and the Proposed Monitor’s Report, the purpose for these CCAA proceedings is to provide 260 with breathing room to complete the renovations at the Nuvo Building and then refinance or sell the Nuvo Property. 260 obtained a commitment for a priming DIP loan in the amount of approximately \$7.2 million to fund the costs of these proceedings and complete the renovations, even though according to the Proposed Monitor’s Report (at paragraph 33), the estimated cost to complete the renovations is \$2.0 million.

25. Based on my review of the 13-Week Cash Flow Forecast included in the Proposed Monitor’s Report, approximately \$2.0 million of the DIP loan will be used to pay the lien claimants the amounts owed to them before any work commences. Bridging objects to the proposed payment of the lien claims as they rank subordinate in priority to Bridging’s mortgage on the Nuvo Property.

26. 260 relies on a confidential appraisal to support its position that upon completion of the renovations, the Nuvo Property will exceed the amounts owing to its lenders.

27. It is Bridging’s opinion based on its experience as a secured lender that 260 will not be able to refinance the Nuvo Property for an amount sufficient to fully repay all mortgages and other encumbrances on the property including the DIP loan due to inadequate lease revenue to service the debt. Instead, 260 will have to sell the Nuvo Property to pay the mortgages and other encumbrances totaling approximately \$35 million (including the DIP loan) based on information contained in the Saulnier Affidavit.

28. In the opinion of Bridging, Mr. Saulnier’s continued involvement in the completion of the renovations is unnecessary and the CCAA proceeding adds a significant layer of additional costs in priority to Bridging’s mortgage which is highly prejudicial to Bridging’s security position.

29. Bridging is of the opinion that a receiver appointed by this Court can no less effectively than 260 take all necessary steps to complete the renovation work and sell the Nuvo Property on a more cost-efficient basis than is being proposed by 260. The costs savings are material to Bridging as the third ranking mortgagee, whose loan is at serious risk of non-payment.

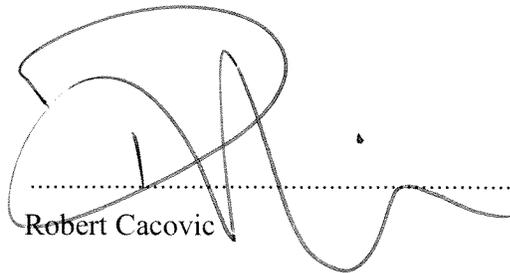
30. In the circumstances, it would not be appropriate to grant the Applicant the relief it is seeking. The application should be dismissed and a receiver appointed to complete the renovations and sell the Nuvo Property. MSI Spergel Inc. has consented to act as receiver if so appointed by the Court.

31. Bridging is prepared to provide the receiver with the necessary funding to complete the renovations and sell the Nuvo Property if the receiver considers it advisable to do so, secured by a receiver’s charge on the property of 260 ranking immediately behind Meridian’s security.

Sworn before me at the City of Vancouver, in the Province of British Columbia, on March 5, 2020.



.....
Commissioner for Taking Affidavits
(or as may be)



.....
Robert Cacovic

ROBERT HANSON
BARRISTER & SOLICITOR
NORTON ROSE FULBRIGHT CANADA LLP
SUITE 1800 - 510 WEST GEORGIA STREET
VANCOUVER, B.C. V6B 0M3
(604) 641-4953

**THIS IS EXHIBIT "A" TO
THE AFFIDAVIT OF ROBERT CACOVIC**

SWORN BEFORE ME THIS 4th PM

DAY OF MARCH, 2020



A Commissioner etc.

ROBERT HANSON

BARRISTER & SOLICITOR

NORTON ROSE FULBRIGHT CANADA LLP

SUITE 1800 - 510 WEST GEORGIA STREET

VANCOUVER, B.C. V6B 0M3

(604) 641-4953



March 20, 2018

2607380 Ontario Inc.
2380 Mohawk Trail
Campbellville, ON L0P 1B0

Attention: Mr. Shawn Saulnier

Dear Mr. Saulnier:

We are pleased to advise that Bridging Finance Inc., as agent (the "Lender") has approved a third mortgage loan over 1295 North Service Road, Burlington, Ontario (the "Property") in the principal amount of \$2,500,000 (the "Loan") upon the terms and conditions described in this commitment letter (the "Commitment") which, upon execution, shall bind 2607380 Ontario Inc. (the "Borrower"), Shawn Saulnier (the "Personal Guarantor") and Mohawk Inn & Suites Management Inc. and 2348587 Ontario Inc. (collectively, the "Corporate Guarantors" and with the Personal Guarantor, the "Guarantors") and the Lender.

PURPOSE

The Loan shall be used to finance the acquisition of the Property and shall at all times be used for this purpose and for no other purpose without the prior written consent of the Lender.

CLOSING DATE

The date of the Loan advance, being no later than March 31, 2018 (the "Closing Date").

TERM

The Loan shall mature and any outstanding balance together with accrued interest and costs shall become due and payable in full to the Lender on the earliest of: (a) March 23, 2020; (b) the date of demand by the Lender; and (c) the date of maturity or demand by Meridian Credit Union Limited ("MCUL") of the loan (the "MCUL Loan") to the Borrower in respect of the Property from MCUL (the "Maturity Date").

INTEREST RATE

Prime Rate in effect from time to time plus 11.80% per annum calculated and payable monthly not in advance both before and after maturity, default and judgment. On the date of this Commitment the Prime Rate is 3.45% per annum and the interest rate applicable to the Loan is 15.25% per annum.

"Prime Rate" means the annual rate of interest announced from time to time by the Bank of Montreal as a reference rate then in effect for determining interest rates on Canadian dollar commercial loans in Canada and designated by the Lender as its prime rate.

REPAYMENT

Interest shall accrue from the date of the advance of the Loan and shall be capitalized and added to the principal amount of the Loan on the last day of each month commencing March 31, 2018, and ending September 30, 2018. Thereafter, commencing October 31, 2018, payments of interest only shall be made on the last day of each month.

PREPAYMENT

The Loan may be prepaid in full or partially at any time without any fee or penalty provided that the Borrower shall deliver an irrevocable prepayment notice to the Lender (the "Prepayment Notice") sixty (60) days prior to the



proposed prepayment date (the “Prepayment Date”) setting forth the amount being prepaid (the “Prepayment Amount”) and provided that the Borrower pays the full Prepayment Amount on the Prepayment Date. Should the Borrower wish to prepay the Loan in full or partially without having to provide the Lender with the required sixty (60) days prior notice, the Borrower shall pay to the Lender an amount calculated in accordance with the formula set out below and which shall be due and payable as of the date the prepayment is made:

$$I/365 \times (60 - N) \times M$$

Where:

I = the annual interest rate on the Loan on the date the Prepayment Notice was given or, if no Prepayment Notice was given, on the date the prepayment is made;

N = where a Prepayment Notice was given, the number of days between the date the Prepayment Notice is given and the date of prepayment, provided that if no Prepayment Notice was given, N shall equal 0; and

M = the Prepayment Amount, including any proportionate interest and other fees owing, on the date the Prepayment Notice was given or, if no Prepayment Notice was given, on the date the prepayment is made.

In the event that the Prepayment Amount is not paid in full on the Prepayment Date, then the Lender shall have the option, in its discretion, to declare and consider the Prepayment Notice to be null and void such that any prepayment shall thereafter only be permitted by the delivery of a new Prepayment Notice in compliance with this section.

SECURITY

The Loan shall be secured by the following security (the “Security”):

- (a) a third mortgage and charge on the Property (the “Charge”) supported by title insurance;
- (b) a second ranking general assignment of leases and rents and revenues from the Property (the “GAR”);
- (c) a general security agreement providing a second ranking security interest against all the Borrower’s present and future assets, property and undertaking;
- (d) a second ranking general assignment of construction contracts in respect of the Property;
- (e) a postponement and assignment of any claims from the directors and shareholders of the Borrower, if applicable;
- (f) an assignment of insurance in respect of the Borrower and the Property;
- (g) a joint and several environmental indemnity to be provided by the Borrower and the Guarantors;
- (h) an undertaking and agreement to fund cost overruns and debt service agreement by the Borrower and the Guarantors;
- (i) an unlimited guarantee and postponement of claim by each of the Guarantors;
- (j) an inter-creditor agreement with MCUL which shall include, among other things, a limit to the priority of the security in favour of MCUL to the principal amount \$23,000,000; and
- (k) such other pledges, assignments, security agreements and documents as the Lender or its solicitors may deem necessary.

All documentation shall be in form and substance as required by the Lender or its solicitors.



TITLE

The Borrower shall have a good and marketable fee simple title to the Property. The Charge shall be third in priority subject only to a first mortgage in favour of MCUL in the principal amount of \$23,000,000 and a second mortgage in favour of the vendor of the Property in the principal amount of \$4,500,000 (the "VTB"), and otherwise rank in priority to all other encumbrances whatsoever, save and except the Permitted Encumbrances to be defined in the Charge, to the full extent of the Loan. Title insurance is mandatory. The Borrower shall promptly provide any authorization that the Lender may request in order to permit it to obtain information on file with any government authority having jurisdiction over the Property. The Borrower shall not seek to rezone all or any part of the Property without the prior written consent of the Lender such consent to not be unreasonably withheld or delayed.

FINANCIAL INFORMATION

The Borrower shall, at the Lender's request, provide (a) updated review engagement financial statements for the Borrower and Notice to Reader financial statements for the Corporate Guarantors; (b) management prepared financial statements relating specifically to the operation of the Property including a rent roll, if applicable; (c) copies of all leases and renewals, as applicable; (d) updated net worth statement of the Personal Guarantor with supporting information; (e) tax returns of the Borrower and the Guarantors with notice of assessment confirming all taxes paid; and (f) such other financial and other information as the Lender may require.

LEASES

The Borrower shall provide copies of all leases and renewals of the Property, if applicable, for the Lender's review, which leases must be acceptable to the Lender. The Borrower and each tenant shall otherwise perform all their respective obligations in any lease. The Lender reserves the right to require that any or all present and future leases of the Property be postponed in favour of the Lender's interest therein. The Lender reserves the right to require tenant acknowledgements/estoppel certificates from all tenants.

