

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

BETWEEN:

MERIDIAN CREDIT UNION LIMITED

Applicant

- and -

2607380 ONTARIO INC.

Respondent

**APPLICATION UNDER section 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**

NOTICE OF APPLICATION

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Applicant. The claim made by the Applicant is set out on the following pages.

THIS APPLICATION will come on for a hearing on March 18, 2021 at 2:00 pm, or as soon thereafter as the application can be heard on the application of the Applicant.

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 38C 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 not later than 2:00 p.m. on the day 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: _____

Issued by _____
Local Registrar

Address of Court Office:
330 University Avenue
Toronto, Ontario, Canada

TO: THE SERVICE LIST

THE APPLICANT, MAKES APPLICATION FOR:

1. An Order substantially in the form of Order attached as Appendix "A" appointing msi Spergel Inc. ("**Spergel**") as the receiver and manager ("**Receiver**"), without security, of all of the assets, undertakings and properties (the "**Property**") of 2607380 Ontario Inc. ("**260**") pursuant to Section 243 of the *Bankruptcy and Insolvency Act*, RSC 1986, c B-3, as amended (the "**BIA**") and Section 101 of the *Courts of Justice Act*, RSO 1990, c C43, as amended (the "**CJA**"); and
2. Such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE APPLICATION ARE:

The Parties

3. 260 is a company incorporated under the laws of Ontario. It's primary asset is a 4.9 acre parcel of land legally described as PT LT 10, RCP PL 99, PART 3&7, 20R6963, S/T IN 619045; BURLINGTON (PIN 07127-0265 (LT)) and municipally described as 1295 North Service Road, Burlington, Ontario (the "**Nuvo Property**"). There is a multi-purpose commercial building approximately 114,000 ft² in size located on the Nuvo Property (the "**Nuvo Building**"). 260's sole business is the development and leasing of the Nuvo Building.
4. Meridian is a credit union established under the *Credit Union and Caisses Populaires Act, 1994*, S.O. 1994, c. 11. Meridian is a mortgagee with respect to the Real Property of 260.
5. Spergel is a licensed insolvency trustee.

Meridian's Debt and Security

6. 260 is indebted to Meridian in the approximate amount of \$18,500,000 (the "**Pre-CCAA Indebtedness**") pursuant to the Credit Agreement. The Pre-CCAA Indebtedness is repayable on demand.

7. 260 is further indebted to Meridian in the amount of approximately \$7,200,000 pursuant to advances made by Meridian under a DIP Credit Facility Agreement made as of March 3, 2020, as amended (the "**DIP Loan**" and the "**DIP Loan Agreement**").

8. 260 is in default of its obligations under both the Credit Agreement and the DIP Loan Agreement and the full amounts of the Pre-CCAA Indebtedness and the DIP Loan are due and payable.

9. 260's obligation to repay the **Pre-CCAA** Indebtedness to Meridian is secured by:

- (a) a Charge/Mortgage in the principal amount of \$23,000,000.00 (the "**Meridian Charge/ Mortgage**") registered in favour of Meridian on March 26, 2018; and,
- (b) a General Security Agreement dated January 31, 2018 granted by 260 in favour of Meridian (the "**GSA**").

(collectively, the "**Security**").

10. The Meridian Charge/Mortgage is a first ranking charge/mortgage against the Nuvo Property and the GSA is registered under the *Personal Property Security Act* (Ontario).

11. There is a second ranking charge/mortgage against the Nuvo Property in the amount of \$4,500,000 in favour of CCCI, and a third ranking charge/mortgage against the Nuvo Property in the amount of \$3,250,000 in favour of Bridging. These claims are subject to an intercreditor agreement with Meridian which, among other things confirms Meridian's priority against the Nuvo Property.

12. Excluding construction liens and beneficiaries of Court-ordered charges, based on the available records, CCCI and Bridging are the only other secured creditors of 260 holding registered security against the Nuvo Property.

