

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N :

**MERIDIAN CREDIT UNION LIMITED**

Applicant

- and -

**ADELAIDE STREET LOFTS 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  
(Returnable November 1, 2019)**

---

Date: October 28, 2019

**AIRD & BERLIS LLP**  
Barristers and Solicitors  
Brookfield Place  
Suite 1800, Box 754  
181 Bay Street  
Toronto, ON M5J 2T9

**Steve Graff (LSO # 31871V)**  
Tel: (416) 865-7726  
Fax: (416) 863-1515  
Email: [sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)

**Kathryn Esaw (LSO # 58264F)**  
Tel: (416) 865-4707  
Fax: (416) 863-1515  
Email: [kesaw@airdberlis.com](mailto:kesaw@airdberlis.com)

*Lawyers for Meridian Credit Union Limited*

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N :

**MERIDIAN CREDIT UNION LIMITED**

Applicant

- and -

**ADELAIDE STREET LOFTS 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***

---

**I N D E X**

---

<b>DOCUMENT</b>	<b>TAB</b>
Notice of Application issued, September 27, 2019	1
Affidavit of Bernhard Huber, sworn September 30, 2019	2
<b>Exhibit “A”</b> – Ontario Corporate Profile of Adelaide Street Lofts Inc.	A
<b>Exhibit “B”</b> – Credit Agreement between Meridian Credit Union Limited and Adelaide Street Lofts Inc., dated April 2, 2018	B
<b>Exhibit “C”</b> – General Security Agreement in favour of Meridian Credit Union Limited, dated May 14, 2018	C
<b>Exhibit “D”</b> – Notice of Assignment of Rents	D

<b>DOCUMENT</b>	<b>TAB</b>
<b>Exhibit “E”</b> – Charge No. AT4862974 on 63 Adelaide Street West	E
<b>Exhibit “F”</b> – Guarantee and Postponement of Claim of John and Jim Neilas, dated May 14, 2018	F
<b>Exhibit “G”</b> – Guarantee and Postponement of Claim of Neilas Inc. dated May 14, 2018	G
<b>Exhibit “H”</b> – PPSA search results for Adelaide Street Lofts Inc.	H
<b>Exhibit “I”</b> – Parcel register for 63 Adelaide Street West	I
<b>Exhibit “J”</b> – Priority and Standstill Agreement	J
<b>Exhibit “K”</b> – Demand letters and Notice of Intention to Enforce Security	K
<b>Exhibit “L”</b> – Order of Justice Hainey appointed representative counsel dated March 21, 2019	L
<b>Exhibit “M”</b> – Second Report of Representative Counsel, dated September 13, 2019	M
<b>Exhibit “N”</b> – Order of Justice Hainey appointing Information Officer, dated September 17, 2019	N
<b>Exhibit “O”</b> – Letter to Debtor’s Counsel, dated September 6, 2019	O
<b>Exhibit “P”</b> – Forbearance Letter, dated September 12, 2019	P
<b>Exhibit “Q”</b> – Letter from Meridian to the Service List, dated September 13, 2019	Q
Consent of Receiver	3
Draft Order	4
Draft Order blacklined to the Model Receivership Order	5
Service List	6

**TAB 1**

CV-19-00628145 - 00CL

Court File No. \_\_\_\_\_

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

**MERIDIAN CREDIT UNION LIMITED**

Applicant

- and -



**ADELAIDE STREET LOFTS 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**

**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 before a judge presiding over the Court at 330 University Avenue, Toronto, Ontario on October 8, 2019 at 10:00 a.m. or as soon after that time as the matter 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 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 two 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: September 27, 2019

Issued by  A. Stanojevic  
Local registrar

Address of  
court office: 330 University Avenue  
Toronto, Ontario *9th floor 9B.*  
M5G 1R7

**TO: ALL THE PARTIES ON THE ATTACHED SERVICE LIST**

## APPLICATION

**THE APPLICANT, MERIDIAN CREDIT UNION LIMITED (“MERIDIAN”), MAKES APPLICATION FOR AN ORDER**, amongst other things:

- a) abridging the time for service and filing of this notice of application and the application record and dispensing with and/or validating service of same;
- b) appointing msi Spergel Inc. (“**Spergel**”) as receiver (in such capacity, the “**Receiver**”), without security, of all the assets, undertakings and properties of Adelaide Street Lofts Inc. (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor (including, without limitation, the real property municipally known as 263 Adelaide Street West, Toronto, Ontario (the “**Real Property**”)), including all proceeds thereof; and
- c) such further and other relief as counsel may advise and this Court may permit.

### **THE GROUNDS FOR THE APPLICATION ARE:**

- a) the Debtor is a privately-owned Ontario corporation;
- b) the Debtor’s registered address is the Real Property at Suite 503;
- c) the Debtor is directly indebted to Meridian in connection with certain credit facilities made available by Meridian to the Debtor (the “**Credit Facilities**”) pursuant to and under the terms of a credit agreement dated April 2, 2018 (as may have been further amended, replaced, restated, renewed or supplemented from time to time, the “**Credit Agreement**”);
- d) as security for its obligations to Meridian, including, without limitation, its obligations under the Credit Agreement, the Debtor provided security in favour of Meridian, including, without limitation:
  - i) a general security agreement dated May 14, 2018, registration in respect of which was duly made pursuant to the *Personal Property Security Act* (Ontario) (the “**PPSA**”);

- ii) a charge/mortgage registered on title on May 14, 2018 as Instrument No. AT4862974, in the principal amount of \$16,414,000 on the Real Property; and
- iii) a notice of assignment of rents – registered on May 14, 2018 as instrument no. AT4862975 in the Land Titles Office for the Registry Division of Toronto with respect to the Real Property;
- e) Meridian is the first secured creditor on title to the Real Property, and the first secured creditor under the PPSA, each pursuant to a Priority and Standstill Agreement between Meridian as the primary lender and Hi-Rise Capital Ltd. (“**Hi-Rise**”) and Community Trust Company as, together, the subordinated lender dated May 7, 2018;
- f) the Credit Facilities are repayable on demand;
- g) one or more defaults has also occurred under the Credit Agreement, including, without limitation, the Debtor having failed to pay property taxes arising in respect of the Real Property and having failed to pay interest installments due thereunder which default has continued into the present;
- h) in accordance with its rights under the Credit Agreement, Meridian made formal written demand on the Debtor for payment of its indebtedness to Meridian by letter dated June 14, 2019, which demand letter was accompanied by a Notice of Intention to Enforce Security pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”);
- i) pursuant to an order of the Honourable Mr. Justice Hainey dated March 21, 2019, Miller Thomson LLP is representative counsel (“**Rep Counsel**”) to the persons who invested funds in the syndicated mortgages advanced as a loan to the Debtor administered by Hi-Rise (the “**Investors**”) in the proceeding commenced by Hi-Rise (the “**Hi-Rise Proceeding**”);
- j) the appointment of Rep Counsel was intended to, among other things, initiate a transparent and fair process by which the Investors could vote on a proposed



transaction for the sale of the Property, as the documents governing the relationship between the Investors and Hi-Rise did not contemplate the settlement of the Investors' debt in a deficiency situation;

- k) in the time since the Hi-Rise Proceeding was commenced, the parties – including the Borrower, Rep Counsel, and Hi-Rise – have not been able to resolve the issues that are the subject of same, and the process for the vote by the Investors continues to be delayed;
- l) the Debtor has failed to honour the demand or make alternative arrangements acceptable to Meridian, including entering into a forbearance agreement;
- m) the Debtor is insolvent and unable to fulfill its obligations to Meridian and other stakeholders;
- n) as of September 16, 2019, a total of \$16,828,734.56 was owing under the Credit Agreement (plus accruing interest and recovery costs and expenses);
- o) a receiver is necessary for the protection of the Debtor's estate, the interests of Meridian, and other stakeholders;
- p) in the circumstances, it is just and equitable that a receiver be appointed;
- q) Spergel is a licensed trustee in bankruptcy and is familiar with the Debtor's circumstances and the Debtor's arrangements with Meridian;
- r) Spergel has consented to being appointed as the Receiver;
- s) the other grounds set out in the affidavit to be sworn in support of the within application (the "**Supporting Affidavit**");
- t) sections 243 and 244 of the BIA;
- u) section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- v) rules 1.04, 2.03, 3.02 and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and

- w) such further grounds as are required and this Court may permit.

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

- a) the Supporting Affidavit;
- b) the consent of Spergel to act as the Receiver; and
- c) such other material as is required and this Court may permit.

September 27, 2019

**AIRD & BERLIS LLP**

Barristers & Solicitors

Brookfield Place

181 Bay Street, Suite 1800

Toronto, Ontario M5J 2T9

**Steven L. Graff (LSO # 31871V)**

Tel: 416-865-7726

Fax: 416-863-1515

Email: [sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)

**Kathryn Esaw (LSO #58264F)**

Tel: 416-865-4707

Fax: 416-863-1515

Email: [kesaw@airdberlis.com](mailto:kesaw@airdberlis.com)

*Lawyers for Meridian Credit Union Limited*

**MERIDIAN CREDIT UNION LIMITED**

- and -

**ADELAIDE STREET LOFTS INC.**

Applicant

Respondent

**CV-19-00628145-0001**  
Court File No.

---

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

**Proceedings commenced at Toronto**

---

**NOTICE OF APPLICATION**

---

**AIRD & BERLIS LLP**  
Barristers and Solicitors  
Brookfield Place  
181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

**Steven L. Graff (LSO # 31871V)**

Tel: 416-865-7726

Fax : 416-863-1515

Email: [sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)

**Kathryn Esaw (LSO #58264F)**

Tel: 416-865-4707

Fax: 416-863-1515

Email: [kesaw@airdberlis.com](mailto:kesaw@airdberlis.com)

*Lawyers for Meridian Credit Union Limited*

**TAB 2**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**BETWEEN:**

**MERIDIAN CREDIT UNION LIMITED**

Applicant

- and -

**ADELAIDE STREET LOFTS 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**

**AFFIDAVIT OF BERNHARD HUBER  
(sworn September 30, 2019)**

I, Bernhard Huber, of the City of St. Catharines, in the Province of Ontario, **MAKE OATH  
AND SAY AS FOLLOWS:**

1. I am Senior Commercial Credit Specialist of Meridian Credit Union Limited (“**Meridian**”). Meridian is a secured creditor of Adelaide Street Lofts Inc. (the “**Debtor**”), the sole respondent herein, and I am responsible for Meridian’s recovery initiatives relating to the Debtor. As such, I have personal knowledge of the matters to which I hereinafter depose. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and, in all such cases, believe it to be true.

2. This affidavit is sworn in support of an application by Meridian for an order, amongst other things, appointing msi Spergel Inc. (“**Spergel**”) as receiver of all the assets, undertakings and properties of the Debtor, including, without limitation, the real property municipally known as 263 Adelaide Street West, Toronto, Ontario (the “**Real Property**”).

### **DESCRIPTION OF THE DEBTOR AND ITS BUSINESS**

3. The Debtor is an Ontario corporation, incorporated on October 4, 2010. The Debtor’s corporate profile report is attached as **Exhibit “A”** to this affidavit, which reflects, amongst other things, that the Debtor’s registered office address is located at Suite 503 of the Real Property and that Ioannis (John) Neilas (“**John**”) is the sole director and officer of the Debtor. The Debtor’s business is the development of the Real Property, although my understanding was that the Debtor would not ultimately undertake any construction but rather obtain various municipal approvals relating to the Real Property and then sell it to a larger industry player for construction. For reasons described below, the Debtor’s current operations are de minimus, if any.

### **MERIDIAN’S LOANS TO THE DEBTOR AND RELATED SECURITY**

4. The Debtor is directly indebted to Meridian in connection with certain credit facilities made available by Meridian to the Debtor (the “**Credit Facilities**”) pursuant to and under the terms of a credit agreement dated April 2, 2018 (as may have been or be further amended, replaced, restated, renewed or supplemented from time to time, the “**Credit Agreement**”), a copy of which is attached as **Exhibit “B”** to this affidavit. The Credit Agreement provided for a loan in the amount of \$16,414,000 in principal, plus all applicable interest, costs and other obligations owing thereunder (together, the “**Indebtedness**”).

5. The Credit Agreement contains a number of defaults (each, an “**Event of Default**”) including, among others:

- (a) The failure to make any payment of interest or principal when due pursuant to the Credit Agreement;
- (b) A breach of any of the terms of the Credit Agreement, the Security Documents or any other Financing Documents (which terms are defined in the Credit Agreement but which include the general security agreement described below (the “**GSA**”));
- (c) Any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings or other proceedings for relief by or against the Debtor;
- (d) There occurs or is likely to occur, in Meridian’s sole discretion, a material adverse change in the Debtor’s financial condition;
- (e) Any default occurs under any Security Document or Financing Document;
- (f) The Debtor is in default in making a payment under any other indebtedness incurred which has the effect of permitting the holder of such obligation to cause such obligation to become due prior to its stated maturity; and
- (g) Meridian believes in good faith that the ability of the Debtor to pay its obligations to Meridian are impaired or in jeopardy.

6. Upon the occurrence of an Event of Default, Meridian may, among other things:

- (a) Declare any or all of the obligations under the Credit Agreement to be immediately due and payable; and

- (b) Proceed to enforce upon its security and to enforce its rights by the appointment by instrument in writing of a receiver of the assets and undertakings of the Debtor or by proceeding in any court for the appointment of a receiver.

7. As security for its obligations to Meridian, including, without limitation, its obligations under the Credit Agreement, the Debtor provided security in favour of Meridian (collectively, the “**Security**”), including:

- (a) the GSA dated May 14, 2018, registration in respect of which was duly made pursuant to the *Personal Property Security Act* (Ontario) (the “**PPSA**”), a copy of which GSA is attached as **Exhibit “C”** to this affidavit;
- (b) a notice of assignment of rents – General (“**Assignment of Rents**”), granted by the Debtor, registered on May 14, 2018 as instrument no. AT4862975 in the Land Titles Office for the Registry Division of Toronto with respect to the Real Property, a copy of which Assignment of Rents is attached as **Exhibit “D”** to this affidavit; and
- (c) a charge/mortgage (“**Charge**”) registered on title on May 14, 2018 as Instrument No. AT4862974, in the principal amount of \$16,414,000 on the Real Property, a copy of which Charge is attached as **Exhibit “E”** to this affidavit.

8. The obligations of the Debtor to Meridian, including, without limitation, the Debtor’s obligations under the Credit Agreement, were also guaranteed by:

- (a) John and Dimitrios (Jim) Neilas (“**Jim**” and, together, the “**Individual Guarantors**”) pursuant to a joint and several Guarantee and Postponement of



Claim dated May 14, 2018 in the limited amount of \$5,000,000, a copy of which is attached hereto as **Exhibit “F”**; and

- (b) Neilas Inc. (now known as 263 Holdings Inc.) (the “**Corporate Guarantor**” and together with the Individual Guarantors, the “**Guarantors**”) pursuant to an unlimited Guarantee and Postponement of Claim dated May 14, 2018, a copy of which is attached hereto as **Exhibit “G”**”.

Meridian has not yet commenced proceedings in respect of such guarantees.

#### **OTHER REGISTERED SECURED CREDITORS**

9. A copy of the PPSA search results for the Debtor is attached as **Exhibit “H”** to this affidavit. The search results show that, in addition to the PPSA registration against the Debtor held by Meridian, Hi-Rise Capital Ltd. (“**Hi-Rise**”) has made two PPSA registrations against the Debtor. The registrations in favour of Hi-Rise were registered prior to Meridian’s but have since been postponed, described below, and Hi-Rise is therefore subordinate to Meridian.

10. A copy of the parcel registry in respect of the Real Property that is subject to the Charge is attached as **Exhibit “I”** to this affidavit. The parcel register reflects that in addition to Meridian, Hi-Rise and Community Trust Company (“**CT**”) jointly hold a second Charge/Mortgage in respect of the Real Property as noted on the said parcel register. The registration in favour of Hi-Rise/CT was registered prior to Meridian’s but has since been postponed, described below, and Hi-Rise and CT are therefore subordinate to Meridian.

11. Pursuant to a Priority and Standstill Agreement between Hi-Rise and CT (as the subordinated lender), Meridian (as primary lender) and the Debtor dated May 7, 2018, a copy of

which is attached as **Exhibit “J”** to this affidavit, Hi-Rise and CT subordinated and postponed their indebtedness and security to Meridian in all respects.

***Hi-Rise***

12. Hi-Rise is a mortgage broker and mortgage administrator which receives and advances, on behalf of investors, funds to a variety of companies that undertake real property developments. Investors obtain a syndicated mortgage as security for their loans.

13. Hi-Rise has sought and obtained certain relief against the Debtor, which is detailed below, and has filed an affidavit sworn by Noor Al-Awqati (the “**Al-Awqati Affidavit**”) in support of such relief. The Al-Awqati Affidavit describes the general structure of mortgages in real property development, including subordinated syndicated mortgages, and which I have excerpted below for reference to provide additional background on Hi-Rise and its role in the structure of real estate development via-a-vis a lender such as Meridian:

11. In all of the Projects for which Hi-Rise acts as mortgage administrator and trustee, the syndicated mortgage is an integral source of financing. A Project is typically developed through the following process: a development company (the “**Developer**”) identifies a potentially viable parcel of land on which to construct new units (typically condominiums or rental units). The Developer purchases this land and takes title in the name of a special-purpose company (the “**Borrower**”) that will own the land and buildings constructed on it. To finance the purchase of the land, the Borrower obtains a loan secured by a first mortgage from a recognized commercial lender (the “**First Mortgage**”). Since the First Mortgage is well secured against the Borrower’s real property, the Borrower benefits from a favourable interest rate.

12. However, beyond the price of the land, substantial additional funds are required to cover the Borrower’s pre-development costs, soft costs, and construction costs. Accordingly, the Borrower sources these funds using a combination of other loans. Since it often takes months or years to undertake zoning, obtain architectural plans, and (where applicable) pre-sell condominium units, the Borrower requires an infusion of funding during the period before construction begins (i.e., for development fees,

architect and consultant fees, other professional and administrative fees, and interest paid both to the commercial lender and to the syndicated mortgage investors).

13. In such circumstances, a variety of individual investors are prepared to participate in a syndicated mortgage administered by Hi-Rise as trustee on the investors' behalf. As mortgage administrator and trustee, Hi-Rise receives funds from investors and advances them, on the investors' behalf, to the Borrower. It also receives interest payments (and if there is a sale of a project, it receives proceeds) from the Borrower and distributes them to investors. The success of each Project – and the payments made to investors – is dependent on a number of factors, including the time required for zoning and other pre-construction activities, access to construction financing, changing market demand and dynamics, timely construction, and the ability to remain within budget.
14. In the early stages of a Project, the syndicated mortgage balance is not fully secured because it is subordinate to the First Mortgage and the land is still in largely an undeveloped state. Therefore, at this initial stage, the value of the property is less than the aggregate amount of the First Mortgage and syndicated mortgage and, accordingly, the Borrower offers a much higher rate of interest (typically around 10% per annum) to investors to reflect the increased risk that investors undertake.
15. The majority of construction funding for a Project comes from a separate construction loan obtained from a commercial lender (“**Construction Loan**”). As a condition of granting the Construction Loan, these lenders require valuable security over the land and the buildings being constructed. As such, in the normal course, Hi-Rise uses the power given to it by investors in the LPA to subordinate the syndicated mortgage to the Construction Loan so that the Construction Loan is secured by a second mortgage and the syndicated mortgage becomes a third mortgage. This means that the Borrower pays, in the following order, the First Mortgage, the Construction Loan, and the syndicated mortgage, to the extent of proceeds generated. Any excess funds then become profit for the Borrower.

14. Hi-Rise is licensed by the Financial Services Regulatory Authority of Canada (“**FSRA**”).

#### **FINANCIAL STATUS OF THE DEBTOR**

15. I understand that the Debtor's financial statements for the year ended December 31, 2018, (the “**2018 Financials**”) will be filed under seal pending the return of this motion.

16. Based on the 2018 Financials, which are the most current financial statements in Meridian's possession, the Debtor's liabilities exceed its assets. The Debtor further realized a net loss for the year.

### **DEFAULT AND DEMAND**

17. The Credit Agreement required that the Credit Facilities be repaid in full on or before February 28, 2019. As of the date of this affidavit, the Debtor has not repaid the Credit Facilities, which constitutes a default under the Credit Agreement.

18. Further, the Debtor has committed Events of Default by, without limitation, failing to pay the property taxes that have arisen in respect of the Real Property (which payment is a term under the Credit Agreement), failing to pay interest installments due thereafter (which payment is a term under the Credit Agreement) and failing to keep interest payments under the Credit Agreement current.

19. Further, based on the 2018 Financials, which are the most current financial statements in Meridian's possession, the ability of the project related to the Real Property to continue as a going concern is subject to an outside entity injecting funds into the project. A significant adverse change in the amount and timing of cash flow from the financial asset has resulted in the declaration of an impairment

20. Starting in February 2019 and continuing through May 2019, Meridian approached the Debtor regarding the Credit Facilities, and issues surrounding the Credit Agreement, options for repayment, and eventually to attempt to negotiate a forbearance agreement. The Debtor was unable to come to a resolution regarding any of these issues and did not respond to the substance of the forbearance agreement.

21. On June 14, 2019, counsel to Meridian made demand on each of the Debtor and Guarantors for repayment of the obligations owing to those respective parties. Counsel to Meridian also delivered a notice of intention to enforce security (“**NOI**”) pursuant to s. 244(1) of the *Bankruptcy and Insolvency Act* (the “**BIA**”). To date, none of the Debtor or Guarantors have responded to the demands. Copies of the demands on the Debtor and Guarantors, along with a copy of the NOI, are attached hereto as **Exhibit “K”**.

#### **APPOINTMENT OF REPRESENTATIVE COUNSEL AND RELATED MATTERS**

22. In its capacity as a mortgage broker and administrator, Hi-Rise has arranged syndicated mortgage financing for the Debtor through receiving funds from certain individuals (collectively, the “**Investors**”) and then advancing them to the Debtor. The authorized principal amount under the Hi-Rise syndicated mortgage is \$60,000,000.

23. As alleged, and further detailed, in the Al-Awqati Affidavit, due to market forces no party was willing to provide construction financing and the development of the Real Property had to be wound down.

24. In association with the winding down of the development of the Real Property, the Debtor has identified a transaction pursuant to which the Debtor would sell the Real Property (the “**Transaction**”). Per the Al-Awqati Affidavit, it is uncertain whether the value of the proceeds from the Transaction would be sufficient to fully repay the Investors, and according to Hi-Rise, the agreements governing the relationship between the Investors and Hi-Rise do not provide for the sale and settlement of the Property and discharge of the syndicated mortgage in such a deficiency scenario.

25. As of March 2019, there were about 642 Investors. In order to ensure the interests of the Investors were properly represented, and to facilitate communications to the Investors, Hi-Rise commenced an application (the “**Hi-Rise Proceeding**”) under the Trustee Act, RSO 1990, c T-23, as amended, and the Ontario *Rules of Civil Procedure*, RRO 1990, Reg 194, as amended, seeking, among other things, an order (the “**Rep Counsel Order**”):

- (a) appointing Miller Thomson as representative counsel (“**Rep Counsel**”) to represent the Investors;
- (b) permitting Hi-Rise to call, hold and conduct a meeting (the “**Investors’ Meeting**”) of the Investors in order for the Investors to consider and, if deemed advisable, pass a resolution approving the Transaction (as defined and described below) and the distribution of proceeds therefrom (the “**Distribution**”); and
- (c) scheduling a further hearing in the Hi-Rise Proceeding regarding court approval of the Transaction and the Distribution if the Investors approve same at the Investors Meeting.

26. Justice Hainey granted the Rep Counsel Order on March 21, 2019, an issued and entered copy of which is attached hereto as **Exhibit “L”**.<sup>1</sup>

### ***The Transaction***

---

<sup>1</sup> The style of cause in respect of the Hi-Rise Proceeding and Court File No. are as follows: *In the matter of section 60 of the Trustee Act, R.S.O. 1990, c. T-23, as amended, and rule 10 of the Ontario Rules of Civil Procedure, R.R.O. 1990, Reg. 194, as amended, and in the matter of Hi-Rise Capital Ltd. and in the matter of Adelaide Street Lofts Inc.*”, Court File No. CV-19-616261-00CL

27. As detailed in the second report of Rep Counsel dated September 13, 2019, a copy of which is attached hereto (without exhibits) as **Exhibit “M”**, the Transaction contemplates that the Debtor and Lanterra Developments Limited (in trust) will enter into a joint venture agreement (the “**JV Agreement**”) to develop the Real Property. Rep Counsel has advised that it has not been permitted to view the joint venture agreement between the Debtor and Lanterra, but only documents summarizing the Transaction. I do not know of any other non-party to the JV Agreement who has seen the agreement itself.

### *Investors’ Meeting*

28. Further to the terms of the Representative Counsel Order, on August 27, 2019, Hi-Rise delivered a notice to Investors that the Investors Meeting would be held on September 25, 2019. Rep Counsel issued a statement on August 30, 2019, noting that it opposed the holding of the Investors Meeting absent additional documentation from the Debtor regarding the Transaction on the timeline proposed.

### *Appointment of an Information Officer, Delay of Investors’ Meeting*

29. On or about August 21, 2019, Representative Counsel determined that it required a third party financial adviser to review and assess the circumstances surrounding all transactions relating to the Real Property and sought an order in respect of same.

30. Hi-Rise, the Debtor and Representative Counsel negotiated the terms of a financial advisor order, which discussions Meridian participated in starting in early September 2019.

31. By order dated September 17, 2019 (the “**IO Order**”), a copy of which is attached hereto as **Exhibit “N”**, Alvarez & Marsal Canada Inc. was appointed as the information officer (the

“**Information Officer**”) to, among other things, report on the sales process. No party opposed the IO Order.

32. In addition to the appointment of the Information Officer, the IO Order also set the date of the Investors Meeting as being October 23, 2019, delaying the vote by nearly a month. Depending on the outcome of the vote, the resolution surrounding the Real Property, and the repayment of the Indebtedness, may be significantly delayed.

33. The IO Order expressly provides that the order does not affect Meridian’s rights under any agreement or under law, including the right to appoint a receiver. Meridian expressed in court that while it did not oppose the granting of the IO Order, it was imperative that the Debtor enter into a forbearance agreement with Meridian, as detailed below.

#### ***Concerns of Rep Counsel and FSRA***

34. Both Rep Counsel and counsel to FSRA have expressed concerns with the conduct of the sales process, the lack of disclosure regarding the Transaction (including the refusal to provide copies of the Lanterra Agreement itself) and the possibility that other, better offers have not been pursued.

35. Both Rep Counsel and counsel to FSRA have also expressed concerns about improper communications between Hi-Rise and Investors, as well as improper potential communications between John and one or more Investors.



**MERIDIAN'S EFFORTS TO RESOLVE THE DEBTOR'S DEFAULTS WITHOUT RESORTING TO A FORMAL INSOLVENCY PROCEEDING SINCE AUGUST**

36. On September 6, 2019, counsel to Meridian delivered a letter to Debtor's counsel noting that the Hi-Rise Proceeding had only recently come to Meridian's attention, and that in the face of the Debtor's lack of response regarding prior attempts to come to a consensual path forward in respect of the Credit Agreement defaults, Meridian was no longer inclined to wait any longer for repayment of the indebtedness thereunder. Meridian proposed general terms for a strict forbearance agreement, to be settled by the end of business on September 12, 2019, which terms included the full repayment of the Indebtedness by October 31, 2019. The Debtor did not respond to the terms proposed in the letter. A copy of the September 6 Letter is attached hereto as **Exhibit "O"**.

37. Meridian and its counsel met with the Debtor and its counsel on September 11, 2019, to discuss the status of the Hi-Rise Proceeding. Meridian again advised that it was prepared to forbear on terms, which terms were set out in a letter to the Debtor's counsel on September 12, 2019 (the "**September 12 Forbearance Letter**"). Among other things, Meridian required that the Investors Meeting take place by September 25, 2019, that in the event a settlement with the Investors was approved, an interim payment be made to Meridian within a set period of time thereafter, and provided for a date by which the remaining Indebtedness would be repaid in full. The September 12 Forbearance Letter was not a formal forbearance agreement and was intended to be a flexible yet tailored solution to the requirements of both Meridian and the Debtor to ensure that the Investors Meeting could proceed while adequately protecting Meridian. The Debtor did not respond to the substance of the September 12 Forbearance Letter. The September 12 Forbearance Letter also listed documents that the Debtor had agreed to provide Meridian, which to date have

not been received. A copy of the September 12 Forbearance Letter is attached hereto as **Exhibit “P”**.

38. On September 13, 2019, counsel to Meridian delivered a letter to the service list (the **“September 13 Letter”**) regarding the Information Officer Order noting, among other things, that the repayment of the Indebtedness in a timely manner was critically important to Meridian. A copy of the September 13 Letter is attached hereto as **Exhibit “Q”**.

39. At the September 16, 2019 chambers appointment in respect of the motion in support of the Information Officer Order, Meridian also noted the importance of the timely repayment of the Indebtedness and that its lack of opposition to the Information Officer Order and its permitting the Hi-Rise Proceeding to continue was based in all respects on the execution by the Debtor and Meridian of a forbearance agreement by September 20, 2019, on mutually acceptable terms.

40. On September 18, 2019, counsel to Meridian delivered a formal forbearance agreement to counsel to the Debtor. On September 20, 2019, counsel to the Debtor delivered a mark up to the forbearance agreement which provided none of the protections Meridian had been demanding since September 6, 2019. The Debtor’s comments regarding the forbearance agreement are generally wholly untenable to Meridian such that Meridian has lost confidence that the Debtor intends to attempt, in good faith, to enter into a forbearance agreement.

41. Meridian determined that the commencement of the within application was appropriate and in the best interests of the Debtor’s stakeholders for the following reasons, among others:

- (a) the as-yet unresolved concerns regarding the sales process;

- (b) Meridian's belief that a sales process, if one is determined to be necessary, would be more efficient if conducted through a receivership proceeding;
- (c) the Debtor's refusal to provide Meridian with a copy of the Lanterra Agreement outside of the Debtor's counsel's office;
- (d) the Debtor's refusal to consider forbearance terms that would provide any meaningful protection to, or a path to recovery for, Meridian; and
- (e) the additional delays to the Investors Meeting, which will result in at least an additional month of Meridian waiting to learn whether the Transaction can be approved and which, without a forbearance agreement, does not provide a path to recovery for Meridian.

42. Meridian has made its position known that it would seek a receivership application if a mutually agreeable forbearance agreement could not be executed by September 20, 2019.

#### **APPOINTMENT OF A RECEIVER**

43. Meridian has been attempting to have the Debtor repay the Indebtedness for an extended period of time without any serious progress. Indeed, it appears that the Debtor and its principals have no intention of facilitating an amenable resolution of these issues and are determined to stymie any out of court resolution to recover on the Credit Facilities. As of September 16, 2019, a total of \$16,828,734.56 was owing under the Credit Agreement (plus accruing interest and recovery costs and expenses).

44. The Credit Agreement and the GSA provide that Meridian is entitled to appoint a receiver in an Event of Default under the Credit Agreement. At this stage, Meridian considers it reasonable

and prudent to begin the enforcement of its Security in an effort to recover the indebtedness owed by the Debtor to Meridian, and it is within Meridian's rights under the Credit Agreements and the Security to do so.

45. In the circumstances set out above, I believe that it is just and equitable that a receiver be appointed. A receiver is necessary for the protection of the Debtor's estate, the interests of Meridian, the Investors and, perhaps, other stakeholders. Meridian believes that the appointment of a receiver would enhance the prospect of recovery by Meridian and protect stakeholders.

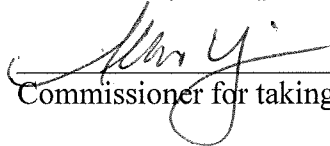
46. Meridian proposes that Spergel be appointed as the Receiver.

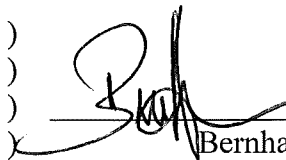
47. Spergel is a licensed trustee in bankruptcy and is already familiar with the circumstances of the Debtor and its arrangements with Meridian.

48. Spergel has consented to act as receiver should the Court so appoint it. A copy of Meridian's consent will be provided to the Court on the return of this application.

49. This affidavit is made in support of the within application.

SWORN before me at the City of  
Toronto, in the Province of Ontario,  
This 30<sup>th</sup> day of September, 2019

  
\_\_\_\_\_  
Commissioner for taking affidavits, etc.

)  
)  
)  
)   
\_\_\_\_\_  
Bernhard Huber

**Allison Ekuned Van Rooijen, a Commissioner,  
etc., Province of Ontario, for  
Meridian Credit Union Limited, Motus Bank  
and Meridian OneCap Credit Corporation.  
Expires May 8, 2021.**

**MERIDIAN CREDIT UNION LIMITED**

- and -

**ADELAIDE STREET LOFTS INC.**

Applicant

Respondent

Court File No. CV-19-00628145-00CL

---

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**Proceedings commenced at Toronto**

---

**AFFIDAVIT OF BERNHARD HUBER  
(sworn September 30, 2019)**

---

**AIRD & BERLIS LLP**  
Barristers and Solicitors  
Brookfield Place  
181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

**Steven L. Graff (LSO # 31871V)**  
Tel: (416) 865-7726  
Fax: (416) 863-1515  
Email: [sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)

**Kathryn Esaw (LSO # 58264F)**  
Tel: (416) 865-4707  
Fax: (416) 863-1515  
Email: [kesaw@airdberlis.com](mailto:kesaw@airdberlis.com)

*Lawyers for Meridian Credit Union Limited*

**This is Exhibit "A" referred to in the Affidavit of Bernhard  
Huber sworn the 30<sup>th</sup> of September, 2019**



---

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

**Alison Eluned Van Rooijen, a Commissioner,  
etc., Province of Ontario, for  
Meridian Credit Union Limited, Motus Bank  
and Meridian OneCap Credit Corporation.  
Expires May 8, 2021.**

Request ID: 023547960  
Transaction ID: 72952650  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2019/09/06  
Time Report Produced: 08:03:15  
Page: 1

## CORPORATION PROFILE REPORT

<b>Ontario Corp Number</b>	<b>Corporation Name</b>	<b>Incorporation Date</b>
2259079	ADELAIDE STREET LOFTS INC.	2010/10/04
		<b>Jurisdiction</b>
		ONTARIO
<b>Corporation Type</b>	<b>Corporation Status</b>	<b>Former Jurisdiction</b>
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE
<b>Registered Office Address</b>		<b>Date Amalgamated</b>
263 ADELAIDE STREET WEST		NOT APPLICABLE
<b>Suite # 503</b>		<b>New Amal. Number</b>
TORONTO		NOT APPLICABLE
ONTARIO		<b>Notice Date</b>
CANADA M5H 1Y2		NOT APPLICABLE
<b>Mailing Address</b>		<b>Letter Date</b>
263 ADELAIDE STREET WEST		NOT APPLICABLE
<b>Suite # 503</b>		<b>Revival Date</b>
TORONTO		NOT APPLICABLE
ONTARIO		<b>Continuation Date</b>
CANADA M5H 1Y2		NOT APPLICABLE
		<b>Transferred Out Date</b>
		NOT APPLICABLE
		<b>Cancel/Inactive Date</b>
		NOT APPLICABLE
		<b>EP Licence Eff.Date</b>
		NOT APPLICABLE
		<b>EP Licence Term.Date</b>
		NOT APPLICABLE
		<b>Date Commenced in Ontario</b>
		NOT APPLICABLE
		<b>Date Ceased in Ontario</b>
		NOT APPLICABLE
<b>Activity Classification</b>	<b>Number of Directors</b>	
NOT AVAILABLE	<b>Minimum</b>	
	<b>Maximum</b>	
	00001	
	00010	

Request ID: 023547960  
Transaction ID: 72952650  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2019/09/06  
Time Report Produced: 08:03:15  
Page: 2

## CORPORATION PROFILE REPORT

**Ontario Corp Number**

2259079

**Corporation Name**

ADELAIDE STREET LOFTS INC.