TAXES

With respect to municipal taxes, school taxes and local improvement rates ("Taxes") levied against the Property, the Borrower will pay all Taxes as they fall due and will provide the Lender with receipts confirming payment of same as it may require.

INSURANCE

The Borrower shall insure the Property and keep it insured against the following in each case to the extent applicable:

- (a) Loss or damage by fire and other insurable hazards defined in an "all risks" insurance policy for the full replacement cost with provision for permission to occupy and with automatic vacancy permit;
- (b) Comprehensive boiler and pressure vessel insurance for the full replacement cost or such lesser amount as shall be acceptable to the Lender;
- (c) Business interruption or rental loss insurance acceptable to the Lender for an indemnity period of not less than 12 months and with coverage of not less than 100% of the resulting loss of rent or other revenue received from the operation of the Property; and
- (d) Public liability insurance on a comprehensive basis to an amount not less than \$10,000,000 on an occurrence basis, or such other amount as the Lender may reasonably request, adding the Lender as an additional insured.



The policy to be maintained shall not contain any co-insurance clauses, shall be in form and with an insurer satisfactory to the Lender and shall include the agreement of the insurer that the policy will not be cancelled without at least 30 days' prior written notice of intended cancellation to the Lender. The Lender shall be named in all policies of insurance as third mortgagee, subject only to the interests of the mortgages under the MCUL Loan and the VTB, upon the terms of the standard Insurance Bureau of Canada mortgage clause or as loss payee as its interest may appear, and as additional insured with respect to public liability insurance. The Lender may in its sole discretion, at the Borrower's expense, retain an insurance consultant to review the insurance coverage to ensure that it meets the Lender's requirements.

ENVIRONMENTAL AND OTHER PROVISIONS

The Borrower represents and warrants to the Lender as follows: (a) except as may have been disclosed in environmental reports delivered to the Lender in connection herewith the receipt of which shall have been acknowledged in writing by the Lender, no environmental hazard exists on the Property or on adjacent land; (b) no claim, complaint or notice of any action has been made or issued relating to an environmental hazard on the Property; (c) the Property is being used in compliance with applicable laws; and (d) the Borrower does not own any real property abutting the Property. The Borrower shall give the Lender immediate notice of any change in circumstances which would render any of the above representations untrue; and shall ensure that the Property and all improvements thereon comply in all respects with all applicable laws, including those in respect of zoning, use, occupancy, construction liens, subdivision, parking, historical designation, fire, access, loading facilities, landscaping, pollution of the environment, toxic materials or other environmental hazards, building construction and public health and safety; and shall ensure that there will be no outstanding work orders against the Property or any part thereof.

In the event that the Property does not comply with all applicable environmental and other laws on the Closing Date or at any other time during the term of the Loan, the Borrower will forthwith notify the Lender and remediate and cure any non-compliance, including removal of any hazardous substances, to the entire satisfaction of the Lender, failing which the Borrower shall be in default under this Commitment and the Security.

CONDITIONS PRECEDENT TO ADVANCE

The Lender's obligation to advance the Loan is conditional upon receipt by it of the following, all in form and substance satisfactory to the Lender or its solicitors:

- (a) a duly executed copy of this Commitment, together with the Commitment Fee;
- (b) duly executed copies of the Security registered where required, provided however that registration of the Charge and GAR shall not be a condition of the advance if title insurance is obtained satisfactory to the Lender;
- (c) a certificate or binder of insurance satisfactory to the Lender;
- (d) an appraisal of the property for not less than \$35,000,000 on an as complete basis prepared for the Lender by an approved appraiser (or delivery of a reliance letter), the assumptions, findings and conclusions of which are satisfactory to the Lender in its absolute discretion;
- (e) satisfactory credit bureau report for the Guarantors together with a current net worth statement with details of assets and liabilities;
- (f) personal tax returns and notices of assessment of the Guarantors for the past 2 years confirming that all taxes have been paid;



- (g) a Phase 1, Phase 2 and Phase 3 environmental site assessment if deemed necessary by the Lender addressed to and satisfactory to the Lender;
- (h) current rent roll together with details of leases satisfactory to the Lender, if applicable;
- (i) copies of all leases and renewals, if applicable, satisfactory to the Lender;
- (j) confirmation that all Taxes are current;
- (k) corporate documentation to the Lender's and its solicitors' satisfaction, where applicable including, without limitation, articles of incorporation with form 1 indicating the officers and directors of the Borrower;
- (l) an authorization by the Borrower authorizing the Lender to contact its external accountant/auditor and any government agency with respect to financial statements, income taxes, payroll deductions, worker's compensation and HST;
- (m) a solicitor's corporate opinion in respect of the Borrower and the Corporate Guarantors satisfactory to the Lender and its solicitors;
- (n) a legal opinion from the Lender's solicitors satisfactory to the Lender confirming based on title insurance that (i) the Borrower has good and marketable title to the Property; and (ii) the Charge constitutes a good and valid third charge on the Property, subject to the MCUL Loan and the VTB;
- (o) if the Borrower is a bare trustee, a copy of the declaration of trust or nominee agreement;
- (p) confirmation of current zoning for the Property;
- (q) a satisfactory site visit by the Lender in respect of the Property; and
- (r) such other information, documentation, opinions and registrations as the Lender or its solicitors may request.

REPORTING REQUIREMENTS

For the purposes of the Lender's annual review of the Loan and Property, the Borrower and Guarantors shall provide the following statements and information (collectively the "Statements") to the Lender.

- (a) Review engagement financial statements for the Borrower and notice to reader financial statements for the Corporate Guarantors prepared by accountants acceptable to the Lender within 120 days of each fiscal year end together with copies of all tax filings and notices of assessment to confirm all taxes are paid up-to-date;
- (b) Updated net worth statement for the Personal Guarantor together with supporting information to support asset values and income as requested by the Lender together with copies of all tax filings and notices of assessment to confirm all taxes are paid up-to-date;
- (c) Current Taxes bill with confirmation that all required Taxes have been paid;
- (d) Current insurance policy indicating the Lender as third mortgagee or as loss payee as its interest may appear, and as additional insured with respect to public liability insurance;
- (e) Current rent roll listing, inter alia, all terms of all leases, and copies of any leases and renewals entered into since the last annual review, if applicable;



- (f) Update on the status (with detail satisfactory to the Lender) of the development of the Property; and
- (g) Such other information pertinent to the Property as the Lender may request.

WORK FEE

A work fee of \$37,500 plus HST for a total of \$42,375 is fully earned by Bridging Finance Inc. on the date of acceptance of this Commitment and shall be deducted from the advance of the Loan.

APPRAISALS AND ASSESSMENT

All appraisals, inspections, assessments and information with respect to the Property provided to the Lender are provided only for the purpose of assisting it in determining whether to grant the Loan, and no acceptance, use of or adoption of such appraisals, inspections, assessments or information by the Lender shall be construed as any agreement by it as to the value or condition of the Property. The Borrower is responsible for all appraisal and assessment fees.

ASSIGNMENT

Neither the Borrower nor the Guarantors shall have the right to assign any of its respective rights or obligations under this Commitment or in respect of the Loan to any person. The Borrower and Guarantors agree that the Lender may transfer and assign, without their consent and without notice or cost to them, the Lender's rights and obligations under this Commitment, the Loan, the Security and any related documentation (the "Mortgage Loan and Security") to any person. The Lender may also syndicate, securitize or grant participation interests in the Mortgage Loan and Security without the consent of the Borrower and Guarantors or notice or cost to them. The Borrower and Guarantors agree that the Lender may disclose confidential information relating to the Mortgage Loan and Security, including any financial information provided by them at any time or otherwise relating to the Property and any plans, drawings or other documentation or information regarding the Property, to any person in connection with any of the transactions contemplated in this paragraph.

TIME

Time is of the essence hereof.

AMENDMENT

This Commitment shall only be amended by agreement in writing executed by all the parties hereto.

WAIVER

Any failure by the Lender to exercise any rights or remedies under this Commitment or any Security shall not constitute a waiver thereof.

GOVERNING LAW

This Commitment shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein.



SURVIVAL

The terms and conditions of this Commitment shall survive the execution and registration of the Security and there shall be no merger of these provisions or conditions in the Security; provided that in the event of any conflict between the provisions of this Commitment and the Security, the provisions of this Commitment shall prevail to the extent necessary to remove such conflict. Notwithstanding the foregoing, in the event that the Security contains remedies which are in addition to the remedies set forth in this Commitment, the existence of such additional remedies in the Security shall not constitute a conflict or inconsistency with the provisions of the Commitment.

NOTICES

Any notice or demand or other written communication hereunder shall be given by facsimile, letter or by electronic means of communication. A facsimile communication shall be deemed received on the Business Day following its transmission. A letter shall be deemed received when delivered to the receiving party at the address shown on page 1 hereof. An electronic communication shall be deemed received on the day of transmittal if a Business Day and before 5:00 p.m. or, if not, on the next Business Day. Each party shall be bound by any notice given as provided hereunder and entitled to act in accordance therewith. "Business Day" means any day other than a Saturday, Sunday or any statutory or civic holiday observed in the Province of Ontario.

INTERPRETATION

In this Commitment (a) words denoting the singular include the plural and vice versa and words denoting any gender include all genders; (b) the word "including" shall mean "including, without limitation,"; (c) any reference to a statute shall mean the statute in force as at the date hereof, together with all regulations promulgated thereunder, as the same may be amended, re-enacted, consolidated and/or replaced from time to time, and any successor statute thereto; (d) any reference to this Commitment, the Security or other concomitant agreement or instrument shall include all amendments, addenda, modifications, extensions, renewals, restatements, supplements or replacements thereto from time to time; (e) any reference to the Lender, Borrower, Guarantors and any other person shall include their respective heirs, estate trustees, legal representatives, successors and assigns; and reference to a "person" shall include an individual, general or limited partnership, joint venture, sole proprietorship, corporation, unincorporated association, trust, trustee, estate trustee, legal representative or any federal, provincial, municipal or other form of government; and reference to a "corporation" shall include a company or other form of body corporate; (f) all dollar amounts are expressed in Canadian dollars; (g) the division of this Commitment into separate sections and the insertion of headings is for convenience of reference only and shall not affect the construction or interpretation of this Commitment; and (h) if more than one person is named as, or otherwise becomes liable for or assumes the obligations and liabilities of the Borrower or Guarantors, then the obligations and liabilities of all such persons shall be joint and several. This Commitment is intended to supplement and not derogate from the Security or any other concomitant document.