Pre-CCAA Default and Enforcement

13. By March of 2019, 260 was facing liquidity issues, and was no longer able to make payments with regard to expenses related to the Construction Project, including payments due to the general contractor of the Construction Project.

14. As at February 25, 2020, 260 was in default of its obligations under the Credit Agreement and Security Documents, which defaults continue (the "**Pre-CCAA Events of Default**").

15. On February 25, 2020 Meridian delivered a demand letter (the "**Demand Letter**") demanding the repayment of the Pre-CCAA Indebtedness, and a notice of its intention to enforce its security pursuant to section 244 of the *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985, C. B-3, as amended (the "**244 Notice**") on 260. 260 has not yet cured the Pre-CCAA Events of Default or paid the Pre-CCAA Indebtedness.

CCAA Proceedings and DIP Loan

16. On February 25, 2020, 260 sought and obtained protection under the CCAA pursuant to the Order of Justice Conway dated February 25, 2020 (the “**Initial Order**”).

17. Richter Advisory Group Inc. was appointed as Monitor (the “**Monitor**”) and a comeback hearing was scheduled for March 6, 2020 (the “**Comeback Hearing**”).

18. During the period between the date of the Initial Order and the Comeback Hearing, Meridian agreed to act as debtor-in-possession (“**DIP**”) lender to 260 on the condition that, among other things, the Initial Order would be amended and restated to increase the oversight and control of the Monitor over 260 and that strict deadlines would be imposed for the implementation of a sale and investment solicitation process (the “**SISP**”), failing which Meridian would be at liberty to enforce its security.

19. At the Comeback Hearing on March 6, 2020, Justice Conway amended and restated the Initial Order to, among other things, approve the DIP Loan Agreement (the “**Amended and Restated Initial Order**”).

20. The DIP Loan Agreement was subsequently amended in accordance with three separate amending agreements dated April 23, 2020, July 10, 2020 and November 18, 2020 (together, the “**DIP Amendments**”) to, among other things, provide for the extension of SISP timelines and relief from other requirements under the DIP Loan Agreement.

21. Despite a number of extensions and forbearances, all of which have now expired, the DIP Loan has not been repaid and 260 is in default of its obligations under the DIP Loan Agreement.

22. The DIP Loan provided for charge over the Nuvo Property as security for the DIP Loan (the "**DIP Charge**"), in priority to all claims except an administrative charge created under the said Order.

23. The DIP Charge and Meridian's rights under the DIP Loan Agreement are now fully enforceable, including Meridian's right to appoint a receiver and manager over the Nuvo Property.

24. 260 has consented to the immediate enforcement of the DIP Charge and Meridian's rights under the DIP Loan Agreement, to the lifting of the stay in its CCAA proceedings and to the appointment of Spergel as receiver and manager on the terms of the Order sought on this Application.

Appointment of Spergel as Receiver and Manager is Just and Convenient

25. Pursuant to the Credit Agreement and Security, the DIP Loan Agreement and the DIP Charge, 260 granted Meridian the right to seek the appointment of a receiver and manager upon the occurrence of an Event of Default.

26. Numerous events of default under the Credit Agreement and the DIP Loan Agreement have occurred which 260 has not cured.

27. The statutory notice period provided for under the BIA has expired in respect of the Pre-CCAA Indebtedness.

28. Meridian has given notice of the occurrence of the DIP Loan Defaults under the DIP Loan Agreement.

29. No material payments in respect of the Indebtedness have been made to Meridian.

30. It is just and convenient to appoint Spergel as Receiver.

31. The immediate appointment of a receiver will provide transparency and oversight to allow for orderly realization on the Nuvo Property for the benefit of stakeholders.

32. Spergel is a licensed trustee in bankruptcy, and has consented to act as Receiver should the Court so appoint it. A copy of the executed consent of Spergel is attached as Appendix "B".

33. Meridian also relies upon the following:

- (a) The provisions of the BIA, including Section 243;
- (b) Section 101 of the CJA;
- (c) Rules 1.04, 3.02, 16.08, and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, c. C.43; and
- (d) Such further and other grounds as counsel may advise and this Honourable Court permit.