**Corporate Name History**

ADELAIDE STREET LOFTS INC.

**Effective Date**

2010/10/04

**Current Business Name(s) Exist:**

NO

**Expired Business Name(s) Exist:**

NO

**Administrator:  
Name (Individual / Corporation)**

IOANNIS  
(JOHN)  
NEILAS

**Address**

55 MCGILLIVRAY AVENUE

TORONTO  
ONTARIO  
CANADA M5M 2Y3

**Date Began**

2018/07/31

**First Director**

NOT APPLICABLE

**Designation**

DIRECTOR

**Officer Type**

**Resident Canadian**

Y



Request ID: 023547960  
Transaction ID: 72952650  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2019/09/06  
Time Report Produced: 08:03:15  
Page: 3

## CORPORATION PROFILE REPORT

**Ontario Corp Number**

2259079

**Corporation Name**

ADELAIDE STREET LOFTS INC.

**Administrator:  
Name (Individual / Corporation)**

IOANNIS  
(JOHN)  
NEILAS

**Address**

55 MCGILLIVRAY AVENUE

TORONTO  
ONTARIO  
CANADA M5M 2Y3

**Date Began**

2018/07/31

**First Director**

NOT APPLICABLE

**Designation**

OFFICER

**Officer Type**

PRESIDENT

**Resident Canadian**

Y

**Administrator:  
Name (Individual / Corporation)**

IOANNIS  
(JOHN)  
NEILAS

**Address**

55 MCGILLIVRAY AVENUE

TORONTO  
ONTARIO  
CANADA M5M 2Y3

**Date Began**

2018/07/31

**First Director**

NOT APPLICABLE

**Designation**

OFFICER

**Officer Type**

SECRETARY

**Resident Canadian**

Y

Request ID: 023547960  
Transaction ID: 72952650  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2019/09/06  
Time Report Produced: 08:03:15  
Page: 4

## CORPORATION PROFILE REPORT

**Ontario Corp Number**

2259079

**Corporation Name**

ADELAIDE STREET LOFTS INC.

**Administrator:  
Name (Individual / Corporation)**

IOANNIS  
(JOHN)  
NEILAS

**Address**

55 MCGILLIVRAY AVENUE

TORONTO  
ONTARIO  
CANADA M5M 2Y3

**Date Began**

2018/07/31

**First Director**

NOT APPLICABLE

**Designation**

OFFICER

**Officer Type**

TREASURER

**Resident Canadian**

Y

Request ID: 023547960  
Transaction ID: 72952650  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2019/09/06  
Time Report Produced: 08:03:15  
Page: 5

## CORPORATION PROFILE REPORT

Ontario Corp Number

2259079

Corporation Name

ADELAIDE STREET LOFTS INC.

Last Document Recorded

Act/Code	Description	Form	Date
CIA	ANNUAL RETURN 2018	1C	2019/07/07 (ELECTRONIC FILING)

THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.

ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.

The issuance of this report in electronic form is authorized by the Ministry of Government Services.

Request ID: 023547967  
Transaction ID: 72952661  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2019/09/06  
Time Report Produced: 08:03:23  
Page: 1

## CORPORATION DOCUMENT LIST

**Ontario Corporation Number**  
2259079

**Corporation Name**  
ADELAIDE STREET LOFTS INC.

ACT/CODE	DESCRIPTION	FORM	DATE (YY/MM/DD)
CIA	ANNUAL RETURN 2018 PAF: NEILAS, JIM	1C	2019/07/07 (ELECTRONIC FILING)
CIA	ANNUAL RETURN 2017 PAF: NEILAS, JIM	1C	2019/07/07 (ELECTRONIC FILING)
CIA	CHANGE NOTICE PAF: RODRIGUES, ELLIE	1	2019/06/11 (ELECTRONIC FILING)
CIA	CHANGE NOTICE PAF: SPANU, CATALINA	1	2019/04/25 (ELECTRONIC FILING)
CIA	ANNUAL RETURN 2016 PAF: NEILAS, JIM	1C	2018/02/11 (ELECTRONIC FILING)
CIA	ANNUAL RETURN 2015 PAF: NEILAS, JIM	1C	2016/05/22 (ELECTRONIC FILING)
CIA	ANNUAL RETURN 2014 PAF: NEILAS, JIM	1C	2015/07/04 (ELECTRONIC FILING)
CIA	ANNUAL RETURN 2013 PAF: NEILAS, JIM	1C	2015/01/31 (ELECTRONIC FILING)
CIA	ANNUAL RETURN 2012 PAF: NEILAS, JIM	1C	2013/10/19 (ELECTRONIC FILING)
CIA	ANNUAL RETURN 2011 PAF: NEILAS, JIM	1C	2012/10/13 (ELECTRONIC FILING)
CIA	ANNUAL RETURN 2010 PAF: NEILAS, JIM	1C	2012/10/13 (ELECTRONIC FILING)
CIA	CHANGE NOTICE PAF: NEILAS, JIM	1	2011/12/08 (ELECTRONIC FILING)
CIA	INITIAL RETURN PAF: VARDIN, ELLIOTT	1	2010/11/05
BCA	ARTICLES OF INCORPORATION	1	2010/10/04 (ELECTRONIC FILING)

Request ID: 023547967  
Transaction ID: 72952661  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2019/09/06  
Time Report Produced: 08:03:23  
Page: 2

## CORPORATION DOCUMENT LIST

**Ontario Corporation Number**  
2259079

**Corporation Name**  
ADELAIDE STREET LOFTS INC.

<b>ACT/CODE</b>	<b>DESCRIPTION</b>	<b>FORM</b>	<b>DATE (YY/MM/DD)</b>
-----------------	--------------------	-------------	----------------------------

THIS REPORT SETS OUT ALL DOCUMENTS FOR THE ABOVE CORPORATION WHICH HAVE BEEN FILED ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.

ALL "PAF" (PERSON AUTHORIZING FILING) INFORMATION IS DISPLAYED EXACTLY AS RECORDED IN ONBIS. WHERE PAF IS NOT SHOWN AGAINST A DOCUMENT, THE INFORMATION HAS NOT BEEN RECORDED IN THE ONBIS DATABASE.

The issuance of this report in electronic form is authorized by the Ministry of Government Services.

Request ID: 023547975  
Transaction ID: 72952676  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2019/09/06  
Time Report Produced: 08:03:31  
Page: 1

## **LIST OF CURRENT BUSINESS NAMES REGISTERED BY A CORPORATION**

**Ontario Corporation Number**  
2259079

**CORPORATION NAME**  
ADELAIDE STREET LOFTS INC.

<b>REGISTRATION DATE</b>	<b>BUSINESS NAME</b>	<b>EXPIRY DATE</b>	<b>BUSINESS ID NUMBER</b>
------------------------------	--------------------------	------------------------	-------------------------------

**NO CURRENT BUSINESS NAMES ON FILE!**

THE REPORT SETS OUT ALL BUSINESS NAMES REGISTERED OR RENEWED BY THE CORPORATION IN THE PAST 5 YEARS AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. IF MORE DETAILED INFORMATION IS REQUIRED, YOU MAY REQUEST A SEARCH AGAINST INDIVIDUAL NAMES SHOWN ON THIS REPORT.

The issuance of this report in electronic form is authorized by the Ministry of Government Services.

**This is Exhibit "B" referred to in the Affidavit of Bernhard  
Huber sworn the 30<sup>th</sup> of September, 2019**



---

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

**Alison Eluned Van Rooijen, a Commissioner,  
etc., Province of Ontario, for  
Meridian Credit Union Limited, Motus Bank  
and Meridian OneCap Credit Corporation.  
Expires May 8, 2021.**

Meridian Credit Union  
St. Catharines  
Commercial Business Centre

Meridian™

75 Corporate Park Drive  
St. Catharines, Ontario L2S 3W3  
tel: 905-937-4222  
fax: 905-937-6129  
contact centre: 1-866-592-2226  
meridioncu.ca

April 02, 2018

Adelaide Street Lofts Inc.  
263 Adelaide Street West  
Toronto, Ontario  
M5H 1Y2

Attention Dimitrios Nellias:

Re: Credit Agreement

On the basis of the financial and other information provided to us, Meridian Credit Union Limited ("Meridian") has authorized the following credit facilities ("Credit Facilities") on the terms and conditions set out below.

This agreement ("Credit Agreement") and the other Financing Documents constitute the entire agreement between you and us pertaining to the credit facilities and supersedes all prior correspondence, agreements, negotiations, discussions and understandings, whether written or oral. This Credit Agreement may not be amended except by an agreement in writing that makes express reference to this agreement and is signed by you and us.

The attached Schedule A is an integral part of this Credit Agreement. Capitalized terms used and not otherwise defined shall have the meanings set out in Schedule A.

**BORROWER:** Adelaide Street Lofts Inc. ("Member")

**GUARANTORS:** Nellias Inc. ("Corporate Guarantor")  
Dimitrios Nellias ("Individual Guarantor")  
Ioannis Nellias ("Individual Guarantor")  
(Individual Guarantors and Corporate Guarantor, each a Guarantor and collectively, the "Guarantors")

**CREDIT FACILITIES AND AUTHORIZED AMOUNTS:**

1. Demand Loan Land	To a maximum of	\$16,414,000
---------------------	-----------------	--------------

**PURPOSE:** 1. Demand Loan Land To refinance the existing loan from KingSet Capital on 263 Adelaide Street West, Toronto, Ontario, as per below sources and uses of funds table.

Adelaide Street Lofts Inc.

April 2, 2018

Page 1 of 8



Sources			Uses		
Meridian Loan	\$ 16,414,000	100%	Refinance Existing Kingsett Debt	\$ 14,300,000	87%
			Lender Fees	\$ 135,000	1%
			Broker Fees & Closing Costs	\$ 125,000	1%
			Interest Reserve	\$ 951,000	6%
			Property Tax Arrears	\$ 453,000	3%
			Property Tax Reserve	\$ 450,000	3%
<b>Total</b>	<b>\$ 16,414,000</b>	<b>100%</b>	<b>Total</b>	<b>\$ 16,414,000</b>	<b>100%</b>

**REPAYMENT:** All Credit Facilities are available on a demand basis only and Meridian may terminate the Credit Facilities at any time. Any prepayment shall be subject to the provisions of Schedule A.

1. Demand Loan Interest only on a monthly basis. Full repayment is due by February 28, 2019.

Two extension periods of up to 3 months may be granted at Meridian's sole discretion and are subject to payment of the extension fee.

**INTEREST RATES:** Interest on the daily principal balance of the Credit Facilities shall be paid monthly in arrears, unless otherwise specified, computed daily, compounded monthly, and accrue at an annual rate equal to:

1. Demand Loan Land Prime Rate plus 2.00% per annum.  
Prime Rate is currently 3.45%

**CREDIT FEES:** Amendment Fee: Amendments to this Credit Agreement, as requested by the Member, will be subject to a minimum fee to be determined by Meridian per request, subject to the complexity and circumstances of each request as mutually agreed upon between the Member and Meridian.

Annual Renewal Fee: An annual administration fee of \$2,500 is payable within 120 days following each fiscal year end for review of the account.

Additional Fees: Covenant Breaches/Late Reporting/Events of Default will each be subject to a minimum fee to be determined by Meridian, per occurrence where such condition has not previously been approved by Meridian in writing.

Extension Fee: 25bps of the authorized loan amount for each 3 month extension period.

Arrangement Fee: \$135,000 of which \$35,000 has previously been collected and is non-refundable, is payable upon signed acceptance of this Credit Agreement.

**EXPENSES:** The Member shall pay all reasonable legal fees and disbursements in respect of this Credit Agreement, the preparation, issuance, amendment, renewal or extension of the Security Documents, the enforcement and preservation of Meridian's rights and remedies, and all reasonable fees and costs relating to appraisals, insurance consultation, credit reporting and responding to demands of any government or any agency or department thereof, whether or not the documentation is completed or any funds are advanced under this Credit Agreement

**SECURITY:** The present and future indebtedness and liability of the Member and the Guarantor(s) to Meridian shall be secured by the following security, evidenced by documents in form satisfactory to Meridian (collectively, the "Security Documents") registered or recorded as required by Meridian in first position (unless specifically noted or consented to otherwise), and provided prior to any advances or availability being made under this Credit Agreement:

- 1) General Security Agreement over all of the Member's present and after acquired Personal Property.
- 2) Subordination and Standstill Agreement from Hi-Rise Capital with non-acceleration clause.
- 3) Joint and Several Guarantee and Postponement of Claim in favour of Meridian in the amount of \$5,000,000 provided by Dimitrios and Ioannis Nellas.
- 4) Guarantee and Postponement of Claim in favour of Meridian in the Unlimited amount provided by Nellas Inc. together with authorizing resolution.
- 5) Environmental Undertaking and Indemnity executed by the Borrower and Guarantors.
- 6) Collateral Mortgage for \$16,414,000 registered in the name of Adelaide Street Lofts Inc. on the property and buildings located at 263 Adelaide Street West, Toronto, Ontario. Notwithstanding the face amount of the mortgage being registered as security, the Member acknowledges that Meridian has made no commitment to provide additional funding.
- 7) Assignment of Rents & Leases.
- 8) Assignment of Fire Insurance, indicating Meridian as first loss payee or first mortgagee on the subject property. The fire insurance is to be on a full replacement basis with no cross liability.
- 9) Comprehensive General Liability Insurance for a minimum of \$2,000,000 to be carried by the Member with Meridian shown as Additional Insured.

**CONDITIONS:** The availability of the Credit Facilities is contingent upon compliance and satisfaction of each of the following conditions and covenants together with those set out in the Security Documentation and Schedule A:

Conditions  
Precedent:

Meridian shall have received each of the following:

- a) Such financial and other information or documents relating to the Member as Meridian may reasonably require.
- b) All the Security Documents duly authorized, executed and delivered and registered or recorded as Meridian may require.
- c) Duly executed copy of this Credit Agreement.

- d) Payment of the Arrangement Fee.
- e) Letter of Transmittal from the Appraiser confirming the appraisal report may be relied upon by Meridian.
- f) Phase I/II/III (as applicable) – Environmental Site Assessment (ESA) Report for the real property located at 263 Adelaide Street West prepared by an external consultant pre-approved by Meridian. The contents and the conclusions of the report must be acceptable to Meridian. The Member is responsible for the payment of all charges relative to the preparation of the report.
- g) Documents confirming the development / zoning status of the land. Meridian legal counsel is to review and confirm that all conditions of the OMB approval dated July 19, 2017 are met with the exception of condition c, which outlines the parties execute and register on title, as. 37 Agreement.
- h) Such financial and other information or documents relating to the Member as Meridian may reasonably require.
- i) Documentation/Statements confirming Personal Net Worth as outlined in the statement dated January 15, 2018.
- ~~j) Finalized Review Engagement Financial Statements as at December 31, 2017.~~
- k) Detailed Rent Roll and Operating Financial Statements for the property.

**Reporting Covenants - The Member shall provide Meridian with each of the following:**

Description	Frequency	Timing of Receipt (days)
• Confirmation of valid Insurance coverage as stipulated under Security through copy of certificate of renewal.	Annual	120
• Financial Statements as at the Corporate Guarantors fiscal year end, prepared by a Chartered Professional Accountant on a Notice to Reader basis.	Annual	120
• Updates to the status of the project/potential sale as requested.	As Requested by Meridian	
• Updates as to status of satisfaction of all OMB conditions of approval, sale of the Project and changes / amendments to the HI-Rise Capital Inc. financing.	Quarterly	30
• Updated Personal Financial Statements for the individual guarantors, as requested, with supporting documentation confirming asset and liability values and verifying income.	As Requested by Meridian	
• Confirmation property taxes are current through copy of a paid tax receipt or interim billing showing no arrears.	Annual	120
• Financial Statements as at the Member's fiscal year end, prepared by a Chartered Professional Accountant on a Review Engagement basis.	Annual	120

Adelaide Street Lofts Inc.

April 2, 2018

**Positive Covenants - The Member and the Guarantors will:**

- The Member will hold \$1,401,000 of the initial advance in a Meridian account with the funds being used as follows:
  - To make monthly interest payments on the Demand Loan.
  - To pay property taxes as required. Property tax payments shall be remitted directly from the account to the municipality.
- Additionally, See Schedule "A" Credit Covenants (a).

**Negative Covenants**

- See Schedule "A" Credit Covenants (b).

**EVENTS OF DEFAULT**

See Schedule A.

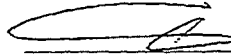
Kindly indicate your acceptance of this Credit Agreement by signing and returning to us the enclosed duplicate of this letter by no later than May 1, 2018 at which point this letter and all agreements contained herein shall become null and void.

Yours truly,

**MERIDIAN CREDIT UNION LIMITED**



Carson Griffin  
Senior Relationship Manager



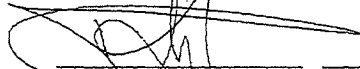
John Alfieri  
Senior Director & Regional Manager,  
Commercial Services

Will the above Credit Facilities be used on behalf of or by a third party? No  Yes   
(if Yes has been checked please ensure that a New Product Form – Business is completed)

**ACKNOWLEDGEMENT:**


The arrangements set out above are hereby acknowledged and accepted by:

Adelaide Street Lofts Inc.

  
Signature of Authorized Officer  
(I have the authority to bind the Corporation)

Name/Title Diminos Neilas, President, Secretary

April 12, 2018  
Date

  
Signature of Authorized Officer  
(I have the authority to bind the Corporation)


Name/Title Ioannis Neilas, D.S.O

April 12, 2018  
Date

**GUARANTORS**

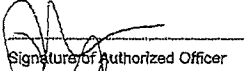
Each of the Guarantors hereby acknowledges and confirms that it understands all the terms & conditions contained therein with respect to its respective Guarantee and Postponement of Claim;

Neilas Inc.

  
Signature of Authorized Officer  
(I have the authority to bind the Corporation)

Name & Title Diminos Neilas, President

April 12, 2018  
Date

  
Signature of Authorized Officer  
(I have the authority to bind the Corporation)

Name & Title Ioannis Neilas, D.S.O


April 12, 2018  
Date

Diminos Neilas

  
Guarantor Signature

April 12, 2018  
Date

Ioannis Neilas

  
Guarantor Signature

April 12, 2018  
Date

## SCHEDULE "A" TO CREDIT AGREEMENT

The Credit Facilities as described in the Credit Agreement shall be governed by the following terms and conditions:

### Definitions

For the purpose of the Credit Agreement, the following terms shall have the meanings indicated below:

**"Acceptable Inventory"** means the lower of cost or net realizable value, as determined by Meridian from a review of the most recent financial statements and inventory declaration provided by the Member, of all materials owned by the Member for resale or for production of goods for resale, as defined by GAAP, over which the security constituted by the Security Documents shall rank as a valid first mortgage, first ranking transfer or first security interest and which is not subject to any security interest or other encumbrance or any other right or claim which ranks or is capable of ranking in priority to the security constituted by the Security Documents including, without limitation, rights of unpaid suppliers under the *Bankruptcy and Insolvency Act* (Canada) to repossess inventory within 30 days after delivery.

**"Acceptable Receivables"** means the aggregate of accounts receivable of the Member, as defined by GAAP, and as determined by the most recent financial statements and/or aged list of accounts receivable of the Member, over which the security constituted by the Security Documents shall rank as a valid first assignment or first security interest, from customers approved by Meridian.

**"Business Day"** means a day upon which Meridian is open for business.

**"COF Rate"** means the fixed annual rate of interest established and recorded as such by Meridian from time to time as being the aggregate cost of the requested funds on an annual fixed rate basis for a period of 30, 60, 90, or 180 days or 1, 2, 3, 4 or 5 years, as selected by the Member (but maturing not later than the final date for payment of the subject Loan, in any event), including dealer commissions and such reserves as are applicable.

**"Credit Agreement"** means the letter from Meridian to the Member to which this Schedule is attached, together with this Schedule, and includes all amendments and replacements thereof.

**"Financing Documents"** means the present Credit Agreement, the Visa Business Card Agreement, the Visa Business Card Fee and Rate Agreement, the Security Documents and all other documents, instruments, certificates and contracts that the Member or an officer of the Member (or a Guarantor or an officer of a Guarantor) has signed and delivered in accordance herewith, directly or indirectly, or which are mentioned or contemplated in these presents or in such documents, instruments, certificates or contracts.

**"GAAP"** means, generally accepted accounting principles in effect in Canada from time to time applied consistently, including the International Financial Reporting Standards.

**"Government Authority"** means any government legislature, regulatory authority, agency, commission, board or court or other law, regulation or rule making entity having or purporting to have jurisdiction on behalf of any nation, state, country or other subdivision.

**"Legal Requirement"** means all laws, statutes, codes, ordinances, orders, awards, judgments, decrees, injunctions, rules, regulations, authorizations, consents, approvals, orders, permits, franchises, licenses, directions and requirements of any Governmental Authority.

**"Personal Property"** has the meaning given to that term in the Personal Property Security Act (Ontario) and includes chattel paper, documents of title, goods, instruments, intangibles, money, investment property and fixtures but does not include building materials that have been affixed to real property.

"**Potential Preferred Claims**" means, at any time and from time to time, all claims secured by a lien created by or arising under statute or regulation or arising under common law without the explicit consent of the obligor, which rank or are capable of ranking prior to or *pari passu* with the security constituted by the Security Documents against all or any part of property and assets secured thereby, whether then existing or, in Meridian's sole judgment, likely to arise including, without limitation, claims on amount of unremitted source deductions, income tax, goods and services tax, sales tax, workers compensation premiums, director liabilities and such other claims given priority to the claims of secured creditors or excluded from the property of a bankrupt divisible among creditors under the *Bankruptcy and Insolvency Act* (Canada).

"**Prime Rate**" means the floating annual rate of interest established and recorded as such by Meridian from time to time as a reference rate for purposes of determining rates of interest it will charge on loans denominated in Canadian dollars.

"**US Base Rate**" means the annual rate of interest established and recorded as such by Meridian from time to time as a reference rate for purposes of determining rates of interest it will charge on loans denominated in United States dollars.

"**Visa Business Card Agreement**" means the Meridian Visa Business Card Cardholder Agreement between Member, each Guarantor (if any), Meridian, Collabria Financial Services Inc. (including, without limitation, its successors and assigns) and others named therein as parties thereto, as such agreement may be amended, restated, supplemented or replaced from time to time in accordance with its terms.

"**Visa Business Card Fee and Rate Agreement**" means the document executed by the Member and others named as parties thereto that (i) discloses certain interest rates, grace period, minimum payments, foreign currency conversion fees and certain other fees and (ii) includes certain terms and conditions and privacy notices and consents, as such document may be amended, restated, supplemented or replaced from time to time in accordance with its terms and this Schedule "A".

#### Governing Law

This Credit Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. The Borrower and each of the Guarantors attorns to the exclusive jurisdiction of the courts of the Province of Ontario.

#### Currency

All dollar amounts expressed in this Credit Agreement shall refer to Canadian dollars unless otherwise specified.

#### Currency Indemnity

Loans denominated in Canadian currency must be repaid with Canadian currency and loans denominated in United States currency must be repaid in United States currency and the Member shall indemnify Meridian for any loss suffered by Meridian if a loan denominated in United States currency is repaid with Canadian currency or vice versa, whether such payment is made pursuant to an order of a court or otherwise.

#### Evidence of Indebtedness

Meridian's accounts, books, and records constitute, in absence of manifest error, conclusive evidence of the advances made under all Credit facilities, repayments on account thereof and the indebtedness of the Member [and the Guarantors] to Meridian.

#### Authorization

The Member for good and valuable consideration authorizes Meridian to accept telecopier and electronic communications on behalf of the Member as full and sufficient authority to act in accordance with communications as received by Meridian from the Member.

The Member shall be bound by all such telecopier and electronic communications from itself in the same manner and extent as if such communications were originally handwritten and signed by the Member, and the Member shall hold Meridian at all times fully indemnified from all claims and demands in respect of all such instructions, in the event such telecopier and electronic communications, were made without authority or otherwise.

#### Interest, Fees and Payment

- (a) Interest on the daily balance of principal advanced under the Credit Agreement and remaining unpaid from time to time shall be payable by the Member as set out in the Credit Agreement both before and after maturity or demand, default and judgment.

At the discretion of Meridian, each payment under the Credit Agreement shall be applied first in payment of costs and expenses, then interest and fees and the balance, if any, shall be applied in reduction of outstanding principal in inverse order of maturity.

- (b) The fees collected by Meridian shall be its property as consideration for the time, effort and expense incurred by it in the review of documents and financial statements, and the Member acknowledges and agrees that the determination of these costs is not feasible and that the fees set out in the Credit Agreement represent a reasonable estimate of such costs.
- (c) Any amounts which become payable to Meridian under the Credit Agreement or the Security Documents or the other Financing Documents and which are not paid when due shall accrue interest and be payable from the due date at an annual rate equal to Meridian's Prime Rate plus 5% per annum, compounded and payable monthly on the last day of each month, both before and after default and judgment, if no other interest rate is expressed for such amounts.
- (d) In the event Meridian authorizes for the Member a higher debit balance than the maximum amount authorized under this Credit Agreement, the Member agrees to repay such excess amount on demand with interest at Meridian's prescribed rate for such excess advances from time to time, being 21% per annum at the present time. Such excess amounts are deemed to be secured by any security taken by Meridian pursuant to the terms hereof and all payments or credits to the account of the Member shall be deemed to have been applied first to the repayment of any such excess amounts.
- (e) All payments by the Member to Meridian shall be made at the address of the branch of Meridian set out on the Credit Agreement or at such other place as Meridian may specify in writing from time to time. Any payment delivered or made to Meridian by 3:00 p.m. local time at the place where such payment is to be made shall be credited as of that day, but if made afterwards shall be credited as of the next Business Day.
- (f) Notwithstanding anything to the contrary contained in the Credit Agreement, Meridian may, in its discretion, make an advance under a Credit Facility to pay any unpaid interest or fees which have become due under the terms of the Credit Agreement.
- (g) The obligation of the Member [and the Guarantors] to make all payments under the Credit Agreement and the Security Documents and other Financing Documents shall be absolute and unconditional and shall not be limited or affected by any circumstance, including, without limitation:
- (i) any set-off, compensation, counterclaim, recoupment, defense or other right which the Member [or any Guarantor] may have against Meridian or anyone else for any reason whatsoever; or



- (ii) any insolvency, bankruptcy, reorganization or similar proceedings by or against the Member (or any Guarantor).
- (h) The imposition or collection of a fee does not constitute an express or implied waiver by Meridian of any Event of Default or of any of the terms or conditions of the lending arrangements, security or rights arising from any Event of Default. Fees may be charged to the Member's deposit account when incurred.

**Prepayment**

**Floating Rate Loans:** Permitted at any time without penalty unless otherwise stipulated herein.

**Fixed Rate Loans:** The Member may not make any payments in addition to those required on the stipulated dates prior to the term maturity date except for an annual prepayment provision, not exceeding 10% of the original principal amount. This right of prepayment is not cumulative such that if the Member does not use this privilege in a calendar year, the Member cannot carry forward this right of prepayment for that calendar year to any following calendar year.

Any additional prepayment, in whole or in part, will be applied in inverse order of maturity, by payment in full of all outstanding principal, interest, applicable expenses and discharge costs, and subject to a prepayment penalty consisting of the greater of:

- (a) three months interest, based on the unpaid principal balance as at the payout date,  
and
- (b) the interest rate differential, being an amount calculated by multiplying the difference between the "existing" annual interest rate and the then "current" annual interest rate as at prepayment date, by the unpaid principal balance as at the requested payout date, and calculated with respect to the remaining portion of the term of the loan.

**Credit Covenants**

In addition to the covenants previously set out, each of the following shall apply until all the Credit Facilities are repaid in full and cancelled:

- (a) The Member will:
  - (i) maintain its membership with Meridian while any portion of the facilities remains outstanding or committed. A \$1.00 share deposit is required;
  - (ii) permit Meridian or associated agents access at all reasonable times to any premises where collateral covered Meridian security may be located and Meridian or its agents may inspect such collateral and all related documents and records;
  - (iii) agree that Meridian will provide all day to day business banking services for the Member;
  - (iv) advise Meridian of any change in the amount and the terms of any credit arrangement made with other lenders or any action taken by another lender to recover amounts outstanding with such other lender;
  - (v) advise promptly after the happening of any event which will result in a material adverse change in the financial condition, business, operations, or prospects of the Member [or a Guarantor] or the occurrence of any Event of Default or default under the Credit Agreement or under any other agreement for borrowed money;

\* defined and based on COF Rate for a term closest to the remaining term of the loan, plus applicable interest rate spread similar to that used for existing rate

- (vi) inform Meridian of any actual or probable litigation and furnish Meridian with copies of details of any litigation or other proceedings, which might affect the financial condition, business, operations, or prospects of the Member; and
  - (vii) do all things necessary to maintain in good standing its corporate existence and preserve and keep all material agreements, rights, franchises, licenses, operations, contracts or other arrangements in full force and effect.
- (b) The Member shall not, without the prior written consent of Meridian:
- (i) grant or allow any lien, charge, privilege, hypothec or other encumbrance, whether fixed or floating, to be registered against or exist on any of its assets, and in particular, without limiting the generality of the foregoing, shall not grant a trust deed or other instrument in favour of a trustee;
  - (ii) become guarantor or endorser or otherwise become liable upon any note or other obligation other than in the normal course of business of the Member;
  - (iii) declare or pay dividends on any class or kind of its shares, repurchase or redeem any of its shares or reduce its capital in any way whatsoever or repay any shareholders' advances. Such approval will not be unreasonably withheld so long as financial results and account performance is satisfactory;
  - (iv) amalgamate with or permit all or substantially all of its assets to be acquired by any other person, firm or corporation or permit any reorganization or change of control of the Member; or
  - (v) change the nature of its business.
- (c) The scheduled property tax payments are to be paid up to date at all times. If the Member fails to keep the tax payments up to date, Meridian reserves the right to pay the taxes and to collect from the Member an amount sufficient to pay the taxes in full. If the Member fails to timely provide Meridian with evidence of payment status, the Member authorizes Meridian to obtain the document from the municipality at the immediate sole cost and expense of the Member plus costs incurred.
- (d) Insurance coverage is to be maintained, sufficient to substantially replace all assets in the event of loss. If the Member fails to take out and keep in force such minimum insurance as is required hereunder, then Meridian may, but not be obliged to, take out and keep in force such insurance at the immediate sole cost and expense of the Member plus costs incurred, or use other means at its disposal under the terms of the Security Documents.
- (e) The regular rent/lease payments on all rented/leased premises are to be maintained up to date at all times.
- (f) Meridian shall have the right to waive the delivery of any Security Documents or the performance of any term or condition of the Credit Agreement, and may advance all or any portion of the Credit Facility prior to satisfaction of any of the aforesaid conditions precedent, but any such waiver by Meridian of any obligation or condition shall not constitute a waiver of such obligation or condition for any future advance.
- (g) All financial terms and covenants shall be determined in accordance with GAAP, applied consistently.
- (h) Any amount payable by the Member to Meridian under the Credit Agreement or the Security Documents or the other Financing Documents may be debited to any account of the Member with Meridian.

#### Letters of Credit

Meridian shall have the discretion to restrict the maturity date of Letters of Credit

#### Cash Management and Foreign Exchange

Meridian may and the Member hereby authorizes Meridian to, drawdown under any Credit Facility hereunder to satisfy any obligation of the Member to Meridian in connection with any cash management service and/or foreign exchange service provided by Meridian to the Member. Meridian may draw under any Credit Facility hereunder even if the drawdown results in amounts outstanding in excess of the authorized limit for such Credit Facility.

#### Visa Business Card

If a "Visa Business Cash Back Card", "Visa Business Infinite Cash Back Card" and/or "Visa Business Flex Cash Back Card" is included as a Credit Facility, then the provisions of this paragraph shall apply. The terms and conditions of the Visa Business Card Agreement and the Visa Business Card Fee and Rate Agreement are incorporated herein by this reference mutatis mutandis. Member and each Guarantor, if any, represents and warrants that it has received and read in full the Visa Business Card Agreement and the Visa Business Card Fee and Rate Agreement. Member agrees that (i) the reference to the "application by the Primary Cardholder or, as applicable, the Authorized Officer Cardholder" contained within the definition of "Business" in the Visa Business Card Agreement is and shall be deemed to be a reference to the Credit Agreement and the execution on behalf of the Member of the Credit Agreement, (ii) it is the "Business" as defined and referred to in the Visa Business Card Agreement, (iii) it is bound by the Visa Business Card Agreement and (iv) it is jointly and severally liable with the other parties named therein for all debts, liabilities and obligations owing or accruing due under the Visa Business Card Agreement. Each Guarantor, if any, agrees to be bound by the Visa Business Card Agreement [and the Visa Business Card Fee and Rate Agreement] in the capacity of the "Guarantor" as defined and referred to thereunder and each Guarantor agrees that its guarantee of the debts, liabilities and obligations under the Credit Agreement includes without limitation all debts, liabilities and obligations owing or accruing due under the Visa Business Card Agreement. The Visa Business Card Fee and Rate Agreement may be amended, restated, supplemented or replaced by Meridian from time to time within the time periods contemplated in the Visa Business Card Agreement (generally, 30 days' advance written notice) and any use of a Card (as defined in the Visa Business Card Agreement) after receiving any such notice will constitute Member's and any Guarantor's acceptance of the changes contained in such notice.