ADDITIONAL LOAN TERMS:

The additional loan terms attached as Schedule "A" to this commitment letter shall form a part thereof as if incorporated herein.

LENDER APPROVED SOLICITORS:

Philip L. Taylor, Chaitons LLP
5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9
Phone: 416-218-1125 / Fax: 416-218-1855
philip@chaitons.com



ACCEPTANCE

The terms of this Commitment are open for acceptance by the Borrower and Guarantors by executing the original hereof where indicated below and delivering it to the Lender via email to its solicitors at Philip@chaitons.com on or before 5:00 p.m. on March 23, 2018, after which date and time this Commitment shall lapse and become null and void.

Yours truly,

BRIDGING FINANCE INC., AS AGENT

Per: 
Name: Natasha Sharpe
Title: Chief Investment Officer

ACCEPTED on: March ____, 2018

2607380 ONTARIO INC.

Per: _____
Name: Shawn Saulnier
Title: President
I have authority to bind the corporation.

The undersigned Guarantors have read, understand and accept the terms and conditions of this Commitment.

ACCEPTED on: March ____, 2018

MOHAWK INN & SUITES MANAGEMENT INC.

Per: _____
Name: Shawn Saulnier
Title: President
I have authority to bind the corporation.

2348587 ONTARIO INC.

Per: _____
Name: Shawn Saulnier
Title: President
I have authority to bind the corporation.

Witness: _____

Shawn Saulnier



ACCEPTANCE

The terms of this Commitment are open for acceptance by the Borrower and Guarantors by executing the original hereof where indicated below and delivering it to the Lender via email to its solicitors at Philip@chaitons.com on or before 5:00 p.m. on March 23, 2018, after which date and time this Commitment shall lapse and become null and void.

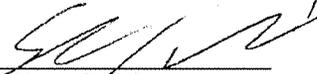
Yours truly,

BRIDGING FINANCE INC., AS AGENT

Per: _____
Name:
Title:

ACCEPTED on: March 23, 2018

2607380 ONTARIO INC.

Per: 
Name: Shawn Saulnier
Title: President
I have authority to bind the corporation.

The undersigned Guarantors have read, understand and accept the terms and conditions of this Commitment.

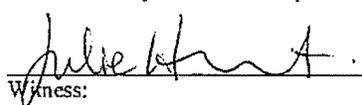
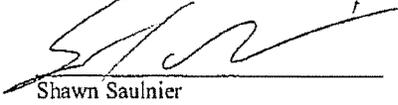
ACCEPTED on: March 23, 2018

MOHAWK INN & SUITES MANAGEMENT INC.

Per: 
Name: Shawn Saulnier
Title: President
I have authority to bind the corporation.

2348587 ONTARIO INC.

Per: 
Name: Shawn Saulnier
Title: President
I have authority to bind the corporation.

Witness:  Shawn Saulnier 



SCHEDULE "A"
ADDITIONAL LOAN TERMS

Attached to and forming part of a commitment letter dated March 20, 2018 among Bridging Finance Inc., as agent, as Lender, 2607380 Ontario Inc., as Borrower, and Mohawk Inn & Suites Management Inc., 2348587 Ontario Inc. and Shawn Saulnier, collectively, as Guarantors.

DEFAULT

In the event that the Borrower or any of the Guarantors does not perform or comply with any of the provisions of this Commitment or the Security or any other agreement between the Borrower or Guarantors and the Lender relating to the Loan, such non-performance or failure to comply shall constitute a default under the terms of this Commitment and the Security and the Lender shall have the right to immediately demand payment of any amounts advanced, together with interest at the rate set out in this Commitment, as well as any other amounts due under this Commitment or the Security. Any default under the MCUL Loan shall be a default under the Loan.

SALE OR OWNERSHIP CHANGE

The Borrower shall not sell, assign or otherwise dispose of the Property without the prior written consent of the Lender. If the Borrower is a corporation, it shall not make any changes to its authorized capital or its allocation or ownership which would result in a change of voting control or beneficial ownership of the corporation, without the prior written consent of the Lender.

SIGNAGE

Upon the request of the Lender, the Borrower shall, at its own expense, erect a sign on the Property containing an acknowledgement of the financing provided by the Lender, the size and format of such acknowledgement: (i) to be similar to that of other signs in similar circumstances; (ii) to comply with municipal by-laws; and (iii) in a location acceptable to the Borrower and the Lender each acting in a commercially reasonable manner.

SUBSEQUENT FINANCING

The Borrower shall not enter into any further financing of the Property and shall not further encumber the Property without the prior written consent of the Lender, which consent may be withheld in the Lender's sole discretion.

APPOINTMENT OF RECEIVER

In the event that the Borrower or any of the Guarantors shall be in default in the observance or performance of any of the terms, conditions, covenants or payments contained in this Commitment or the Security, the Lender may, by notice in writing, appoint any person to be a receiver, a manager or a receiver and manager of the Property upon and subject to terms more particularly set out in the Security.

INSPECTION

The Lender shall have the right at any reasonable time or times to fully inspect the Property, so long as any monies remain outstanding under the Loan.

CONSENT TO DISCLOSURE

The Borrower hereby consents (such consent to remain in force as long as the Loan is outstanding) to any government body or authority or other person having information relating to HST or any other amount required to be paid by the Borrower, where the failure to pay such other amount could give rise to a claim ranking or capable of ranking in priority to the Security, to release such information to the Lender at any time upon its request. The Borrower shall



provide signed third-party authorizations in support of the foregoing at any time upon the Lender's request, whether prior to or after disbursement of the Loan.

LENDER'S EXPENSES AND ADMINISTRATION FEES

The Borrower shall pay all fees and expenses (including, but not limited to, all due diligence, consultant, field examination and appraisal costs, all fees and expenses for outside legal counsel and other outside professional advisors and the time spent by the Lender and its representatives in retaking, holding, repairing, processing and preparing for disposition and disposing of the Security calculated at the Lender's standard per diem rate in effect at such applicable time and established by the Lender in its sole discretion for internal personnel of the Lender) reasonably incurred by the Lender in connection with the preparation, registration and ongoing administration of the Loan and the Security and with the enforcement of the Lender's rights and remedies under this Commitment or the Security, whether or not any amounts are advanced under this Commitment. In addition, the Borrower shall pay the administration fees in connection with the administration of the Loan by the Lender, including the provision of mortgage statements and discharges, processing late payments, and cheques or automatic debits which are dishonoured or not accepted, the amount of each such administration fee being a liquidated amount to cover administrative costs and not a penalty. If the Lender has paid any expense for which the Lender is entitled to reimbursement from the Borrower and such expense has not been deducted from the advance under the Loan, such expense shall be payable by the Borrower upon demand therefor from the Lender. If the Borrower fails to pay any such costs, charges or expenses upon demand, they will be added to the outstanding Loan and shall be secured by the Security. All such fees and expenses and interest thereon shall be secured by the Security whether or not any funds under the Loan are advanced.

DEMOLITION

Except in connection with the construction and renovations approved prior to the date hereof, the Borrower shall not demolish all or any portion of the Property without the Lender's prior written consent.

INTEREST ON INTEREST

Interest shall be payable on all past due interest from the due date of such interest at the Interest Rate, both before and after default, demand, maturity and judgment. Any overdue interest shall be payable on demand. If such overdue interest and compound interest are not paid within one month from the time of default, a rest will be made and compound interest at the Interest Rate will be payable on the aggregate amount then due, both before and after maturity, default and judgment, and so on from time to time until paid.

LENDER'S RECORDS

The Lender shall keep accounts showing the status of the Loan and records of the sums borrowed, principal and interest repayments and all other sums due under this Commitment. In the absence of manifest error, the Lender's records shall constitute conclusive evidence of the Borrower's indebtedness to the Lender hereunder.

PAYMENTS TO GOVERNMENT AUTHORITIES

During the term of the Loan the Borrower shall pay, when due, all amounts owing to any government authority which, if unpaid, would give such authority recourse for such amounts ranking in priority to the Security; the failure to pay any such amount, when due, shall constitute a default under this Commitment and the Security.

CAPITALIZED WORDS

Unless otherwise defined herein, all capitalized words and expressions shall have the same meanings as defined in the commitment letter to which these additional loan terms are attached.

**THIS IS EXHIBIT "B" TO
THE AFFIDAVIT OF ROBERT CACOVIC**

SWORN BEFORE ME THIS 4TH 5TH 11TH

DAY OF MARCH, 2020



A Commissioner etc.

ROBERT HANSON

BARRISTER & SOLICITOR

NORTON ROSE FULBRIGHT CANADA LLP

SUITE 1800 - 510 WEST GEORGIA STREET

VANCOUVER, B.C. V6B 0M3

(604) 641-4953

Properties

PIN 07127 - 0265 LT *Interest/Estate* Fee Simple
Description PT LT 10 , RCP PL 99 , PART 3 & 7 , 20R6963 , S/T IN 619045 ; BURLINGTON
Address 1295 NORTH SERVICE RD
 BURLINGTON

Chargor(s)

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name 2607380 ONTARIO INC.
Address for Service 2380 Mohawk Trail
 Campbellville, ON L0P 1B0

I, Shawn Saulnier, the President, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

Chargee(s)*Capacity**Share*

Name BRIDGING FINANCE INC.
Address for Service 77 King Street West
 Suite 2925
 Toronto, ON M5K 1K7

Statements

Schedule: See Schedules

Provisions

Principal \$ 3,250,000.00 *Currency* CDN
Calculation Period monthly, not in advance
Balance Due Date On Demand
Interest Rate Bank of Montreal Prime Rate Plus 11.80%
Payments
Interest Adjustment Date
Payment Date On Demand
First Payment Date
Last Payment Date
Standard Charge Terms
Insurance Amount full insurable value
Guarantor

Signed By

Denise Borzi 5000 Yonge Street, 10th Floor acting for Signed 2018 03 22
 Toronto Chargor(s)
 M2N 7E9
 Tel 416-222-8888
 Fax 416-218-1860

I have the authority to sign and register the document on behalf of the Chargor(s).