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

- (a) The affidavit of Bernhard Huber, sworn March 16, 2021 in the proceedings identified in the files of this Court as Court File No. CV-20-00636875-00CL;
- (b) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

March 16, 2021

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Lawyers for the Applicant

APPENDIX "A"

Court File No.: CV-21-

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) THURSDAY, THE 18th
JUSTICE DIETRICH) DAY OF MARCH, 2021

BETWEEN :

MERIDIAN CREDIT UNION LIMITED

Applicant

– and –

2607380 ONTARIO INC.

Respondent

**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. ("**Spergel**") as receiver and manager (in such capacity, 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 by judicial videoconference via Zoom due to the COVID-19 emergency.

ON READING the affidavit of Bernhard Huber sworn March 16, 2021 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, counsel for the Debtor, and those other parties listed on the counsel slip, no one else appearing for any other party although duly served as appears from the affidavit of service of Heather Fisher sworn March 16, 2021, and on reading the consent of Spergel to act as the Receiver,

SERVICE

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

THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, Spergel 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, and all proceeds thereof (collectively, the "**Property**"), including but not limited to the lands and premises listed in Schedule "B" (the "**Nuvo Property**").

RECEIVER'S POWERS

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, real estate brokers, 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 and sell 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 \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$250,000; 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, including as against Real 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

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.

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.

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.

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

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

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

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

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

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

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

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

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

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

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

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.

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.

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

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 \$500,000 (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.

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.

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

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.

SERVICE AND NOTICE

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 '<URL>'.

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.

GENERAL

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.

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

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.

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.

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.

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"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that msi Spergel Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties of 2607380 Ontario Inc. 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 _____, 2021 (the "**Order**") made in an action having Court file number __-__-_____, 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.

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 five (5) per cent above the prime commercial lending rate of Meridian Credit Union from time to time.

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.

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

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.

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.

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 _____, 2021.

msi Spergel Inc., solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____
Name:
Title:

SCHEDULE "B"

DESCRIPTION OF REAL PROPERTY

1. The lands and premises municipally described as 1295 North Service Road, Burlington, Ontario:

- **PIN 07127-0265 (LT):** PT LT 10, RCP PL 99, PART 3&7, 20R6963, S/T IN 619045; BURLINGTON

APPENDIX "B"

CONSENT TO ACT OF MSI SPERGEL INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**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**

BETWEEN:

MERIDIAN CREDIT UNION LIMITED

Applicant

and

2607380 ONTARIO LIMITED

Respondent

CONSENT TO ACT

msi Spergel Inc. hereby consents to act as receiver over all of the assets, undertakings and properties of every nature and kind whatsoever and wherever situated, including all proceeds thereof, of 2607380 Ontario Limited, in accordance with an order substantially in form of the receivership order sought and included in the Application Record of Meridian Credit Union Limited.

DATED the 16th day of March, 2021

msi Spergel Inc.



Name: Trevor Pringle, LIT

Title: Partner

TITLE	consent to act - Nuvo
FILE NAME	Final Meridian, 2...ent to Act - .pdf
DOCUMENT ID	2c4d46aec38177664ad7f557819192fa86fabb69
AUDIT TRAIL DATE FORMAT	MM / DD / YYYY
STATUS	● Completed

Document history



SENT

03 / 16 / 2021

09:09:37 UTC-5

Sent for signature to Trevor Pringle (tpringle@spergel.ca)
 from msispergelinc@gmail.com
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VIEWED

03 / 16 / 2021

09:10:20 UTC-5

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 IP: 38.99.141.34



SIGNED

03 / 16 / 2021

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 IP: 38.99.141.34



COMPLETED

03 / 16 / 2021

09:10:40 UTC-5

The document has been completed.

MERIDIAN CREDIT UNION LIMITED

- and -

Court File No. CV-21-
2607380 ONTARIO INC.

Respondent

Applicant

APPLICATION UNDER section 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

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

PROCEEDING COMMENCED AT TORONTO

NOTICE OF APPLICATION

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