#### Events of Default

Without limiting the entitlement of Meridian to demand repayment at any time of any Credit Facility or any other rights of Meridian under this Credit Agreement that are repayable on demand, upon the occurrence of any one of the following events (an "Event of Default") the obligation of Meridian to make any further advances under any of the Credit Facilities shall terminate immediately and, Meridian may, by written notice to the Member, declare all the unpaid principal of and accrued interest for all Credit Facilities to be immediately due and payable whereupon the same shall become due and payable forthwith:

- (a) The Member fails to make any payment of interest or principal when due pursuant to this Credit Agreement or any other Financing Document;
- (b) There is a breach by the Member of any other term or condition contained in this Credit Agreement or any other Financing Document;
- (c) A representation or warranty contained herein or any other Financing Document is incorrect in any material respect;
- (d) Any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings or other proceedings for the relief of debtors are instituted by or against the Member and, if instituted against the Member, are allowed against or consented to by the Member or are not dismissed or stayed within five (5) days after such institution;

- (e) There occurs or is reasonably likely to occur, in the sole discretion of Meridian:
  - (i) a material adverse change in the financial condition of the Member;
  - (ii) an unacceptable change in ownership of the Member; or
  - (iii) legal implications detrimental to the affairs of the Member;
- (f) Any default occurs under any Security Document or under any other Financing Document;
- (g) Default by the Member under any other agreement, whether now or hereafter existing, with Meridian or in respect of any obligation to Meridian;
- (h) The Member is in default in making a payment of any other indebtedness incurred, assumed or guaranteed by it and the effect of such default is to permit the holder of such obligation to cause such obligation to become due prior to its stated maturity;
- (i) Meridian in good faith believes that the ability of the Member to pay any of its obligations to Meridian or to perform any of the covenants contained herein is impaired or the security referred to herein is impaired or is in jeopardy.

The above Events of Default applicable to the Member also extend to the Member's subsidiary(s) and any Guarantors.

#### **Remedies of the Lender**

- (a) Upon the occurrence of an Event of Default, Meridian may declare any or all of the indebtedness and other obligations under the Financing Documents to be immediately due and payable and Meridian may proceed to realize on its security and to enforce its rights by entry or by the appointment by instrument in writing of a receiver or receivers of all or any part of the assets and undertakings of the Member and such receiver or receivers may be any person or persons, whether an officer or officers or employee or employees of Meridian or not, and Meridian may remove any receiver or receivers so appointed and appoint another or others in his or their stead; or by proceeding in any court of competent jurisdiction for the appointment of a receiver or receivers or for sale of the assets and undertakings of the Member or any part thereof; or by any other action, suit, remedy or proceeding authorized or permitted hereby or by law or by equity; and may file such proofs of claim and other documents as may be necessary or advisable in order to have its claim lodged in any bankruptcy, winding-up or other judicial proceedings relative to the Member.
- (b) Any such receiver or receivers so appointed shall have power:
  - (i) to take possession of the assets and undertakings of the Member or any part thereof and to carry on the business of the Member;
  - (ii) to borrow money required for the maintenance, preservation or protection of the assets and undertakings of the Member or any part thereof or the carrying on of the business of the Member;
  - (iii) to further charge the Member's assets and undertakings in priority to its Security as security for money so borrowed; and
  - (iv) to sell, lease or otherwise dispose of the whole or any part of the Member's assets or undertakings on such terms and conditions and in such manner as he shall determine.

In exercising any powers any such receiver or receivers shall be deemed to act as agent or agents for the Member and Meridian shall not be responsible for the actions of such agent or agents.

- (c) In addition, Meridian may enter upon and lease or sell the whole or any part or parts of the Member's assets and undertakings and any such sale may be made hereunder by public auction, by public tender or by private contract, with or without notice, advertising or any other formality, all of which are hereby waived by the Member, and such sale shall be on such terms and conditions as to credit or otherwise and as to upset or reserve bid or price as to Meridian in its sole discretion may deem advantageous and such sale may take place whether or not Meridian has taken such possession of such assets and undertakings.
- (d) No remedy for the realization of the security or for the enforcement of the rights of Meridian shall be exclusive of or dependent on any other such remedy, and any one or more of such remedies may from time to time be exercised independently or in combination.
- (e) The term "receiver" as used herein includes a receiver and manager.

**Representations**

The Member [and each Guarantor] represents and warrants that:

- (a) It has full power, authority and legal right to borrow in the manner and on the terms and conditions set out in this Credit Agreement and the other Financing Documents, to execute and deliver the acceptance of this Credit Agreement and to carry out the terms and conditions of this Credit Agreement and the other Financing Documents;
- (b) The execution and delivery of the acceptance of this Credit Agreement and the other Financing Documents and the carrying out of the terms of this Credit Agreement and of the other Financing Documents do not violate any law, order or regulation applicable to it and have been (or will be) duly and validly authorized by it;
- (c) This Credit Agreement as accepted and the other Financing Documents as delivered are valid, binding and legally enforceable against it in accordance with their respective terms except to the extent that the enforcement thereof may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditor's rights generally;
- (d) It is not in default under the provisions of any agreement evidencing, guaranteeing or relating to any outstanding indebtedness or liability and the execution and acceptance of this Credit Agreement and the delivery of the Financing Documents will not constitute a breach of any agreement to which it is a party;
- (e) There are no actions, suits or proceedings pending or threatened against it before any court or government department, commission, board or agency which, if determined adversely, would have a material adverse effect on its financial condition.
- (f) **Representations and Covenants re: Hazardous Substances**
  - (i) To the best of the Member's knowledge after due and diligent inquiry, no regulated, hazardous or toxic substances are being stored on any of the Member's premises (the "Premises") or any adjacent property, nor have any such substances been stored or used on the Premises or any adjacent property prior to the Member's ownership, possession or control of the Premises. The Member agrees to provide written notice to Meridian immediately upon the Member becoming aware that the Premises or any adjacent property are being or have been contaminated with regulated, hazardous or toxic substances. The Member will not permit any activities on the Premises which directly or indirectly could result in the Premises or any other property being contaminated with regulated, hazardous or toxic substances. For the purposes of the Credit Agreement, the term "regulated, hazardous or toxic substances" means any substance, defined or designated as hazardous or toxic wastes, hazardous or toxic material, a hazardous, toxic or radioactive substance or other similar term, by any applicable federal, provincial or local statute, regulation or ordinance now or in the future in effect, or any substance or materials, the use or disposition of which is regulated by any such statute, regulation or ordinance;

(ii) The Member shall promptly comply with all statutes, regulations and ordinances, and with all orders, decrees or judgments of governmental authorities or courts having jurisdiction, relating to the use, collection, storage, treatment, control, removal or cleanup of regulated, hazardous or toxic substances in, on, or under the Premises or in, on or under any adjacent property that becomes contaminated with regulated, hazardous or toxic substances as a result of construction, operations or other activities on, or the contamination of, the Premises, or incorporated in any improvements thereon. Meridian may, but shall not be obligated to, enter upon the Premises and take such actions and incur such costs and expenses to effect such compliance as it deems advisable and the Member shall reimburse Meridian on demand for the full amount of all costs and expenses incurred by Meridian in connection with such compliance activities; and

(iii) The assets of the Member which are now or in the future encumbered by the Security Documents are hereby further mortgaged and charged to Meridian, and Meridian shall have a security interest in such assets, as security for the repayment of such costs and expenses and interest thereon, as if such costs and expenses had originally formed part of the Credit Agreement.

**(g) Representations and Covenants re: Environmental Issues**

(i) To the best of the Member's knowledge, any property mortgaged does not contain any pollutants, dangerous substances, liquid waste, industrial waste, toxic substances, hazardous wastes, hazardous materials, hazardous substances or contaminants. To the best of the Member's knowledge, after due inquiry and investigation, none of these substances have ever been released into the environment as a result of any of the activities conducted on the property mortgaged and future usage will be limited to environmentally acceptable activities in compliance with all current and future applicable international, federal, provincial or municipal laws, by-laws, statutes, regulations, orders, permits or judgements, relating to the environment or occupational health and safety ("Environmental Laws");

(ii) There are no claims, actions, investigations, liens, prosecutions, notices, work orders, control orders, stop orders or directives, written or oral, ("Orders") of any kind issued or pending by any third party, court or international, federal, provincial or municipal ministry, department or agency ("Environmental Authority") which enforces Environmental Laws with respect of any activities of the Member, or any property owned by the Member, past or present, as they relate to any and all Environmental Laws. To the best of the Member's knowledge, there are no circumstances, current or contemplated, which might give rise to any such Order;

(iii) To the best of the Member's knowledge, after due inquiry and investigation, any property mortgaged and its existing and prior uses comply and have at all times complied with all Environmental Laws.

The Member shall pay, at the Member's sole cost and expense, the entire cost of any environmental audit deemed necessary by Meridian in Meridian's sole discretion. Such audit shall be performed by a duly licensed engineer acceptable to Meridian. The scope of any environmental audit shall be at Meridian's sole discretion. The auditor performing the environmental audit, its employees and agents shall be granted full access to the property mortgaged and all buildings thereon to perform any testing or investigation deemed necessary by the auditor in the auditor's sole discretion.

The Member shall ensure that the representations and warranties of the Member are true and correct at this time and throughout the term of the Credit Facilities.

Waiver or Variation

No term or condition of the Credit Agreement or any other Financing Document may be waived or varied orally or by any course of conduct of any officer, employee or agent of Meridian. Any amendment to the Credit Agreement or any of the Financing Documents must be in writing and signed by a duly authorized officer of Meridian.

Credit Reporting

The Member and each Guarantor consents to Meridian obtaining from any credit reporting agency or from any person such information as Meridian may require at any time, and consents to the disclosure at any time of any information concerning the Member and any Guarantor to any credit grantor with whom the Member and any Guarantor has financial relations or to any credit reporting agency.

Time of Essence

Time shall be of the essence of this Credit Agreement.

Survival

All terms, conditions, representations and warranties of this letter shall survive the closing of the Credit Facilities contemplated and neither the preparation, nor registration or any documents related to the transaction shall bind Meridian to advance funds under this Credit Agreement or the other Financing Documents.

No Merger

It is understood and agreed that the execution and delivery of the mortgage and other security documents shall in no way merge or extinguish this Credit Agreement or the other Financing Documents or their terms and conditions.

The terms and conditions of this Credit Agreement and the other Financing Documents shall continue in full force and effect; provided however, in the case of any inconsistency between the provisions of this Credit Agreement, and the provisions of any of the Security Agreements and the other Financing Documents, the provisions of this Credit Agreement shall prevail.

General Indemnity

The Member agrees to indemnify Meridian from and against any and all claims, losses and liability arising or resulting from any of the Financing Documents. In no event will Meridian be liable to the Member [or any Guarantor] for any direct, indirect or consequential damages arising under or in connection with any of the Financing Documents.

Successors and Assigns

This Credit Agreement and the other Financing Documents shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

This Credit Agreement and the other Financing Documents may not be assigned, transferred or otherwise disposed of by the Member [or any Guarantor] without the prior written consent of Meridian, which consent may be arbitrarily withheld. Meridian may, without notice to and without the consent of the Member or any Guarantor, assign, syndicate, securitize, transfer or grant participation interests in the whole or any part of this Credit Agreement, the Credit Facilities, the Security Documents and any and all right, title, benefits, remedies and obligations relating thereto. The Member and each Guarantor agrees to co-operate with Meridian in connection with any such assignment, syndication, securitization, transfer or grant of participation interests including, without limitation, the delivery of an Estoppel certificate in a form satisfactory to Meridian.

**Set Off**

Meridian may (but shall not be obligated), at any time, to apply any credit balance, whether or not then due, to which the Member or any Guarantor is entitled towards satisfaction of the obligations of the Member or any Guarantor under any of the Financing Documents.

**Increased Costs**

The Member shall reimburse Meridian for any additional cost or reduction in income arising as a result of (i) the imposition of, or increase in, taxes on payments due to Meridian hereunder (other than taxes on the overall net income of Meridian), (ii) the imposition of, or increase in, any reserve or similar requirements, (iii) (i) the imposition of, or change in, any other condition affecting the Credit Facilities imposed by any applicable law or the interpretation thereof.

**Release of Information**

The Member [and each Guarantor] hereby irrevocably authorizes and directs its accountant (the "Accountant") to deliver all financial statements and other financial information concerning it to Meridian and agrees that Meridian and the Accountant may communicate with each other as to its business and financial affairs.

**Miscellaneous**


Accounting terms will (to the extent not defined in this Agreement) be interpreted in accordance with GAAP and all financial statements and information provided will be prepared in accordance with those principles.

**Notices**

Any notices contemplated herein shall be in writing given by authenticated telecopier or electronic communication, and any such notice, shall be deemed to have been given when sent, if sent by telecopier, or when receipt has been confirmed in the case of electronic communication. In the case of the Member [and each Guarantor] such notice shall be sent to the most recent telecopier number or address for electronic communication that appears on Meridian's records.



**This is Exhibit "C" referred to in the Affidavit of Bernhard  
Huber sworn the 30<sup>th</sup> of September, 2019**

  
Commissioner for Taking Affidavits (or as may be)

**Allison Eluned Van Rooijen, a Commissioner,  
etc., Province of Ontario, for  
Meridian Credit Union Limited, Motus Bank  
and Meridian OneCap Credit Corporation.  
Expires May 8, 2021.**



## General Security Agreement

THIS SECURITY AGREEMENT (as amended, modified, renewed, supplemented, replaced or extended from time to time, this "Agreement") dated as of May 14, 2018 is made by and between ADELAIDE STREET LOFTS INC. (the "Assignor"), and MERIDIAN CRÉDIT UNION LIMITED (the "Lender").

The Assignor hereby enters into this General Security Agreement with the Lender for valuable consideration and as security for the repayment and discharge of all indebtedness, obligations and liabilities of any kind, now or hereafter existing, direct or indirect, absolute or contingent, joint or several, of the Assignor to the Lender, wheresoever and howsoever incurred whether as principal or surety, together with all expenses (including legal fees on a solicitor and client basis) incurred by the Lender, its receiver or agent in the preparation, perfection and enforcement of security or other agreements held by the Lender in respect of such indebtedness, obligations or liabilities and interest thereon (all of which present and future indebtedness, obligations, liabilities, expenses and interest are herein collectively called the "Indebtedness").

### A. Grant of Security Interests

1. The Assignor hereby grants to the Lender, by way of mortgage, charge, assignment and transfer, a security interest (the "Security Interest") in the undertaking of the Assignor and in all property, real and personal, including, without limitation, all Goods (including all parts, accessories, attachments, special tools, additions and accessions thereto), Accounts, Chattel Paper, Documents of Title (whether negotiable or not), Instruments, Intangibles, Money, Securities, Investment Property, now or hereafter owned or acquired by or on behalf of the Assignor and in all proceeds and renewals thereof, accretions thereto and substitutions therefor (hereinafter collectively call the "Collateral") including without limitation, all of the following now or hereafter owned or acquired by or on behalf of the Assignor:
  - (i) all Inventory of whatever kind and wherever situate;
  - (ii) all Equipment of whatever kind and wherever situate including, without limitation, all machinery, tools, apparatus, plant furniture, fixtures and vehicles of whatsoever nature or kind;
  - (iii) all accounts and book debts and generally all debts, accounts receivable, dues, claims, choses in action and demands of every nature and kind howsoever arising or secured including letters of credit, guarantees and advices of credit which are now due, owing or accruing or growing due to or owned by or which may hereafter become due, owing or accruing or growing due to or owned by the Assignor;
  - (iv) all deeds, documents, writings, papers, books of account and other books relating to or being records of Accounts, Chattel Paper or Documents of Title or by which such are or may hereafter be secured, evidenced, acknowledged or made payable;
  - (v) all contractual rights and insurance claims and all goodwill, patents, trademarks, copyrights and other industrial property;
  - (vi) all monies other than trust monies lawfully belonging to others;
  - (vii) all property and assets, real and personal, moveable or immoveable, of whatsoever nature and kind; and
  - (viii) all present and future investment property held by the Assignor, including securities, shares, options, rights, warrants, joint venture interests, interests in limited partnerships, trust units, bonds, debentures and all other documents which constitute evidence of a share, participation, or other interest of the Assignor in property or in a enterprise or which constitute evidence of an obligation of the issuer, together with all accretions thereto, all substitutions therefor, all dividends and income derived therefrom and all rights and claims in respect thereof.
2. The Security Interest hereby created shall not extend or attach to (i) any personal property held in trust by the Assignor and lawfully belonging to others or (ii) any property of the Assignor that constitutes consumer goods for the personal use of the Assignor; or (iii) the last day of the term of any lease, oral or written or agreement therefor, now held or hereafter acquired by the Assignor, provided that upon the enforcement of the Security Interest the Assignor shall stand possessed of such last day in trust to assign and dispose of the same to any person acquiring such term. Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed thereto in the PPSA.

### B. Attachment

3. The Assignor warrants and acknowledges that the Assignor and the Lender intend the Security Interest in existing Collateral to attach upon the execution of this General Security Agreement; that value has been given; that the Assignor has rights in such existing Collateral; and that the Assignor and the Lender intend the Security Interest in hereafter acquired Collateral to attach at the same time as the Assignor acquires rights in the said after acquired Collateral.

### C. Representations and Warranties of Assignor

4. The Assignor hereby represents and warrants to the Lender that:
  - (a) the Collateral is genuine and owned by the Assignor, with good and marketable title, free of all security interests, mortgages, liens, claims, charges or other encumbrances (collectively hereinafter called "Encumbrances"), save for the Security Interest
  - (b) no person has any right, title, claim or interest (by way of security interest or other lien) in, against or to the Collateral.
  - (c) all information heretofore, herein or hereafter supplied to the Lender by or on behalf of the Assignor with respect to the Collateral is accurate and complete in all material respects.
  - (d) the Assignor has delivered to the Lender all instruments and chattel paper and other items of Collateral in which a security interest is or may be perfected by possession, together with such additional writings, including assignments, with respect thereto as the Lender shall request.
  - (e) all of the patents, trade-marks, and copyrights of the Assignor have been registered or applied to be registered with the United States Patent and Trademark Office, the United States Copyright Office or the Canadian Intellectual Property Office, as appropriate.
  - (f) the Assignor's chief executive office is in the Province of Ontario and the Assignor's records concerning the Collateral are located at its chief executive office.

#### D. Covenants and Agreements of Assignor

5. The Assignor hereby covenants and agrees with the Lender that until all of the Indebtedness is paid in full:
- (a) the Assignor shall not without the prior written consent of the Lender sell or dispose of any of the Collateral other than in the ordinary course of business consistent with prudent practice, and if the amounts on or in respect of the Collateral or Proceeds thereof shall be paid to the Assignor, other than in the ordinary course of business consistent with prudent practice, the Assignor shall receive the same in trust for the Lender and forthwith pay over the same to the Lender upon request; provided however that the Inventory of the Assignor may be sold or disposed of in the ordinary course of business and for the purpose of carrying on the same;
  - (b) the Assignor shall not without the prior written consent of the Lender create or permit any Encumbrances upon or assign or transfer as security or pledge or hypothecate as security the Collateral except to the Lender;
  - (c) the Assignor shall at all times have and maintain insurance over the Collateral against risks of fire (including extended coverage), theft, and such risks as the Lender may reasonably require in writing, containing such terms, in such form, for such periods and written by such companies as may be reasonably satisfactory to the Lender. The Assignor shall duly and reasonably pay all premiums and other sums payable for maintaining such insurance and shall cause the insurance money thereunder to be payable to the Lender as its interest hereunder may appear and shall, if required, furnish the Lender with certificates or other evidence satisfactory to the Lender of compliance with the foregoing insurance provisions. In the event that Assignor fails to pay all premiums and other sums payable in accordance with the foregoing insurance provision, the Lender may make such payments to be repayable by the Assignor on demand and any such payments made by the Lender shall be secured hereby;
  - (d) the Assignor shall keep the Collateral in good condition and repair according to the nature and description thereof, and the Lender may, whenever it deems necessary, either in person or by agent, inspect the Collateral and the reasonable cost of such inspection shall be paid by the Assignor and secured hereby and the Lender may make repairs as it deems necessary and the cost thereof shall be paid by the Assignor and secured hereby;
  - (e) the Assignor shall duly pay all taxes, rates, levies, assessments of every nature which may be lawfully levied, assessed or imposed against or in respect of the Assignor or the Collateral as and when the same become due and payable;
  - (f) the Assignor agrees that the Lender may, at any time, whether before or after a default under this General Security Agreement, notify any account Borrower of the Assignor of the Security Interest, require such account Borrower to make payment to the Lender, take control of any Proceeds of Collateral and may hold all amounts received from any account Borrower and any Proceeds as part of the Collateral and as security for the Indebtedness;
  - (g) the Assignor shall prevent the Collateral from becoming an accession to any personal property not subject to this agreement or becoming affixed to any real property, without the prior written consent of the Lender.
  - (h) the Assignor shall from time to time deliver to the Lender promptly upon request (and, if so requested, from time to time as they are acquired by the Assignor) all items of Collateral comprising Chattel Paper, Instruments, Investment Property (to the extent certificated) and those Documents of Title which are negotiable.
  - (i) the Assignor shall pay or reimburse the Lender for all costs and expenses of the Lender, its agents, officers and employees (including, without limitation, legal fees and disbursements on a substantial indemnity basis) incurred with respect to:
    - (i) the preparation, perfection, execution and filing of this agreement and the filing of financing statement(s) and financing change statement(s) with respect to this agreement;
    - (ii) any person engaged by the Lender to conduct an inspection of the collateral; and
    - (iii) dealing with other creditors of the Assignor in connection with the establishment, confirmation, amendment or preservation of the priority of the Security Interest;such costs and expenses to be payable by the Assignor to the Lender on demand, to bear interest at the highest rate per annum borne by any of the Indebtedness, calculated and compounded monthly, and (with all such interest) to be added to and form part of the Indebtedness.
  - (j) the Assignor shall promptly notify the Lender in writing of the details of:
    - (i) any amendment to its articles, including without limitation by virtue of the filing of articles of amalgamation, effecting a change in the Assignor's name or authorizing it to use a French version of its name;
    - (ii) any claim, litigation or proceedings before any court, administrative board or other tribunal which either does or could have a material adverse effect on the Collateral or the Assignor;
    - (iii) any claim, lien, attachment, execution or other process or encumbrance made or asserted against or with respect to the Collateral which either does or could have a material adverse effect on the Security Interest;
    - (iv) any transfer of the Assignor's interest in the Collateral, whether or not permitted hereunder; or
    - (v) any material loss of or damage to the Collateral, whether or not such loss or damage is covered by insurance.
  - (k) if any of the Collateral consists of Investment Property, (a) the Assignor authorizes the Lender to transfer such Collateral or any part thereof into its own name or that of its nominee so that the Lender or its nominee may appear of record as the sole owner thereof; provided, that so long as no event of default has occurred, the Lender shall deliver promptly to the Assignor all notices, statements or other communications received by it or its nominee as such registered owner, and upon demand and receipt of payment of necessary expenses thereof, shall give to the Assignor or its designee a proxy or proxies to vote and take all action with respect to such property; provided further that after the occurrence of an event of default, the Assignor waives all rights to be advised of or to receive any notices, statements or communications received by the Lender or its nominee as such record owner, and agrees that no proxy or proxies given by the Lender to the Assignor or its designee as aforesaid shall thereafter be effective; and (b) the Assignor further agrees to execute such other documents and to perform such other acts, and to cause any issuer or securities intermediary to execute such other documents and to perform such other acts as may be necessary or appropriate in order to give the Lender "control" of such Investment Property, as defined in the Securities Transfer Act, 2006 (Ontario), which "control" shall be in such manner as the Lender shall designate in its sole judgment and discretion, including, without limitation, an agreement by any issuer or securities intermediary that it will comply with instructions in the case of an issuer or entitlement orders in the case of a securities intermediary, originated by the Lender, whether before or after the occurrence of an event of default, without further consent by the Assignor.
  - (l)
6. The Assignor shall at all times and from time to time do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered any such further act, deed, transfer, assignment, assurance, document or instrument as the Lender may reasonably require for the better granting, mortgaging, charging, assigning and transferring unto the Lender the property and assets hereby subjected or intended to be subject to the Security Interest or which the Assignor may hereafter become bound to mortgage, charge, assign, transfer or subject to the Security Interest in favour of the Lender for the better accomplishing and effectuating of this

General Security Agreement and the provisions contained herein and each and every officer of the Lender is irrevocably appointed attorney to execute in the name and on behalf of the Assignor any document or instrument for the said purposes.

7. The Assignor shall permit the Lender at any time, either in person or by agent upon reasonable notice to the Assignor, to inspect the Assignor's books and records pertaining to the Collateral. The Assignor shall at all times upon request by the Lender furnish the Lender with such information concerning the Collateral and the Assignor's affairs and business as the Lender may reasonably request including, without limitation, lists of Inventory and Equipment and lists of Accounts showing the amounts owing upon each Account and securities therefor and copies of all financial statements, books and accounts, invoices, letters, papers and other documents in any way evidencing or relating to the Accounts.
8. The Assignor acknowledges and agrees that, in the event it amalgamates with any other corporation or corporations, it is the intention of the parties hereto that the term "Assignor" when used herein shall apply to each of the amalgamating corporations and to the amalgamated corporation, such that the Security Interest granted hereby:
  - (i) shall extend and attach to "Collateral" (as that term is herein defined) owned by each of the amalgamating corporations and the amalgamated corporation at the time of amalgamation and to any "Collateral" thereafter owned or acquired by the amalgamated corporation;
  - (ii) shall secure the "Indebtedness" (as that term is herein defined) of each of the amalgamating corporations and the amalgamated corporation to the Lender at the time of amalgamation and any "Indebtedness" of the amalgamated corporation to the Lender thereafter arising.

#### E. Default

9. The Assignor shall be in default under this General Security Agreement upon the occurrence of any one of the following events:
  - (a) the nonpayment by the Assignor, when due, whether by acceleration or otherwise, of any of the Indebtedness;
  - (b) the death or a declaration of incompetency by a court of competent jurisdiction with respect to the Assignor, if an individual;
  - (c) the failure of the Assignor to observe or perform any covenant, undertaking or agreement heretofore or hereafter given to the Lender, whether contained herein or not;
  - (d) an execution or any other process of the Court becomes enforceable against the Assignor or a distress or an analogous process is levied upon the property of the Assignor or any part thereof;
  - (e) the Assignor becomes insolvent, commits an act of bankruptcy, makes an assignment in bankruptcy or a bulk sale of its assets, any proceeding for relief as a Assignor or liquidation, re-assignment or winding-up is commenced with respect to the Assignor or an application for a bankruptcy order is filed or presented against the Assignor and is not bona fide opposed by the Assignor;
  - (f) the Assignor ceases to carry on business;
  - (g) any representation or warranty of the Assignor contained herein or in any document or certificate furnished in connection herewith proves to have been untrue in any material respect at the time in respect of which it was made;
  - (h) an encumbrancer, whether permitted or otherwise, takes possession of any significant portion of the Collateral;
  - (i) an order is made or legislation enacted for the expropriation, confiscation, forfeiture, escheating or other taking or compulsory divestiture, whether or not with compensation, of all or a significant portion of the Collateral unless the same is being actively and diligently contested by the Assignor in good faith, the Assignor shall have provided to the Lender such security therefor as it may reasonably require and such order or legislation shall have been vacated, lifted, discharged, stayed or repealed within thirty days from the date of being entered, pronounced or enacted, as the case may be;
  - (j) the Assignor is liquidated, dissolved or its corporate charter expires or is revoked; or
  - (k) the Assignor defaults in the observance or performance of any provision relating to indebtedness of the Assignor to any creditor other than the Lender and thereby enables such creditor to demand payment of such indebtedness.
10. The Lender may in writing waive any breach by the Assignor of any of the provisions contained herein or any default by the Assignor in the observance or performance of any covenant or condition required by the Lender to be observed or performed by the Assignor; provided that no act or omission by the Lender in the premises shall extend to or be taken in any manner whatsoever to affect any subsequent breach or default or the rights resulting therefrom.

#### F. Remedies of the Lender

11. (a) Upon any default under this General Security Agreement, the Lender may declare any or all of the Indebtedness to be immediately due and payable and the Lender may proceed to realize the security hereby constituted and to enforce its rights by entry or by the appointment by instrument in writing of a receiver or receivers of all or any part of the Collateral and such receiver or receivers may be any person or persons, whether an officer or officers or employee or employees of the Lender or not, and the Lender may remove any receiver or receivers so appointed and appoint another or others in his or their stead; or by proceedings in any court of competent jurisdiction for the appointment of a receiver or receivers or for sale of the Collateral or any part thereof; or by any other action, suit, remedy or proceeding authorized or permitted hereby or by law or by equity; and may file such proofs of claim and other documents as may be necessary or advisable in order to have its claim lodged in any Bankruptcy, winding-up or other judicial proceedings relative to the Assignor.
- (b) Any such receiver or receivers so appointed shall have power:
  - (i) to take possession of the Collateral or any part thereof and to carry on the business of the Assignor;
  - (ii) to borrow money required for the maintenance, preservation or protection of the Collateral or any part thereof or the carrying on of the business of the Assignor;
  - (iii) to further charge the Collateral in priority to the Security Interest as security for money so borrowed; and
  - (iv) to sell, lease or otherwise dispose of the whole or any part of the Collateral on such terms and conditions and in such manner as he shall determine.

In exercising any powers any such receiver or receivers shall be deemed to act as agent or agents for the Assignor and the Lender shall not be responsible for the actions of such agent or agents.
- (c) In addition, the Lender may enter upon and lease or sell the whole or any part or parts of the Collateral and any such sale may be made hereunder by public auction, by public tender or by private contract, with or without notice, advertising or any other formality, all of which are hereby waived by the Assignor, and such sale shall be on such terms and conditions as to credit or otherwise and as to upset or reserve bid or price as to the Lender in its sole discretion may seem advantageous and such sale may take place whether or not the Lender has taken such possession of such Collateral.

- (d) No remedy for the realization of the security hereof or for the enforcement of the rights of the Lender shall be exclusive of or dependent on any other such remedy, and any one or more of such remedies may from time to time be exercised independently or in combination.
- (e) The term "receiver" as used in this General Security Agreement includes a receiver and manager.

**G. Rights of the Lender**

- 12. All payments made in respect of the Indebtedness and money realized from any securities held therefor may be applied on such part or parts of the Indebtedness as the Lender may see fit and the Lender shall at all times and from time to time have the right to change any appropriation of any money received by it and to re-apply the same on any other part or parts of the Indebtedness as the Lender may see fit, notwithstanding any previous application by whomsoever made.
- 13. The Assignor grants to the Lender the right to set off against any and all accounts, credits or balances maintained by it with the Lender, the aggregate amount of any of the Indebtedness when the same shall become due and payable whether at maturity, upon acceleration of maturity thereof or otherwise.
- 14. The Lender, without exonerating in whole or in part the Assignor, may grant time, renewals, extensions, indulgences, releases and discharges to, may take securities from and give the same and any or all existing securities up to, may abstain from taking securities from or from perfecting securities of, may accept compositions from and may otherwise deal with the Assignor and all other persons and securities as the Lender may see fit.
- 15. The Lender may assign, transfer and deliver to any transferee any of the Indebtedness or any security or any documents or instruments held by the Lender in respect thereof provided that no such assignment, transfer or delivery shall release the Assignor from any of the Indebtedness; and thereafter the Lender shall be fully discharged from all responsibility with respect to the Indebtedness and security, documents and instruments so assigned, transferred or delivered. Such transferee shall be vested with all powers and rights of the Lender under such security, documents or instruments but the Lender shall retain all rights and powers with respect to any such security, documents or instruments not so assigned, transferred or delivered. The Assignor shall not assign any of its rights or obligations hereunder without the prior written consent of the Lender.

**H. Miscellaneous**

- 16. This General Security Agreement is in addition to, not in substitution for and shall not be merged in any other agreement, security, document or instrument now or hereafter held by the Lender or existing at law in equity or by statute.
- 17. Nothing herein shall obligate the Lender to make any advance or loan or further advance or loan or to renew any note or extend any time for payment of any indebtedness of the Assignor to the Lender.
- 18. This General Security Agreement shall be binding upon the Assignor and its heirs, legatees, trustees, executors, administrators, successors and assigns including any successor by reason of amalgamation of or any other change in the Assignor and shall enure to the benefit of the Lender and its successors and assigns.
- 19. In construing this General Security Agreement, terms herein shall have the same meaning as defined in the PPSA, as hereinafter defined, unless the context otherwise requires. Words importing gender shall include all genders. Words importing the singular number shall include the plural and vice versa.
- 20. If one or more of the provisions contained herein shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.
- 21. The headings in this General Security Agreement are included herein for convenience of reference only and shall not constitute a part of this General Security Agreement for any other purpose.
- 22. Any notice or statement referred to herein may be delivered, sent by facsimile machine or providing that postal service throughout Canada is fully operative, may be mailed by ordinary prepaid mail to the Assignor at his last address known to the Lender and the Assignor shall be deemed to have received such notice or statement on the day of delivery, if delivered, one business day after transmission and confirmation received if sent by facsimile machine and three business days after mailing, if mailed.
- 23. Where any provision or remedy contained or referred to in this General Security Agreement is prohibited, modified or altered by the laws of any province or territory of Canada which governs that aspect of this General Security Agreement and the provision or remedies may be waived or excluded by the Assignor in whole or in part, the Assignor hereby waives and excludes such provision to the fullest extent permissible by law.
- 24. This General Security Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario as the same may be in effect from time to time including, where applicable, the Personal Property Security Act of that Province (as amended or substituted, the "PPSA"). For the purpose of legal proceedings this General Security Agreement shall be deemed to have been made in the said Province and to be performed there and the courts of that Province shall have jurisdiction over all disputes which may arise under this General Security Agreement and the Assignor hereby irrevocably and unconditionally submits to the nonexclusive jurisdiction of such courts, provided always that nothing herein contained shall prevent the Lender from proceeding at this election against the Assignor in the Courts of any other Province, country or jurisdiction.
- 25. The Assignor acknowledges having received a copy of this General Security Agreement.

This General Security Agreement has been duly executed by the Assignor on the 14 day of May, 2018.

ADELAIDE STREET LOFTS INC.

< Please print >

Name: Dimitrios (Jim) Neilas

Title: President

Name: Ioannis Neilas

Title: Authorized Signing Officer

Signature

Signature

To be completed  
by incorporated  
business

I/We have the  
authority to bind  
the Corporation.

< Please print >

Name: \_\_\_\_\_

Middle Initial: \_\_\_\_\_ Date of Birth (day month year): \_\_\_\_\_ Gender: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Assignor

To be completed  
by sole  
proprietor or  
partners

Name: \_\_\_\_\_

Middle Initial: \_\_\_\_\_ Date of Birth (day month year): \_\_\_\_\_ Gender: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Assignor

**This is Exhibit "D" referred to in the Affidavit of Bernhard  
Huber sworn the 30<sup>th</sup> of September, 2019**



---

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

**Allison Eluned Van Rooijen, a Commissioner,  
etc., Province of Ontario, for  
Meridian Credit Union Limited, Motus Bank  
and Meridian OneCap Credit Corporation.  
Expires May 8, 2021.**



**Properties**

*PIN* 21411 - 0294 LT  
*Description* PART BLK B PLAN 216-E PARTS 1 & 2 PLAN 66R29363; SUBJECT TO AN EASEMENT OVER PART 2 PLAN 66R29363 AS IN ES61538; TOGETHER WITH AN EASEMENT OVER PART 3 PLAN 66R29363 AS IN ES61223; CITY OF TORONTO  
*Address* 263 ADELAIDE STREET WEST  
TORONTO

**Applicant(s)**

The assignor(s) hereby assigns their interest in the rents of the above described land. The notice is based on or affects a valid and existing estate, right, interest or equity in land.