Submitted By

CHAITONS LLP

5000 Yonge Street, 10th Floor
Toronto
M2N 7E9

2018 03 26

Tel 416-222-8888

Fax 416-218-1860

Fees/Taxes/Payment

Statutory Registration Fee \$63.65

Total Paid \$63.65

SCHEDULE - ADDITIONAL PROVISIONS

Any reference to the "Computer Field" in this Charge means a computer data entry field in a charge registered pursuant to Part 111 of the *Land Registration Reform Act* (Ontario) into which the terms and conditions of this Charge may be inserted.

1. Definitions

In this Schedule, the following terms shall have the following meanings:

"**Applicable Laws**" means all applicable federal, provincial or municipal laws, statutes, regulations, rules, by-laws, policies and guidelines, orders, permits, licences, authorizations and approvals.

"**Bankruptcy Legislation**" means any present or future bankruptcy or insolvency legislation, including where applicable the *Bankruptcy and Insolvency Act* (Canada) and the *Companies' Creditors Arrangement Act* (Canada).

"**Business Day**" means any day other than a Saturday, Sunday or any statutory or civic holiday observed in the Province of Ontario.

"**Charge**" means the charge prepared in the electronic format and registered electronically pursuant to Part 111 of the LRRRA, including this Schedule and any other schedules thereto.

"**Chargee**" means Bridging Finance Inc., as agent and any person who acquires the right, title and interest of the Chargee.

"**Chargor**" means the person or persons indicated in the Computer Field of the Charge entitled "Chargor(s)".

"**Costs**" means all fees, costs, charges and expenses of the Chargee of and incidental to (a) the negotiation, preparation, execution and registration of the Charge and any other instruments connected therewith and every renewal or discharge thereof; (b) the collection of any amounts payable hereunder, enforcement of any covenants contained herein and the realization of the security herein contained; (c) procuring or attempting to procure payment of any Indebtedness or any other amounts due and payable hereunder including foreclosure, power of sale or execution proceedings commenced by the Chargee or any other party; (d) any inspection required to be made of the Mortgaged Premises, or review of plans, specifications and other documentation which may require the approval or consent of the Chargee; (e) all repairs and replacements required to be made to the Mortgaged Premises; (f) the Chargee having to go into possession of the Mortgaged Premises and secure, complete and equip the Fixtures or Improvements in any way in connection herewith; and (g) solicitors' reasonable costs, charges and expenses relating to any of the foregoing and any necessary examination of title to the Mortgaged Premises. For greater certainty, Costs shall (i) extend to and include reasonable legal costs incurred by the Chargee; (ii) be payable forthwith by the Chargor; and (iii) be a charge on the Mortgaged Premises. Costs include interest at the highest interest rate applicable to the Indebtedness on all such fees, costs, charges and expenses.

"**Event of Default**" has the meaning ascribed thereto in Section 12.

"**Fixtures**" includes all fixtures, buildings, erections, appurtenances, plants and improvements, fixed or otherwise, now or hereafter put on the Lands, including all fences, furnaces, oil burners, water heaters, electric light fixtures, window blinds, screen and storm doors and windows, and all air-conditioning, plumbing, cooling, ventilating, cooking, refrigeration and heating equipment and all other apparatus and equipment appurtenant to the Mortgaged Premises.

"**Improvement**" includes any construction, installation, alteration, addition, repair or demolition to any part of the Mortgaged Premises.

"**Indebtedness**" means all obligations, debts and liabilities, whether present or future, direct or indirect, absolute or contingent, matured or not, extended or renewed now or at any time hereafter owing by the Chargor to the Chargee, whether as principal or surety, whether alone or jointly with any other person and in whatever name, style or form, whether otherwise secured or not and

whether arising from dealings between the Chargee and the Chargor or from other dealings or proceedings by which the Chargee may become a creditor of the Chargor and whether the same are from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred again, and all interest, compound interest, damages and Costs, and all premiums of insurance upon the Improvements and Fixtures, Taxes and other amounts paid by the Chargee in accordance with the provisions of this Charge.

"LRRA" means the *Land Registration Reform Act* (Ontario)

"Lands" means the lands and premises described in the Computer Field of the Charge entitled "Properties".

"Lien" means any mortgage, charge, pledge, hypothec, assignment, lien, lease, sublease, easement, preference, priority, trust or other security interest or encumbrance of any kind or nature whatsoever with respect to any property or asset, including any title reservations, limitations, provisos or conditions.

"Mortgaged Premises" means the Lands, Fixtures and Improvements.

"Permitted Encumbrances" means (a) Liens for Taxes not at the time due; (b) the charge and other collateral security in favour of Meridian Credit Union Limited registered on or about the date hereof in the maximum principal amount of \$23,000,000; (c) the charge and any other collateral security in favour of Crossroads Christian Communications Incorporated registered on or about the date hereof in the maximum principal amount of \$4,500,000; and (d) any other Liens disclosed by the registered title to the Lands provided the same (i) do not, in the Chargee's opinion, in the aggregate, materially impair the development, management, ownership, operation, value or marketability of the Mortgaged Premises or any part thereof; (ii) are materially complied with by the Chargor and the Mortgaged Premises; and (iii) do not, in the Chargee's opinion, pose any threat to the Mortgaged Premises.

"person" means any individual, general or limited partnership, joint venture, sole proprietorship, corporation, unincorporated association, trust, trustee, estate trustee, legal representative or governmental authority.

"Prime" and **"Prime Rate"** when referred to in the Computer Field of the Charge entitled "Interest Rate" means the annual rate of interest announced from time to time Bank of Montreal as a reference rate then in effect for determining interest rates on Canadian dollar commercial loans in Canada and designated by Bank of Montreal as its prime rate.

"Principal Amount" means the amount indicated in the Computer Field of the Charge entitled "Principal".

"Receiver" shall include one or more of a receiver and a receiver and manager of all or any portion of the Mortgaged Premises appointed by the Chargee pursuant to this Charge.

"Taxes" means all taxes, rates and other impositions whatsoever which are now or may hereafter be imposed, charged or levied by any authority creating a lien or charge on the Mortgaged Premises or any part thereof.

"Transfer" means (a) any conveyance, assignment, transfer, sale, granting or creation of an option or trust with respect to, or other disposition of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) any legal or beneficial interest in the Mortgaged Premises or any part thereof; or (b) any change in the effective voting control of any person comprising the Chargor or any beneficial or unregistered owner of any part of the Mortgaged Premises from that existing as of the date of this Charge (including any change of ownership of 50% or more of the voting securities representing an interest in any such person) and shall include any agreement to do or complete any of the matters referred to in (a) or (b) above.

2. Implied Covenants

The implied covenants deemed to be included in the Charge by sections 7(1) 1. iii., and 7(1) 2. of the LRRA are hereby varied by deleting therefrom the words "except as the records of the land registry office disclose" and substituting therefor "except Permitted Encumbrances". The implied covenant deemed to be included in the Charge by section 7(1) 1. vii. of the LRRA is hereby varied to provide that "the Chargor or the Chargor's successors will, before and after default,

execute and deliver such further assurances of the Mortgaged Premises and do such other acts, at the Chargor's expense, as may be required by the Chargee". The implied covenants deemed to be included in a charge under section 7(1) of the LRRRA are in addition to and shall not be interpreted to supersede or replace any of the covenants contained in this Charge which are covenants by the Chargor, for the Chargor and the Chargor's successors and assigns with the Chargee and the Chargee's successors and assigns. In the event of any conflict between any of the covenants implied by the LRRRA, and any other covenant or provision contained herein, the covenant or provision contained herein shall prevail.

3. Successors

Notwithstanding the definition of the word "successor" in the LRRRA, the word "successor" as used in this Charge shall include an heir, executor, administrator, estate trustee, personal representative or successor.

4. Charge

In consideration of the sum of \$10.00 and other good and valuable consideration (the receipt and sufficiency whereof are hereby acknowledged by the Chargor) and as a continuing security for the payment to the Chargee of the Indebtedness and to secure the performance of all the obligations of the Chargor hereunder, the Chargor hereby charges the Mortgaged Premises with payment to the Chargee of any ultimate outstanding balance of the Indebtedness due and remaining unpaid and the performance of the Chargor's obligations hereunder, provided that such security shall be limited to the aggregate of the Principal Amount, Costs and any other amounts payable hereunder, and with the powers of sale hereinafter expressed.

5. Defeasance

Provided this Charge to be void upon payment in full on demand of all the Indebtedness and the performance in full of all the obligations of the Chargor hereunder up to a maximum amount of the aggregate of the Principal Amount, Costs and any other amounts payable hereunder, together with Taxes and performance of statute labour, and observance and performance of all covenants, provisos and conditions herein contained.

6. Demand

In the event that the Chargor is called upon to pay any Indebtedness in accordance with its terms or if any Event of the Default has occurred which has not been remedied, the Chargor shall be obligated to pay and the Chargee shall be entitled to forthwith make demand for payment of all such Indebtedness and any other monies secured hereby.

