

**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.

(Applicant)

AFFIDAVIT OF SHAWN SAULNIER
(Sworn March 6, 2020)

I, Shawn Saulnier, of the Town of Campbellville, Ontario MAKE OATH AND SAY:

1. I am the President and Chief Executive Officer of 2607380 Ontario Inc. ("**260**" or the "**Applicant**"). As a result of my role with the Applicant, I have knowledge of the matters to which I hereinafter depose. I have also reviewed the books and records of the Applicant and have spoken with certain of the directors, officers and/or employees of the Applicant, as necessary and applicable. Where I have relied upon information received from such individuals, I believe such information to be true.
2. All references to currency in this affidavit are references to Canadian dollars, unless otherwise indicated.
3. I swear this affidavit further to my affidavit sworn March 4, 2020 (the "**Comeback Affidavit**") and in reply to the receivership application brought by Bridging and the Affidavit of Robert Cacovic sworn March 5, 2020 (the "**Bridging Affidavit**"). All capitalized terms not otherwise defined herein are as defined in the Comeback Affidavit.

A. 260's Loan Obligations

4. As set out in my Initial Affidavit sworn February 24, 2020 (the "**Initial Affidavit**"), as of December 31, 2019, 260 had liabilities totalling approximately \$27.8 million. 260's obligations to its lenders, ranking as follows:

- (a) 260's primary loan obligation is to Meridian for the financing of the acquisition of the Nuvo Property and the partial renovation of the Nuvo Building totalling \$17.3 million inclusive of interest, as of January 31, 2020;
- (b) a vendor take back mortgage to CCCI, totalling \$4.5 million, secured by way of a \$4.5 million charge (the "**CCCI Charge**"); and
- (c) Bridging, totalling approximately \$2.8 million outstanding to Bridging under the Bridging Commitment as of January 31, 2020, secured by way of a third ranking charge in the amount of \$3.25 million (the "**Bridging Charge**").

5. Pursuant to the Meridian Credit Agreement, a copy of which was attached as Exhibit "D" to my Initial Affidavit, Meridian agreed to provide financing to 260 for the acquisition of the Nuvo Property and renovation of the Nuvo Building. Meridian agreed to provide this through three facilities: (i) a \$12.35 million loan to finance the acquisition of the Nuvo Property, (ii) a \$5 million loan to finance renovation costs related to the Nuvo Property, and (iii) a \$20 million loan to provide long-term take-out financing for the Nuvo Property. This \$20 million loan was removed through the First Meridian Amendment and Forbearance Agreement and replaced with a \$2.5 million loan to assist with renovations at the Nuvo Property. Had the \$2.5 million loan been advanced by Meridian, it would have ranked ahead of Bridging and CCCI and could have been used to pay the outstanding amounts owed to Maple Reinders and other contractors.

Bridging Commitment

6. Pursuant to the Bridging Commitment dated March 20, 2018, Bridging agreed to provide the maximum principal amount of \$2.5 million to 260 for the acquisition of the Nuvo Property. It was a condition precedent to any advances under the Bridging Commitment that 260 would provide a copy of a valuation for the Nuvo Property by an approved appraiser

valuating it at no less than \$35 million on a completed basis. An appraisal in excess of this amount was provided to Bridging, as required.

7. In addition to the Bridging Charge, 260 granted various security to Bridging to secure the obligations under the Bridging Commitment, including:

- (a) a general security agreement granting a security interest in all the present and after acquired property of 260;
- (b) a general assignment of leases, rents and revenues from the Nuvo Property;
- (c) a general assignment of construction contracts in respect of the Nuvo Property;
- (d) an assignment of insurance in respect of 260 and the Nuvo Property; and
- (e) an unsecured guarantee provided by me and certain of the Mohawk Entities.

Priority, Postponement and Standstill Agreement

8. As set out in my Initial Affidavit, in connection with the initial acquisition of the Nuvo Building in March 2018, Meridian, Bridging and CCCI signed a standstill agreement setting out the relative priorities of the security held by them on the Nuvo Property. On August 16, 2019, Meridian, CCCI and Bridging entered into an Amended and Restated Priority, Postponement and Standstill Agreement, a copy of which was attached to the Initial Affidavit as Exhibit "N" (as amended, the "**Standstill Agreement**"). The Standstill Agreement provided that the relative priorities of the security granted to Meridian, CCCI and Bridging as against the Nuvo Property would be as follows:

Rank	Charge
First	<ul style="list-style-type: none">• Meridian Charge, up to the amount of \$20,735,000 (the "Meridian Limited Indebtedness")• CCCI Charge, over all amounts in excess of the Meridian Limited Indebtedness
Second	<ul style="list-style-type: none">• Meridian Charge, any amounts in excess of the Meridian Limited Indebtedness
Subordinate	<ul style="list-style-type: none">• Bridging Charge

9. The Standstill Agreement also provides that CCCI and Bridging cannot take any collection, realization or enforcement proceedings or remedies against the Nuvo Property for a period of 90 days following the delivery by CCCI or Bridging of a default notice to 260 and Meridian. Further, pursuant to the Standstill Agreement, Bridging and CCCI cannot take any steps to enforce or realize upon their security following a period of 90 days from the delivery of an enforcement notice by Meridian.