*Name* ADELAIDE STREET LOFTS INC.  
*Address for Service* 263 Adelaide Street West, Suite 503  
Toronto, ON M5H 1W7

I, Dimitrios (Jim) Neilas, President/Secretary and Ioannis Neilas, Authorized Signing Officer,, have the authority to bind the corporation. This document is not authorized under Power of Attorney by this party.

**Party To(s)**

*Capacity*

*Share*

*Name* MERIDIAN CREDIT UNION LIMITED  
*Address for Service* 75 Corporate Park Drive  
St. Catharines, ON L2S 3W3

**Statements**

The applicant applies for the entry of a notice of general assignment of rents.

This notice may be deleted by the Land Registrar when the registered instrument, AT4862974 registered on 2018/05/14 to which this notice relates is deleted

Schedule: See Schedules

**Signed By**

Steven Ira Pearlstein 145 King Street West, Suite 2200 acting for Signed 2018 05 14  
Toronto Applicant(s)  
M5H 4G2

Tel 416-362-3711

Fax 416-864-9223

I have the authority to sign and register the document on behalf of all parties to the document.

Steven Ira Pearlstein 145 King Street West, Suite 2200 acting for Signed 2018 05 14  
Toronto Party To(s)  
M5H 4G2

Tel 416-362-3711

Fax 416-864-9223

I have the authority to sign and register the document on behalf of all parties to the document.

**Submitted By**

MINDEN GROSS LLP 145 King Street West, Suite 2200 2018 05 14  
Toronto  
M5H 4G2

Tel 416-362-3711

Fax 416-864-9223

**Fees/Taxes/Payment**

*Statutory Registration Fee* \$63.65

*Total Paid* \$63.65

**File Number**

*Party To Client File Number :* 4108456 (SIP/MK)



## General Assignment of Leases and Rents

THIS ASSIGNMENT made the 14th day of May, 2018.

BETWEEN

ADELAIDE STREET LOFTS INC.

(hereinafter called the "Assignor")

OF THE FIRST PART

-and-

MERIDIAN CREDIT UNION LIMITED

(hereinafter called the "Assignee")

OF THE SECOND PART

### WITNESSES:

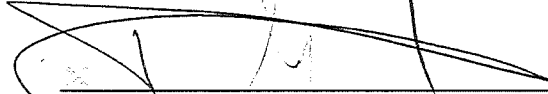
1. WHEREAS the Assignor is the registered owner of the lands and premises described as PIN 21411-0294 (LT) including the buildings erected or to be erected thereon (herein called the "Lands"), subject to a Charge to the Assignee which Charge secures the principal amount of \$ 16,414,000.00 ( SIXTEEN MILLION FOUR HUNDRED FOURTEEN THOUSAND Dollars).
2. **NOW THEREFORE** in consideration of Five Dollars (\$5.00) and other valuable consideration (the receipt and sufficiency of which is hereby acknowledged by the Assignor), the Assignor transfers and assigns to the Assignee, its successors and assigns, as security only (and not absolutely) for payment of the Principal Amount and interest secured by the said Charge, all its rights, benefits, title and interest under, in and to, and all claims of whatsoever nature or kind which the Assignor now has or may hereafter have under or pursuant to:
  - (a) the benefit of all present and future leases, subleases, agreements to occupy or use and licenses in respect of the whole or any part(s) of the Lands (the "Leases");
  - (b) all present and future incomes, rents, accounts and other moneys reserved or payable under the Leases (the "Rents"); and
  - (c) the benefit of every existing and future guarantee with respect to the Leases of all or any of the obligations of any existing or future tenant, user, occupier or licensee of the whole or any portion of the Lands.
3. **THE ASSIGNOR COVENANTS AND AGREES THAT:**
  - (a) it has not and will not do or omit to do any act having the effect of terminating, cancelling or accepting surrender of any of the Leases or of waiving, releasing, reducing or abating any rights or remedies of the Assignor or obligations of any other party thereunder or in connection therewith;
  - (b) none of such rights, remedies and obligations are or will be affected by any other agreement, document or understanding or by any reduction, abatement, defence, set-off, or counterclaim;
  - (c) none of the Leases or the Assignor's rights thereunder, including the right to receive the Rents, has been or will be amended, assigned, encumbered, discounted or anticipated by any instrument which might rank prior to or pari passu with the security hereby created or intended to be created save for those that will be discharged out of the advance of funds under the said Charge;
  - (d) none of the Rents has been or will be paid in advance (except those in respect of the first and/or the last months of the terms of any of the Leases when so required thereunder);
  - (e) none of the remainder of the Rents has been or will be paid prior to the due date for payment thereof;
  - (f) there is no current default under any of the Leases by any of the parties thereto;
  - (g) there is no outstanding dispute under any of the Leases between the Assignor and any other party thereto; and
  - (h) the Assignor will observe and perform all of his obligations under each of the Leases.
4. **PROVIDED**, however, and it is hereby specifically agreed as follows:
  - (a) The Assignor shall be permitted to collect and receive the Rents as and when they shall become due and payable according to the terms of each such Leases, unless and until there is default under the Charge and the Assignee has given notice to the tenant, user, occupier, licensee or guarantor thereunder requiring it to pay the Rents to the Assignee; but nothing herein contained shall permit or authorize the Assignor to collect any of the rents contrary to clauses (d) and (e) above; and
  - (b) Nothing herein contained shall have the effect of making the Assignee, its successors and assigns, responsible for the collection of the Rents or any of them or for the performance of any of the obligations or conditions under or in respect to the Leases or any of them to be observed and performed by the Assignor, and the Assignee shall not, by virtue of this agreement or its receipt of the Rents or any of them, become or be deemed a mortgagee in possession of the Lands and the Assignee shall not be under any obligation to take any action or exercise any remedy in the collection or recovery of the Rents or any of them or to see to or enforce the performance of the obligations and liabilities of any person under or in respect of the Leases or any of them; and the Assignee shall be liable to account only for such moneys as shall actually come into its hands, less proper collection charges and such moneys may be applied on account of any indebtedness of the Assignor to the Assignee pursuant to the Charge.
5. **THE** Assignor agrees to execute at the Assignor's expense such further assurances as may reasonably be required by the Assignee from time to time to perfect this assignment and, without limiting the generality of the foregoing, whenever any of the Leases not now existing is made or arises, the Assignor will forthwith at the request of the Assignee give the Assignee a specific assignment of the

Rents and/or the Leases thereunder similar to this assignment and will obtain from any other parties thereto acknowledgments, such acknowledgments to be in such form as may reasonably be required by the Assignee.

6. **THE** Assignor agrees to specifically assign to the Assignee at the Assignor's expense and in registrable form, any of the Leases of part or parts of the Lands whether now existing or which may be created in the future and which the Assignee may from time to time require assigned to it.
7. **THE** Assignor further agrees that he will not lease or agree to lease any part of the Lands except at a rent, on terms and conditions, and to tenants, which are not less favourable or desirable to the Assignor than those, which a prudent landlord would expect to receive for the premises to be leased.
8. **PROVIDED** that upon repayment of the whole of the moneys secured by the Charge and upon performance of all those covenants therein contained, these presents shall be void and of no further force or effect. The delivery of an executed full and final discharge of the Charge shall operate as a re-assignment of the Rents and Leases to the Assignor.
9. **IT IS HEREBY AGREED** that in construing this assignment the words "Assignor" and "Assignee" and the pronoun "it" relating thereto and used therewith, shall be read and construed as "Assignor" or "Assignors", "Assignee" or "Assignees", and "it", "its", "he", "she", "his", "her", "they", "their" or "them" respectively, as the number and gender of the party or parties referred to in each case require and the number of the verb agreeing therewith shall be construed as agreeing with the said word or pronoun so substituted.
10. **THIS ASSIGNMENT** shall enure to the benefit of and be binding upon the respective heirs, estate trustees, executors, administrators, successors and assigns of the parties hereto. In the event the Assignor is more than one party, all covenants and liabilities and obligations of the Assignor shall be joint and several.

**IN WITNESS WHEREOF** the Assignor has executed this Assignment as of the date first above written.

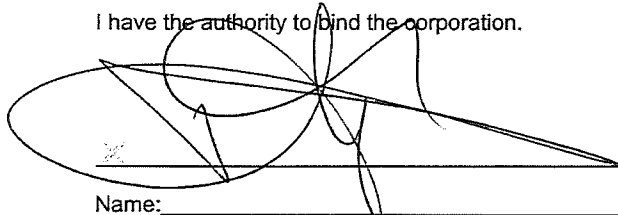
ADELAIDE STREET LOFTS INC.



Name: Dimitrios (Jim) Neilas

Title: President

I have the authority to bind the corporation.




Name: \_\_\_\_\_

Title: \_\_\_\_\_

I have the authority to bind the corporation.

**This is Exhibit "E" referred to in the Affidavit of Bernhard  
Huber sworn the 30<sup>th</sup> of September, 2019**

  
\_\_\_\_\_  
*Commissioner for Taking Affidavits (or as may be)*

**Allison Eluned Van Rooijen, a Commissioner,  
etc., Province of Ontario, for  
Meridian Credit Union Limited, Motus Bank  
and Meridian OneCap Credit Corporation.  
Expires May 8, 2021.**

**Properties**

*PIN* 21411 - 0294 LT *Interest/Estate* Fee Simple  
*Description* PART BLK B PLAN 216-E PARTS 1 & 2 PLAN 66R29363; SUBJECT TO AN EASEMENT OVER PART 2 PLAN 66R29363 AS IN ES61538; TOGETHER WITH AN EASEMENT OVER PART 3 PLAN 66R29363 AS IN ES61223; CITY OF TORONTO  
*Address* 263 ADELAIDE STREET WEST  
TORONTO

**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* ADELAIDE STREET LOFTS INC.  
*Address for Service* 263 Adelaide Street West, Suite 503  
Toronto, ON M5H 1W7

I, Dimitrios (Jim) Neilas, President/Secretary and Ioannis Neilas, Authorized Signing Officer, have the authority to bind the corporation. This document is not authorized under Power of Attorney by this party.

**Chargee(s)**

*Capacity*

*Share*

*Name* MERIDIAN CREDIT UNION LIMITED  
*Address for Service* 75 Corporate Park Drive  
St. Catharines, ON L2S 3W3

**Statements**

Schedule: See Schedules

**Provisions**

*Principal* \$16,414,000.00 *Currency* CDN  
*Calculation Period*  
*Balance Due Date* On Demand  
*Interest Rate* 24.00%  
*Payments*  
*Interest Adjustment Date*  
*Payment Date*  
*First Payment Date*  
*Last Payment Date*  
*Standard Charge Terms* 200522  
*Insurance Amount* Full insurable value  
*Guarantor*

**Signed By**

Steven Ira Pearlstein 145 King Street West, Suite 2200 acting for Signed 2018 05 14  
Toronto Chargor(s)  
M5H 4G2

Tel 416-362-3711  
Fax 416-864-9223

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

**Submitted By**

MINDEN GROSS LLP 145 King Street West, Suite 2200 2018 05 14  
Toronto  
M5H 4G2

Tel 416-362-3711  
Fax 416-864-9223

**Fees/Taxes/Payment**

Statutory Registration Fee	\$63.65
Total Paid	\$63.65

**File Number**

Chargee Client File Number : 4108456 (SIP/MK)

SCHEDULE FOR ALL COLLATERAL MORTGAGES

SCHEDULE "A"

PAYMENT PROVISIONS

This Charge is given as continuing security for payment to the Chargee of all debts and liabilities, present or future, direct or indirect, absolute or contingent, matured or not, at any time owing by the Chargor to the Chargee (such debts and liabilities being hereinafter called the "liabilities"), but the Chargor's liability hereunder being limited to the sum of "the Credit Limit" (being the Principal Amount stated on Page 1 of this Charge/Mortgage) with interest at the rate hereinafter set out;

The Chargor covenants to pay each and every liability to the Chargee punctually as the same falls due; provided that this Charge is void upon payment on demand of the ultimate balance of the liabilities and all promissory notes, bills of exchange, guarantees and any other instruments whatsoever from time to time representing the liabilities or any part thereof, not exceeding the principal sum of "the Credit Limit" (being the Principal Amount stated on Page 1 of this Charge/Mortgage) together with interest thereon at the rate of 24.00 per centum per annum as well after as before maturity and both before and after default and all other amounts payable by the Chargor hereunder.

(SCHEDULE FOR COMMERCIAL / FARM / RESIDENTIAL / CONSTRUCTION MORTGAGES)

SCHEDULE "B"

ADDITIONAL PROVISIONS


RECEIVER

Notwithstanding anything herein contained it is declared and agreed that at any time and from time to time when there shall be default under the provisions of these presents the chargee may at such time and from time to time and with or without entry into possession of the charged premises or any part thereof by writing under its corporate seal appoint a receiver of the charged premises or any part thereof and of the rents and profits thereof and with or without security and may from time to time by similar writing remove any receiver and appoint another in his stead and that, in making any such appointment or removal, the chargee shall be deemed to be acting as the agent or attorney for the chargor. Upon the appointment of any such receiver or receivers from time to time the following provisions shall apply:

1. That the statutory declaration of an officer of the chargee as to default under the provisions of these presents shall be conclusive evidence thereof.
2. That every such receiver shall be the irrevocable agent or attorney of the chargor for the collection of all rents falling due in respect of the charged premises or any part thereof whether in respect of any tenancies created in priority to these presents or subsequent thereto;
3. That every such receiver may, in the discretion of the chargee and by writing under its corporate seal, be vested with all or any of the powers and discretions of the chargee;
4. That the chargee may from time to time by such writing fix the remuneration of every such receiver who shall be entitled to deduct the same out of the charged premises or the proceeds thereof;
5. That every such receiver shall, so far as concerns responsibility for his acts or omissions, be deemed the agent or attorney of the chargor and in no event the agent of the chargee;
6. That the appointment of every such receiver by the chargee shall not incur or create any liability on the part of the chargee to the receiver in any respect and such appointment or anything which may be done by any such receiver or the removal of any such receiver or the termination of any such receivership shall not have the effect of constituting the chargee a chargee in possession in respect of the charged premises or any part thereof;
7. That every such receiver shall from time to time have the power to rent any portion of the demised premises which may become vacant for such term and subject to such provisions as he may deem advisable or expedient and in so doing every such receiver shall act as the attorney or agent of the chargor and he shall have authority to execute under seal any lease of any such premises in the name of and on behalf of the chargor and the chargor undertakes to ratify and confirm whatever any such receiver may do in the premises;
8. That every such receiver shall have full power to take all steps he deems appropriate to complete any unfinished construction upon the charged premises with the intent that the charged premises and the buildings thereof when so completed shall be the complete structure as represented by the chargor to the chargee for the purpose of obtaining this charge loan;
9. That every such receiver shall have full power to manage, operate, amend, repair, alter or extend the charged premises or any part thereof in the name of the chargor for the purpose of securing the payment of rental from the charged premises or any part thereof;
10. That no such receiver be liable to the chargor to account for monies or damages other than cash received by him in respect of the charged premises or any part thereof and out of such cash so received every such receiver shall in the following order pay:
  - (a) His remuneration aforesaid;
  - (b) All payments made or incurred by him in connection with the management, operation, amendment, repair, alteration or extension of the charged premises or any part thereof; or completion of any unfinished construction upon same;
  - (c) In payment of interest, principal and other money which may, from time to time, be or become charged upon the charged premises in priority to these presents, and all taxes, insurance premiums and every proper expenditure made or incurred by him in respect to the charged premises or any part thereof;
  - (d) The chargee in payment of all interest due or falling due under this charge and the balance to be applied upon principal due and payable and secured by this charge; and
  - (e) Thereafter any surplus remaining in the hands of every such receiver to the chargor, its successors and assigns.



**This is Exhibit "F" referred to in the Affidavit of Bernhard  
Huber sworn the 30<sup>th</sup> of September, 2019**

  
\_\_\_\_\_  
*Commissioner for Taking Affidavits (or as may be)*

**Allison Eluned Van Rooijen, a Commissioner,  
etc., Province of Ontario, for  
Meridian Credit Union Limited, Motus Bank  
and Meridian OneCap Credit Corporation.  
Expires May 8, 2021.**



## Guarantee and Postponement of Claim

To: MERIDIAN CREDIT UNION LIMITED:  
(hereinafter called the "Credit Union")

For Valuable Consideration Dimitrios (Jim) Neilas and Ioannis Neilas  
(hereinafter called the "Guarantor")

hereby guarantees payment of the liabilities of ADELAIDE STREET LOFTS INC.  
(hereinafter referred to as the "Member")

to the Credit Union and agrees to the following Terms and Conditions:

1. If more than one Guarantor executes this instrument the provisions hereof shall be read with all necessary grammatical changes, each reference to the Guarantor shall include each and every one of the undersigned severally and this Guarantee and all covenants and agreements herein contained shall be deemed to be joint and several.
2. The Credit Union may grant extensions of time or other indulgences, take and give up securities, accept compositions, grant releases and discharges and otherwise deal with the Member, with other parties and with securities as the Credit Union may see fit. The Credit Union may apply all moneys received from the Member or others, or from securities, upon such part of the Member's liability as it may think best, without prejudice to and without in any way limiting or lessening the liability of the Guarantor under this Guarantee.
3. Neither the failure of the Credit Union to take any security that the parties hereto contemplated it would take nor the failure of the Credit Union to perfect any security taken shall prejudice, or in any way limit or lessen the liability of the Guarantor under, this Guarantee.
4. No loss of or in respect of securities received by the Credit Union from the Member or any other person, whether occasioned through the fault of the Credit Union or otherwise, shall discharge pro tanto, limit or lessen the liability of the Guarantor under this Guarantee.
5. This Guarantee shall be binding on the Guarantor as a continuing guarantee and shall cover any present liabilities of the Member to the Credit Union, all liabilities incurred after the date hereof whether from dealings between the Credit Union and the Member or from any other dealings by which the Member may become in any manner whatever liable to the Credit Union and any ultimate balance due or remaining due to the Credit Union. The Guarantor, or the executors, administrators or successors of the Guarantor, may determine further liability under this Guarantee by written notice to the Credit Union; and this Guarantee shall not apply to any liabilities of the Member to the Credit Union incurred after the expiration of thirty days from the date of receipt of such notice by the Credit Union.
6. Any change in the name of the Member, or any change in the membership of the Member's firm, shall not affect or in any way limit or lessen the liability of the Guarantor hereunder. This Guarantee shall also extend to any person, firm or corporation acquiring or from time to time carrying on the business of the Member.
7. All moneys, advances, renewals and credits in fact borrowed or obtained from the Credit Union shall be deemed to form part of the liabilities hereby guaranteed notwithstanding any incapacity, disability or lack of limitation of status or of power of the Member or of the directors, partners or agents thereof, notwithstanding that the Member may not be a legal entity, and notwithstanding any irregularity, defect or informality in the borrowing or obtaining of such moneys, advances, renewals or credits. Any amount which may not be recoverable from the Guarantor on the basis of a guarantee shall be recoverable from the Guarantor as principal debtor in respect thereof and shall be paid to the Credit Union after demand therefor has hereinafter provided.
8. Any account settled or stated by or between the Credit Union and the Member shall be accepted by the Guarantor as conclusive evidence that the balance or amount thereby appearing due by the Member to the Credit Union is so due.
9. Should the Credit Union receive from the Guarantor any payment or payments, either in full or on account of the liability under this Guarantee, the Guarantor shall not be entitled to claim repayment against the Member or the Member's estate until the Credit Union's claims against the Member have been paid in full. In case of any liquidation, winding up or bankruptcy of the Member, or in the event that the Member shall make a sale of any of the Member's assets within the bulk transfer provisions of any applicable legislation, or in the case of any composition with creditors or scheme of arrangement, the Credit Union shall have the right to rank for its full claim and receive all dividends or other payments in respect thereof until its claim has been paid in full and the Guarantor shall continue liable up to the amount guaranteed, less any payments made by the Guarantor, for any balance which may be owing to the Credit Union by the Member. In the event of the valuation by the Credit Union of any of its securities and/or the retention thereof the Credit Union, such valuation and/or retention shall not, as between the Credit Union and the Guarantor, be considered as a purchase of such securities, or as payment, satisfaction or reduction of the Member's liabilities to the Credit Union, or any part thereof.
10. The Guarantor shall make payment to the Credit Union of the amount of the liability of the Member forthwith after demand therefor is made in writing. Such demand shall be deemed to have been made when an envelope containing the demand and addressed to the Guarantor at the last address of the Guarantor known to the Credit Union is deposited, postage prepaid and registered, in the Post Office. The liability of the Guarantor shall bear interest from the date of such demand at the rate or rates then applicable to the liabilities of the Member to the Credit Union. Furthermore, when demand for payment has been made, the Guarantor shall also be liable to the Credit Union for all legal costs (on a solicitor and own client basis) incurred by or on behalf of the Credit Union resulting from any action instituted on the basis of this Guarantee.
11. For the further security of the Credit Union the Guarantor agrees that:
  - (a) Any debts and claims against the Member now or at any time hereafter held by the Guarantor are and shall be held by the Guarantor for the further security of the Credit Union, and as between the Guarantor and the Credit Union are hereby postponed to the debts and claims against the Member now or at any time hereafter held by the Credit Union. Any such debts and claims of the Guarantor shall be held in trust for the Credit Union, shall be collected, enforced or proved subject to and for the purposes of this agreement and any moneys received by the Guarantor in respect thereof shall be paid over to the Credit Union on account of the Credit Union's debts and claims. No such debt or claim of the Guarantor against the Member shall be released or withdrawn by the Guarantor unless the Credit Union's written consent to such release or withdrawal is first obtained. The Guarantor shall not permit the prescription of any such debt or claim by any statute of limitations, assign any such debt or claim to any person other than the Credit Union, or ask for or obtain any security, negotiable paper or other evidence of any such debt or claim except for the purpose of delivering the same to the Credit Union. The Credit Union may at any time give notice to the Member requiring the Member to pay to the Credit Union all or any of such debts or claims of the

Guarantor against the Member, and in such event such debts and claims are hereby assigned and transferred to the Credit Union. In the event of the liquidation, winding up or bankruptcy of the Member, or in the event that the Member shall make a sale of any of the Member's assets within the bulk transfer provisions of any applicable legislation, or in the event of any composition with creditors or scheme of arrangement, any and all dividends or other moneys which may be due or payable to the Guarantor in respect of the debts or claims of the Guarantor against the Member are hereby assigned and transferred to and shall be due and be paid to the Credit Union, and for such payment to the Credit Union this shall be a sufficient warrant and authority to any person making the same. The Guarantor shall, at any time and from time to time at the request of and as required by the Credit Union, make execute and deliver all statements of claims, proofs of claim, assignments and other documents and do all matters and things which may be necessary or advisable for the protection of the rights of the Credit Union under and by virtue of this instrument.

(b) The provisions of this clause are independent of and severable from the provisions of clauses 1-10 of this Guarantee and Postponement of Claim and shall remain in force whether or not the Guarantor is liable for any amount under clauses 1-10 and clause 18 and whether or not the Credit Union has received the notice referred to in paragraph 5. The provisions of this clause may, however, be terminated by the Guarantor, by written notice given to the Credit Union at any time when the Guarantor is not liable for any amount under clauses 1-10 and clause 18 by reason of the fact that the Member is not indebted or liable to the Credit Union.

12. The Credit Union shall not be bound to exhaust its recourse against the Member, other parties or the securities it may hold before being entitled to payment from the Guarantor under this Guarantee.
13. This Guarantee is given in addition to and without prejudice to any securities of any kind, including any guarantees and postponement agreements, whether or not in the same form as this instrument, now or hereafter held by the Credit Union.
14. There are no representations, collateral agreements or conditions with respect to this instrument, or affecting the Guarantor's liability hereunder, other than those contained herein.
15. The terms and conditions set out in this Guarantee shall not merge with any judgment which may be obtained against the Guarantor or the Member.
16. This instrument shall be construed in accordance with the laws of the Province of Ontario. The Guarantor agrees that any legal suit, action or proceeding arising out of or relating to this instrument may be instituted in the courts of Ontario, and the Guarantor hereby agrees to accept and submit to the jurisdiction of the said courts, to acknowledge their competence, and to be bound by any judgement thereof. Nothing herein shall limit the Credit Union's right to bring proceedings against the Guarantor elsewhere.
17. This Guarantee and Postponement of Claim shall extend to and enure to the benefit of the successors and assigns of the Credit Union, and shall be binding upon the Guarantor and the heirs, executors and administrators or the successors and assigns of the Guarantor.
18. WITH RESPECT TO THE LIABILITIES OF ADELAIDE STREET LOFTS INC.

The liability of the Guarantor hereunder shall be limited to the sum of \$ 5,000,000.00 and shall bear interest from the date of demand for payment as heretofore provided.

Signed, Sealed and Delivered this 14<sup>th</sup> day of May, 2018 at Toronto, Ontario

To be completed by individuals, partners or sole proprietors	X Signature of Witness	X Signature of Guarantor
	X Signature of Witness	X Signature of Guarantor
To be completed by incorporated businesses	Per X Authorized Signing Official	Title
	Per X Authorized Signing Official	Title

**This is Exhibit "G" referred to in the Affidavit of Bernhard  
Huber sworn the 30<sup>th</sup> of September, 2019**

  
\_\_\_\_\_  
*Commissioner for Taking Affidavits (or as may be)*

**Alison Eluned Van Rooijen, a Commissioner,  
etc., Province of Ontario, for  
Meridian Credit Union Limited, Motus Bank  
and Meridian OneCap Credit Corporation.  
Expires May 8, 2021.**



## Guarantee and Postponement of Claim

To: MERIDIAN CREDIT UNION LIMITED:  
(hereinafter called the "Credit Union")

For Valuable Consideration NEILAS INC.  
(hereinafter called the "Guarantor")

hereby guarantees payment of the liabilities of ADELAIDE STREET LOFTS INC.  
(hereinafter referred to as the "Member")

to the Credit Union and agrees to the following Terms and Conditions:

1. If more than one Guarantor executes this instrument the provisions hereof shall be read with all necessary grammatical changes, each reference to the Guarantor shall include each and every one of the undersigned severally and this Guarantee and all covenants and agreements herein contained shall be deemed to be joint and several.
2. The Credit Union may grant extensions of time or other indulgences, take and give up securities, accept compositions, grant releases and discharges and otherwise deal with the Member, with other parties and with securities as the Credit Union may see fit. The Credit Union may apply all moneys received from the Member or others, or from securities, upon such part of the Member's liability as it may think best, without prejudice to and without in any way limiting or lessening the liability of the Guarantor under this Guarantee.
3. Neither the failure of the Credit Union to take any security that the parties hereto contemplated it would take nor the failure of the Credit Union to perfect any security taken shall prejudice, or in any way limit or lessen the liability of the Guarantor under, this Guarantee.
4. No loss of or in respect of securities received by the Credit Union from the Member or any other person, whether occasioned through the fault of the Credit Union or otherwise, shall discharge *pro tanto*, limit or lessen the liability of the Guarantor under this Guarantee.
5. This Guarantee shall be binding on the Guarantor as a continuing guarantee and shall cover any present liabilities of the Member to the Credit Union, all liabilities incurred after the date hereof whether from dealings between the Credit Union and the Member or from any other dealings by which the Member may become in any manner whatever liable to the Credit Union and any ultimate balance due or remaining due to the Credit Union. The Guarantor, or the executors, administrators or successors of the Guarantor, may determine further liability under this Guarantee by written notice to the Credit Union; and this Guarantee shall not apply to any liabilities of the Member to the Credit Union incurred after the expiration of thirty days from the date of receipt of such notice by the Credit Union.
6. Any change in the name of the Member, or any change in the membership of the Member's firm, shall not affect or in any way limit or lessen the liability of the Guarantor hereunder. This Guarantee shall also extend to any person, firm or corporation acquiring or from time to time carrying on the business of the Member.
7. All moneys, advances, renewals and credits in fact borrowed or obtained from the Credit Union shall be deemed to form part of the liabilities hereby guaranteed notwithstanding any incapacity, disability or lack or limitation of status or of power of the Member or of the directors, partners or agents thereof, notwithstanding that the Member may not be a legal entity, and notwithstanding any irregularity, defect or informality in the borrowing or obtaining of such moneys, advances, renewals or credits. Any amount which may not be recoverable from the Guarantor on the basis of a guarantee shall be recoverable from the Guarantor as principal debtor in respect thereof and shall be paid to the Credit Union after demand therefor has hereinafter provided.
8. Any account settled or stated by or between the Credit Union and the Member shall be accepted by the Guarantor as conclusive evidence that the balance or amount thereby appearing due by the Member to the Credit Union is so due.
9. Should the Credit Union receive from the Guarantor any payment or payments, either in full or on account of the liability under this Guarantee, the Guarantor shall not be entitled to claim repayment against the Member or the Member's estate until the Credit Union's claims against the Member have been paid in full. In case of any liquidation, winding up or bankruptcy of the Member, or in the event that the Member shall make a sale of any of the Member's assets within the bulk transfer provisions of any applicable legislation, or in the case of any composition with creditors or scheme of arrangement, the Credit Union shall have the right to rank for its full claim and receive all dividends or other payments in respect thereof until its claim has been paid in full and the Guarantor shall continue liable up to the amount guaranteed, less any payments made by the Guarantor, for any balance which may be owing to the Credit Union by the Member. In the event of the valuation by the Credit Union of any of its securities and/or the retention thereof the Credit Union, such valuation and/or retention shall not, as between the Credit Union and the Guarantor, be considered as a purchase of such securities, or as payment, satisfaction or reduction of the Member's liabilities to the Credit Union, or any part thereof.
10. The Guarantor shall make payment to the Credit Union of the amount of the liability of the Member forthwith after demand therefor is made in writing. Such demand shall be deemed to have been made when an envelope containing the demand and addressed to the Guarantor at the last address of the Guarantor known to the Credit Union is deposited, postage prepaid and registered, in the Post Office. The liability of the Guarantor shall bear interest from the date of such demand at the rate or rates then applicable to the liabilities of the Member to the Credit Union. Furthermore, when demand for payment has been made, the Guarantor shall also be liable to the Credit Union for all legal costs (on a solicitor and own client basis) incurred by or on behalf of the Credit Union resulting from any action instituted on the basis of this Guarantee.
11. For the further security of the Credit Union the Guarantor agrees that:
  - (a) Any debts and claims against the Member now or at any time hereafter held by the Guarantor are and shall be held by the Guarantor for the further security of the Credit Union, and as between the Guarantor and the Credit Union are hereby postponed to the debts and claims against the Member now or at any time hereafter held by the Credit Union. Any such debts and claims of the Guarantor shall be held in trust for the Credit Union, shall be collected, enforced or proved subject to and for the purposes of this agreement and any moneys received by the Guarantor in respect thereof shall be paid over to the Credit Union on account of the Credit Union's debts and claims. No such debt or claim of the Guarantor against the Member shall be released or withdrawn by the Guarantor unless the Credit Union's written consent to such release or withdrawal is first obtained. The Guarantor shall not permit the prescription of any such debt or claim by any statute of limitations, assign any such debt or claim to any person other than the Credit Union, or ask for or obtain any security, negotiable paper or other evidence of any such debt or claim except for the purpose of delivering the same to the Credit Union. The Credit Union may at any time give notice to the Member requiring the Member to pay to the Credit Union all or any of such debts or claims of the

Guarantor against the Member, and in such event such debts and claims are hereby assigned and transferred to the Credit Union. In the event of the liquidation, winding up or bankruptcy of the Member, or in the event that the Member shall make a sale of any of the Member's assets within the bulk transfer provisions of any applicable legislation, or in the event of any composition with creditors or scheme of arrangement, any and all dividends or other moneys which may be due or payable to the Guarantor in respect of the debts or claims of the Guarantor against the Member are hereby assigned and transferred to and shall be due and be paid to the Credit Union, and for such payment to the Credit Union this shall be a sufficient warrant and authority to any person making the same. The Guarantor shall, at any time and from time to time at the request of and as required by the Credit Union, make execute and deliver all statements of claims, proofs of claim, assignments and other documents and do all matters and things which may be necessary or advisable for the protection of the rights of the Credit Union under and by virtue of this instrument.

(b) The provisions of this clause are independent of and severable from the provisions of clauses 1-10 of this Guarantee and Postponement of Claim and shall remain in force whether or not the Guarantor is liable for any amount under clauses 1-10 and clause 18 and whether or not the Credit Union has received the notice referred to in paragraph 5. The provisions of this clause may, however, be terminated by the Guarantor, by written notice given to the Credit Union at any time when the Guarantor is not liable for any amount under clauses 1-10 and clause 18 by reason of the fact that the Member is not indebted or liable to the Credit Union.

12. The Credit Union shall not be bound to exhaust its recourse against the Member, other parties or the securities it may hold before being entitled to payment from the Guarantor under this Guarantee.
13. This Guarantee is given in addition to and without prejudice to any securities of any kind, including any guarantees and postponement agreements, whether or not in the same form as this instrument, now or hereafter held by the Credit Union.
14. There are no representations, collateral agreements or conditions with respect to this instrument, or affecting the Guarantor's liability hereunder, other than those contained herein.
15. The terms and conditions set out in this Guarantee shall not merge with any judgment which may be obtained against the Guarantor or the Member.
16. This instrument shall be construed in accordance with the laws of the Province of Ontario. The Guarantor agrees that any legal suit, action or proceeding arising out of or relating to this instrument may be instituted in the courts of Ontario, and the Guarantor hereby agrees to accept and submit to the jurisdiction of the said courts, to acknowledge their competence, and to be bound by any judgement thereof. Nothing herein shall limit the Credit Union's right to bring proceedings against the Guarantor elsewhere.
17. This Guarantee and Postponement of Claim shall extend to and enure to the benefit of the successors and assigns of the Credit Union, and shall be binding upon the Guarantor and the heirs, executors and administrators or the successors and assigns of the Guarantor.
18. WITH RESPECT TO THE LIABILITIES OF ADELAIDE STREET LOFTS INC.

The liability of the Guarantor hereunder shall be unlimited and shall bear interest from the date of demand for payment as heretofore provided.