7. Covenants of Chargor

The Chargor hereby covenants, agrees and declares as follows:

- (a) The Chargor has good title in fee simple to the Mortgaged Premises free of all encumbrances other than the Permitted Encumbrances.
- (b) The Chargor has the right to convey the Mortgaged Premises to the Chargee.
- (c) On default, the Chargee shall have quiet possession of the Mortgaged Premises, free from all encumbrances other than the Permitted Encumbrances.
- (d) The Chargor will execute at the Chargor's expense such further assurances of the Mortgaged Premises as may be requisite.
- (e) The Chargor has done no act to encumber the Mortgaged Premises, except the Permitted Encumbrances.
- (f) The Chargor shall pay as they fall due all Permitted Encumbrances and Taxes and shall not suffer any construction, statutory or other liens or rights of retention, other than Permitted Encumbrances, to remain outstanding upon any of the Mortgaged Premises. The Chargor shall, within one month from the date fixed for payment of the last instalment of Taxes in each year, furnish the Chargee, if requested by it, with receipted tax bills showing all such Taxes for the year have been paid in full.
- (g) The Chargor will insure, with insurance companies satisfactory to the Chargee, the Mortgaged Premises to the amount of not less than their full replacement cost in dollars of lawful money of Canada. Such insurance shall have "Extended Coverage" and "Replacement Cost" endorsements and include not only insurance against loss or damage by fire, but also insurance against loss or damage by war, the enemy, explosion, tempest, tornado, cyclone, lightning and such other risks or hazards as the Chargee may reasonably require at any time and from time to time and, if requested by the Chargee, against loss or damage from any other cause with insurers approved by the Chargee, and the Chargor will pay all premiums necessary for such purposes as the same shall become due. The Chargee may require any such insurance to be cancelled and new insurance to be effected with insurance companies satisfactory to the Chargee. The loss under all policies or contracts of insurance shall be payable to the Chargee as mortgagee or as its interest may appear and such policies or contracts shall contain the Insurance Bureau of Canada standard

mortgage clause and shall be in terms satisfactory to the Chargee. Evidence of continuation of all such insurance having been effected shall be produced to the Chargee, if requested by it, at least three Business Days before the expiration thereof, otherwise the Chargee may provide therefor and charge the premium paid to the Chargor and the same shall be payable forthwith and shall also be a charge upon the Mortgaged Premises.

(h) All Fixtures are and shall, immediately on being placed upon the Mortgaged Premises, become fixtures and a part of the Mortgaged Premises, and form a part of this security; and the Chargor hereby grants and releases to the Chargee all its claims upon the Mortgaged Premises subject to the aforesaid proviso for defeasance.

(i) The Chargee may distrain for arrears of interest, if any, and for overdue principal and any other sum payable hereunder. The Chargor waives the right to claim exceptions and agrees that the Chargee shall not be limited in the amount for which it may distrain.

(j) The Chargee may make any payment or cure any default under any Permitted Encumbrance and may pay and satisfy the whole or any part of any liens, Taxes, charges or encumbrances now or hereafter existing in respect of the Mortgaged Premises. In the event of the Chargee making any such payment or curing a default or satisfying any such liens, Taxes, charges or encumbrances it shall be entitled to all the equities and securities of the person or persons so paid and is hereby authorized to retain any discharge thereof without registration for so long as it may think fit so to do.

(k) The Chargor will keep the Mortgaged Premises in good condition and repair and shall not permit any act of waste to be committed upon the Mortgaged Premises; the Chargee may, whenever it deems it necessary or desirable, by its agent enter upon and inspect the same and in the event of a default hereunder the reasonable cost of such inspection shall be payable by the Chargor to the Chargee. If the Chargor neglects to keep the Mortgaged Premises in good condition and repair or commits or permits any act of waste on the Mortgaged Premises (as to which the Chargee shall be sole judge), the Chargee may make such repairs and replacements as it deems necessary.

(l) The Chargor shall diligently and continuously construct in a good and workmanlike manner any unfinished Fixtures and, in the event that any material amount of work is not done on such Fixtures for a period of ten consecutive days, the Chargee or its representatives may enter into the Mortgaged Premises and do any or all work which they may consider necessary or desirable to complete such Fixtures or to protect the same from deterioration.

(m) Save and except the renovations and construction contemplated prior to the date hereof and provided such renovations and construction is completed in accordance with the plans approved by the applicable governmental authorities, the Chargor shall not make any material Improvement, whether financed by the Chargee or otherwise, without the prior written consent of the Chargee and except in accordance with contracts, plans and specifications approved by the Chargee in writing prior to the commencement of work on the Improvement.

(n) The Chargor shall at all times comply with all Applicable Laws relating to it and the Mortgaged Premises, including all applicable zoning by-laws, rent control legislation and construction lien legislation.

8. Quiet Possession

Until an Event of Default, the Chargor shall have quiet possession of the Mortgaged Premises.

9. Waivers

The Chargee may waive any breach by the Chargor of any of the provisions contained in this Charge or any default by the Chargor in the observance or performance of any covenant or condition required to be observed or performed by the Chargor hereunder, provided that no such waiver by the Chargee shall extend to or be taken in any manner to affect any subsequent breach or default or the rights resulting therefrom.

10. Performance of Covenants

If the Chargor shall fail to perform any covenant on its part herein contained, the Chargee may in its absolute discretion perform any such covenant capable of being performed by it. If any such covenant requires the payment of money or if the Mortgaged Premises shall become subject to any encumbrance ranking in priority to the lien hereof other than a Permitted Encumbrance, the Chargee may make such payment or pay or discharge such encumbrance, but shall be under no obligation to do so. All sums so paid by the Chargee shall immediately be payable by the Chargor to the Chargee and shall constitute a charge upon the Mortgaged Premises. No such performance or payment shall relieve the Chargor from any default hereunder or any consequences of such default.

11. Continuing and Additional Security

The security hereby constituted is a continuing security for the payment of all Indebtedness and the fulfillment of all the obligations of the Chargor hereunder and such security is in addition to any other security now or hereafter held by the Chargee. The taking of any action or proceedings or refraining from so doing, or any other dealings with any other security for the monies secured

hereby, shall not release or affect the obligations of the Chargor hereunder or the charges created hereby.

12. Default

The security hereby created shall become enforceable in each of the following events (each event being herein called an "Event of Default"):

- (a) if the Chargee shall make an authorized and proper demand for payment of any Indebtedness or any other monies hereby secured and payment in full has not been received by the Chargee within the time limited therefor;
- (b) if the Chargor defaults in the performance or observance of any other covenant or condition herein contained and such default shall continue for 15 days after written notice thereof to the Chargor by the Chargee;
- (c) if there is any material misrepresentation or misstatement contained in any certificate or document delivered by the Chargor or any representative of the Chargor to the Chargee in connection with this Charge or the Indebtedness;
- (d) if a petition is filed under any Bankruptcy Legislation against the Chargor or an authorized assignment made or a Receiver appointed under any Bankruptcy Legislation or by or on behalf of a secured creditor of the Chargor or a proposal made to the creditors of the Chargor under any Bankruptcy Legislation;
- (e) if any execution, distress, sequestration or any other process of any court becomes enforceable against any of the property of the Chargor, or if a distress or like process is levied upon any of such property;
- (f) if the Chargor commits any act of bankruptcy;
- (g) if any portion of the Mortgaged Premises is expropriated by any governmental body or authority which the Chargee (in its sole discretion) considers material;
- (h) if a Transfer is made or permitted without the prior written consent of the Chargee in its sole discretion; or
- (i) save and except Permitted Encumbrances, if a Lien shall be created, issued, incurred or permitted to exist (by operation of law or otherwise and whether prior or subordinate to the security of this Charge) on any part of the Mortgaged Premises or any interest therein (except in favour of the Chargee as security for the Indebtedness) without the prior written consent of the Chargee in its sole discretion.

13. Remedies

Upon the happening of any Event of Default, in addition to any other rights or remedies available to it hereunder or at common law or in equity or pursuant to any statute, the Chargee shall have the following rights and powers:

- (a) To enter upon and possess all or any part of the Mortgaged Premises;
- (b) To preserve and maintain the Mortgaged Premises and make such replacements thereof and additions thereto as it shall deem advisable;
- (c) On default of payment for at least 15 days the Chargee or its agents or representatives may on giving the notice, if any, required hereby enter on and/or lease the Mortgaged Premises or on default of payment for at least 15 days may on at least 35 days' notice sell the Mortgaged Premises. In the event that the giving of such notice shall not be required by law or to the extent that such requirements shall not be applicable, it is agreed that notice may be effectually given by giving it in accordance herewith; and such notice shall be sufficient although not addressed to any person or persons by name or designation and notwithstanding that any person to be affected thereby may be unknown, unascertained or under disability. The Chargee may sell the Mortgaged Premises or any part thereof by public auction or private sale, for such price as can reasonably be obtained therefor, and on such terms as to credit and otherwise, and with such conditions of sale and stipulations as to title or evidence or commencement of title or otherwise, as it shall in its discretion deem proper, and in the event of any sale on credit or for part cash and part credit, the Chargee shall not be accountable for or charged with any monies until actually received. The Chargee may rescind or vary any contract of sale and may buy in and resell the Mortgaged Premises or any part thereof without being answerable for loss occasioned thereby.

No purchaser or lessee shall be bound to inquire into the legality, regularity or propriety of any sale or lease or be affected by notice of any irregularity or impropriety of any kind; and no lack of default or want of notice or other requirement or any irregularity or impropriety of any kind shall invalidate any sale or lease hereunder. The Chargee may sell or lease without entering into actual possession of the Mortgaged Premises and when it desires to take possession it may break locks and bolts and while in possession or upon any sale or lease the Chargee shall be accountable only for monies which are actually received by it. Sales may be made from time to time of parts of the Mortgaged Premises to satisfy any portion of the Indebtedness or other sums owing hereunder and leaving the Indebtedness or the residue thereof secured hereunder on the remaining Mortgaged Premises. The Chargor hereby appoints the Chargee its true and lawful attorney and agent to make application under the *Planning Act* (Ontario) and to do all things and execute all documents to effectually complete such sale. The Chargee may lease or take sale proceedings hereunder notwithstanding that other mortgage proceedings have been taken or are then pending; and

(d) To appoint by instrument any person or persons to be a Receiver of all or any portion of the undertaking, property and assets of the Chargor forming the Mortgaged Premises and all rents, issues, incomes and profits to be derived therefrom, to fix the Receiver's remuneration and from time to time to remove any Receiver so appointed and appoint another or others in its stead.

14. Receiver

Following an Event of Default, any Receiver shall have all of the powers of the Chargee set forth in this Charge and, in addition, shall have the following powers:

- (a) To lease all or any portion of the Mortgaged Premises and for this purpose execute contracts in the name of the Chargor, which contracts shall be binding upon the Chargor and the Chargor hereby irrevocably constitutes such Receiver as its attorney for such purposes;
- (b) To take possession of the Mortgaged Premises, collect all rents, issues, incomes and profits derived therefrom and realize upon any additional or collateral security granted by the Chargor to the Chargee and for that purpose may take any proceedings in the name of the Chargor or otherwise; and
- (c) To carry on or concur in carrying on the business which the Chargor is conducting on and from the Mortgaged Premises and for that purpose the Receiver may borrow money on the security of the Mortgaged Premises in priority to this Charge.