10. Bridging was provided with a copy of the Meridian Credit Agreement in March 2018 and was aware that the financing provided by Meridian would be partially used to fund renovation costs for the Nuvo Building. Pursuant to section 2.02 of the Standstill Agreement, Bridging agreed to subordinate all of its rights, including its security, in favour of Meridian to the extent of the Meridian indebtedness of up to **\$23 million, including accrued interest and all reasonable costs and expenses of Meridian** arising in connection with the Meridian Credit Agreement. The relevant provisions of the Standstill Agreement, showing Bridging's subordination to Meridian in the maximum principal amount of \$23 million, are included in Schedule "A" hereto.

11. I am advised by counsel that Meridian served a Notice of Intention to Enforce Security pursuant to section 244 of the *Bankruptcy and Insolvency Act* (Canada) on 260 prior to the commencement of the hearing of 260's CCAA application on February 25, 2020. This default notice is now stayed pursuant to the terms of the Initial Order.

B. Meridian Amendment and Forbearance Agreements

12. As noted in the Initial Affidavit, the Meridian Credit Agreement was amended on June 14, 2019 and August 14, 2019 through the First Meridian Amendment and Forbearance Agreement and the Second Meridian Amendment and Forbearance Agreements (collectively, the "**Meridian Amendment and Forbearance Agreements**"). Copies of the Meridian Amendment and Forbearance Agreements were attached as Exhibits "H" and "I" to the Initial Affidavit.

13. Commencing in early 2019, in accordance with 260's reporting requirements under the Bridging Commitment, Bridging was advised and became aware that 260 had run into liquidity issues. I and members of 260's team had a good relationship with the Bridging account managers Robert Cacovic and Yannick Adair and kept Bridging informed of our

efforts to secure the additional financing from Meridian and other parties, commencing in February 2019.

14. Further, Bridging was aware of and provided with copies of each of the Meridian Amendment and Forbearance Agreements before they were signed by 260. The Meridian Amendment and Forbearance Agreements each listed the amount of \$1.289 million owing to 260's general contractor, Maple Reinders, on account of construction arrears for completed work. It was also a condition to the Meridian Amendment and Forbearance Agreements that 260 would update Meridian regarding "discussions with Bridging Finance Inc. and its willingness to refinance/extend existing credit facilities". Meridian had asked Bridging to consider providing additional financing or refinancing in the summer of 2019 and again in the fall of 2019. However, Bridging declined to provide the additional funds, and instead remained in third position.

C. Valuations of the Nuvo Building and Discussions with Bridging Regarding Additional Financing

15. As noted in the Initial Affidavit, the Nuvo Property was appraised in July 2017 and in April 2019. The April 2019 Valuation was commissioned by 260 and valued the Nuvo Property on a completed and fully-leased basis at an amount that far exceeds its obligations to its lenders. The April 2019 Valuation also valued the Nuvo Property at an amount significantly higher than the 2017 valuation, which reflects the positive impact of the renovations carried out by Maple Reinders. The Applicant filed a copy of the April 2019 Valuation with the Court under seal at the commencement of the CCAA Proceedings.

16. Both Meridian and Bridging were provided with a copy of the April 2019 Valuation when prepared.

17. The Bridging Affidavit notes at paragraph 14-17 various efforts to refinance the property. It is unclear why Mr. Cacovic does not disclose the additional facts as outlined in my Initial Affidavit- i.e. over the summer of 2019, 260 attempted to obtain the additional financing to complete the renovations of the Nuvo Building from other sources. 260 entered into a \$7.1 million term sheet with one party that did not ultimately proceed. As part of 260's ongoing status discussions with Bridging, Bridging was made aware of this term sheet.

18. I feel strongly that there is value in the Nuvo Building that exceeds the secured debt, as supported by the April 2019 Valuation. Appointing a receiver will adversely affect the value to unsecured creditors, employees and tenants of the Nuvo Building, as well as putting my equity interests at risk.

SWORN BEFORE ME at the City of
Toronto, Ontario on March 6, 2020.

Commissioner for Taking Affidavits

SHAWN SAULNIER

SCHEDULE "A"

EXCERPTS FROM THE STANDSTILL AGREEMENT

AND WHEREAS the Borrower granted a charge to Meridian which was registered in the Land Registry Office for the Land Titles Division of Halton (No. 20) on the date hereof and additionally secured by a General Assignment of Rents, Notice of which was registered on the date hereof, which charge secures the maximum principal sum of TWENTY THREE MILLION DOLLARS (\$23,000,000.00), together with costs and interest thereon (the "**Meridian Indebtedness**") registered against the Real Property and other security collateral to such charge (collectively, the "**Meridian Security**") pursuant to a Credit Agreement, dated March 9, 2018, as such Credit Agreement may have been, and may in the future be amended, modified, restated or replaced from time to time or time, including without limitation pursuant to an Amended and Restated Amendment and Forbearance Letter dated August 14, 2019 (the "**Meridian Credit Agreement**");