Signed, Sealed and Delivered this 14<sup>th</sup> day of May, 2013 at Toronto, Ontario

To be completed by individuals, partners or sole proprietors	X Signature of Witness	X Signature of Guarantor
	X Signature of Witness	X Signature of Guarantor
To be completed by incorporated businesses	NEILAS INC. Per <u>X</u> Authorized Signing Official	President Title
	Per <u>X</u> Authorized Signing Official	Authorized Signing Officer Title

**This is Exhibit "H" referred to in the Affidavit of Bernhard  
Huber sworn the 30<sup>th</sup> of September, 2019**



---

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

**Alison Eluned Van Rooljen, a Commissioner,  
etc., Province of Ontario, for  
Meridian Credit Union Limited, Motus Bank  
and Meridian OneCap Credit Corporation.  
Expires May 8, 2021.**

RUN NUMBER : 266  
RUN DATE : 2019/09/23  
ID : 20190923095512.92

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 1  
( 4738)

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE  
OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

TYPE OF SEARCH : BUSINESS DEBTOR

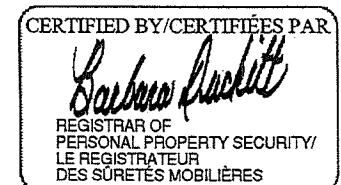
SEARCH CONDUCTED ON : ADELAIDE STREET LOFTS INC.

FILE CURRENCY : 22SEP 2019

ENQUIRY NUMBER 20190923095512.92 CONTAINS 9 PAGE(S), 3 FAMILY(IES).

THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS WHICH SET OUT A BUSINESS DEBTOR NAME  
WHICH IS SIMILAR TO THE NAME IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE OTHER  
SIMILAR BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

AIRD & BERLIS LLP  
ATTN: SHANNON MORRIS  
HOLD FOR PICK UP  
TORONTO ON M5J2T9



(crj5 06/2019)

CONTINUED... 2



RUN NUMBER : 266  
RUN DATE : 2019/09/23  
ID : 20190923095512.92

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 2  
( 4739)

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : ADELAIDE STREET LOFTS INC.  
FILE CURRENCY : 22SEP 2019

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

FILE NUMBER  
738577548

00

CAUTION FILING	PAGE NO.	TOTAL OF PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	REGISTRATION PERIOD
	001	002		20180424 1354 1862 1257	P PPSA	5

01

DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME
---------------	------------------	---------	---------

02

DEBTOR NAME BUSINESS NAME ADELAIDE STREET LOFTS INC.

03

ONTARIO CORPORATION NO. ON M5H 1W7

04

ADDRESS 263 ADELAIDE STREET WEST, SUITE 503 TORONTO

05

DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME
---------------	------------------	---------	---------

06

DEBTOR NAME BUSINESS NAME NEILAS INC.

07

ADDRESS 263 ADELAIDE STREET WEST, SUITE 503 TORONTO

08

SECURED PARTY / LIEN CLAIMANT MERIDIAN CREDIT UNION LIMITED

09

ADDRESS 75 CORPORATE PARK DRIVE ST. CATHARINES ON L2S 3W3

COLLATERAL CLASSIFICATION		MOTOR VEHICLE	AMOUNT	DATE OF	NO. FIXED				
CONSUMER	GOODS	INVENTORY	EQUIPMENT	ACCOUNTS	OTHER	INCLUDED	MATURITY	OR	MATURITY DATE
	X	X	X	X	X	X			

10

YEAR	MAKE	MODEL	V-I-N.
------	------	-------	--------

11

MOTOR VEHICLE

13

GENERAL COLLATERAL DESCRIPTION ALL PRESENT AND AFTER ACQUIRED PERSONAL PROPERTY USED IN CONNECTION WITH, SITUATE AT, OR ARISING FROM THE OWNERSHIP, DEVELOPMENT, USE OR DISPOSITION OF, THE LANDS AND PREMISES KNOWN AS 263 ADELAIDE STREET

16

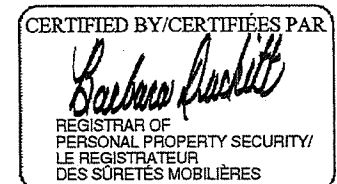
REGISTERING AGENT MINDEN GROSS LLP (SIP/MK 4108456)

17

ADDRESS 2200-145 KING STREET WEST TORONTO ON M5H 4G2

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED... 3



(crl1fu 06/2019)



RUN NUMBER : 266  
RUN DATE : 2019/09/23  
ID : 20190923095512.92

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 3  
( 4740)

TYPE OF SEARCH BUSINESS DEBTOR  
SEARCH CONDUCTED ON ADELAIDE STREET LOFTS INC.  
FILE CURRENCY 22SEP 2019

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

FILE NUMBER  
738577548

00

CAUTION FILING	PAGE NO.	TOTAL OF PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	REGISTRATION PERIOD
	002	002		20180424 1354 1862 1257		

01

DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

02

DEBTOR NAME

BUSINESS NAME

03

ONTARIO CORPORATION NO.

04

ADDRESS

05

DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

06

DEBTOR NAME

BUSINESS NAME

07

ADDRESS

08

SECURED PARTY / LIEN CLAIMANT

09

ADDRESS

COLLATERAL CLASSIFICATION

CONSUMER GOODS	INVENTORY	EQUIPMENT	ACCOUNTS	OTHER	MOTOR VEHICLE INCLUDED	AMOUNT	DATE OF MATURITY	OR	NO FIXED MATURITY DATE
----------------	-----------	-----------	----------	-------	------------------------	--------	------------------	----	------------------------

10

YEAR MAKE MODEL VEHICL

11

MOTOR VEHICLE

13

GENERAL

WEST, TORONTO, ONTARIO (SIP/MK 4108456)

14

COLLATERAL

15

DESCRIPTION

16

REGISTERING

17

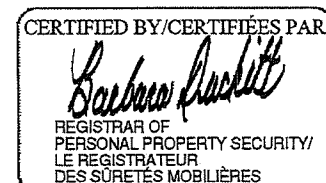
AGENT

ADDRESS

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED...

4



(crj1fu 06/2019)

RUN NUMBER : 266  
RUN DATE : 2019/09/23  
ID : 20190923095512.92

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 4  
( 4741)

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : ADELAIDE STREET LOFTS INC.  
FILE CURRENCY : 22SEP 2019

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CAUTION KILLING	PAGE NO. OF	TOTAL PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER
01	001	001		20180514 1058 1862 3038	
21	RECORD REFERENCED	FILE NUMBER	738577548		
22	PAGE AMENDED	NO SPECIFIC PAGE AMENDED	CHANGE REQUIRED A AMENDMENT	RENEWAL YEARS	CORRECT PERIOD
23	REFERENCE	FIRST GIVEN NAME	INITIAL	SURNAME	
24	DEBTOR/ TRANSFEROR	BUSINESS NAME	ADELAIDE STREET LOFTS INC.		
25	OTHER CHANGE				
26	REASON/ DESCRIPTION	TO DELETE THE GENERAL COLLATERAL DESCRIPTION ON THE ORIGINAL REGISTRATION.			
27					
28					
02/	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME	
05	DEBTOR/ TRANSFeree	BUSINESS NAME			
03/					
06					ONTARIO CORPORATION NO.
04/07	ADDRESS				
29	ASSIGNOR	SECURED PARTY/LIEN CLAIMANT/ASSIGNEE			
08					
09	ADDRESS				
	COLLATERAL CLASSIFICATION				
	CONSUMER				
10	GOODS	INVENTORY	EQUIPMENT	ACCOUNTS OTHER	MOTOR VEHICLE
					INCLUDED
					AMOUNT
					DATE OF MATURITY OR
					NO FIXED MATURITY DATE
	YEAR	MAKE	MODEL	V. I. N.	
11	MOTOR				
12	VEHICLE				
13	GENERAL				
14	COLLATERAL				
15	DESCRIPTION				
16	REGISTERING AGENT OR	MINDEN GROSS LLP (SP/MK 4108456)			
17	SECURED PARTY/ LIEN CLAIMANT	ADDRESS	2200-145 KING STREET WEST	TORONTO	ON M5H 4G2

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED... 5

CERTIFIED BY/CERTIFIÉES PAR  
*Barbara Duckitt*  
REGISTRAR OF  
PERSONAL PROPERTY SECURITY/  
LE REGISTRATEUR  
DES SÛRETÉS MOBILIÈRES

(crj2fu 06/2019)

Ontario 

RUN NUMBER : 266  
RUN DATE : 2019/09/23  
ID : 20190923095512.92

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 5  
( 4742)

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : ADELAIDE STREET LOFTS INC.  
FILE CURRENCY : 22SEP 2019

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CAUTION FILING	PAGE NO. OF	TOTAL PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER
01	001	001		20180515 1233 1862 3118	
21	RECORD FILE NUMBER	738577548			
22	PAGE AMENDED	NO SPECIFIC PAGE AMENDED	CHANGE REQUIRED	RENEWAL YEARS	CORRECT PERIOD
		X	A AMENDMENT		
23	REFERENCE	FIRST GIVEN NAME	INITIAL	SURNAME	
24	DEBTOR/ TRANSFEROR	BUSINESS NAME	ADELAIDE STREET LOFTS INC.		
25	OTHER CHANGE				
26	REASON/	TO AMEND THE GENERAL COLLATERAL DESCRIPTION ON THE ORIGINAL			
27	DESCRIPTION	REGISTRATION.			
28					
02/	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME	
05	DEBTOR/				
03/	TRANSFeree	BUSINESS NAME			
06					
04/07	ADDRESS	ONTARIO CORPORATION NO.			
29	ASSIGNOR				
08	SECURED PARTY/LIEN CLAIMANT/ASSIGNEE				
09	ADDRESS				
	COLLATERAL CLASSIFICATION				
	CONSUMER	MOTOR VEHICLE			
10	GOODS	INVENTORY	EQUIPMENT	ACCOUNTS	OTHER
	X	X	X	X	X
	YEAR	MAKE	MODEL	V I N	
11	MOTOR				
12	VEHICLE				
13	GENERAL	NOTICE - SECURITY AGREEMENT CONTAINS COVENANT BY DEBTOR NOT TO GRANT			
14	COLLATERAL	SECURITY INTERESTS IN OR TRANSFER TO THIRD PARTIES THE COLLATERAL			
15	DESCRIPTION	WITHOUT THE CONSENT OF THE SECURED PARTY.			
16	REGISTERING AGENT OR	MINDEN GROSS LLP (SP/MK 4108456)			
17	SECURED PARTY/	ADDRESS	TORONTO	ON	M5H 4G2
	LIEN CLAIMANT	2200-145 KING STREET WEST			

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED... 6

CERTIFIED BY/CERTIFIÉES PAR  
*Sabrina Pochitt*  
REGISTRAR OF  
PERSONAL PROPERTY SECURITY/  
LE REGISTRATEUR  
DES SÛRETÉS MOBILIÈRES

(crj2fu 06/2019)



RUN NUMBER : 266  
 RUN DATE : 2019/09/23  
 ID : 20190923095512.92

PROVINCE OF ONTARIO  
 MINISTRY OF GOVERNMENT SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE  
 CERTIFICATE

REPORT : PSSR060  
 PAGE : 6  
 ( 4743)

TYPE OF SEARCH : BUSINESS DEBTOR  
 SEARCH CONDUCTED ON : ADELAIDE STREET LOFTS INC.  
 FILE CURRENCY : 22SEP 2019

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CAUTION FILING	PAGE NO. OF	TOTAL PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	
01	001	1		20190912 1425 1793 9978		
21	RECORD REFERENCED	FILE NUMBER	738577548			
22		PAGE AMENDED	NO SPECIFIC PAGE AMENDED	CHANGE REQUIRED A AMENDMENT	RENEWAL YEARS	CORRECT PERIOD
23	REFERENCE		FIRST GIVEN NAME	INITIAL	SURNAME	
24	DEBTOR/ TRANSFEROR	BUSINESS NAME	ADELAIDE STREET LOFTS INC.			
25	OTHER CHANGE					
26	REASON/ DESCRIPTION	AMENDED TO (1) AMEND THE SECOND DEBTOR'S NAME FROM "NEILLAS INC." TO "263 HOLDINGS INC.", AND (2) TO REMOVE THE GENERAL COLLATERAL DESCRIPTION IN REGISTRATION NO. 20180515 1233 1862 3118				
02/	DATE OF BIRTH		FIRST GIVEN NAME	INITIAL	SURNAME	
05	DEBTOR/ TRANSFEREE	BUSINESS NAME	263 HOLDINGS INC.			
06					ONTARIO CORPORATION NO.	
04/07	ADDRESS	263 ADELAIDE STREET WEST, #503		TORONTO	ON	M5H1Y2
29	ASSIGNOR	SECURED PARTY/LIEN CLAIMANT/ASSIGNEE				
08						
09		ADDRESS				
10		COLLATERAL CLASSIFICATION				
		CONSUMER GOODS	MOTOR VEHICLE	DATE OF MATURITY	OR	NO FIXED MATURITY DATE
		INVENTORY	EQUIPMENT	AMOUNT		
		ACCOUNTS	OTHER			
			INCLUDED			
11	MOTOR VEHICLE	YEAR	MAKE	MODEL	V. I. N.	
12	GENERAL					
13	COLLATERAL DESCRIPTION					
14	REGISTERING AGENT OR SECURED PARTY/ LIEN CLAIMANT	ADDRESS	AIRD & BERLIS LLP 181 BAY STREET, SUITE 1800, BOX# 754			TORONTO
15					ON	M5J2T9

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED... 7

CERTIFIED BY/CERTIFIÉES PAR  
*Barbara Duckitt*  
 REGISTRAR OF  
 PERSONAL PROPERTY SECURITY/  
 LE REGISTRATEUR  
 DES SÛRETÉS MOBILIÈRES

(crj2fu 06/2019)



RUN NUMBER : 266  
RUN DATE : 2019/09/23  
ID : 20190923095512.92

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 7  
( 4744)

TYPE OF SEARCH BUSINESS DEBTOR  
SEARCH CONDUCTED ON ADELAIDE STREET LOFTS INC.  
FILE CURRENCY 22SEP 2019

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

FILE NUMBER  
693816777

CAUTION FILING	PAGE NO.	TOTAL OF PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	REGISTRATION PERIOD
	001	001		20140214 1548 1862 5597	P PPSA	10

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

03 NAME BUSINESS NAME ADELAIDE STREET LOFTS INC.

04 ADDRESS 263 ADELAIDE STREET WEST, SUITE 350, TORONTO ONTARIO CORPORATION NO. ON M5H 1Y2

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

06 NAME BUSINESS NAME

07 ADDRESS ONTARIO CORPORATION NO.

08 SECURED PARTY / HI-RISE CAPITAL LTD.  
LIEN CLAIMANT

09 ADDRESS 200 ADELAIDE STREET WEST, SUITE 401 TORONTO ON M5H 1W7

COLLATERAL CLASSIFICATION		MOTOR VEHICLE		AMOUNT	DATE OF	NO. FIXED
GOODS	INVENTORY	EQUIPMENT	ACCOUNTS OTHER	INCLUDED	MATURITY OF	MATURITY DATE
X	X	X	X	X		

11 MOTOR YEAR MAKE MODEL V.I.N.  
12 VEHICLE

13 GENERAL GENERAL SECURITY AGREEMENT RESPECTING THE PROPERTY MUNICIPALLY KNOWN  
14 COLLATERAL AS 263 ADELAIDE STREET WEST, TORONTO, ONTARIO M5H 1Y2  
15 DESCRIPTION

16 REGISTERING GARFINKLE, BIDERMAN LLP (BP-9230-002)  
17 AGENT ADDRESS 1 ADELAIDE ST. E., SUITE 801 TORONTO ON M5C 2V9

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY \*\*\*

CONTINUED... 8

CERTIFIED BY/CERTIFIÉES PAR  
*Barbara Duckitt*  
REGISTRAR OF  
PERSONAL PROPERTY SECURITY/  
LE REGISTRATEUR  
DES SÛRETÉS MOBILIÈRES

(c/11fu 06/2019)



RUN NUMBER : 266  
RUN DATE : 2019/09/23  
ID : 20190923095512.92

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 8  
( 4745)

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : ADELAIDE STREET LOFTS INC.  
FILE CURRENCY : 22SEP 2019

FORM 1G FINANCING STATEMENT / CLAIM FOR LIEN

FILE NUMBER  
693816786

CADATION FILING	PAGE NO.	TOTAL OF PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	REGISTRATION PERIOD
	001	001		20140214 1548 1862 5598	P PPSA	10

DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

DEBTOR NAME BUSINESS NAME ADELAIDE STREET LOFTS INC.

ADDRESS 263 ADELAIDE STREET WEST, SUITE 350, TORONTO

ONTARIO CORPORATION NO.  
ON M5H 1Y2

DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

DEBTOR NAME BUSINESS NAME

ADDRESS

ONTARIO CORPORATION NO.

SECURED PARTY / LIEN CLAIMANT HI-RISE CAPITAL LTD.

ADDRESS 200 ADELAIDE STREET WEST, SUITE 401 TORONTO

ON M5H 1W7

COLLATERAL CLASSIFICATION		MOTOR VEHICLE		AMOUNT	DATE OF		NO. FIXED
GOODS	INVENTORY	EQUIPMENT	ACCOUNTS OTHER	INCLUDED	MATURITY	OR	MATURITY DATE

MOTOR YEAR MAKE MODEL V.I.N.

VEHICLE

GENERAL GENERAL ASSIGNMENT OF RENTS RESPECTING THE PROPERTY MUNICIPALLY KNOWN  
COLLATERAL AS 263 ADELAIDE STREET WEST, TORONTO, ONTARIO M5H 1Y2  
DESCRIPTION

REGISTERING AGENT GARFINKLE, BIDERMAN LLP (BP-9230-002)

ADDRESS 1 ADELAIDE ST. E., SUITE 801 TORONTO ON M5C 2V9

\*\*\* FOR FURTHER INFORMATION CONTACT THE SECURED PARTY \*\*\*

CONTINUED... 9

CERTIFIED BY/CERTIFIÉES PAR  
*Sabrina Auckitt*  
REGISTRAR OF  
PERSONAL PROPERTY SECURITY/  
LE REGISTRATEUR  
DES SÛRETÉS MOBILIÈRES

(ej1fu 06/2019)



RUN NUMBER : 266  
RUN DATE : 2019/09/23  
ID : 20190923095512.92

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

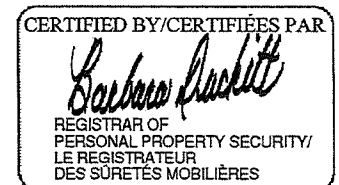
REPORT : PSSR060  
PAGE : 9  
( 4746)

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : ADELAIDE STREET LOFTS INC.  
FILE CURRENCY : 22SEP 2019

INFORMATION RELATING TO THE REGISTRATIONS LISTED BELOW IS ATTACHED HERETO.

FILE NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER
738577548	20180424 1354 1862 1257	20180514 1058 1862 3038	20180515 1233 1862 3118	20190912 1425 1793 9978
693816777	20140214 1548 1862 5597			
693816786	20140214 1548 1862 5598			


6 REGISTRATION(S) ARE REPORTED IN THIS ENQUIRY RESPONSE.



(crf5 06/2019)



**This is Exhibit "1" referred to in the Affidavit of Bernhard  
Huber sworn the 30<sup>th</sup> of September, 2019**

  
\_\_\_\_\_  
*Commissioner for Taking Affidavits (or as may be)*

**Allison Eluned Van Rooijen, a Commissioner,  
etc., Province of Ontario, for  
Meridian Credit Union Limited, Motus Bank  
and Meridian OneCap Credit Corporation.  
Expires May 8, 2021.**



ServiceOntario

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

LAND  
REGISTRY  
OFFICE #66

21411-0294 (LT)

PAGE 1 OF 3  
PREPARED FOR mcdonald  
ON 2019/09/06 AT 10:14:36

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

PROPERTY DESCRIPTION: PART BLK B PLAN 216-E PARTS 1 & 2 PLAN 66R29363; SUBJECT TO AN EASEMENT OVER PART 2 PLAN 66R29363 AS IN ES61538; TOGETHER WITH AN EASEMENT OVER PART 3 PLAN 66R29363 AS IN ES61223; CITY OF TORONTO

PROPERTY REMARKS: "FOR THE PURPOSE OF THE QUALIFIER THE DATE OF REGISTRATION OF ABSOLUTE TITLE IS 2017/06/09".

ESTATE/QUALIFIER:  
FEE SIMPLE  
LT ABSOLUTE PLUS

RECENTLY:  
RE-ENTRY FROM 21411-0162

PIN CREATION DATE:  
2017/06/09

OWNERS' NAMES  
ADELAIDE STREET LOFTS INC.

CAPACITY SHARE

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2017/06/09 **						
**SUBJECT TO SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPHS 3 AND 14 AND *						
** PROVINCIAL SUCCESSION DUTIES AND EXCEPT PARAGRAPH 11 AND ESCHEATS OR FORFEITURE **						
** TO THE CROWN UP TO THE DATE OF REGISTRATION WITH AN ABSOLUTE TITLE. **						
63BA1446	1979/02/02	PLAN BOUNDRIES ACT REMARKS: PLD558, CT340669				C
AT2730828	2011/06/24	TRANSFER REMARKS: PLANNING ACT STATEMENTS	\$16,500,000	GUESTVILLE ENTERPRISES LIMITED	ADELAIDE STREET LOFTS INC.	C
AT3522046	2014/02/18	CHARGE		*** DELETED AGAINST THIS PROPERTY *** ADELAIDE STREET LOFTS INC.	KINGSETT MORTGAGE CORPORATION	
AT3522047	2014/02/18	NO ASSGN RENT GEN REMARKS: AT3522046.		*** DELETED AGAINST THIS PROPERTY *** ADELAIDE STREET LOFTS INC.	KINGSETT MORTGAGE CORPORATION	
AT3522463	2014/02/18	CHARGE	\$40,000,000	ADELAIDE STREET LOFTS INC.	HI-RISE CAPITAL LTD.	C
AT3522464	2014/02/18	NO ASSGN RENT GEN REMARKS: AT3522463.		ADELAIDE STREET LOFTS INC.	HI-RISE CAPITAL LTD.	C
AT3522631	2014/02/18	POSTPONEMENT REMARKS: AT3522463 TO AT3522046 & AT3522047		*** DELETED AGAINST THIS PROPERTY *** HI-RISE CAPITAL LTD.	KINGSETT MORTGAGE CORPORATION	
AT3586925	2014/05/22	TRANSFER OF CHARGE REMARKS: AT3522463.		HI-RISE CAPITAL LTD.	CANADIAN WESTERN TRUST COMPANY	C
AT3591493	2014/05/28	POSTPONEMENT		*** DELETED AGAINST THIS PROPERTY *** HI-RISE CAPITAL LTD.	KINGSETT MORTGAGE CORPORATION	

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.



ServiceOntario

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

LAND  
REGISTRY  
OFFICE #66

21411-0294 (LT)

PAGE 2 OF 3  
PREPARED FOR mcdonald  
ON 2019/09/06 AT 10:14:36

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
				CANADIAN WESTERN TRUST COMPANY		
AT3946856	2015/07/15	NOTICE	\$2	ADELAIDE STREET LOFTS INC.	HI-RISE CAPITAL LTD. CANADIAN WESTERN TRUST COMPANY	C
AT4420428	2016/12/01	TRANSFER OF CHARGE		HI-RISE CAPITAL LTD. CANADIAN WESTERN TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
AT4420442	2016/12/01	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. CANADIAN WESTERN TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
AT4505545	2017/03/08	TRANSFER OF CHARGE		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
AT4505546	2017/03/08	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
AT4529978	2017/04/04	TRANSFER OF CHARGE		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
AT4529979	2017/04/04	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
AT4572550	2017/05/18	TRANSFER OF CHARGE		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
AT4572551	2017/05/18	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
66R29363	2017/06/09	PLAN REFERENCE				C
AT4593553	2017/06/09	APL ABSOLUTE TITLE		ADELAIDE STREET LOFTS INC.		C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.



ServiceOntario

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

LAND  
REGISTRY  
OFFICE #66

21411-0294 (LT)

PAGE 3 OF 3  
PREPARED FOR mcdonald  
ON 2019/09/06 AT 10:14:36

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT4627861	2017/07/14	TRANSFER OF CHARGE		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
		REMARKS: AT4572550.				
AT4627862	2017/07/14	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
		REMARKS: AT3522463, 4572551				
AT4664798	2017/08/25	TRANSFER OF CHARGE		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
		REMARKS: AT4627861. AT4627861				
AT4664799	2017/08/25	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
		REMARKS: AT4627862				
AT4773446	2018/01/04	BYLAW		CITY OF TORONTO		C
		REMARKS: BY-LAW 1385-2017 TO DESIGNATE THE PROPERTY AT 263 ADELAIDE STREET WEST (PURMAN BUILDING) AS BEING OF CULTURAL HERITAGE VALUE OR INTEREST				
AT4862974	2018/05/14	CHARGE	\$16,414,000	ADELAIDE STREET LOFTS INC.	MERIDIAN CREDIT UNION LIMITED	C
AT4862975	2018/05/14	NO ASSGN RENT GEN		ADELAIDE STREET LOFTS INC.	MERIDIAN CREDIT UNION LIMITED	C
		REMARKS: AT4862974.				
AT4863246	2018/05/14	POSTPONEMENT		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	MERIDIAN CREDIT UNION LIMITED	C
		REMARKS: AT3522463 TO AT4862974				
AT4863247	2018/05/14	DISCH OF CHARGE		*** COMPLETELY DELETED *** KINGSETT MORTGAGE CORPORATION		
		REMARKS: AT3522046.				

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

**This is Exhibit "J" referred to in the Affidavit of Bernhard  
Huber sworn the 30<sup>th</sup> of September, 2019**



---

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

**Allison Eluned Van Rooijen, a Commissioner,  
etc., Province of Ontario, for  
Meridian Credit Union Limited, Motus Bank  
and Meridian OneCap Credit Corporation.  
Expires May 8, 2021.**

PRIORITY AND STANDSTILL AGREEMENT

THIS AGREEMENT is made as of the 7 day of May, 2018.

A M O N G:

MERIDIAN CREDIT UNION LIMITED

(hereinafter referred to as the "Primary Lender")

- and -

HI-RISE CAPITAL LTD. and  
COMMUNITY TRUST COMPANY

(hereinafter referred to as the "Subordinated Lender")

- and -

ADELAIDE STREET LOFTS INC.

(hereinafter referred to as "Borrower")

WHEREAS:

A. Pursuant to a commitment letter dated April 2, 2018 between the Borrower and the Primary Lender (as amended, restated, supplemented, extended, or replaced from time to time, hereinafter referred to as the "Commitment") the Primary Lender agreed to provide to the Borrower a first mortgage loan in the principal amount of Canadian \$16,414,000.00 (which principal amount together with interest thereon and other amounts as more particularly described in the Commitment and the Primary Lender Security (as defined below), including, without limitation, yield maintenance, all costs, fees, disbursements or monies expended by the Primary Lender pursuant to or secured by the Primary Lender Security as well as monies expended by the Primary Lender for the purpose of enforcement or protection of the Primary Lender Security is, collectively, hereafter referred to as the "Primary Lender Indebtedness");

B. The Borrower, in consideration of the loan made available to the Borrower by the Primary Lender, has granted to the Primary Lender the security described in Schedule "A" hereto (which security as amended, restated, supplemented, extended or replaced from time to time together with such further security granted by the Borrower in favour of the Primary Lender as security for the Primary Lender Indebtedness is hereafter collectively referred to as the "Primary Lender Security") upon and in respect of the assets described in such security, including and together with all assets of the Borrower now and or hereafter acquired (collectively, all of the foregoing being the "Collateral");

C. The Borrower is indebted to the Subordinated Lender in a principal amount not to exceed Canadian \$60,000,000.00 (which principal amount together with interest thereon and other amounts now or hereafter owing including, without limitation, all costs, fees, disbursements or monies expended by the Subordinated Lender pursuant to or secured by the Subordinated Security (as hereafter defined) including as well monies expended by the Subordinated Lender for the purpose of

enforcement or protection of his security is collectively, hereinafter referred to as the "Subordinated Indebtedness");

D. The Borrower, in consideration of the loan made available to it by the Subordinated Lender, granted to the Subordinated Lender, the security described in Schedule "B" hereto (which security as amended, restated, supplemented, extended or replaced from time to time together with such further security granted by the Borrower in favour of the Subordinated Lender as security for the Subordinated Indebtedness is hereafter collectively, the "Subordinated Security").

E. The Subordinated Lender has agreed to subordinate and postpone the Subordinated Indebtedness and the Subordinated Security to and in favour of and grant priority to the Primary Lender Indebtedness and the Primary Lender Security, subject to and in accordance with the terms of this Agreement; and

F. The Primary Lender and the Subordinated Lender have agreed to enter into this agreement for the purposes of establishing their respective rights.

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties, each of the parties hereby covenants, agrees and declares as follows:

ARTICLE 1  
**ACKNOWLEDGMENT, REPRESENTATIONS AND WARRANTIES**

Section 1.1

Each of the parties hereby acknowledges, represents and warrants that the foregoing recitals pertaining to them respectively are true and correct, both in substance and in fact.

Section 1.2

The Subordinated Lender hereby acknowledges, represents and warrants that it has full right, power and authority to execute this Agreement. The Subordinated Lender further acknowledges, represents and warrants that the principal amount of indebtedness secured by the Subordinated Security as of the date of this Agreement does not exceed Canadian \$60,000,000.00 and the Subordinated Security is in full force and effect, in good standing and has not been assigned or amended (and if assigned, the Subordinated Lender will assign subject only to the terms of this Agreement and the assignee will enter into a written agreement acknowledging the same and agreeing to be bound by the terms hereof).

Section 1.3

The Borrower and the Subordinated Lender further represent and warrant that the Borrower has not made any payments of principal or interest in connection with the Subordinated Indebtedness in contravention of Section 5.1 hereof.

ARTICLE 2  
**SUBORDINATED LENDER'S POSTPONEMENT**

Section 2.1

The Subordinated Lender hereby subordinates, postpones and grants priority to and in favour of the Primary Lender in accordance with the terms of this Agreement in respect of all of its right, title and interest in and to the Collateral, whether now or hereinafter acquired, existing under and by virtue of

the Subordinated Security to and in favour of all of the right, title and interest of the Primary Lender in and to the Collateral now or hereafter existing under and by virtue of the Primary Lender Security to the extent of the Primary Lender Indebtedness with the intent that with respect to the Collateral, notwithstanding any priority to which the Subordinated Lender may be or may hereafter become entitled for any reason whatsoever (including, without limitation, priority by date and the time or order of creating, granting or executing any document, the perfection, or the giving of notice under any demand for payment, the date of advance, registration, publication, filing or crystallization of any charge or encumbrance contained in the Subordinated Security and the security interests created thereby or by the provisions of any relevant law or statute or any issues relating to the enforceability of the Primary Lender Security), the Primary Lender Security and all rights provided thereunder or by law or otherwise shall have full and absolute priority over and with respect to the Subordinated Security, and the Subordinated Security shall, with respect to the Collateral, whether now or hereinafter acquired, in all respects, be subordinated, postponed and rank junior to the Primary Lender Security and all rights provided thereunder or by law or otherwise until the parties hereto agree otherwise in writing.

ARTICLE 3  
CONSENT

Section 3.1

The Subordinated Lender hereby consents to the granting of the Primary Lender Security by the Borrower to the Primary Lender.

ARTICLE 4  
ACKNOWLEDGMENT

Section 4.1

The Borrower agrees to be bound by the provisions of this Agreement.

ARTICLE 5  
PAYMENT TO SUBORDINATED LENDER AND TRUST FUNDS

Section 5.1

From and after the date hereof and until repayment of the Primary Lender Indebtedness in full:

- (a) The Borrower shall not make any payments of principal or of interest pursuant to or in connection with the Subordinated Indebtedness or the Subordinated Security or any other amount owing by the Borrower to the Subordinated Lender, all of which are postponed to repayment of the Primary Lender Indebtedness in full; and
- (b) the Subordinated Security shall not be amended or assigned unless the assignee provides the documentation contemplated by Section 1.2 hereof..

Section 5.2

Should any payment, proceeds or monies be received by the Subordinated Lender on or with respect to the Subordinated Indebtedness in contravention of the provisions of this Agreement, the Subordinated Lender shall deliver such payment, proceeds, or monies to the Primary Lender in the form received and until delivered the same shall be held in trust by the Subordinated Lender for the Primary Lender.



ARTICLE 6  
LIMITED REMEDIES OF THE SUBORDINATED LENDER

Section 6.1

The Subordinated Lender shall not be entitled and hereby agrees not to exercise or take any steps to exercise any of its remedies and/or recourses against or in respect of the Collateral or any part thereof under the Subordinated Security or otherwise until such time as the Primary Lender Indebtedness is repaid in full, nor will the Subordinated Lender take any steps to impair the priority of the Primary Lender Security or directly or indirectly act in any way, allege or make any claims prejudicial or adverse to the security interests of the Primary Lender arising pursuant to the Primary Lender Security.

ARTICLE 7  
FURTHER ASSURANCES

Section 7.1

The Primary Lender, the Subordinated Lender and the Borrower hereby agree, at the cost of the Borrower, to execute and deliver all such further documents, confirmations, postponements and acknowledgements as may reasonably be requested by any party hereto from time to time in order to give effect to the terms of this Agreement including, without limitation, such registrations or filings as the Primary Lender may require to reflect the agreements contained herein. Notwithstanding the delivery for registration or filing of specific postponements or subordinations, this Agreement shall govern the priority between the Primary Lender, the Borrower and the Subordinated Lender and shall be paramount in that regard.

ARTICLE 8  
ADVANCES

Section 8.1

The Subordinated Lender hereby acknowledges that all advances by the Primary Lender to the Borrower constituting the Primary Lender Indebtedness from time to time shall have full priority over the interests of the Subordinated Lender and the Subordinated Security, which Subordinated Security is hereby postponed to all future advances, and the Primary Lender Security shall constitute a security, encumbrance and charge upon the Collateral in priority to the Subordinated Security. The Subordinated Lender hereby agrees to a subordination of the priority of the Subordinated Security to the Primary Lender Security up to the amount of the Primary Lender Indebtedness at any time and from time to time, and as aforesaid to the same effect as if the Primary Lender Indebtedness and such other amounts aforesaid was secured and/or advanced prior to the advance of any monies secured by the Subordinated Security and the Subordinated Lender expressly agrees to execute any instruments giving effect to such subordination as may be required for such purpose.

ARTICLE 9  
AGREEMENT

Section 9.1

The Subordinated Lender agrees that it will not, and will not allow any person to, take any steps to impair the Primary Lender Security or the priority thereof provided for in this Agreement.