Any Receiver appointed pursuant to the provisions hereof shall be deemed to be the agent of the Chargor for the purposes of (i) carrying on and managing the business and affairs of the Chargor; and (ii) establishing liability for all the acts or omissions of the Receiver while acting in any capacity hereunder and the Chargee shall not be liable for such acts or omissions; provided that, without restricting the generality of the foregoing, the Chargor irrevocably authorizes the Chargee to give instructions to the Receiver relating to the performance of its duties as set out herein.

15. Application of Monies

All monies actually received by the Chargee or the Receiver pursuant hereto shall be applied, subject to any claims of creditors of the Chargor ranking in priority to the charges created by this Charge, in the following manner: (a) First, in or towards payment of all applicable Costs; (b) Second, in or towards payment or satisfaction of any remaining Indebtedness in such order as the Chargee in its sole discretion may determine; and (c) Third, any surplus shall be paid to the Chargor or as required by Applicable Law.

16. Release, Extensions

The Chargee may in its sole discretion at all times release any part or parts of the Mortgaged Premises either with or without any consideration therefor, without responsibility therefor and without thereby releasing any other part of the Mortgaged Premises or any person from its obligations under this Charge, the Indebtedness or from any of the covenants herein contained and without being accountable to the Chargor for the value thereof or for any money except that actually received by the Chargee, it being expressly agreed that every part of the Mortgaged Premises into which it is or may hereafter be divided does and shall stand charged with the whole of the amount hereby secured. The Chargee may grant time, renewals, extensions, indulgences, releases and discharges to, may take additional securities, may give any securities up, may abstain from taking securities or from perfecting securities, may accept compositions, and may otherwise deal with the Chargor and all other persons and securities as the Chargee may see fit without prejudicing the rights of the Chargee under this Charge.

17. No Change in Rights

No sale or other dealing by the Chargor with the Mortgaged Premises or any part thereof shall in any way change the liability of the Chargor or in any way alter the rights of the Chargee as against the Chargor or the Mortgaged Premises or the amount or terms of any Indebtedness or any guarantee thereof.

18. No Merger

The taking of a judgment or judgments on any of the covenants herein contained shall not operate as a merger of the said covenants.

19. Assignment of Rents

Subject to the proviso for defeasance, and as additional and separate continuing collateral security for the Chargor's obligations hereunder, the Chargor hereby assigns to the Chargee all present and future leases of the Mortgaged Premises or any part thereof, and all rents, issues, incomes and profits now or hereafter derived from the leases or the Mortgaged Premises or any part thereof, together with the benefit of all covenants, agreements and provisos contained in such leases. The Chargor will execute and deliver to the Chargee, from time to time, upon the request of the Chargee and at the expense of the Chargor, assignments in registrable form of all leases and rents relating to the Mortgaged Premises and such other notices or documents as may be required by the Chargee. Nothing in this Charge shall make the Chargee responsible for the collection of rents payable under any lease of the Mortgaged Premises or any part thereof or for the performance of any covenants, terms or conditions contained in any such lease. The Chargee shall be liable to account only for such rents as actually come into its hands after the deduction of collection charges in respect thereof and may apply such rents to the repayment of the Indebtedness.

20. Disclosure of Information

The Chargor acknowledges that the Chargee may be obliged to release information relating to this Charge and the Indebtedness and any amounts advanced thereunder or secured hereby. The Chargor hereby authorizes the Chargee to release all such information and any other information it may, from time to time, be required to release by Applicable Law to those entitled to such information.

21. Discharge

After payment in full of all Indebtedness and Costs, the Chargee shall within a reasonable period of time after receipt of a written request therefor from the Chargor, provide the Chargor with a discharge of the Charge or an assignment or transfer of the Charge if so required and directed by the Chargor; any such discharge, assignment or transfer shall be prepared by the Chargee at the expense of the Chargor.

22. Governing Law

This Charge shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

23. Notice

Any notice required or desired to be given hereunder or under any instrument supplemental or collateral hereto shall be in writing and may be given either by personally delivering the same or by sending the same by registered mail, postage prepaid, or by facsimile or other electronic transmission to the Chargor or the Chargee at its address for service indicated in the Computer Field of this Charge entitled "Chargor(s)" and "Chargee(s)" respectively or to the last known address or facsimile in the Chargor's or Chargee's records. Any notice so delivered shall be conclusively deemed given when personally delivered and any notice so mailed shall be conclusively deemed given on the third Business Day following the day of mailing, provided that in the event of a known disruption of postal service, notice shall be given by personal delivery only. Any address for notice or payments may be changed by notice given pursuant hereto.

23. Condominium Provisions

If any part the Mortgaged Premises is a condominium unit (a) the Chargor shall promptly observe and perform all of its covenants, duties and obligations under or pursuant to the *Condominium Act* (Ontario) (the "CA") and the declaration, by-laws and rules of the condominium corporation created by registration of the declaration and the description relating thereto of which the condominium unit forms part (the "**Condominium Corporation**"); (b) the Chargor will pay promptly when due any and all contributions to common expenses and all other levies, charges

and assessments made, assessed or levied by or on behalf of the Condominium Corporation payable in respect of, or charged to the owner of, the Mortgaged Premises (all such common expenses, levies, charges, assessments are called "unit charges"); (c) upon request by the Chargee from time to time, the Chargor shall provide satisfactory proof to the Chargee that all unit charges have been paid in full; (d) if the Chargor does not pay any unit charges when due, then, without limiting any of other rights and remedies of the Chargee hereunder or otherwise at law or in equity, the Chargee may (but shall not be obligated to do so) pay the same and the amount so paid shall be added to the Indebtedness and secured by this Charge and shall be payable forthwith to the Chargee upon demand; (e) promptly following receipt thereof, the Chargor shall deliver to the Chargee copies of every notice, assessment, request, claim or demand, notice of meeting and all other documentation or information of any kind relating to the condominium unit or the Condominium Corporation received by the Chargor so that the Chargee receives them at least ten days prior to the date that any response, payment or other action is required; (f) any default by the Chargor under this section (regardless of any action or proceedings taken or proposed by the Condominium Corporation) shall be an Event of Default under this Charge; (g) the Chargor hereby irrevocably assigns to the Chargee, and irrevocably authorizes and empowers the Chargee to exercise, all rights of the Chargor as the owner of the Mortgaged Premises to vote or to consent to all matters relating to the affairs of the Condominium Corporation, provided however that (i) the Chargee may at any time and from time to time give notice in writing to the Chargor and to the Condominium Corporation that the Chargee does not intend to exercise the said right to vote or consent and in that event until the Chargee revokes such notice the Chargor may exercise the right to vote or consent in respect of all matters not requiring a unanimous resolution (any such notice may be for an indeterminate period of time or for a specific meeting or matter); (ii) the Chargee's right to vote and consent do not impose any obligation on the Chargee to consult with the Chargor as to the manner in which such right to vote or consent will be exercised or not exercised or to protect the Chargor's interests and the Chargee shall not be responsible for any exercise or failure to exercise the right to vote or consent; and (iii) neither this assignment and authorization in favour of the Chargee nor the exercise by the Chargee of the right to vote or consent shall constitute the Chargee a mortgagee in possession nor give rise to any liability on the part of the Chargee; (h) this Charge includes a mortgage, charge, assignment and sublease in favour of the Chargee of any lease or rights to occupy any parking space or spaces in the Mortgaged Premises demised to or reserved or designated for exclusive use by the Chargor or its condominium unit and of any lease or right to exclusive use of any common Mortgaged Premises or special privileges in respect thereof granted to the Chargor or its condominium unit; (i) without limiting the obligations of the Chargor hereunder, the Chargor shall cause the Condominium Corporation to maintain the insurance required by this Charge with respect to all the Mortgaged Premises which are governed by the CA for the benefit of the Chargee and shall cause the Condominium Corporation to comply fully with the terms of the required policies of insurance and the insurance provisions of the CA and the declaration, by-laws and rules of the Condominium Corporation; (j) in addition to the Events of Default set out herein, it shall be an Event of Default if (i) the government of the Mortgaged Premises by the Condominium Corporation or any part thereof by the CA is terminated; or (ii) a vote of the Condominium Corporation authorizes the sale of all or substantially of its property or assets or all or any part of its common elements which are all or any part of the Mortgaged Premises, or if any part of such common elements of the Condominium Corporation is expropriated; or (iii) the Condominium Corporation fails to comply with any provision of the CA or the declaration, by-laws or any of the rules of the Condominium Corporation; or (iv) the Condominium Corporation fails to insure the condominium units and the common elements governed by it in accordance with the CA and declaration and by-laws of the Condominium Corporation; or (v) in the Chargee's opinion, the Condominium Corporation fails to manage its property and assets in a prudent and businesslike manner and in keeping with the highest standards for similar properties in the locality in which the Mortgaged Premises are located.

24. Multi-Residential Properties

If the Mortgaged Premises are a multi-residential property, the Chargor represents and warrants with respect to the Mortgaged Premises as follows: (a) except as permitted by Applicable Laws in respect of residential housing (i) no demolition, conversion, renovation, repair or severance has taken place with respect to the Mortgaged Premises; and (ii) there have been no increases in the rental rate charged for any residential rental unit or units on the Mortgaged Premises; (b) in accordance with Applicable Laws in respect of residential housing (i) all rents charged with respect to the Mortgaged Premises are lawful rents and all required rebates have been paid; and (ii) all required filings have been made and were timely, accurate and complete; and (c) under Applicable Laws in respect of residential housing (i) no applications, investigations or proceedings have been

commenced or made; and (ii) there are no outstanding orders or decisions made by any governmental authority with respect to the Mortgaged Premises or any residential rental unit. On request by the Chargee, the Chargor shall provide a statutory declaration by an officer or director of the Chargor that the above representations and warranties are true and correct. The Chargor shall deliver to the Chargee on request all documents required to establish the legality of rents.

The Chargor hereby authorizes all governmental authorities having jurisdiction over residential housing to release to the Chargee or its solicitors any and all information contained in their files. The Chargor shall comply with the provisions of all Applicable Laws while this Charge is continuing. Any breach of this covenant or any material incorrectness of any of the representations and warranties hereinabove contained shall be an Event of Default under this Charge.