1.01 The parties hereto hereby acknowledge and agree that the following priorities shall govern with respect to the Meridian Security and the CCCI Security relating to the Real Property, namely:

- (a) the Meridian Security relating to the Real Property, and all advances made thereunder from time to time up to the amount of the Limited Meridian Indebtedness, as well as all reasonable costs and expenses of Meridian arising from or in connection with the Credit Agreement and the Meridian Security, and/or incurred by or on behalf of Meridian in enforcing the Meridian Security or any portion thereof, shall, shall constitute a first charge and security interest against the Real Property and all other Property Collateral relating to the Real Property, and for grater certainty the Meridian Security shall constitute a second charge and security interest against the Real Property over all amounts of the Meridian Indebtedness which are in excess of the Limited Meridian Indebtedness together with costs and interest thereof; and

2.01 The parties hereto hereby acknowledge and agree that the following priorities shall govern with respect to the Meridian Security and the BFI Security relating to the Real Property, namely:

- (a) the Meridian Security, and all advances made thereunder from time to time up to the amount of Meridian Indebtedness, as well as all reasonable costs and expenses of Meridian arising from or in connection with the Meridian Commitment Letter and Meridian Security, and/or incurred by or on behalf of Meridian in enforcing Meridian Security or any portion thereof, shall constitute a first charge, and security interest against the Real Property and all other Property Collateral; and
- (b) the BFI Security and all advances made or secured thereunder from time to time, and all other amounts secured thereunder, including without limitation,

all reasonable costs and expenses of BFI arising from or in connection with the BFI Security and/or incurred by or on behalf of BFI in enforcing the BFI Security or any portion thereof, shall, so long as the Meridian Security is registered against title to the Real Property, constitute a subordinate charge and security interest in relation to the Meridian Security, against the Real Property and all other Property Collateral relating to the Real Property.

2.02 Without limiting the generality of the forgoing, with respect to the Real Property and the Property Collateral, BFI hereby postpones and subordinates the BFI, and all of its rights, powers and interest thereunder, to and in favour of the Meridian Security to the extent of the Meridian Indebtedness and all interest now or hereafter accrued and/or payable thereon, and all reasonable costs and expenses of Meridian arising from or in connection with the Credit Agreement and the Meridian Security, and/or incurred by or on behalf of Meridian in enforcing the Meridian Security or any portion thereof, with such postponement and subordination to be valid and effective regardless of the respective times of execution, delivery, registration, attachment, perfection, crystallization and/or enforceability of the applicable BFI Security and the Meridian Security, and with such postponement and subordination to be valid and effective in respect of the entirety of the Meridian Indebtedness together with costs and interest thereon regardless of the time of advance of any part of all of the Meridian Indebtedness from time to time or times including whether advanced before or subsequent to the date of registration of the BFI Security.

2.03 Notwithstanding any other provision hereof, save and except for all reasonable costs and expenses of Meridian arising from or in connection with the Meridian Commitment Letter and Meridian Security, and/or incurred by or on behalf of Meridian in enforcing Meridian Security or any portion thereof, Meridian agrees that any increase in the principal amount secured by the Meridian Security, or any increase in the interest rate secured by the Meridian Security above a rate which is equivalent to the Prime Rate (as defined in the Meridian Credit Agreement, unamended from March 9, 2018) plus Eleven percent (11%), without BFI's prior written consent shall not be afforded the priority over the BFI Security as contemplated herein.

6.01 CCCI and BFI agree that, from and after the date hereof, to and until the date of the repayment and/or satisfaction of all outstanding indebtedness and/or liabilities of the Borrower to Meridian under the Meridian Security and the complete discharge thereof, CCCI and BFI shall not take, direct, initiate, pursue or otherwise participate in, either directly or indirectly, any collection, realization or enforcement proceedings or remedies against, or otherwise effecting, the Borrower, nor against the Real Property, or any portion thereof, nor against any other Property collateral relating to Real Property or any other undertaking, property and assets of the Borrower ("**Realization**"), as a result of any breach, default or non-compliance with any covenants, conditions, representations, warranties, terms and/or provisions of the CCCI Security or BFI Security, as applicable ("**Borrower Default**"), or any portion thereof, for a period of ninety (90) days following the delivery by CCCI or BFI, as applicable, to the Borrower and to Meridian of a notice of default by the Borrower under the CCCI Security or BFI Security, as applicable (the "**Standstill Period**").

6.08 CCCI and BFI agree with Meridian that CCCI and BFI shall not, during the Standstill Period, be permitted to exercise any of their rights and remedies arising as a result of a breach or default under the CCCI Security or BFI Security, or any portion thereof, against any guarantors of the CCCI Indebtedness or BFI Indebtedness or any other person or entities who may be liable for the indebtedness and obligations of the Borrower under or secured by such security other than the Borrower.

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Court File No.: CV-20-00636875-00CL

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(COMMERCIAL LIST)
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AFFIDAVIT OF SHAWN SAULNIER
SWORN MARCH 6, 2020

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