ARTICLE 10  
NOTICE

Section 10.1

Any demand, notice or communication to be made or given hereunder shall be in writing, except as expressly provided otherwise, and may be made or given by personal delivery or by transmittal by telecopy addressed to the respective parties as follows:

(a) to the Primary Lender:

Meridian Credit Union Limited  
75 Corporate Park Drive  
St. Catharines, ON L2S 3W3  
Fax No.: (905) 988-4006

(b) to the Subordinated Lender:

Hi-Rise Capital Ltd.  
200 Adelaide Street West, Suite 401  
Toronto, ON M5H 1W7

Attention:  
Fax No.:

And:

Community Trust Company  
2350 Matheson Boulevard East  
Mississauga, ON L4W 5G9

Attention:  
Fax No.:

(c) to the Borrower:

Adelaide Street Lofts Inc.  
263 Adelaide Street West, Suite 503  
Toronto, ON M5H 1W7

Attention: Dimitrios (Jim) Neilas  
Fax No.:

or to such other addresses or telecopy number as any party may from time to time notify the others in accordance with this Article 10. Any demand, notice or communication made or given by personal delivery shall be conclusively deemed to have been made or given on the day of actual delivery thereof, or, if made or given by telecopy, on the first business day (being a day other than Saturday,

Sunday or a statutory holiday in Ontario), on which Schedule I Primary Lenders are open for commercial business in Toronto, Ontario, following the transmittal thereof.

ARTICLE 11  
GOVERNING LAW

Section 11.1

This Agreement is to be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada which are applicable in the Province of Ontario.

ARTICLE 12  
SUCCESSORS AND ASSIGNS AND AGENCY

Section 12.1

This Agreement will be binding upon and enure to the benefit of the parties to this Agreement and their respective successors and assigns.

ARTICLE 13  
PARAMOUNTCY AND COUNTERPART SIGNATURES

Section 13.1

The parties hereto agree that this Agreement is paramount to all other agreements and shall govern with respect to the matters provided for set out herein. The Subordinated Lender agrees that in the event of any inconsistency between the terms of the Subordinated Security and the terms of this Agreement with respect to the matters provided for or set out herein, the terms of this Agreement shall govern to the extent of such inconsistency.

Section 13.2

This Agreement may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

MERIDIAN CREDIT UNION LIMITED

By: 


Name:

Title:

**Carson Griffith**  
**Senior Relationship Manager**

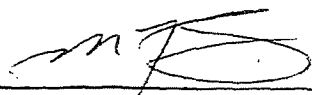
I/We have authority to bind the corporation

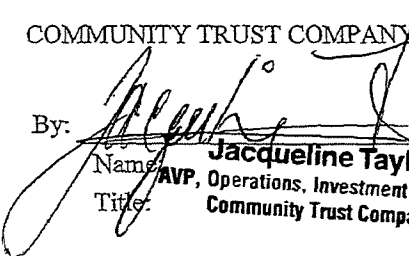
HI-RISE CAPITAL LTD

By:   
Name: Michael Kraft  
Title: C.E.O.

I/We have authority to bind the corporation

COMMUNITY TRUST COMPANY

  
NAME: **Michael E. Favelyukis**  
TITLE: Vice-President and CFO  
Community Trust Company

By:   
Name: **Jacqueline Taylor**  
Title: **AVP, Operations, Investment Services**  
Community Trust Company

I/We have authority to bind the corporation

ADELAIDE STREET LOFTS INC.

By: \_\_\_\_\_  
Name: Dimitrios (Jim) Neilas  
Title: President / Secretary

By: \_\_\_\_\_  
Name: Ioannis Neilas  
Title: Authorized Signing Officer

We have authority to bind the corporation.

HI-RISE CAPITAL LTD

By: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the corporation

COMMUNITY TRUST COMPANY

By: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the corporation

ADELAIDE STREET LOFTS INC.

By: \_\_\_\_\_

Name: Dimitrios (Jim) Neilas

Title: President / Secretary

By: \_\_\_\_\_

Name: Ioannis Neilas

Title: Authorized Signing Officer

We have authority to bind the corporation.

**SCHEDULE "A"**

**THE PRIMARY LENDER SECURITY**

1. First ranking charge on the lands and premises municipally known as 263 Adelaide Street West, Toronto, Ontario currently bearing PIN 21411-0294(LT) (the "Property");
2. First ranking General Assignment of Rents and Income from the Property;
3. A first in priority general security agreement charging all of the Borrower's present and after-acquired personal property situate on, relating to, arising from or used or acquired in connection with the Property;
4. First ranking Financing Statement filed under the Personal Property security Act as File Number 728577548 being Registration Number 20180424 1354 1862 1257

**SCHEDULE "B"**

**SUBORDINATED SECURITY**

1. Second ranking charge registered February 18, 2014 as Instrument No. AT3522463 on the lands and premises municipally known as 263 Adelaide Street West, Toronto, Ontario currently bearing PIN 21411-0294(LT) (the "Property");
2. Second ranking General Assignment of Rents and Income from the Property registered February 18, 2014 as Instrument No. AT3522464;
3. A second in priority general security agreement charging all of the Borrower's present and after-acquired personal property situate on, relating to, arising from or used or acquired in connection A first in priority general security agreement charging all of the Borrower's present and after-acquired personal property situate on, relating to, arising from or used or acquired in connection with the Property;
4. A Notice of Agreement Amending Charge registered July 15, 2017 as Instrument No. AT39468561
5. Financing Statement filed under the Personal Property Security Act as File Number 693816777 being Registration Number 20140214 1548 1862 5597
6. Financing Statement filed under the Personal Property Security Act as File Number 693816786 being Registration Number 20140214 1548 1862 5598

**This is Exhibit "J" referred to in the Affidavit of Bernhard  
Huber sworn the 30<sup>th</sup> of September, 2019**



---

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

**Allison Eluned Van Rooljen, a Commissioner,  
etc., Province of Ontario, for  
Meridian Credit Union Limited, Motus Bank  
and Meridian OneCap Credit Corporation.  
Expires May 8, 2021.**



PRIORITY AND STANDSTILL AGREEMENT

THIS AGREEMENT is made as of the 7 day of May, 2018.

A M O N G:

MERIDIAN CREDIT UNION LIMITED

(hereinafter referred to as the "Primary Lender")

- and -

HI-RISE CAPITAL LTD. and  
COMMUNITY TRUST COMPANY

(hereinafter referred to as the "Subordinated Lender")

- and -

ADELAIDE STREET LOFTS INC.

(hereinafter referred to as "Borrower")

WHEREAS:

A. Pursuant to a commitment letter dated April 2, 2018 between the Borrower and the Primary Lender (as amended, restated, supplemented, extended, or replaced from time to time, hereinafter referred to as the "Commitment") the Primary Lender agreed to provide to the Borrower a first mortgage loan in the principal amount of Canadian \$16,414,000.00 (which principal amount together with interest thereon and other amounts as more particularly described in the Commitment and the Primary Lender Security (as defined below), including, without limitation, yield maintenance, all costs, fees, disbursements or monies expended by the Primary Lender pursuant to or secured by the Primary Lender Security as well as monies expended by the Primary Lender for the purpose of enforcement or protection of the Primary Lender Security is, collectively, hereafter referred to as the "Primary Lender Indebtedness");

B. The Borrower, in consideration of the loan made available to the Borrower by the Primary Lender, has granted to the Primary Lender the security described in Schedule "A" hereto (which security as amended, restated, supplemented, extended or replaced from time to time together with such further security granted by the Borrower in favour of the Primary Lender as security for the Primary Lender Indebtedness is hereafter collectively referred to as the "Primary Lender Security") upon and in respect of the assets described in such security, including and together with all assets of the Borrower now and or hereafter acquired (collectively, all of the foregoing being the "Collateral");

C. The Borrower is indebted to the Subordinated Lender in a principal amount not to exceed Canadian \$60,000,000.00 (which principal amount together with interest thereon and other amounts now or hereafter owing including, without limitation, all costs, fees, disbursements or monies expended by the Subordinated Lender pursuant to or secured by the Subordinated Security (as hereafter defined) including as well monies expended by the Subordinated Lender for the purpose of

enforcement or protection of his security is collectively, hereinafter referred to as the "Subordinated Indebtedness");

D. The Borrower, in consideration of the loan made available to it by the Subordinated Lender, granted to the Subordinated Lender, the security described in Schedule "B" hereto (which security as amended, restated, supplemented, extended or replaced from time to time together with such further security granted by the Borrower in favour of the Subordinated Lender as security for the Subordinated Indebtedness is hereafter collectively, the "Subordinated Security").

E. The Subordinated Lender has agreed to subordinate and postpone the Subordinated Indebtedness and the Subordinated Security to and in favour of and grant priority to the Primary Lender Indebtedness and the Primary Lender Security, subject to and in accordance with the terms of this Agreement; and

F. The Primary Lender and the Subordinated Lender have agreed to enter into this agreement for the purposes of establishing their respective rights.

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties, each of the parties hereby covenants, agrees and declares as follows:

ARTICLE 1  
ACKNOWLEDGMENT, REPRESENTATIONS AND WARRANTIES

Section 1.1

Each of the parties hereby acknowledges, represents and warrants that the foregoing recitals pertaining to them respectively are true and correct, both in substance and in fact.

Section 1.2

The Subordinated Lender hereby acknowledges, represents and warrants that it has full right, power and authority to execute this Agreement. The Subordinated Lender further acknowledges, represents and warrants that the principal amount of indebtedness secured by the Subordinated Security as of the date of this Agreement does not exceed Canadian \$60,000,000.00 and the Subordinated Security is in full force and effect, in good standing and has not been assigned or amended (and if assigned, the Subordinated Lender will assign subject only to the terms of this Agreement and the assignee will enter into a written agreement acknowledging the same and agreeing to be bound by the terms hereof).

Section 1.3

The Borrower and the Subordinated Lender further represent and warrant that the Borrower has not made any payments of principal or interest in connection with the Subordinated Indebtedness in contravention of Section 5.1 hereof.

ARTICLE 2  
SUBORDINATED LENDER'S POSTPONEMENT

Section 2.1

The Subordinated Lender hereby subordinates, postpones and grants priority to and in favour of the Primary Lender in accordance with the terms of this Agreement in respect of all of its right, title and interest in and to the Collateral, whether now or hereinafter acquired, existing under and by virtue of

the Subordinated Security to and in favour of all of the right, title and interest of the Primary Lender in and to the Collateral now or hereafter existing under and by virtue of the Primary Lender Security to the extent of the Primary Lender Indebtedness with the intent that with respect to the Collateral, notwithstanding any priority to which the Subordinated Lender may be or may hereafter become entitled for any reason whatsoever (including, without limitation, priority by date and the time or order of creating, granting or executing any document, the perfection, or the giving of notice under any demand for payment, the date of advance, registration, publication, filing or crystallization of any charge or encumbrance contained in the Subordinated Security and the security interests created thereby or by the provisions of any relevant law or statute or any issues relating to the enforceability of the Primary Lender Security), the Primary Lender Security and all rights provided thereunder or by law or otherwise shall have full and absolute priority over and with respect to the Subordinated Security, and the Subordinated Security shall, with respect to the Collateral, whether now or hereinafter acquired, in all respects, be subordinated, postponed and rank junior to the Primary Lender Security and all rights provided thereunder or by law or otherwise until the parties hereto agree otherwise in writing.

ARTICLE 3  
CONSENT

Section 3.1

The Subordinated Lender hereby consents to the granting of the Primary Lender Security by the Borrower to the Primary Lender.

ARTICLE 4  
ACKNOWLEDGMENT

Section 4.1

The Borrower agrees to be bound by the provisions of this Agreement.

ARTICLE 5  
PAYMENT TO SUBORDINATED LENDER AND TRUST FUNDS

Section 5.1

From and after the date hereof and until repayment of the Primary Lender Indebtedness in full:

- (a) The Borrower shall not make any payments of principal or of interest pursuant to or in connection with the Subordinated Indebtedness or the Subordinated Security or any other amount owing by the Borrower to the Subordinated Lender, all of which are postponed to repayment of the Primary Lender Indebtedness in full; and
- (b) the Subordinated Security shall not be amended or assigned unless the assignee provides the documentation contemplated by Section 1.2 hereof..

Section 5.2

Should any payment, proceeds or monies be received by the Subordinated Lender on or with respect to the Subordinated Indebtedness in contravention of the provisions of this Agreement, the Subordinated Lender shall deliver such payment, proceeds, or monies to the Primary Lender in the form received and until delivered the same shall be held in trust by the Subordinated Lender for the Primary Lender.

ARTICLE 6  
LIMITED REMEDIES OF THE SUBORDINATED LENDER

Section 6.1

The Subordinated Lender shall not be entitled and hereby agrees not to exercise or take any steps to exercise any of its remedies and/or recourses against or in respect of the Collateral or any part thereof under the Subordinated Security or otherwise until such time as the Primary Lender Indebtedness is repaid in full, nor will the Subordinated Lender take any steps to impair the priority of the Primary Lender Security or directly or indirectly act in any way, allege or make any claims prejudicial or adverse to the security interests of the Primary Lender arising pursuant to the Primary Lender Security.

ARTICLE 7  
FURTHER ASSURANCES

Section 7.1

The Primary Lender, the Subordinated Lender and the Borrower hereby agree, at the cost of the Borrower, to execute and deliver all such further documents, confirmations, postponements and acknowledgements as may reasonably be requested by any party hereto from time to time in order to give effect to the terms of this Agreement including, without limitation, such registrations or filings as the Primary Lender may require to reflect the agreements contained herein. Notwithstanding the delivery for registration or filing of specific postponements or subordinations, this Agreement shall govern the priority between the Primary Lender, the Borrower and the Subordinated Lender and shall be paramount in that regard.

ARTICLE 8  
ADVANCES

Section 8.1

The Subordinated Lender hereby acknowledges that all advances by the Primary Lender to the Borrower constituting the Primary Lender Indebtedness from time to time shall have full priority over the interests of the Subordinated Lender and the Subordinated Security, which Subordinated Security is hereby postponed to all future advances, and the Primary Lender Security shall constitute a security, encumbrance and charge upon the Collateral in priority to the Subordinated Security. The Subordinated Lender hereby agrees to a subordination of the priority of the Subordinated Security to the Primary Lender Security up to the amount of the Primary Lender Indebtedness at any time and from time to time, and as aforesaid to the same effect as if the Primary Lender Indebtedness and such other amounts aforesaid was secured and/or advanced prior to the advance of any monies secured by the Subordinated Security and the Subordinated Lender expressly agrees to execute any instruments giving effect to such subordination as may be required for such purpose.

ARTICLE 9  
AGREEMENT

Section 9.1

The Subordinated Lender agrees that it will not, and will not allow any person to, take any steps to impair the Primary Lender Security or the priority thereof provided for in this Agreement.

ARTICLE 10  
NOTICE

Section 10.1

Any demand, notice or communication to be made or given hereunder shall be in writing, except as expressly provided otherwise, and may be made or given by personal delivery or by transmittal by telecopy addressed to the respective parties as follows:

(a) to the Primary Lender:

Meridian Credit Union Limited  
75 Corporate Park Drive  
St. Catharines, ON L2S 3W3  
Fax No.: (905) 988-4006

(b) to the Subordinated Lender:

Hi-Rise Capital Ltd.  
200 Adelaide Street West, Suite 401  
Toronto, ON M5H 1W7

Attention:  
Fax No.:

And:

Community Trust Company  
2350 Matheson Boulevard East  
Mississauga, ON L4W 5G9

Attention:  
Fax No.:

(c) to the Borrower:

Adelaide Street Lofts Inc.  
263 Adelaide Street West, Suite 503  
Toronto, ON M5H 1W7

Attention: Dimitrios (Jim) Neilas  
Fax No.:

or to such other addresses or telecopy number as any party may from time to time notify the others in accordance with this Article 10. Any demand, notice or communication made or given by personal delivery shall be conclusively deemed to have been made or given on the day of actual delivery thereof, or, if made or given by telecopy, on the first business day (being a day other than Saturday,

Sunday or a statutory holiday in Ontario), on which Schedule I Primary Lenders are open for commercial business in Toronto, Ontario, following the transmittal thereof.

ARTICLE 11  
GOVERNING LAW

Section 11.1

This Agreement is to be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada which are applicable in the Province of Ontario.

ARTICLE 12  
SUCCESSORS AND ASSIGNS AND AGENCY

Section 12.1

This Agreement will be binding upon and enure to the benefit of the parties to this Agreement and their respective successors and assigns.

ARTICLE 13  
PARAMOUNTCY AND COUNTERPART SIGNATURES

Section 13.1

The parties hereto agree that this Agreement is paramount to all other agreements and shall govern with respect to the matters provided for set out herein. The Subordinated Lender agrees that in the event of any inconsistency between the terms of the Subordinated Security and the terms of this Agreement with respect to the matters provided for or set out herein, the terms of this Agreement shall govern to the extent of such inconsistency.

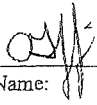
Section 13.2

This Agreement may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

MERIDIAN CREDIT UNION LIMITED

By: \_\_\_\_\_




Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Carson Griffi**  
Senior Relationship Manager

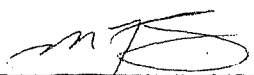
I/We have authority to bind the corporation

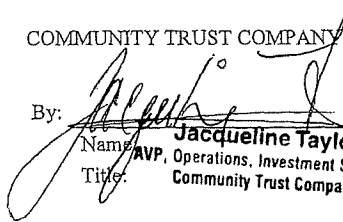
HI-RISE CAPITAL LTD

By:   
Name: Michael Kraft  
Title: C.E.O.

I/We have authority to bind the corporation

COMMUNITY TRUST COMPANY

  
NAME: Michael E. Favelyukis  
TITLE: Vice-President and CFO  
Community Trust Company

By:   
Name: Jacqueline Taylor  
Title: AVP, Operations, Investment Services  
Community Trust Company

I/We have authority to bind the corporation

ADELAIDE STREET LOFTS INC.

By: \_\_\_\_\_  
Name: Dimitrios (Jim) Neilas  
Title: President / Secretary

By: \_\_\_\_\_  
Name: Ioannis Neilas  
Title: Authorized Signing Officer

We have authority to bind the corporation.

HI-RISE CAPITAL LTD

By: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the corporation

COMMUNITY TRUST COMPANY

By: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the corporation

ADELAIDE STREET LOFTS INC.

By: \_\_\_\_\_

Name: Dimitrios (Jim) Neilas

Title: President / Secretary

By: \_\_\_\_\_

Name: Ioannis Neilas

Title: Authorized Signing Officer

We have authority to bind the corporation.



SCHEDULE "A"

THE PRIMARY LENDER SECURITY

1. First ranking charge on the lands and premises municipally known as 263 Adelaide Street West, Toronto, Ontario currently bearing PIN 21411-0294(LT) (the "Property");
2. First ranking General Assignment of Rents and Income from the Property;
3. A first in priority general security agreement charging all of the Borrower's present and after-acquired personal property situate on, relating to, arising from or used or acquired in connection with the Property;
4. First ranking Financing Statement filed under the Personal Property security Act as File Number 728577548 being Registration Number 20180424 1354 1862 1257

SCHEDULE "B"

SUBORDINATED SECURITY

1. Second ranking charge registered February 18, 2014 as Instrument No. AT3522463 on the lands and premises municipally known as 263 Adelaide Street West, Toronto, Ontario currently bearing PIN 21411-0294(LT) (the "Property");
2. Second ranking General Assignment of Rents and Income from the Property registered February 18, 2014 as Instrument No. AT3522464;
3. A second in priority general security agreement charging all of the Borrower's present and after-acquired personal property situate on, relating to, arising from or used or acquired in connection A first in priority general security agreement charging all of the Borrower's present and after-acquired personal property situate on, relating to, arising from or used or acquired in connection with the Property;
4. A Notice of Agreement Amending Charge registered July 15, 2017 as Instrument No. AT39468561
5. Financing Statement filed under the Personal Property Security Act as File Number 693816777 being Registration Number 20140214 1548 1862 5597
6. Financing Statement filed under the Personal Property Security Act as File Number 693816786 being Registration Number 20140214 1548 1862 5598


**This is Exhibit "K" referred to in the Affidavit of Bernhard  
Huber sworn the 30<sup>th</sup> of September, 2019**



---

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

**Allison Eluned Van Rooijen, a Commissioner,  
etc., Province of Ontario, for  
Meridian Credit Union Limited, Motus Bank  
and Meridian OneCap Credit Corporation.  
Expires May 8, 2021.**



SCARFONE HAWKINS LLP

One James St.S., 14th Fl.  
P.O. Box 926, Depot 1  
Hamilton, ON L8N 3P9

TEL (905) 523-1333  
FAX (905) 523-5878

*Lawyers and Trade-mark Agents*

Reply to: Michael J. Valente LL.M., (P.C.) ext. 235  
[mvalente@SHLAW.ca](mailto:mvalente@SHLAW.ca)  
Direct Dial: (905) 526-4379

June 14, 2019

**VIA REGISTERED MAIL**

ADELAIDE STREET LOFTS INC.  
263 Adelaide Street West  
Suite 503  
Toronto, Ontario M5H 1Y2

Attention: Ioannis Neilas, President

Dear Sirs:

Re: The Indebtedness & Liability of Adelaide Street Lofts Inc. (the "Member")  
To Meridian Credit Union Limited ("MCU") - Our File No. 19L1096

---

We are counsel to MCU.

We refer to the Credit Agreement, dated April 2, 2018, between the Member and MCU (the "Credit Agreement").

We write to confirm that MCU has grave concerns with respect to the Member's outstanding loan obligations. These concerns were stipulated in part in MCU's Forbearance Agreement, dated May 16, 2019 (the "Forbearance Agreement") and include the following:

- the Member's failure to repay the outstanding credit facility on or before February 28, 2019 as agreed;
- the Member's failure to provide an agreement for the sale of the property municipally known as 263 Adelaide Street West, Toronto (the "Property") on terms satisfactory to MCU;
- the Member's failure to keep the Property's taxes current with the result that arrears have accrued in the amount of \$65,086.00;
- the Member's failure to keep interest current;
- the Member's failure to deliver accountant prepared financial statements as at December 31, 2018;
- the Member's refusal to accept the terms of the Forbearance Agreement; and

• the Member's failure to provide any viable plan for the immediate repayment of its debt. In these circumstances, MCU has assessed the Member's account as an unacceptable overall risk situation, and accordingly, MCU hereby demands payment of the Member's indebtedness and liability which as at June 14, 2019 is as follows:

Demand Land Loan

Principal balance outstanding: \$16,414,000.00

Accrued interest to date, calculated at MCU's prime rate as it exists from time to time (currently 3.95% per annum) plus 2.0 percentage points: \$ 163,218.13

Plus interest at the same rate to the date of payment, the current daily amount being \$2,675.71

Administrative Fee and Professional Fees to Date: \$ 42,610.00

Plus any and all further administrative and professional fees to the date of payment

TOTAL amount owing as at June 14, 2019: \$16,619,828.13

On behalf of MCU, we therefore write to require payment of your indebtedness and liability by the opening of business on Tuesday, June 25, 2019, failing which MCU will take whatever steps that are necessary and desirable to ensure full repayment.

We also take this opportunity to enclose MCU's Notice of Intention to Enforce Security delivered pursuant to subsection 244(1) of the *Bankruptcy & Insolvency Act*.

Please govern yourself accordingly.

Yours very truly,

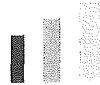
SCARFONE HAWKINS LLP

Per:

  
MICHAEL J. VALENTE (P.C.)

MJV/bw  
Encl.

- cc. 263 Holdings Inc., Guarantor
- cc. Dimitrios Neilas, Guarantor
- cc. Ioannis Neilas, Guarantor
- cc. Our Client



SCARFONE HAWKINS LLP

One James St.S., 14th Flr  
P.O. Box 926, Depot 1  
Hamilton, ON L8N 3P9

Lawyers and Trade-mark Agents

TEL (905) 523-1333  
FAX (905) 523-5878

Reply to: Michael J. Valente LL.M., (P.C.) ext. 235  
[mvalente@SHLAW.ca](mailto:mvalente@SHLAW.ca)  
Direct Dial: (905) 526-4379

June 14, 2019

**VIA REGISTERED MAIL**

DIMITRIOS NEILAS  
386 Bedford Park Avenue  
Toronto, Ontario M5M 1J8

IOANNIS NEILAS  
55 McGillivray Avenue  
Toronto, Ontario M5M 2Y3

Dear Sirs:

Re: Your Guarantee of the Indebtedness & Liability of Adelaide Street Lofts Inc.  
(the "Member") to Meridian Credit Union Limited ("MCU") - Our File No. 19L1096

We are counsel to MCU.

We refer to your joint and several \$5,000,000 Guarantee of the indebtedness and liability of the Member to MCU (the "Guarantee").

We write to advise you that the Member is in default of its obligations to MCU, and otherwise, MCU has concerns with respect to the overall financial viability of the Member.

In light of these circumstances, MCU regards the Member's account as an unacceptable risk situation, and on behalf of MCU, we have demanded payment of the Member's liabilities. You have our letter of demand, dated today, on the Member.

As at the date of this letter, the indebtedness and liability of the Member to MCU is as follows:

**Demand Land Loan**

Principal balance outstanding:	\$16,414,000.00
Accrued interest to date, calculated at MCU's prime rate as it exists from time to time (currently 3.95% per annum) plus 2.0 percentage points:	\$ 163,218.13

Plus interest at the same rate to the date of payment, the current daily amount being \$2,675.71

Administrative Fee and Professional Fees to Date: \$ 42,610.00

Plus any and all further administrative and professional fees to the date of payment

TOTAL amount owing as at June 14, 2019: \$16,619,828.13

Pursuant to the terms of the Guarantee, you jointly and severally agreed to pay on demand the principal sum of \$5,000,000 plus interest from the date of demand at the prescribed rate of MCU's prime rate plus 2.0 percentage points. ("Your Indebtedness"). We therefore write on behalf of MCU to require payment of Your Indebtedness by the opening of business on Tuesday, June 25, 2019, failing which MCU will take whatever steps that are necessary and desirable to ensure full repayment.

Please govern yourself accordingly.

Yours very truly,  
SCARFONE HAWKINS LLP

Per:   
MICHAEL J. VALENTE (P.C.)

MJV/bw  
cc. Our Client



SCARFONE HAWKINS LLP

One James St. S., 14th Flr.  
P.O. Box 926, Depot 1  
Hamilton, ON L8N 3P9

TEL (905) 523-1333  
FAX (905) 523-5878

*Lawyers and Trade-mark Agents*

Reply to: Michael J. Valente LL.M., (P.C.) ext. 235  
[mvalente@SHLAW.ca](mailto:mvalente@SHLAW.ca)  
Direct Dial: (905) 526-4379

VIA REGISTERED MAIL  
CERTIFIED MAIL

June 14, 2019

**VIA REGISTERED MAIL**

263 HOLDINGS INC., formerly known as Neilas Inc.  
263 Adelaide Street West  
Suite 503  
Toronto, Ontario M5H 1Y2

Attention: Ioannis Neilas, President

Dear Sirs:

Re: Your Guarantee of the Indebtedness & Liability of Adelaide Street Lofts Inc.  
(the "Member") to Meridian Credit Union Limited ("MCU") - Our File No. 19L1096

---

We are counsel to MCU.

We refer to your unlimited Guarantee of the indebtedness and liability of the Member to MCU (the "Guarantee").

We write to advise you that the Member is in default of its obligations to MCU, and otherwise, MCU has concerns with respect to the overall financial viability of the Member.

In light of these circumstances, MCU regards the Member's account as an unacceptable risk situation, and on behalf of MCU, we have demanded payment of the Member's liabilities. You have our letter of demand, dated today, on the Member.

As at the date of this letter, the indebtedness and liability of the Member to MCU is as follows:

Demand Land Loan

Principal balance outstanding:	\$16,414,000.00
Accrued interest to date, calculated at MCU's prime rate as it exists from time to time (currently 3.95% per annum) plus 2.0 percentage points:	\$ 163,218.13



Plus interest at the same rate to the date of payment, the current daily amount being \$2,675.71

Administrative Fee and Professional Fees to Date: \$ 42,610.00

Plus any and all further administrative and professional fees to the date of payment

TOTAL amount owing as at June 14, 2019: \$16,619,828.13

Pursuant to the terms of the Guarantee, you agreed to pay on demand the indebtedness and liability of the Member. We therefore write on behalf of MCU to require payment of your indebtedness and liability by the opening of business on Tuesday, June 25, 2019, failing which MCU will take whatever steps that are necessary and desirable to ensure full repayment.

Please govern yourself accordingly.

Yours very truly,  
SCARFONE HAWKINS <sup>LLP</sup>

Per:

  
MICHAEL J. VALENTE (P.C.)

MJV/bw  
cc. Our Client

**NOTICE OF INTENTION TO ENFORCE SECURITY  
(Subsection 244(1))  
OF THE BANKRUPTCY AND INSOLVENCY ACT**

TO: ADELAIDE STREET LOFTS INC., an insolvent company

TAKE NOTICE THAT:

1. Meridian Credit Union ("MCU"), a secured creditor, intends to enforce its security on the property of the insolvent company described below:

(i) All assets of Adelaide Street Lofts Inc., including Accounts Receivable, Inventory, Equipment, Motor Vehicles and Real Property.

2. The security that is to be enforced is in the form of:

(a) \$16,414,000.00 Charge/Mortgage, registered on May 14, 2018 as instrument no. AT4862974 in the Land Titles Office for the Registry Division of Toronto with respect to the lands municipally known as 263 Adelaide Street West, Toronto (the "Lands");

(b) Notice of Assignment of Rents – General, registered on May 14, 2018 as instrument no. AT4862975 in the Land Titles Office for the Registry Division of Toronto with respect to the Lands;

(c) General Security Agreement, registered on April 24, 2018 as no. 20180424 1354 1862 1257 pursuant to the Ontario Personal Property Security Act ("PPSA");

3. The total amount of indebtedness secured by the security is as follows:

Demand Land Loan

Principal balance outstanding: \$16,414,000.00

Accrued interest to date, calculated at  
MCU's prime rate as it exists from  
time to time (currently 3.95% per annum)  
plus 2.0 percentage points: \$ 163,218.13

Plus interest at the same rate to the  
date of payment, the current daily amount  
being \$2,675.71

Administrative Fee and Professional Fees to Date: \$ 42,610.00


Plus any and all further administrative and professional  
fees to the date of payment

TOTAL amount owing as at June 14, 2019: \$16,619,828.13

4. The secured creditor will not have the right to enforce the security until after the expiry of the 10-day period following the sending of this notice, unless the insolvent company consents to an earlier enforcement.

Dated at Hamilton, this 14<sup>th</sup> day of June, 2019.

MERIDIAN CREDIT UNION LIMITED  
by its solicitors,

Per: 

---

Michael J. Valente

**SCARFONE HAWKINS LLP**  
Barristers and Solicitors  
One James Street South, 14th Floor  
P.O. Box 926, Station "A"  
Hamilton, Ontario  
L8N 3P9  
(905) 523-1333

**This is Exhibit "L" referred to in the Affidavit of Bernhard  
Huber sworn the 30<sup>th</sup> of September, 2019**



---

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

**Allison Eluned Van Rooijen, a Commissioner,  
etc., Province of Ontario, for  
Meridian Credit Union Limited, Motus Bank  
and Meridian OneCap Credit Corporation.  
Expires May 8, 2021.**

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

THE HONOURABLE

)

THURSDAY, THE 21st

)

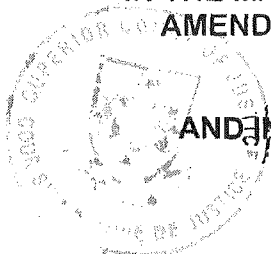
MR. JUSTICE HAINEY

)

DAY OF MARCH, 2019

)

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



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

**ORDER**

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

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

**SERVICE**

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

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

#### **APPOINTMENT OF REPRESENTATIVE COUNSEL**

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

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

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

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

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

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

#### **TERMINATION OF EXISTING ADVISORY COMMITTEE**

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

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

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

#### **APPOINTMENT OF OFFICIAL COMMITTEE**

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

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

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

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

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

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

#### **INVESTOR INFORMATION**

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

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



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

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

#### FEES OF COUNSEL

*which amount shall exclude disbursements incurred by Representative Counsel*

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

*Post-Appointment Fees*

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

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

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

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

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

#### **GENERAL**

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

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

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

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

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

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

Attention: Gregory Azeff & Stephanie De Caria

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

**POWERS OF HI-RISE CAPITAL LTD.**

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

**INVESTOR AND COURT APPROVAL**

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

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

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

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

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

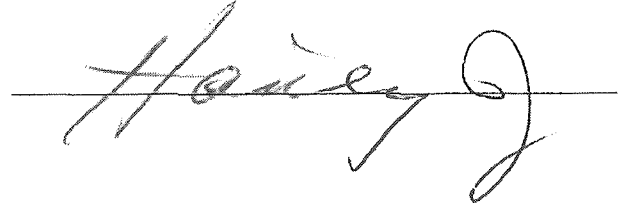
31. **THIS COURT ORDERS** that if at the Meeting a majority in number of the investors representing two-thirds in value present and voting either in person or by proxy cast votes in favour of the proposed Transaction and Distribution, Hi-Rise may proceed to bring a motion to this court, on a date to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

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

#### **NOTICE TO INVESTORS**

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

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

A handwritten signature in cursive script, appearing to read "Honey", is written over a solid horizontal line. The signature is positioned to the right of the center of the page.

**Schedule "A"**  
**OPT-OUT NOTICE**

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

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

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

Attention: Stephanie De Caria

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

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

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

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

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

\_\_\_\_\_

Date

\_\_\_\_\_

Signature

\_\_\_\_\_

Date

\_\_\_\_\_

Signature

If the Investor is a corporation, please execute below:

)  
)  
)  
)  
)  
)  
)  
)  
)

\_\_\_\_\_  
[insert corporation name above]

Per: \_\_\_\_\_

Name: Name

Title: Title

I/We have the authority to bind  
the corporation

## Schedule "B"

### Official Committee Establishment Process

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


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

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

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

#### Establishment of the Official Committee

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

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

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



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

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

- (a) all of the interviews will follow the same structure and will be approximately the same length (about half an hour); and
- (b) substantially similar questions will be posed to each interviewee.

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

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

## Schedule "C"

### Official Committee Protocol

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

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

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

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

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

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

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

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

HI-RISE CAPITAL LTD.  
Applicant

SUPERINTENDENT OF FINANCIAL SERVICES *et. al.*  
Respondents

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

**ORDER**

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

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

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

Lawyers for the Applicant, Hi-Rise Capital Ltd.