25. Construction

In this Charge (a) words denoting the singular include the plural and vice versa and words denoting any gender include all genders; (b) the words "including", "includes" and "include" shall mean "including without limitation," "includes without limitation" and "include without limitation" respectively; (c) any reference to a statute shall mean the statute in force as at the date hereof, together with all regulations promulgated thereunder, as the same may be amended, re-enacted, consolidated and/or replaced from time to time, and any successor statute thereto; (d) any reference to any agreement or instrument shall include all amendments, addenda, modifications, extensions, renewals, restatements, supplements or replacements thereto from time to time; (e) reference to the Chargee, Chargor, any beneficial owner of the Mortgaged Premises, and any other person shall include their respective heirs, estate trustees, legal representatives, successors and assigns, and reference to a "corporation" shall include a company or other form of body corporate; (f) all dollar amounts are expressed in Canadian dollars; (g) the division of this Charge into separate sections and subsections, and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Charge; (h) the Chargee's right to give or withhold any consent or approval, make any determination or exercise any discretion shall be exercised by the Chargee acting reasonably unless otherwise expressly provided, except that following an Event of Default, the Chargee shall be entitled to exercise the same in its sole discretion; (i) if more than one person is named as Chargor, or otherwise becomes liable for or assumes the obligations and liabilities of the Chargor, then the obligations and liabilities of all such persons shall be joint and several; (j) time shall be of the essence; (k) all obligations of the Chargor in this Charge will be deemed to be covenants by the Chargor in favour of the Chargee; and (l) in the event of any conflict or inconsistency between any provision of this Charge and the provisions of the commitment letter governing the loan between the Chargor and the Chargee, the commitment letter will prevail to the extent of any such conflict or inconsistency. The delivery of this Charge for registration by direct electronic transmission shall have the same effect for all purposes as if this Charge was in written form, signed by the Chargor and delivered to the Chargee.

08/14

**THIS IS EXHIBIT "C" TO
THE AFFIDAVIT OF ROBERT CACOVIC**

SWORN BEFORE ME THIS 4th 5th Mar.

DAY OF MARCH, 2020



A Commissioner etc.

ROBERT HANSON
BARRISTER & SOLICITOR
NORTON ROSE FULBRIGHT CANADA LLP
SUITE 1800 - 510 WEST GEORGIA STREET
VANCOUVER, B.C. V6B 0M3
(604) 641-4953

Robb Cacovic

From: Paul Simpson <psimpson@nmcpa.ca>
Sent: August 6, 2019 7:16 AM
To: Robb Cacovic; shawn saulnier
Cc: Brian Champ
Subject: RE: Replacement financing

Hi Robb,

I am out of town on vacation this week and I will join call if available, however, my schedule is unknown so I can't commit to being on a call.

I can tell you that we continue to work closely on a take-out of Meridian that would include providing the funds to repay Bridging, assuming you are ok getting paid before the maturity date in Spring 2020. We don't have a term sheet yet but expect one over the next couple of weeks.

I hope this helps.

Paul

Paul A. Simpson, CPA, CA, LPA
Norton McMullen LLP
Norton McMullen Corporate Finance Inc.
One Valleywood Drive, Suite 200
Markham, ON L3R 5L9
Phone: 905-479-7001 Ext. 314
Fax: 905-479-0045
E-Mail: psimpson@nmcpa.ca

**THIS IS EXHIBIT "D" TO
THE AFFIDAVIT OF ROBERT CACOVIC**

SWORN BEFORE ME THIS 4th 5th *Mr*

DAY OF MARCH, 2020



A Commissioner etc.



Overall Project Budget

	140,458 sf				140,458 sf									
	A	C-A	B	C-B	C	BUDGET DIFFERENCE COMMENTS		GROSS COST TO DATE - Phase 1 & 1b	GROSS COST TO DATE - Phase 2	GROSS COST TO DATE	PREVIOUSLY APPROVED	CURRENT COSTS	COST TO COMPLETE	% COMPLETE
	BORROWER'S BUDGET Phase 1 & 2 & 3	VARIANCE	PREVIOUS PROJECTS	VARIANCE	INITIAL PROJECT BUDGET									
DEVELOPMENT FEES AND PERMITS														
Capital Engineering and Admin Fees	0	0	Included in B1	0	Included in B1	Included in Pre-Development Cost		0	0	0	0	0	0	0%
Development Charges	0	0	Included in B1	0	Included in B1	Included in Pre-Development Cost		0	0	0	0	0	0	0%
Land Dedication Fee	0	0	Included in D1	0	Included in B1	Included in Pre-Development Cost		0	0	0	0	0	0	0%
Planning Permits	27,090	0	27,090	0	27,090	No further costs anticipated	27,090	27,090	27,090	27,090	27,090	0	0	100%
Application Fees - Minor Variance, SPA, Zoning	0	0	Not Applicable	0	Not Applicable	Not Applicable		0	0	0	0	0	0	0%
Utilities and Deposits	0	0	Excluded	0	Excluded	Excluded		0	0	0	0	0	0	0%
Utilities and Deposits Refund	0	0	Excluded	0	Excluded	Excluded		0	0	0	0	0	0	0%
DEVELOPMENT FEES AND PERMITS SUBTOTAL	27,090	0	27,090	0	27,090			27,090	0	27,090	27,090	0	0	100%
MARKETING / SALES / LEASING														
Advertising and Advertising	0	0	Excluded	0	Excluded	Excluded		0	0	0	0	0	0	0%
Opening Expenses	0	0	Excluded	0	Excluded	Excluded		0	0	0	0	0	0	0%
Image	0	0	Excluded	0	Excluded	Excluded		0	0	0	0	0	0	0%
Lease Fee	0	0	Excluded	0	Excluded	Excluded		0	0	0	0	0	0	0%
Market Study	0	0	Not Applicable	0	Not Applicable	Not Applicable		0	0	0	0	0	0	0%
MARKETING / SALES / LEASING SUBTOTAL	0	0	0	0	0			0	0	0	0	0	0	0%
FINANCE														
Fees - 1%	0	0	Not Applicable	0	Not Applicable	Not Applicable		0	0	0	0	0	0	0%
Legal Fees	0	0	Included in E1	0	Included in E1	Included in Legal Fees		0	0	0	0	0	0	0%
Meridian Fees - Meridian	175,000	0	205,000	(30,000)	175,000	As per Meridian \$175,000 (paid) + \$30,000 + \$25,000 (paid directly, not in budget)	175,000	175,000	175,000	175,000	0	0	0	100%
Meridian Fees - Bridging	0	40,000	40,000	0	40,000	As per Credit Facility dated March 9, 2018 at 1.5% / \$40,000		0	0	0	0	40,000	0	0%
Meridian Fees - Greenbrix	0	0	227,500	(227,500)	Not Applicable	Not Applicable		0	0	0	0	0	0	0%
Meridian Charges + Review Fees + Admin Fee	0	2,500	Excluded	2,500	2,500	Allowance as per Meridian		0	0	0	0	2,500	0	0%
Interest - Meridian Acquisition Loan	0	0	303,729	(303,729)	Excluded	Excluded, Borrower to service loan out of rental revenue		0	0	0	0	0	0	0%
Interest - Meridian Construction / Renovation Loan	0	0	349,375	(349,375)	Excluded	Excluded, Borrower to service loan out of rental revenue		0	0	0	0	0	0	0%
Interest - Meridian New Construction Loan	0	0	273,750	(273,750)	Excluded	Excluded, Borrower to service loan out of rental revenue		0	0	0	0	0	0	0%
Interest - Bridging	0	0	Excluded	0	Excluded	Excluded, Borrower to service loan out of rental revenue		0	0	0	0	0	0	0%
Interest - Greenbrix	0	0	852,000	(852,000)	Not Applicable	Not Applicable		0	0	0	0	0	0	0%
Agency Fees	0	0	Not Applicable	0	Not Applicable	Not Applicable		0	0	0	0	0	0	0%
Consultant	0	27,188	76,254	(49,066)	27,188	Based on IOS fee proposal		9,748	9,748	9,748	9,748	17,440	0	36%
FINANCE SUBTOTAL	175,000	69,688	2,779,608	(2,604,608)	244,688			175,000	9,748	184,748	175,000	9,748	59,940	76%
CONTINGENCY														
Development Contingency	0	42,825	42,825	(42,825)	42,825	Allowance for soft-cost overruns to CM Fees and Other Mgmt. Fees		0	0	0	0	0	42,825	0%
CONTINGENCY SUBTOTAL	0	42,825	42,825	(42,825)	42,825			0	0	0	0	0	42,825	0%
PROPERTY TAXES														
T. Self Supply	0	0	Not Applicable	0	Not Applicable	Not Applicable		0	0	0	0	0	0	0%
T. on Monthly Costs	0	0	Excluded	0	Excluded	Excluded		0	0	0	0	0	0	0%
T. Input Tax Credits	0	0	Excluded	0	Excluded	Excluded		0	0	0	0	0	0	0%
PROPERTY TAXES SUBTOTAL	0	0	0	0	0			0	0	0	0	0	0	0%
Per Borrower	10,000,000	1,175,000	14,710,000	(3,545,000)	11,175,000									
NET Cost to Date	6,676,326	0	765,810	0	7,442,136			7,000,000	442,136	7,442,136	7,000,000	442,136	3,732,854	Cost to Complete
HB Retained	139,387								(70,600)	140,987		(100,857)	409,987	HB Retained
HB Released	103,839									103,839		103,839	(103,839)	HB Released

\$2 Million Paid by Owner
 \$5 Million funded by Lender (\$208,763 on hold)

**THIS IS EXHIBIT "E" TO
THE AFFIDAVIT OF ROBERT CACOVIC**

SWORN BEFORE ME THIS 4th *SR* *Jan*

DAY OF MARCH, 2020



A Commissioner etc.

ROBERT HANSON
BARRISTER & SOLICITOR
NORTON ROSE FULBRIGHT CANADA LLP
SUITE 1800 - 510 WEST GEORGIA STREET
VANCOUVER, B.C. V6B 0M3
(604) 641-4953

Nuvo Properties Inc.
Renovation of Crossroads Centre
Cost to complete

	Total Budget
<hr/>	
<u>Construction Costs</u>	
Construction by Maple Reinders	2,879,302
Construction by Owner:	
Development Advisor	44,674
Security	33,315
Construction Manager's Fees	18,621
Signage	15,750
Communications Systems	8,338
<hr/>	
	3,000,000
<hr/>	

TAB 3

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

THE HONOURABLE MADAM) ●DAY, THE ●
JUSTICE CONWAY) DAY OF MARCH, 2020

B E T W E E N:

BRIDGING FINANCE INC., AS AGENT

Applicant

- and -

2607380 ONTARIO INC.

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c.B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C.43, AS AMENDED

**ORDER
(appointing Receiver)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing msi Spergel Inc. as receiver (the "**Receiver**") without security, of all of the assets, undertakings and properties of 2607380 Ontario Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Robert Cacovic sworn March 4, 2020 and the Exhibits thereto, the Affidavit of Shawn Saulnier sworn February 24, 2020 and the Exhibits thereto, the Affidavit of Shawn Saulnier sworn March 4, 2020 and the Exhibits thereto, and on hearing the submissions of counsel for the Applicant, the Debtor, and such other counsel listed on the Counsel Slip, no one else from the service list appearing although properly served as appears from the affidavit of service of Antoinette De Pinto sworn March ●, 2020, and on reading the consent of msi Spergal Inc. to act as the Receiver,

SERVICE

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

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the *BIA* and section 101 of the *CJA*, msi Spergel Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**"), including without limitation the real property municipally known as 1295 North Service Road, Burlington, Ontario and legal described as set out in **Schedule "A"** attached hereto (the "**Real Property**").

RECEIVER'S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality

of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;

- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;

- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to

make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the

landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

8. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the *BIA*, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment,

(iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

11. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the *BIA*, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the *BIA* or under the *Wage Earner Protection Program Act*.

PIPEDA

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete

one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of

any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

17. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the *BIA* or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the *BIA* or by any other applicable legislation.

RECEIVER'S ACCOUNTS

18. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the *BIA*.

19. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$2.0 million (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge, the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the *BIA*, and the charge/mortgage in the principal amount of \$23.0 million in favour of Meridian Credit Union Limited registered against the Real Property on March 26, 2018 as instrument number HR1532634.

22. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "B"** hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

24. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

RETENTION OF LAWYERS

25. **THIS COURT ORDERS** that the Receiver may retain lawyers to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order. Such lawyers may include Chaitons LLP, lawyers for the Applicant herein, in respect of any matter where there is no conflict of interest. The Receiver shall, however, retain independent lawyers in respect of any legal advice or services where a conflict exists, or may exist.

SERVICE AND NOTICE

26. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of

documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol.

27. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

28. **THIS COURT ORDERS** that the Applicant, the Receiver and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtor's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

29. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

30. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

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

32. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

33. **THIS COURT ORDERS** that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

34. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party

likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

SCHEDULE "A"

PIN: 07127-0265 (LT)

Property Description: PT LT 10, RCP PL 99, PART 3 & 7, 20R6963, S/T IN 619045;
BURLINGTON

LRO #20

Municipal Address: 1295 North Service Road, Burlington, ON

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that msi Spergel Inc. the receiver (the "**Receiver**") of the assets, undertakings and properties 2607380 Ontario Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the ● day of March, 2020 (the "**Order**") made in an application having Court file number CV-20-●-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

MSI SPERGEL INC., solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

BRIDGING FINANCE INC., AS AGENT

-and-

2607380 ONTARIO INC.

Applicant

Respondent

Court File No. CV-20-●-00CL

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

PROCEEDING COMMENCED AT
TORONTO

ORDER
(appointing Receiver)

CHAITONS LLP

5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

Harvey Chaiton (LSO # 21592F)

Tel: (416) 218-1129

Fax: (416) 218-1849

E-mail: harvey@chaitons.com

Lawyers for the Applicant

TAB 4

Court File No. CV-20-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MADAM) ~~WEEKDAY~~ DAY,
JUSTICE CONWAY) THE # ●
)
DAY OF ~~MONTH~~ MARCH, ~~20YR~~ 2020

BETWEEN:

PLAINTIFF[†]

Plaintiff

BRIDGING FINANCE INC., AS AGENT

Applicant

- and -

DEFENDANT

Defendant

2607380 ONTARIO INC.

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c.B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C.43, AS AMENDED

[†]The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application. This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.

ORDER (appointing Receiver)

THIS ~~MOTION~~ APPLICATION made by the ~~Plaintiff~~² Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "*BIA*") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "*CJA*") appointing ~~[RECEIVER'S NAME]~~ msi Spergel Inc. as receiver ~~[and manager] (in such capacities,~~ (the "**Receiver**") without security, of all of the assets, undertakings and properties of ~~[DEBTOR'S NAME]~~ 2607380 Ontario Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of ~~[NAME]~~ Robert Cacovic sworn ~~[DATE]~~ March 4, 2020 and the Exhibits thereto, the Affidavit of Shawn Saulnier sworn February 24, 2020 and the Exhibits thereto, the Affidavit of Shawn Saulnier sworn March 4, 2020 and the Exhibits thereto, and on hearing the submissions of counsel for ~~[NAMES], no one appearing for [NAME]~~ the Applicant, the Debtor, and such other counsel listed on the Counsel Slip, no one else from the service list appearing although ~~duly~~ properly served as appears from the affidavit of service of ~~[NAME]~~ Antoinette De Pinto sworn ~~[DATE]~~ March 4, 2020, and on reading the consent of ~~[RECEIVER'S NAME]~~ msi Spergal Inc. to act as the Receiver,

SERVICE

²~~Section 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".~~

1. **THIS COURT ORDERS** that the time for service of the Notice of ~~Motion~~[Application](#) and the ~~Motion~~[Application Record](#) is hereby abridged and validated³ so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the *BIA* and section 101 of the *CJA*, ~~[RECEIVER'S NAME]~~[msi Spergel Inc.](#) is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**"). including without limitation the real property municipally known as 1295 North Service Road, Burlington, Ontario and legal described as set out in Schedule "A" attached hereto (the "**Real Property**").

RECEIVER'S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security

³~~If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~

personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;

- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings;⁴ The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$~~_____~~250,000, provided that the aggregate consideration for all such transactions does not exceed \$~~_____~~500,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, ~~for~~ section 31 of the Ontario *Mortgages Act*, as the case

~~⁴This model order does not include specific authority permitting the Receiver to either file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor. A bankruptcy may have the effect of altering the priorities among creditors, and therefore the specific authority of the Court should be sought if the Receiver wishes to take one of these steps.~~

may be,⁵ shall not be required, ~~and in each case the Ontario Bulk Sales Act shall not apply.~~

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and

⁵ ~~If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be exempted from such notice periods, and further that the Ontario Court has the jurisdiction to grant such an exemption.~~

- (f) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that

nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any

applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

8. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the *BIA*, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

11. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this

Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the *BIA*, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the *BIA* or under the *Wage Earner Protection Program Act*.

PIPEDA

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal

information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

17. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections

81.4(5) or 81.6(3) of the *BIA* or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the *BIA* or by any other applicable legislation.

RECEIVER'S ACCOUNTS

18. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the *BIA*.⁶

19. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

⁶~~Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".~~

FUNDING OF THE RECEIVERSHIP

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$~~_____~~2.0 million (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge ~~and~~, the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the *BIA*, and the charge/mortgage in the principal amount of \$23.0 million in favour of Meridian Credit Union Limited registered against the Real Property on March 26, 2018 as instrument number HR1532634.

22. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "A-B"** hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

24. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

RETENTION OF LAWYERS

25. THIS COURT ORDERS that the Receiver may retain lawyers to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order. Such lawyers may include Chaitons LLP, lawyers for the Applicant herein, in respect of any matter where there is no conflict of interest. The Receiver shall, however, retain independent lawyers in respect of any legal advice or services where a conflict exists, or may exist.

SERVICE AND NOTICE

26. ~~25.~~ THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a

Case Website shall be established in accordance with the Protocol ~~with the following URL~~

~~<@>~~

27. ~~26.~~ **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

28. **THIS COURT ORDERS** that the Applicant, the Receiver and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtor's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

29. ~~27.~~ **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

30. ~~28.~~ **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

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

32. ~~30.~~ **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

33. ~~31.~~ **THIS COURT ORDERS** that the **PlaintiffApplicant** shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the **PlaintiffApplicant**'s security or, if not so provided by the **PlaintiffApplicant**'s security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

34. ~~32.~~ **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party

likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

DOCSTOR: 17717428

SCHEDULE "A"

PIN: 07127-0265 (LT)

Property Description: PT LT 10, RCP PL 99, PART 3 & 7, 20R6963, S/T IN 619045, BURLINGTON

LRO #20

Municipal Address: 1295 North Service Road, Burlington, ON

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that ~~[RECEIVER'S NAME]~~, msi Spergel Inc. the receiver (the "Receiver") of the assets, undertakings and properties ~~[DEBTOR'S NAME]~~ 2607380 Ontario Inc. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the day of March, ~~20~~ 2020 (the "Order") made in an ~~action~~ application having Court file number ~~CL~~ CV-20-●-00CL, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

~~[RECEIVER'S NAME]~~ MSI SPERGEL INC.,
solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

BRIDGING FINANCE INC., AS AGENT

-and-

2607380 ONTARIO INC.

Applicant

Respondent

Court File No. CV-20-●-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

ORDER
(appointing Receiver)

CHAITONS LLP

5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

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Lawyers for the Applicant

Document comparison by Workshare Compare on Thursday, March 05, 2020
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Document 1 ID	file://C:\Users\Samr\OneDrive - Chaitons LLP\Precedents\receivership-order-EN.doc
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Description	DOCS-#4720648-v1-Bridging/Nuvo_-_Receivership_Order
Rendering set	Standard

Legend:	
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Split/Merged cell	
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Statistics:	
	Count
Insertions	106
Deletions	75
Moved from	0

BRIDGING FINANCE INC., AS AGENT

Applicant

- AND -

2607380 ONTARIO INC.

Respondent

Court File No. CV-20-

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

APPLICATION RECORD

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Lawyers for Bridging Finance Inc., as Agent