**This is Exhibit "M" referred to in the Affidavit of Bernhard  
Huber sworn the 30<sup>th</sup> of September, 2019**



---

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

**Allison Eluned Van Rooijen, a Commissioner,  
etc., Province of Ontario, for  
Meridian Credit Union Limited, Motus Bank  
and Meridian OneCap Credit Corporation.  
Expires May 8, 2021.**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

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

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

September 13, 2019

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

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

**Stephanie De Caria LSO#: 68055L**  
sdecaria@millerthomson.com  
Tel: 416.595.2652/Fax: 416.595.8695

Court-appointed Representative Counsel

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

**John L. Finnigan**  
Tel: 416-304-1616  
Fax: 416-304-1313  
Email: [jfinnigan@tgf.ca](mailto:jfinnigan@tgf.ca)

**Tamara Markovic**  
Tel: 416-304-0601  
Fax: 416-304-1313  
Email: [tmarkovic@tgf.ca](mailto:tmarkovic@tgf.ca)

Lawyers for the Respondent,  
Superintendent of Financial Services

AND TO: **CASELS BROCK & BLACKWELL LLP**  
Barristers and Solicitors  
Scotia Plaza  
40 King Street West, Suite 2100  
Toronto, ON M5H 3C2

**John N. Birch**  
Tel: 416-860-5225  
Fax: 416-640-3057  
Email: [jbirch@casselsbrock.com](mailto:jbirch@casselsbrock.com)

**Larry Ellis**  
Tel: 416 869 5406  
Fax: 416 640 3004  
Email: [lellis@casselsbrock.com](mailto:lellis@casselsbrock.com)

**Stephanie Voudouris**  
Tel: 416-860-6617  
Fax: 416-640-3057  
Email: [svoudouris@casselsbrock.com](mailto:svoudouris@casselsbrock.com)

Lawyers for the Applicant,  
Hi-Rise Capital Ltd.



AND TO: **MILLER THOMSON LLP**  
Scotia Plaza  
40 King Street West, Suite 5800  
Toronto, ON M5H 3S1

**Jeffrey Carhart (LSO #23645M)**  
Tel: 416-595-8615  
Fax: 416-595-8695  
Email: [jcarhart@millerthomson.com](mailto:jcarhart@millerthomson.com)

**Gregory Azeff (LSO #45324C)**  
Tel: 416-595-2660  
Fax: 416-595-8695  
Email: [gazeff@millerthomson.com](mailto:gazeff@millerthomson.com)

**Stephanie De Caria (LSO #68055L)**  
Tel: 416-595-2652  
Fax: 416-595-8695  
Email: [sdecaria@millerthomson.com](mailto:sdecaria@millerthomson.com)

Representative Counsel for Adelaide Investors

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

**Geoff R. Hall (LSO #34701O)**  
Tel: 416-601-7856  
Fax: 416-868-0673  
Email: [ghall@mccarthy.ca](mailto:ghall@mccarthy.ca)

**Junior Sirivar**  
Tel: (416) 601-7750  
Email: [jsirivar@mccarthy.ca](mailto:jsirivar@mccarthy.ca)

Lawyers for Adelaide Street Lofts Inc.

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

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

Lawyers for the Respondent,  
David Pozo

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

**Steve Graff**  
Tel: 416.865.7726  
Fax: 416.863.1515  
Email: [sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)

**Katheryn Esaw**  
Tel: 416.865.4707  
Fax: 416.863.1515  
Email: [kesaw@airdberlis.com](mailto:kesaw@airdberlis.com)

Lawyers for Meridian Credit Union

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

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

Lawyers for the respondents, Nadeem and Uzma Ghori

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

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

Lawyers for the Respondent, Anoop Sayal

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

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

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

1. Pursuant to the Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated March 21, 2019 (the "**Appointment Order**"), Miller Thomson LLP was appointed as Representative Counsel (in such capacity, "**Representative Counsel**") appointed pursuant to the Order of the Honourable Mr. Justice Hainey dated March 21, 2019 (the "**Appointment Order**") to represent the interests of all individuals and/or entities (the "**Investors**", which term does not include persons who have opted out of such representation in accordance with the Appointment Order) that have invested funds in a syndicated mortgage investment ("**SMI**") administered by Hi-Rise Capital Ltd. ("**Hi-Rise**") in respect of the proposed development known as the "Adelaide Street Lofts" (the "**Project**") at the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the "**Property**") and owned by Adelaide Street Lofts Inc. (the "**Adelaide**"), in connection with the negotiation and implementation of a settlement with respect to such investments. Copies of the Appointment Order and Endorsement of Justice Hainey dated March 22, 2019, respectively, are attached as **Appendices "A" and "B"**.

2. Pursuant to the Endorsement of the Honourable Mr. Justice Hainey dated April 4, 2019 (the "**Justice Hainey Endorsement**"), a copy of which is attached as **Appendix "C"**, Representative Counsel was granted leave to file reports with the Court, among other things.

## PURPOSE OF REPORT

3. Representative Counsel has filed this Second Report for the sole purpose of updating the Court on the status of certain issues including, in particular, the Representative Counsel's efforts toward the appointment of a Financial Advisor. This Second Report does not provide a comprehensive update of Representative Counsel's activities and conduct since the First Report of Representative Counsel dated April 9, 2019 (the "**First Report**"), but rather only includes details and facts relevant to these issues. Representative Counsel will fully update the Court in respect of its activities and conduct since the First Report at a later time and in a subsequent Court report. This Second Report also does not include all correspondence that has been exchanged over the last several weeks between Representative Counsel and counsel to Hi-Rise and Adelaide, as such correspondence has been extensive and much of it is repetitive (insofar as it sets out the positions of the parties).

4. For ease of reference, the position of Representative Counsel and the Official Committee with respect to the need for transparent disclosure of information and the appointment of the Financial Advisor is set out in Representative Counsel's letter to counsel to the Companies (as defined below) dated August 29, 2019, a copy of which is attached as **Appendix "D"**.

5. Representative Counsel is of the view that in order to properly fulfill its mandate and ensure that Investors are properly advised, it requires the issuance of an Order (the "**Financial Advisor Appointment Order**") in the draft form attached as **Appendix "E"**, *inter alia*:

- (a) appointing Alvarez & Marsal Canada Inc. as financial advisor (in such capacity, the "**Financial Advisor**"), without security, to Representative Counsel to provide financial advisory and strategic services to assist Representative Counsel with the fulfillment of its mandate and duties as specified in the Appointment Order;
- (b) granting the Financial Advisor's Charge (as defined below) as security for its fees and disbursements, to rank subordinate in priority only to: (i) the Rep Counsel Charge; and (ii) any encumbrances ranking in priority to the Rep Counsel Charge;
- (c) prohibiting any Person (as defined in the Financial Advisor Appointment Order) from further encumbering the Property, pending further Order of the Court; and

- (d) restricting Hi-Rise and Adelaide from communicating with Investors, either directly or indirectly, until further Order of the Court.

6. All capitalized terms not otherwise defined herein shall have the same meaning ascribed to them in the Appointment Order and the First Report. Hi-Rise and Adelaide shall hereinafter be referred collectively as the “**Companies**”.

#### **TERMS OF REFERENCE**

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

#### **BACKGROUND TO PROCEEDING**

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

9. As further set out in Hi-Rise's application, Hi-Rise is a mortgage broker and mortgage administrator licensed by the Superintendent of Financial Services of Ontario. Hi-Rise receives and advances, on behalf of Investors, funds to a variety of companies (each a "**Borrower**" and collectively the "**Borrowers**"), such as Adelaide, that undertake real property developments such as the Property. The terms on which Investors advance their funds and Hi-Rise administrators each Syndicated Mortgage are set out in the LPA and the MPA.

10. Pursuant to the Justice Hailey Endorsement, the Court set a timetable for further steps in this proceeding and set a scheduling appointment returnable April 17, 2019. The declaratory relief sought by Hi-Rise has been adjourned to a date to be scheduled by the Court. As further set out below, the parties and Representative Counsel have attended at Court numerous times to provide a status update on the steps in this proceeding.

#### **OFFICIAL COMMITTEE**

11. Pursuant to paragraph 10 of the Appointment Order, Representative Counsel was directed to establish an Official Committee of Investors (the "**Official Committee**") in accordance with the process and procedure described in Schedule "B" attached to the Appointment Order (the "**Official Committee Establishment Process**").

12. As further described in the First Report, Representative Counsel fully carried out the Official Committee Establishment Process and selected 5 Investors to act as Members of the Official Committee and 2 Investors to act as Alternates to the Official Committee. Accordingly, on April 15, 2019, Representative Counsel brought a motion to the Court for the approval of the Official Committee.

13. Pursuant to the Order of the Honourable Mr. Justice Hailey dated April 15, 2019, the Official Committee was approved and constituted (the "**Official Committee Approval Order**"), a copy of which, along with the Endorsement of Justice Hailey dated April 15, 2019, is attached as **Appendix "F"**.

## **PROPOSED TRANSACTION AND THE PROPERTY**

### **Information related to Transaction**

14. In the summer of 2018, BMO Capital Markets (“**BMO**”) undertook a marketing and sales process in respect of the Property (the “**2018 Marketing and Sales Process**”), which resulted in a joint venture agreement (the “**Proposed JV Agreement**”) between Lanterra Developments Limited (in trust) or its designee and 263 Holdings Inc. (the main holding company and owner of Adelaide) to complete the development of the Property (the “**Lanterra Transaction**”). Representative Counsel learned of the Lanterra Transaction through Adelaide during the course of this proceeding, as summarized below.

15. In or around April 2019, Representative Counsel was advised by Adelaide that it received an offer for a proposed Transaction in respect of the Property. At this time, the name of the offeror was anonymous and details in respect of the Transaction were not disclosed to Representative Counsel.

16. Representative Counsel was advised that these details remained confidential at the time because the offeror was still in the process of completing its due diligence, and that such due diligence was expected to be completed by the end of May 2019.

### **Non-Disclosure Agreement**

17. On May 7, 2019, the parties to this proceeding attended at Court to provide a status update on this proceeding and the proposed Transaction in respect of the Property.

18. At this time, the details in respect of the Transaction were not disclosed to Representative Counsel and the name of the offeror remained anonymous as it was still completing its due diligence.

19. Pursuant to the Endorsement of the Honourable Mr. Justice Haaney dated May 7, 2019, a copy of which is attached as **Appendix “G”**, *inter alia*, the Court directed Representative Counsel to enter into the NDA in respect of the Transaction.



20. Accordingly, on May 8, 2019, after consulting with and receiving instructions from the Official Committee, Representative Counsel entered into the NDA with Adelaide in order to permit Representative Counsel to obtain the Transaction details and offerors name on a “counsel-only” basis. A copy of the NDA is attached as **Appendix “H”**.

21. Representative Counsel reported this information to Investors through the Communication dated May 8, 2019, a copy of which is attached as **Appendix “I”**.

22. Thereafter, Representative Counsel attended at the offices of Adelaide’s counsel (McCarthy Tetrault LLP), and reviewed the proposed Lanterra Transaction details. As set out in the NDA, Representative Counsel was not permitted to make copies of the Lanterra Transaction documents or disclose the details of the Lanterra Transaction with Investors or the Official Committee until such time as Adelaide advised given that the offeror was still in the process of completing its due diligence conditions.

#### **Extension to Due Diligence Period**

23. In June 2019, Adelaide advised Representative Counsel that the offeror in respect of the Transaction requested an extension to the due diligence period to June 24, 2019 in order to permit to make further due diligence inquiries related to the Property.

24. After consulting with and receiving instruction from the Official Committee, Representative Counsel agreed to grant Adelaide the extension to June 24, 2019 (“**Due Diligence Expiry Date**”).

25. At this time, Representative Counsel was still bound by the terms of the NDA and not permitted to disclose the details in respect of the Lanterra Transaction with Investors or the Official Committee.

#### **Transaction Details and Joint Venture Agreement**

26. In or around the Due Diligence Expiry Date, Representative Counsel was advised by Adelaide that the offeror had completed its due diligence, and that certain details of the Lanterra Transaction were capable of being reviewed and disclosed by the Official Committee to Investors.

27. Accordingly, on or about June 27, 2019, Representative Counsel and 2 Members of the Official Committee attended at the offices of Adelaide's counsel to review the Lanterra Transaction summary documents.

28. Due to confidentiality concerns expressed by Adelaide, Representative Counsel was permitted to review the Lanterra Transaction details in person with Adelaide's counsel present and take hand-written notes, but was not permitted to take away copies of the documents or otherwise make copies.

### **NEED FOR APPOINTMENT OF FINANCIAL ADVISOR**

#### **Overview of Representative Counsel's Position**

29. Despite frequent and repeated requests, Representative Counsel and the Official Committee have not been provided with a copy of the Proposed JV Agreement. The Companies are only prepared to share the Proposed JV Agreement on unreasonably restrictive terms that will, among other things, prevent the Investors from reviewing it in advance of voting as to whether to compromise their interests. Attached as **Appendix "J"** is an email exchange between Geoff Hall and Representative Counsel dated September 11-12, 2019, in this regard.

30. Adelaide's proposed terms for the disclosure of the Proposed JV Agreement is not acceptable to Representative Counsel or the Official Committee, as it is unnecessarily and unreasonably restrictive. Hi-Rise is asking the Investors to vote on a proposed settlement that arises from and is funded through the Proposed JV Agreement, but at the same time, will not allow the Investors access to review the Proposed JV Agreement. As such, Investors are unable to assess for themselves, among other things, the risks associated with the payments that they are supposed to receive in the future. In the opinions of Representative Counsel and the Official Committee, this position is unfeasible and simply unfair.

31. At this time, the Official Committee is not prepared to recommend to Investors that they vote in favour of the Lanterra Transaction. The Official Committee is of the view that it does not have the information it needs to adequately advise Investors on the Lanterra Transaction and that this proceeding entirely lacks transparency.

32. The Official Committee, Representative Counsel and the Companies agree that a financial advisor ought to be engaged. The dispute between the parties relates to the scope of the financial advisor's mandate and whether such engagement ought to proceed by way of Court appointment.

33. As further set out below, Representative Counsel and the Official Committee are of the view that transparency is required in this proceeding and that: (i) a financial advisor ought to be appointed by the Court; (ii) the Financial Advisor's mandate include reviewing all aspects of Adelaide's proposed sale or transactions in respect of the Property; (iii) the Financial Advisor be empowered by the Court to collect information and documents from all persons in possession of same in order to fulfill that mandate; and, (iv) the Companies and Mr. Neilas ought not to be the gatekeeper of information and documentation (*i.e.* that the Financial Advisor need not go through the Companies in order to gain access to such information and documents).

#### **Relevant Facts to the Dispute**

34. On August 21, 2019, Representative Counsel and counsel to the Companies had a conference call to discuss the terms of the financial advisor's appointment (the "**Conference Call**"). Representative Counsel advised that it required a third party to review and assess the circumstances surrounding all proposed transactions related to the Property, which would include a review of the marketing and sales process undertaken by BMO. At such time, the Companies did not agree to disclosure of information through a third party, but did agree to provide information to Representative Counsel. It was agreed that Representative Counsel would prepare a draft form of Order for review by counsel to the Companies.

35. Pursuant to paragraph 27 of the Appointment Order, Hi-Rise is permitted to call, hold, and conduct a meeting of all Investors in the Project, including Opt-Out Investors, in order for Investors to consider and, if determined advisable, pass a resolution approving the Transaction and the distribution proceeds therefrom (the "**Vote**"). Paragraphs 28 to 31 of the Appointment Order sets out a mechanism and rules for the Vote.

36. On the Conference Call, counsel to Hi-Rise advised Representative Counsel that it intended to call a meeting of Investors on September 25, 2019 in order to hold a Vote respect of

the Lanterra Transaction. At such time, Representative Counsel agreed to same given that the Companies appeared to agree to the Court appointment of a financial advisor.

37. On August 22, 2019, Representative Counsel delivered the draft Order as discussed on the Conference Call. Attached as **Appendix "K"** is a copy of Representative Counsel's email and the draft Order.

38. By letter dated August 24, 2019, a copy of which is attached as **Appendix "L"**, Mr. Geoff Hall (counsel to Adelaide) advised, among other things, that it would not be possible to obtain the Order on consent.

#### **First Notice from Hi-Rise to Investors regarding Vote**

39. By email dated August 27, 2019, Mr. Brinn Norman (General Counsel of Hi-Rise), advised Representative Counsel that it intended to deliver an update to Investors in respect of the Vote proceeding on September 25, 2019. A copy of said email and the proposed draft letter to Investors is attached as **Appendix "M"**.

40. By email response dated August 27, 2019, Representative Counsel advised Mr. Norman that the appointment of a financial advisor would not be proceeding on consent, that Representative Counsel would bring a motion for same, and that as part of that motion, Representative Counsel would be seeking a stay of the Vote. Accordingly, Representative Counsel requested that Hi-Rise not print and send out the update to Investors regarding a Vote in the interim. A copy of said email is attached as **Appendix "N"**.

41. Representative Counsel *did not* receive a response to this correspondence. By letter dated August 27, 2019, Hi-Rise delivered an update to all Investors advising of a meeting of Investors and Vote scheduled to take place on September 25, 2019 (the "**First Notice**"), a copy of which is attached as **Appendix "O"**.

42. The First Notice provides that "At the Adelaide Investor Meeting, details of the pending sale transaction of the property and corresponding Settlement will be presented to investors in the Adelaide Mortgage. Investors will be provided with information and opinions from: .... (iv) Miller Thomson."

43. This First Notice was delivered after Representative Counsel advised it would be seeking a stay of the Vote and therefore inaccurately advises Investors that it will be hearing information and opinions of Representative Counsel.

#### **Conference Call with Justice Hainey**

44. On August 28, 2019, Representative Counsel discussed a potential resolution in respect of the financial advisor's appointment with counsel to Hi-Rise, and also advised that it intended to seek advice and directions from Justice Hainey immediately. Said discussion was later documented in an email exchange that day, a copy of which is attached as **Appendix "P"**.

45. On August 28, 2019, Representative Counsel had a conference call with Justice Hainey pursuant to section 13 of the Appointment Order to seek the Court's advice and direction regarding the Official Committee's instructions on the appointment of a financial advisor. His Honour directed that Representative Counsel send an email to all parties with its proposed terms, and then forward a copy of same to His Honour for review and approval.

46. As a courtesy, Representative Counsel first delivered a copy of its draft email to counsel to the Companies for its review. The Companies objected. Attached as **Appendix "Q"** is a copy of the email thread between Representative Counsel and the Companies dated August 28, 2019, which also includes the positions of the parties and a summary of Representative Counsel's conference call with Justice Hainey.

47. As the request of counsel to Adelaide, Representative Counsel forwarded the above-noted email thread to Justice Hainey.

#### **Proposed Settlement Offer from Hi-Rise**

48. By email dated August 28, 2019, and subsequent to the above-noted correspondence, Mr. Birch provided a copy of the final settlement offer made by the Borrower (the "**Final Offer**") and advised, among other things, that Hi-Rise intends to proceed with the Vote scheduled for September 25, 2019. A copy of said email and the Final Offer is attached as **Appendix "R"**.

49. By responding letter dated August 29, 2019, a copy of which is previously attached as Appendix "D", Representative Counsel reiterated its position that the Official Committee

requires true transparency in this process and that it did not view the Official Committee's requirements for a truly independent and court empowered financial advisor as unreasonable, among other things. Therein, Representative Counsel advised the Companies that it would be bringing a motion, and again advised that it would be seeking a stay of the Vote.

50. Further, Representative Counsel advised that the Final Offer mischaracterizes and grossly overstates the benefits to Investors. For example, the Final Offer characterizes interest payments already received by Investors as recoveries, when they are not, and fails to highlight that non-registered Investors (*i.e.* Investors that do not hold their investment in an RRSP) will receive nothing on closing, with all other recoveries being highly contingent.

51. Further letters were exchanged thereafter regarding the position of Hi-Rise (on September 4, 2019) and Representative Counsel (September 6, 2019), copies of which are attached as **Appendix "S"**.

#### **Second Notice to Investors from Hi-Rise regarding Vote**

52. On August 29, 2019, Hi-Rise delivered a second notice to Investors advising of the time and location of the Vote it set to proceed on September 25, 2019 (the "**Second Notice**"), a copy of which is attached as **Appendix "T"**.

#### **Communication from Representative Counsel**

53. On August 30, 2019, Representative Counsel issued a Communication to Investors in an effort to respond to the Second Notice, and in particular, in order to outline its position in respect of the settlement offer and the Vote. Therein, Representative Counsel made clear that it has not been provided with the requisite information to properly provide advice to Investors and that it does not support the Vote. A copy of this Communication is attached as **Appendix "U"**.

#### **Third Notice to Investors from Hi-Rise and Report of Grant Thornton Limited**

54. On September 3, 2019, Hi-Rise delivered a third notice to Investors (the "**Third Notice**"), enclosing the report of its financial advisor, Grant Thornton Limited dated August 30, 2019, in respect of the settlement offer by Adelaide among other things. A copy of this letter and enclosures are attached as **Appendix "V"**.

55. In the course of these proceedings, Representative Counsel received an unsolicited expression of interest in respect of a cash purchase of the Property from Tricon Lifestyle Rentals LP (“**Tricon**”) in the form of a binding agreement of purchase and sale, subject to certain conditions including due diligence (the “**Tricon Offer**”).

56. Tricon advised Representative Counsel that it had submitted the Tricon Offer to BMO for its review and consideration.

57. The Grant Thornton report provides that “We understand from BMO that in early August of 2019, Tricon withdrew the Tricon APS and that Tricon is no longer pursuing a transaction for the Property.”

58. At one of its meetings, BMO advised Representative Counsel that Tricon is no longer interested in the Property.

59. Tricon has confirmed to Representative Counsel that this information is not correct and that it remains interested and has not withdrawn its offer. Attached as **Appendix “W”** is an email thread dated September 5, 2019 to September 7, 2019 in this regard.

#### **Notice of Enforcement from Meridian Credit Union**

60. By letter dated September 6, 2019 from Mr. Steve Graff (counsel to Meridian), Meridian advised, *inter alia*, that it is owed the principal amount of \$16,414,000, that it was only in the last week of August 2019 that it became aware of these proceedings and the Appointment Order and that absent repayment by October 31, 2019 and a satisfactory forbearance agreement, Meridian will bring an application to appoint a receiver. A copy of said letter is attached as **Appendix “X”**.

#### **Fourth Communications from Hi-Rise to Investors**

61. On September 10, 2019, Hi-Rise delivered a fourth communication to Investors regarding the Meridian letter (the “**Fourth Notice**”), a copy of which is attached as **Appendix “Y”**. Such letter states, among other things, “We have reviewed the Rep Counsel web site and it appears that Miller Thompson has not disclosed this information to you (as at the date of this letter). We believe that you should have all the information that is relevant to making an informed decision

about your investment...” Therein, Hi-Rise also invites Investors to directly contact Mr. Gregory Azeff of Miller Thomson LLP.

### **Communication from Representative Counsel**

62. On September 11, 2019, Representative Counsel issued a Communication to Investors in an effort to respond to the Fourth Notice. Therein, Representative Counsel made clear that it has still not been provided with the requisite information to properly provide advice to Investors and that it does not support the Vote. A copy of this Communication is attached as **Appendix “Z”**.

### **Fifth Communication from Hi-Rise to Investors – Notice of Meeting and Information Statement**

63. On or about Wednesday September 11, 2019, it came to Representative Counsel’s attention that Hi-Rise delivered a “Notice of Meeting and Information Statement” dated September 6, 2019 (the “**Information Statement**”) and a Voting Ballot, which is a form of proxy for Investors to share their vote and appoint Noor Al-Awqati of Hi-Rise as proxyholder. A copy of the Information Statement and the Voting Ballot is attached as **Appendix “AA”**.

64. The Information Statement contains misleading and inaccurate information regarding Representative Counsel and the Official Committee (in particular, at pages 11 to 13 of the Information Statement).

65. Further, the Information Statement does not contain important information regarding the distinction between registered versus non-registered Investors, namely, that under the terms of the proposed settlement, non-registered Investors will not receive repayment on their principal for a least 2 to 3 years, if ever.

### **IMPROPER COMMUNICATIONS**

66. In Representative Counsel’s view, the statements contained in its communications and the Information Statement are a deliberate attempt to undermine the role and credibility of the Official Committee and Representative Counsel.



67. In Representative Counsel's view, the communications from Hi-Rise to Investors are misleading, factually inaccurate, and incomplete. Moreover, such communications directly interfere with Representative Counsel's ability to fulfill its Court-prescribed mandate and duties.

68. Since the Fourth Notice and the Information Statement were delivered to Investors, Representative Counsel has received a flood of personal emails and telephone calls from Investors. It is clear from such correspondence that Investors are confused and are also concerned by the information they are receiving from Hi-Rise. Representative Counsel is of the view that the Investors need to be protected from misinformation and that a communication restriction against Hi-Rise and Adelaide ought to be granted.

69. The Official Committee and the Financial Services Regulatory Authority of Ontario support the imposition of a communication restriction.

#### **PROPOSED FINANCIAL ADVISOR APPOINTMENT ORDER**

70. Pursuant to paragraph 5 of the Appointment Order, Representative Counsel is authorized to retain actuarial, financial, and other advisors and assistants as may be reasonable necessary or advisable in connection with its duties of Representative Counsel.

71. Pursuant to paragraph 6 of the Order, Representative Counsel is authorized to take all steps and do all acts necessary or desirable to carry out the terms of the Appointment Order and fulfill its mandate thereunder.

72. The proposed Financial Advisor's mandate is limited and reasonable in scope, in that it permits the Financial Advisor to review and report to Representative Counsel and to the Court on all matters related to the Company's proposed sale of the Property, including proposed transactions in respect of the Property and the financial implications of the same.

73. The Financial Advisor Appointment Order contemplates granting the Financial Advisor the power to compel access to information and records in respect of Adelaide's proposed sale of the Property, save and except for privileged information and/or records.

74. The Financial Advisor Appointment Order also contemplates granting the Financial Advisor the power to meet with and discuss with affected Persons (which includes Adelaide and Hi-Rise, among others) on all matters relating to the Company's proposed sale of the Property.

75. In Representative Counsel's view, these powers are necessary for the Financial Advisor's mandate as described above.

76. The Official Committee is highly skeptical of the unwillingness of the Hi-Rise and Adelaide to provide true transparency. The Companies stand to potentially make a significant profit through the Lanterra Transaction if it proceeds, even as they ask the Investors to compromise more than \$20 million of the amounts they are owed. Neither the Official Committee nor Representative Counsel will accept any information gathering process in which the Companies are positioned as disclosure gatekeepers.

77. In light of the foregoing, Representative Counsel is of the view that the appointment of the Financial Advisor is necessary for the following reasons:

- (a) The Financial Advisor will be empowered to review and advise on all matters related to the Company's proposed sale of the Property, including but not limited to, all aspects of any and all proposed transactions in respect of the Property and the financial implications of such proposed transactions. This will include the Lanterra Transaction being put forward by Adelaide, as well as exploring the viability of the Tricon Offer, and the financial implications of each;
- (b) The Company's proposed sale of the Property, and any proposed transaction in respect of the Property, directly impacts the economic interests of the Investors, which interests Representative Counsel represents. The Investors ought to have the benefit of all information available prior to voting on any proposed transaction related to the Property, which the Financial Advisor would be in the best position to provide;
- (c) As noted above, Representative Counsel and Members of the Official Committee were permitted to review the Lanterra Transaction details in person and take hand-written notes, but were not permitted to take away copies of the documents.

The Financial Advisor will have the power to compel document production and analyze same, as noted above;

- (d) Representative Counsel seeks to appoint the Financial Advisor with a view to assisting Representative Counsel to fulfill its mandate under the Appointment Order and achieve the best possible financial outcome for Investors;
- (e) In Representative Counsel's view, it will be in a better position to meaningfully report to the Court and to the Investors in respect of the financial implications of the Lanterra Transaction after the Financial Advisor has had the opportunity to review and analyze all proposed transactions in respect of the Property; and
- (f) The Financial Advisor is a third party that will provide an impartial and transparent perspective on all proposed transactions in respect of the Property and the financial implications of same.

#### **Financial Advisor's Charge**

78. As noted above, the Rep Counsel Charge excludes disbursements of Representative Counsel, which disbursement would include the fees of the Financial Advisor. In Representative Counsel's view, and the fees and disbursements of the Financial Advisor ought to be paid by the Company.

79. The Financial Advisor Appointment Order contemplates granting a charge on the Property in favour of the Financial Advisor as security for its fees and disbursements incurred both before and after the making of the Financial connection with fulfilling its duties under the Financial Advisor Appointment Order, up to a maximum amount of \$100,000 (the "**Financial Advisor's Charge**").

80. The proposed Financial Advisor's Charge will rank subordinate in priority only to: (i) the Rep Counsel Charge; and, (ii) any encumbrances ranking in priority to the Rep Counsel Charge. For greater certainty, the proposed Financial Advisor's Charge will rank in priority to all other encumbrances on the Property, including the Hi-Rise Mortgage.

81. Accordingly, if the Financial Advisor's Charge is granted the scheme of priority in respect of the charges on title to the Property would be as follows:

- (a) first-ranking charge – Meridian Mortgage
- (b) second-ranking charge – Rep Counsel Charge
- (c) third-ranking charge – Financial Advisor Charge
- (d) fourth-ranking charge – Hi-Rise Mortgage

82. The Official Committee and the Financial Services Regulatory Authority of Ontario support the Financial Advisor Appointment Order and the Financial Advisor's Charge.

#### **INCREASE TO REP COUNSEL CHARGE**

83. Pursuant to paragraph 17 of the Appointment Order, Representative Counsel shall be paid by Adelaide its reasonable fees, consisting of fees from and after the date of the Appointment Order incurred in its capacity as Representative Counsel (the "**Post-Appointment Fees**") up to a maximum amount of \$200,000, or as may otherwise be ordered by this Court, which amount shall exclude the disbursements incurred by Representative Counsel.

84. Pursuant to paragraph 18 of the Appointment Order, Representative Counsel was granted the Rep Counsel Charge on the Property as security for its Post-Appointment Fees, to rank in priority to the Hi-Rise Mortgage, but subordinate to the Meridian Mortgage (updated amounts owing in respect of each are set out above).

85. Representative Counsel continues to represent the interests of Investors and fulfill its duties and mandate under the Appointment Order, as set out in this Second Report. Representative Counsel's role in this proceeding has been extensive, and will continue to be extensive, and it has incurred legal fees in respect of same.

86. This proceeding has continued far longer than originally anticipated, due to factors outside of Representative Counsel's control including the repeated delays in completing the JV Agreement. In addition, the Companies have frustrated all attempts by Representative Counsel to

obtain truly transparent disclosure. As at the date of this Second Report, Representative Counsel's Post-Appointment Fees are in excess of \$250,000.

87. Accordingly, Representative Counsel intends to seek an increase to the Rep Counsel Charge in respect of its Post-Appointment Fees up to a maximum amount of \$400,000.00, which amount shall exclude the disbursements incurred by Representative Counsel.

#### **Attendance at Court on September 12, 2019**

88. On September 12, 2019, Representative Counsel, counsel to the Companies, Meridian, and the Financial Services Regulatory Authority of Ontario, among others, attended at Court to provide an update on these proceedings.

89. At such attendance, Justice Haaney orally directed the Companies to refrain from communicating with Investors until September 16, 2019 (being the next scheduled Court date). Shortly after the Court attendance on September 12, 2019, Representative Counsel received an email from a financial advisor enclosing a screen shot of a text message sent by John Neilas, whom Representative Counsel understands to be Mr. Jim Neilas' brother. A copy of the text message screen shot is attached as **Appendix "BB"**.

90. The text message reflects the discussions at the court attendance. Representative Counsel is of the view that this correspondence directly circumvents Justice Haaney's oral direction and brought it to the attention of counsel to Hi-Rise.

91. Counsel to Hi-Rise maintains that it has "no knowledge of this alleged communication nor does Hi-Rise."

#### **Position of the Parties**

92. The position of Hi-Rise in respect of the proposed Financial Advisor Appointment Order is set out in the email thread dated September 12-13, 2019, a copy of which is attached as **Appendix "CC"**. The position of Meridian in respect of the proposed Financial Advisor Appointment Order is set out in the correspondence dated September 13, 2019, a copy of which is attached as **Appendix "DD"**.

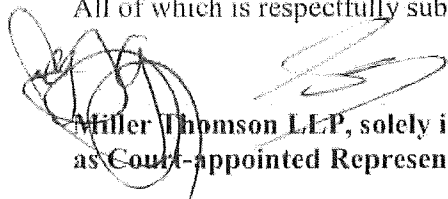
## CONCLUSION

93. Representative Counsel is not in a position to fulfill its mandate. Representative Counsel and the Official Committee cannot provide meaningful and reliable advice to the Investors unless they (and their Financial Advisor) have received all of the information, documents and access to parties that they believe are relevant to fulfilling their mandate, on a truly transparent basis, unfettered by and independent from the Companies. Representative Counsel is of the opinion that Court appointment of a Financial Advisor is critical for this purpose.

94. It is unfortunate that the Companies refuse to cooperate in implementing true transparency on a basis that is acceptable to the Official Committee and the Investors, which are the only parties (other than Meridian) with a financial interest in the Property. Instead, the Companies continue their attempts to inappropriately control the process and the flow of information.

95. Simply put, given the massive compromise the Companies are asking the Investors to accept and the massive potential profits the Companies stand to make through the Lanterra Transaction, Representative Counsel is of the view that the Official Committee is entitled to demand the highest level of transparency, and all aspects and circumstances of the proposed sale of the Property and the Proposed JV Agreement must be subjected to rigorous scrutiny.

All of which is respectfully submitted at Toronto, Ontario this 13<sup>th</sup> day of September, 2019.



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

**This is Exhibit "N" referred to in the Affidavit of Bernhard  
Huber sworn the 30<sup>th</sup> of September, 2019**



---

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

**Allison Eluned Van Rooijen, a Commissioner,  
etc., Province of Ontario, for  
Meridian Credit Union Limited, Motus Bank  
and Meridian OneCap Credit Corporation.  
Expires May 8, 2021.**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. )  
 )  
 )  
JUSTICE HAINEY ) TUESDAY, THE 17<sup>TH</sup>  
 DAY OF SEPTEMBER, 2019

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



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

**ORDER**

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

**ON HEARING** the submissions of Representative Counsel, Hi-Rise, the Company, the Financial Services Regulatory Authority of Ontario ("**FSRA**"), Meridian Credit Union Limited



("Meridian") and such other counsel as appeared, and on being advised of the consent of the parties,

#### **APPOINTMENT**

1. **THIS COURT ORDERS** that Alvarez & Marsal Canada Inc. is hereby appointed as a Court officer to act as an information officer in respect of Hi-Rise and the Property (in such capacity, the "Information Officer").

2. **THIS COURT ORDERS** that the Information Officer shall not take possession of or exercise control over, and shall not be deemed to have taken possession of or exercise control over the business or assets of Hi-Rise or the Company, including, without limitation, the Property.

#### **NO EFFECT ON RIGHTS AND REMEDIES OF MERIDIAN**

3. **THIS COURT ORDERS** that nothing in this Order in any way affects Meridian's ability to exercise any or all of its rights or remedies under any one or more of any credit agreement, security agreement or other document between Meridian and the Company or any other party named in such documents, including the right to the appointment of a receiver under the *Bankruptcy and Insolvency Act*, the *Courts of Justice Act* or otherwise, and the right to apply to the Court for any other remedies.

#### **INFORMATION OFFICER'S POWERS**

4. **THIS COURT ORDERS** that the Information Officer is hereby empowered and authorized to do any of the following where the Information Officer considers it necessary or desirable:

- (a) 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 Information Officer's powers and duties conferred by this Order;
- (b) to review and report to the Court and to all stakeholders, including but not limited to the Representative Counsel, Hi-Rise, the Company, FSRA and Meridian, in

respect of all matters relating to the Property, Hi-Rise's mortgage over the Property, and the Company's proposed sale of the Property, including, but not limited to, the marketing and sales process undertaken in respect of the Property, all aspects of any and all proposed transactions in respect of the Property (and in this regard, the Information Officer may engage in discussions with Tricon Lifestyle Rentals Investment LP to ascertain its interest in the Property), and the financial implications of such proposed transactions (the "Mandate");

- (c) to meet with and discuss with such affected Persons (as defined below) as the Information Officer deems appropriate on all matters relating to the Mandate, subject to such confidentiality terms as the Information Officer deems advisable; and
- (d) to take any steps reasonably incidental to the exercise of these powers or the fulfilment of the Mandate.

**DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE INFORMATION OFFICER**

5. **THIS COURT ORDERS** that (i) the Company and Hi-Rise, (ii) all of their current and former directors, officers, employees, agents, advisors, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms or corporations (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Information Officer of the existence of any information the Information Officer considers that it requires in order to fulfil the Mandate that is within such Person's possession or control, shall grant immediate and continued access to such information to the Information Officer, and shall deliver all such information to the Information Officer upon the Information Officer's request, provided that nothing contained in this paragraph 5 shall oblige any Person to disclose information that is subject to any privilege (including but not limited to solicitor-client privilege, litigation privilege, settlement privilege, or any common law or statutory privilege prohibiting such disclosure).

6. **THIS COURT ORDERS** that all Persons shall forthwith advise the Information Officer of the existence of any books, documents, securities, contracts, orders, corporate and accounting

records, and any other papers, records and information of any kind that the Information Officer considers that it requires in order to fulfil the Mandate, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the “**Records**”), including but not limited to Records in respect of any and all proposed transactions in respect of the Property, in that Person's possession or control, and shall provide to the Information Officer or permit the Information Officer to make, retain and take away copies thereof and grant to the Information Officer unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 6 or in paragraph 7 of this Order shall require the delivery of Records, or the granting of access to Records, that are subject to any privilege (including but not limited to solicitor-client privilege, litigation privilege, settlement privilege, or any common law or statutory privilege prohibiting such disclosure).

7. **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 Information Officer for the purpose of allowing the Information Officer 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 Information Officer in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Information Officer. Further, for the purposes of this paragraph, all Persons shall provide the Information Officer with all such assistance in gaining immediate access to the information in the Records as the Information Officer may in its discretion require including providing the Information Officer with instructions on the use of any computer or other system and providing the Information Officer with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **DUTY TO FACILITATE INFORMATION DISCLOSURE**

8. **THIS COURT ORDERS** that upon request by the Information Officer, the Company and/or Hi-Rise shall immediately provide consent or authorization for any Person to release and disclose Records to the Information Officer, which Records may be requested by the Information

Officer in connection with the Mandate, provided that nothing contained herein shall oblige any Person to disclose information that are subject to any privilege (including but not limited to solicitor-client privilege, litigation privilege, settlement privilege, or any common law or statutory privilege prohibiting such disclosure).

#### **INFORMATION OFFICER'S REPORT**

9. **THIS COURT ORDERS** that on or before October 7, 2019, the Information Officer shall file a report with the Court in respect of the Mandate, including in particular whether sufficient effort has been made to obtain the best price in respect of the Company's proposed sale of the Property, that the proposed sale is not improvident, and in respect of the efficacy and integrity of the process by which offers had been obtained, ~~and whether there has been unfairness in the working out of the process.~~

#### **NO PROCEEDINGS AGAINST THE INFORMATION OFFICER**

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

#### **LIMITATION ON THE INFORMATION OFFICER'S LIABILITY**

11. **THIS COURT ORDERS** that the Information Officer 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.

#### **RESETTING OF THE DATE OF THE INVESTORS' MEETING AND COMMUNICATION RESTRICTION**

12. **THIS COURT ORDERS** that:

- (a) The meeting of Investors called by Hi-Rise for September 25, 2019 is adjourned to October 23, 2019 (the "**Adjournment**"), which date may be altered by further Order of this Court;
- (b) Hi-Rise and the Company, all of their directors, officers, employees, agents, advisors, accountants, legal counsel and shareholders, and all other

persons acting on its instructions or behalf, are hereby restricted from communicating with Investors, either directly or indirectly, without the consent of the Representative Counsel or Order of the Court, which restriction shall remain in effect until September 30, 2019 or such later date as may be imposed by further Order of the Court (the “**Restriction Expiry Date**”). Provided, however, that communication may be made to the Investors about the Adjournment, and such communication shall be subject to review and approval by Representative Counsel prior to being delivered to Investors, in accordance with paragraph 12(c), below;

- (c) All communications delivered by Hi-Rise or the Company to Investors, whether before the Restriction Expiry Date with the consent of Representative Counsel, or after the Restriction Expiry Date, shall be subject to review and approval of Representative Counsel prior to being delivered to Investors. Representative Counsel shall conduct its review and advise Hi-Rise or the Company of its position within 24 hours upon receipt of same, provided, however, that Representative Counsel shall only be entitled to object to the content of a proposed communication that is factually incorrect, and further, Representative Counsel acknowledges that Hi-Rise shall be permitted to express its opinion regarding the sales process and any proposed transaction and to recommend to Investors that they vote in favour or against any transaction or settlement;
- (d) In the event Representative Counsel asserts that part of any communication is factually incorrect, Hi-Rise or the Company shall not deliver said communication to Investors and, Hi-Rise, the Company or Representative Counsel shall be permitted to seek directions from the Court regarding the communication;
- (e) Hi-Rise and the Company are at liberty to communicate with syndicated mortgage investors in the OptArt Loft project at 54-60 Shepherd Road, Oakville (the “**Oakville Investors**”). Notwithstanding paragraph 12(c) of

this Order, communications to the Oakville Investors may refer to the Project and the Property even though some of the Oakville Investors are also Investors, provided that the Representative Counsel is provided with 24 hours to review the portion of any communication to Oakville Investors that references the Project or the Property. The Representative Counsel does not have the right to approve such communications, but is at liberty to seek directions from the Court if the Representative Counsel has any concerns about the proposed communication; and

- (f) Hi-Rise and the Company are restricted from negotiating any settlement or compromise with Investors on a private basis during the course of these proceedings.

#### **PAYMENT OF FEES TO MERIDIAN**

13. **THIS COURT ORDERS** that the Company shall pay an extension fee to Meridian in the amount of \$85,220.00.

#### **ENCUMBRANCES IN RESPECT OF THE PROPERTY**

14. **THIS COURT ORDERS** that subject to this Order, the Property shall not be further encumbered by any Person other than Meridian, pending further Order of this Court.

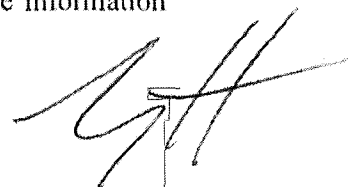
#### **PIPEDA**

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act* and any other applicable privacy legislation, the Information Officer may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable to fulfill its mandate pursuant to this Order.

#### **INFORMATION OFFICER'S ACCOUNTS**

16. **THIS COURT ORDERS** that the Information Officer and counsel to the Information Officer shall be paid by the Company their reasonable fees and disbursements, both before and after the making of this Order on a ~~bi-weekly~~ basis forthwith after delivery of the Information

*monthly*



Officer's accounts to the Company. Any disputes regarding the Information Officer's accounts shall be determined by the Court. For greater certainty, Representative Counsel shall not be liable for the fees and disbursements of the Information Officer or its counsel.

17. **THIS COURT ORDERS** that the Information Officer and counsel to the Information Officer shall be entitled to and are hereby granted a charge (the "**Information Officer Charge**") on the Property, as security for their fees and disbursements, both before and after the making of this Order, up to the maximum amount of \$100,000 or as may otherwise be ordered by this Court. The Information Officer Charge shall form a charge on the Property, subordinate in priority only to: (i) the Rep Counsel Charge (as defined in the Appointment Order and as may be increased by further Orders of this Court); and (ii) any encumbrances ranking in priority to the Rep Counsel Charge (including, without limitation, the mortgage in favour of Meridian), and, for greater certainty, the Information Officer Charge shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, including, without limitation, the Hi-Rise Mortgage (as defined in the Appointment Order), and shall not rank in priority to any security interests, trusts, liens, charges, statutory or otherwise, in favour of Meridian.

18. **THIS COURT ORDERS** that in the event that the Information Officer and its counsel rely on the Information Officer Charge to seek payment of their fees and disbursements, the Information Officer and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Information Officer and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

#### **SERVICE AND NOTICE**

19. **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/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (the "**Rules**"), this Order shall constitute an order for substituted service pursuant to

Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission.

20. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Information Officer is at liberty to serve or distribute this Order, any materials and other orders in this proceeding, and any notices or other correspondence in this proceeding, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Company's creditors or other interested parties at their respective addresses as last shown on the records of the Company 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**

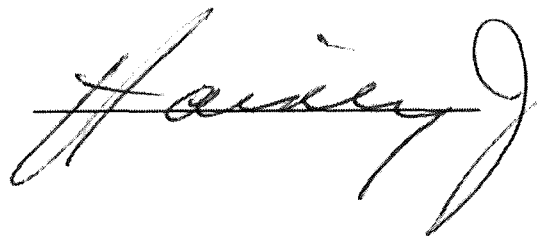
21. **THIS COURT ORDERS** that the Information Officer may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

22. **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 Information Officer 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 Information Officer, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Information Officer and its agents in carrying out the terms of this Order.

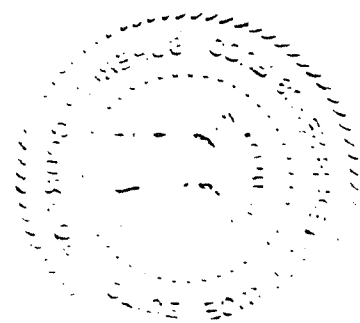
ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

SEP 17 2019

PER / PAR:







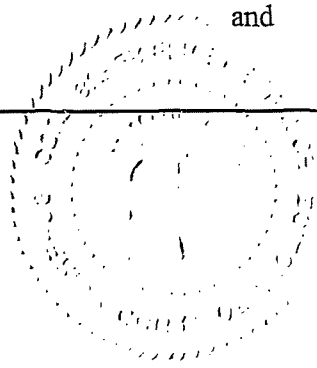
HI-RISE CAPITAL LTD.

Applicant

and

SUPERINTENDENT OF  
FINANCIAL SERVICES et. al.  
Respondents

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



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

Proceeding commenced at Toronto

**ORDER**

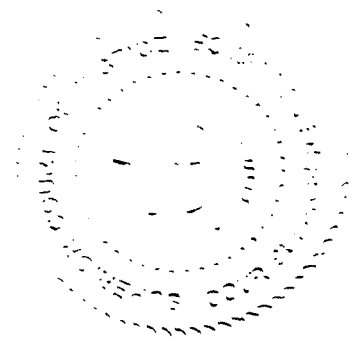
**MILLER THOMSON LLP**

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

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

**Stephanie De Caria LSO#: 68055L**  
sdecaria@millerthomson.com  
Tel: 416.595.2652/Fax: 416.595.8695

Court-appointed Representative Counsel



**This is Exhibit "O" referred to in the Affidavit of Bernhard  
Huber sworn the 30<sup>th</sup> of September, 2019**



---

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

**Allison Eluned Van Rooijen, a Commissioner,  
etc., Province of Ontario, for  
Meridian Credit Union Limited, Motus Bank  
and Meridian OneCap Credit Corporation.  
Expires May 8, 2021.**



Steven L. Graff  
Direct: 416.865.7726  
E-mail: sgraff@airdberlis.com

September 6, 2019

BY EMAIL

Mr. Geoff R. Hall  
Mr. Junior Sirivar  
Mr. Jonathan D. See  
**MCCARTHY TÉTRAULT LLP**  
Suite 5300, 66 Wellington Street West  
TD Bank Tower  
Toronto, ON  
M5K 1E6

Dear Sir:

**Re: Meridian Credit Union Limited loan to Adelaide Street Lofts Inc.**

Please be advised that we have been retained by Meridian Credit Union Limited (“MCU”) in respect of its outstanding loan to Adelaide Street Lofts Inc. (the “**Borrower**”). MCU’s lending relationship with the Borrower is governed by a Credit Agreement dated April 2, 2018, as may be amended from time to time (collectively, the “Credit Agreement”) and as guaranteed by each of Neilas Inc., Demetrios Neilas and Ioannis Neilas (collectively, the “**Guarantors**”). The credit facility extended pursuant to the Credit Agreement is a demand loan under which the amount of \$16,414,000.00 in principal remains outstanding (plus all applicable interest, costs and other obligations owing thereunder). We have been provided with copies of all of the security granted to MCU by the Borrower and the Guarantors (collectively, the “Security”) in connection with the loan.

As the Borrower and the Guarantors have been advised, there was a default under the Credit Agreement when, among other things, the Borrower failed to pay the property taxes that had arisen in respect of the property at 263 Adelaide Street West, Toronto, Ontario (the “**Property**”) and failed to pay interest installments due thereunder which payment default started at the latest, May 14, 2019 and has continued to present.

On June 14, 2019, then counsel to MCU (Scarfone Hawkins) made demand upon each of the Borrower and the Guarantors for repayment of the obligations owing by those respective parties. In conjunction with the delivery of the demands, Scarfone Hawkins delivered Notices of Intention to Enforce Security pursuant to s.244(1) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”). No response was received in respect of the demands by the end of the 10-day BIA period or at all and, to this day, the entire indebtedness to MCU remains outstanding. A form of forbearance agreement was prepared by MCU and delivered to the Borrower on May 16, 2019 and, that too, was not responded to at all.

September 6, 2019

Page 2

MCU relies on all the prior demands and BIA Notices in connection with the outstanding loan. It has not waived and reserves any and all of its rights arising pursuant to the Credit Agreement and all Security provided pursuant thereto, as well as the Demands and BIA notices delivered.

In the face of all of this, MCU was surprised to learn only two weeks ago of the proceedings before Mr. Justice Hailey of the Ontario Superior Court of Justice (Commercial List), the commencement of which happened by way of an Order made by His Honour on March 21, 2019, when Miller Thomson was appointed as representative counsel in respect of individuals and/or entities that hold interests in a syndicated mortgage administered by Hi-Rise Capital and registered against the Property subordinate to the Meridian charge.

MCU was not aware of these proceedings despite many Orders made therein and communications posted. Frankly, there can be no explanation for MCU not being advised of the existence of these proceedings even if specific relief was not sought against it. It is a significantly interested party and ought to have been brought into the loop.

In any event, in the face of the defaults and the complete disregard for MCU's position, MCU is disinclined to wait any longer for the repayment of the outstanding indebtedness owed to it. However, in an effort to avoid the commencement of an application to the Court to appoint a receiver by MCU pursuant to its Security, MCU is prepared to enter into a strict forbearance arrangement with the Borrower for a short time after which the Borrower will be required to repay the entirety of those amounts owed to MCU in addition to any claims that could constitute priority claims (if any) to MCU.

While at this point it seems futile to deliver a draft Forbearance Agreement (considering that the first one was ignored), we have, nonetheless, set out below the general terms that would be required of any such forbearance. If you are agreeable to these terms, then we will draft an agreement and deliver it to you and will refrain from bringing an application for the appointment of a receiver by the Court pending the conclusion and adherence to that agreement. If that agreement is not settled by the end of business on Thursday, September 12, 2019, we will immediately deliver our materials in respect of a Court application to appoint an receiver over the assets, property and undertaking of the Borrower, including the Property.

#### **Forbearance Points**

- Interest on the outstanding indebtedness shall be charged at the rate of Prime plus 6% retroactive to May 15, 2019;
- Outstanding interest will be paid immediately and continue to be paid hereafter on the date due and any payment default hereafter will trigger the consequences detailed below;
- The entire indebtedness including all costs, interest, penalties, etc., shall be repaid by no later than October 31, 2019 (the "**Repayment Date**");
- Meridian shall be paid as extension fee of \$85,220.00 to which it is expressly entitled to by contract. This is the base amount that Meridian could seek in this regard and is very reasonable in the circumstances;

AIRD BERLIS

September 6, 2019

Page 3

- The Borrower will consent to an Order appointing a receiver over the its assets, property and understanding, including the Property, which Order may issue without further notice to the Borrower or any other party, if payment is not made by said date or there is a prior default;
- Each of the Guarantors, namely, 263 Holdings Inc. (formerly known as Neilas Inc.), Demetrios Neilas and Ioannis Neilas, will consent to judgement in a form to be provided and mutually agreed upon in the amount provided for in their respective guarantees which judgements may issue, if repayment is not paid by the Repayment Date ;
- Pending payout, the Borrower will provide MCU with a detailed status report reflecting the efforts that have been made to either re-finance or sell the Property and the current state of each of the negotiations with any party in which the Borrower is engaged in discussions further thereto;
- Standard terms and conditions associated with a Forbearance Agreement in comparable circumstances will form part of the short term Forbearance Agreement.

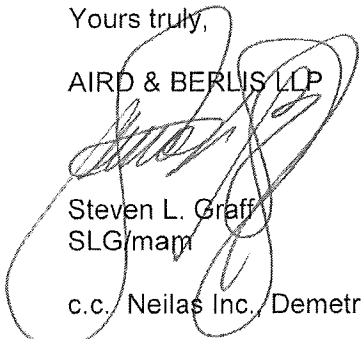
We look forward to hearing from you in this regard immediately.

We reiterate that if a satisfactory resolution is not reached by the close of business on Thursday, September 12, 2019, our application materials for the appointment of a receiver will be delivered immediately thereafter.

Thank you.

Yours truly,

AIRD & BERLIS LLP



Steven L. Graff  
SLG/mam

c.c. Neilas Inc., Demetrios Neilas and Ioannis Neilas

c.c. Meridian Credit Union Limited

37167406.2

AIRD BERLIS

**This is Exhibit "P" referred to in the Affidavit of Bernhard  
Huber sworn the 30<sup>th</sup> of September, 2019**



---

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

**Allison Eluned Van Rooijen, a Commissioner,  
etc., Province of Ontario, for  
Meridian Credit Union Limited, Motus Bank  
and Meridian OneCap Credit Corporation.  
Expires May 8, 2021.**



AIRD BERLIS

Steven L. Graff  
Direct: 416.865.7726  
E-mail: sgraft@airdberlis.com

September 12, 2019

BY EMAIL

Mr. Geoff R. Hall

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

Dear Geoff:

**Re: Forbearance, Meridian Credit Union Limited loan to Adelaide Street Lofts Inc.**

---

We are writing further to our meeting of September 11, 2019 (the "**September 11 Meeting**") regarding the Credit Agreement dated April 2, 2018 (the "**Credit Agreement**") between the lender, Meridian Credit Union Limited ("**MCU**"), and the borrower, Adelaide Street Lofts Inc. (the "**Borrower**"). As you know, the Credit Agreement is a demand loan under which the amount of \$16,414,000 in principal remains outstanding (plus all applicable interest, costs and other obligations owing thereunder) (the "**Indebtedness**"). 263 Holdings Inc. (formerly known as Neilas Inc.), Demetrios Neilas and Ioannis Neilas (together, the "**Guarantors**") have guaranteed certain obligations of the Borrower.

As detailed in our letter of September 6, 2019, numerous defaults have occurred under the Credit Agreement (the "**Defaults**"). On June 14, 2019, MCU's former counsel issued a demand and Notice of Intention to Enforce Security pursuant to s.244(1) of the *Bankruptcy and Insolvency Act* (the "**BIA**").

As discussed at the September 11 Meeting, MCU is prepared to forbear in respect of the Defaults provided the Borrower executes and returns the acknowledgement provided in this letter and otherwise complies with the terms set out herein. As such, in consideration of the respective covenants of the parties hereto, as herein contained, and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Borrower and MCU hereby agree as follows:

1. **The Investors' Meeting:** by September 17, 2019, either (i) on the consent of each of the Borrower, Hi-Rise Capital Ltd ("**Hi-Rise**") and representative counsel to the investors holding an interest in a syndicated mortgage administered by Hi-Rise (the "**Investors**") or (ii) on terms which are imposed by the Ontario Superior Court of Justice (Commercial List) (the "**Court**"), there shall be a meeting (the "**Investors' Meeting**") of the Investors to vote on the proposed settlement (the "**Settlement**") of the Investors' investments in the mortgage on the property municipally known as 263 Adelaide Street

September 12, 2019

Page 2

West, Toronto, Ontario (the "**Property**") on September 25, 2019. Neither Meridian nor its counsel has knowledge of the Settlement or the terms thereof and nothing herein should be interpreted otherwise.

2. **Approval of the Settlement:** the Investors' Meeting shall take place by September 25, 2019. At the Investors' Meeting, the Investors shall approve the Settlement by the requisite majorities agreed to among the Investors, Representative Counsel and the Borrower, or as ordered by the Court.
3. **Interim Payment:** within 10 days of the approval of the Settlement (such date, the "**Interim Payment Date**"), the Borrower shall pay to MCU the following:
  - (a) interest on the Indebtedness up to, but not including, September 16, 2019 at the rate of Prime plus 2%;
  - (b) interest on the Indebtedness at the rate of Prime plus 6% commencing September 16, 2019 to the Interim Payment Date; and
  - (c) an extension fee of \$85,220.00.
4. **Final Repayment:** the Indebtedness, including all costs, interest, penalties, legal fees of MCU, etc., shall be repaid on the sooner of October 31, 2019 or the closing of the transaction associated with the Settlement.
5. **Reporting:** pending final repayment of the Indebtedness, as requested by MCU acting reasonably, the Borrower will provide MCU with reports on the status of the Settlement and the transaction contemplated therein.
6. **Acknowledgements:** the Borrower acknowledges that (i) the contents of this letter are true, complete and accurate in all respects as if made as of the date hereof; and (ii) the Borrower remains liable for the Indebtedness, together with additional indebtedness accruing under the Credit Agreement, including: interest accrued and accruing thereon; recovery fees, costs and expenses; and, other charges now or hereafter properly payable by the Borrower to MCU, without any right of set-off, counterclaim or other deduction or reduction of any kind whatsoever, whether at law or in equity.
7. **Consent to Receiver:** the Borrower hereby consents to the immediate private or court-appointment of a receiver or receiver and manager in the event the conditions in paragraphs 1-6 are not met. For greater certainty and without limitation, if the Investors' Meeting does not take place by September 25, 2019, or the Settlement is not approved at the Investors' Meeting, the Borrower consents to the appointment of a receiver as contemplated in this section.

Finally, we look forward to the production of the following documents forthwith:

1. Copies of any reports produced by Grant Thornton LLP respect of the Property, including in respect of the sales process relating thereto;
2. Copies of any reports produced by BMO Capital Markets Real Estate Inc. respect of the Property, including in respect of the sales process relating thereto;

AIRD BERLIS

3. A copy of the summary package of the proposed transaction with Lanterra Developments Limited (in trust) or its designee ("**Lanterra**") that was delivered to the Investors; and
4. Confirmation of the terms upon which Lanterra is required to complete the transaction under the joint venture agreement or otherwise.

Except as otherwise provided herein, MCU hereby reserves all of its rights and remedies under the Credit Agreement, the security documents delivered pursuant thereto and any other documents, instruments or agreements executed and delivered in connection therewith and any and all applicable law, and the Borrower's undertakings, property and assets under this letter agreement are in addition to and not in substitution for MCU's rights and remedies as such may have existed prior to this letter agreement.

We ask that the Borrow confirm its agreement to the terms contained herein by executing below and returning a copy of same, along with an executed copy of the attached Consent, in which case we will attend at Court as needed to support the Investors' Meeting going forward on the terms outlined above. This letter shall remain open for acceptance until 5:00 p.m. (Toronto time) on September 12, 2019, after which time it shall be null and void and MCU shall exercise its rights and remedies under the Credit Agreement, the associated security and other applicable law, including by way of an application to appoint a receiver under the BIA or otherwise.

Yours truly,

AIRD & BERLIS LLP



Steven L. Graff  
SLG/mam

c.c. Neilas Inc., Demetrios Neilas and Ioannis Neilas

c.c. Meridian Credit Union Limited

AIRD BERLIS

September 12, 2019  
Page 4

ACKNOWLEDGED AND AGREED as of the \_\_\_\_\_ day of September, 2019.

**ADELAIDE STREET LOFTS INC.**

By: \_\_\_\_\_

Name:

Title:

*I have authority to bind the corporation.*

37219945.2

AIRD BERLIS

**This is Exhibit "Q" referred to in the Affidavit of Bernhard  
Huber sworn the 30<sup>th</sup> of September, 2019**



---

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

**Allison Eluned Van Rooijen, a Commissioner,  
etc., Province of Ontario, for  
Meridian Credit Union Limited, Motus Bank  
and Meridian OneCap Credit Corporation.  
Expires May 8, 2021.**

AIRD BERLIS

Steven L. Graff  
Direct: 416.865.7726  
E-mail: sgraff@airdberlis.com

September 13, 2019

BY EMAIL

TO THE SERVICE LIST

**Re: Hi-Rise Capital Ltd. and Adelaide Street Lofts Inc.**  
**Court File No.: CV-19-616261-00CL**

---

We are counsel to Meridian Credit Union Limited ("**Meridian**"). Further to our notice of appearance filed today in respect of the above-noted proceedings (the "**Proceedings**") in the Ontario Superior Court of Justice (Commercial List) (the "**Court**"), we are writing in respect of the proposed process to address the sale of the property subject to the Proceedings, as well as to address some general matters.

As a preliminary matter, we note that by serving a notice of appearance, Meridian in no respect cedes any of its rights or remedies either under the credit agreement or related documents between Meridian and Adelaide Street Lofts Inc. ("**Adelaide**") or under law, including its ability to bring an application to appoint a receiver under the *Bankruptcy and Insolvency Act* or otherwise. To be clear, Meridian is not agreeable to the rights of Meridian becoming subject to, or adjudicated upon, in this Proceeding. Meridian does not wish to be dragged into a dispute between the subordinated lenders and Adelaide.

In respect of the form of order (the "**Financial Advisor Order**") regarding the appointment of Alvarez & Marsal Canada Inc. as financial advisor (the "**Financial Advisor**") for the limited purpose of advising Miller Thomson LLP, in its capacity as Court-appointed Representative Counsel in the Proceeding ("**Representative Counsel**"), we have reviewed the draft. We do not take a position on the granting of the Financial Advisor Order but to the extent such relief is being sought, the changes made in the attached mark-up must be made.

We have two substantive concerns with respect to the order which are addressed in our mark-up. First, the Financial Advisor Order in its current form does not provide for any timeline for the Financial Advisor to conduct its review of the sales process and report to Representative Counsel and the Court, and as we have noted previously, the timely resolution of this process is critically important to Meridian. Second, the Financial Advisor Order further does not provide for information to be shared with Meridian. Our client should be kept apprised of the Financial Advisor's process, findings and results in the same manner as Representative Counsel. These and other issues are addressed in our mark-up.

Finally, please advise who at Alvarez & Marsal Canada Inc. will be leading this mandate and who is proposed to act as counsel to the Financial Advisor.

We look forward to your response.

September 13, 2019  
Page 2

Yours truly,

AIRD & BERLIS LLP

A handwritten signature in black ink, appearing to read 'SLG', with a large, stylized flourish extending from the end.

Steven L. Graff  
SLG/mam

c.c. Meridian Credit Union Limited

37241721.1

AIRD BERLIS

# TAB 3



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

**MERIDIAN CREDIT UNION LIMITED**

Applicant

- and -

**ADELAIDE STREET LOFTS 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**

**CONSENT**

The undersigned, msi Spergel Inc. (“**Spergel**”), hereby consents to the appointment of Spergel as receiver, without security, of all the assets, undertakings and properties of Adelaide Street Lofts Inc. (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, all pursuant to the provisions of 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, and the terms of an order substantially in the form filed in the above proceeding.

DATED at Toronto, this <sup>TH</sup> 25 day of September, 2019.

**msi Spergel Inc.**

  
Name: Trevor Pringle, LLT  
Title: Partner

**MERIDIAN CREDIT UNION LIMITED**

- and -

**ADELAIDE STREET LOFTS INC.**

Applicant

Respondent

Court File No.

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

**Proceedings commenced at Toronto**

**CONSENT**

**AIRD & BERLIS LLP**  
Barristers and Solicitors  
Brookfield Place  
Suite 1800, 181 Bay Street  
Toronto, ON M5J 2T9

**Steven L. Graff (LSUC # 31871V)**

Tel: (416) 865-7724

Email: [sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)

**Kathryn Esaw (LSO #58264F)**

Tel: 416-865-4707

Email: [kesaw@airdberlis.com](mailto:kesaw@airdberlis.com)

Fax: 416-863-1515

*Lawyers for Meridian Credit Union Limited*

# TAB 4

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE <\*> ) FRIDAY, THE 1ST  
JUSTICE <\*> ) DAY OF NOVEMBER, 2019

**MERIDIAN CREDIT UNION LIMITED**

Applicant

- and -

**ADELAIDE STREET LOFTS 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 Meridian Credit Union Limited ("**Meridian**") 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 (in such capacity, the "**Receiver**") without security, of all the assets, undertakings and properties of Adelaide Street Lofts Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including, without limitation, the real property municipally known as 263 Adelaide Street West,

Toronto, Ontario and legally described in PIN No. 21411-0294 (LT) (the "**Real Property**"), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Bernhard Huber sworn September 30, 2019 and the Exhibits thereto and on hearing the submissions of counsel for Meridian and such other counsel as were present, no one appearing for any other person on the service list although duly served as appears from the affidavit of service of <\*> sworn <\*>, 2019, and on reading the consent of Spergel 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 application 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, Spergel is hereby appointed Receiver, without security, of all the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor (including, without limitation, the Real Property), including all proceeds thereof (collectively, the "**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 \$150,000.00 provided that the aggregate consideration for all such transactions does not exceed \$500,000.00; 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;
- (r) to make an assignment in bankruptcy on behalf of the Debtor; and
- (s) 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, including without limitation the application brought by Hi-Rise Capital Ltd. (Court File No. CV-19-616261-00CL).

#### **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 \$500,000.00 (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.

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" 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.

## **SERVICE AND NOTICE**

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 website of the Commercial List at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (the "**Rules**") this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules 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: <\*>.

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.

## **GENERAL**

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.

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

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.

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.

31. **THIS COURT ORDERS** that Meridian shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of Meridian's security or, if not so provided by Meridian'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.

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.

---



## SCHEDULE "A"

### RECEIVER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. **THIS IS TO CERTIFY** that msi Spergel Inc. (the "**Receiver**") of all the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor (including, without limitation, the real property municipally known as 263 Adelaide Street West, Toronto, Ontario and legally described in PIN No. 21411-0294 (LT)), 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 <\*> 2019 (the "**Order**") made in an application 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.

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 [St. Catharines], 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:

**MERIDIAN CREDIT UNION LIMITED**

- and -

**ADELAIDE STREET LOFTS INC.**

Applicant

Respondent

Court File No. CV-19-00628145-00CL

---

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

**Proceedings commenced at Toronto**

---

**ORDER**

---

**AIRD & BERLIS LLP**  
Barristers and Solicitors  
Brookfield Place  
Suite 1800, Box 754  
181 Bay Street  
Toronto, ON M5J 2T9

**Steven L. Graff (LSO #31871V)**

Tel: 416-865-7724

Fax: 416-863-1515

Email: [sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)

**Kathryn Esaw (LSO #58264F)**

Tel: 416-865-4707

Fax: 416-863-1515

Email: [kesaw@airdberlis.com](mailto:kesaw@airdberlis.com)

*Lawyers for Meridian Credit Union Limited*

# TAB 5

Court File No. CV-19-00628145-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE  ) ~~WEEKDAY~~FRIDAY, THE #1ST  
JUSTICE  ) DAY OF ~~MONTH~~NOVEMBER,  
20YR2019

**PLAINTIFF<sup>†</sup>**

**Plaintiff**

MERIDIAN CREDIT UNION LIMITED

Applicant

- and -

**DEFENDANT**

**Defendant**

ADELAIDE STREET LOFTS 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*

<sup>†</sup>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~~<sup>2</sup>Meridian Credit Union Limited ("Meridian") 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. ("Spergel") as receiver ~~[and manager]~~-(in such ~~capacities~~capacity, the "Receiver") without security, of all-~~of~~ the assets, undertakings and properties of ~~[DEBTOR'S NAME]~~Adelaide Street Lofts Inc. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, including, without limitation, the real property municipally known as 263 Adelaide Street West, Toronto, Ontario and legally described in PIN No. 21411-0294 (LT) (the "Real Property"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of ~~[NAME]~~Bernhard Huber sworn ~~[DATE]~~September 30, 2019 and the Exhibits thereto and on hearing the submissions of counsel for ~~[NAMES]~~Meridian and such other counsel as were present, no one appearing for ~~[NAME]~~any other person on the service list although duly served as appears from the affidavit of service of ~~[NAME]~~<\*> sworn ~~[DATE]~~<\*>, 2019, and on reading the consent of ~~[RECEIVER'S NAME]~~Spergel to act as the Receiver,

**SERVICE**

1. THIS COURT ORDERS that the time for service of the ~~Notice~~notice of ~~Motion~~application and the ~~Motion~~application record is hereby abridged and validated<sup>3</sup> so that this ~~motion~~application is properly returnable today and hereby dispenses with further service thereof.

**APPOINTMENT**

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

<sup>3</sup> 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.

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, ~~[RECEIVER'S NAME]~~ 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 (including, without limitation, the Real Property), including all proceeds thereof (collectively, the "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.<sup>4</sup> 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 \$~~\_\_\_\_\_~~150,000.00 provided that the aggregate

<sup>4</sup>~~This 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.~~



consideration for all such transactions does not exceed  
\$ ~~\_\_\_\_\_~~ 500,000.00; 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,<sup>5</sup> 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

<sup>5</sup>~~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.~~

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;

(r) to make an assignment in bankruptcy on behalf of the Debtor; and

(s) ~~(t)~~ 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, including without limitation the application brought by Hi-Rise Capital Ltd. (Court File No. CV-19-616261-00CL).

#### **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.<sup>6</sup>

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

~~<sup>6</sup>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".~~

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 \$~~\_\_\_\_\_~~500,000.00 (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.

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" 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.

#### **SERVICE AND NOTICE**

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 website of the Commercial List ~~\_\_\_\_\_~~website at ~~<http://www.ontariocourts.ca/sej/practice/practice-directions/toronto/e-service-protocol/>~~<http://www.ontariocourts.ca/sej/practice/practice-directions/toronto/e-service-protocol/>



[w.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/](http://w.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/)) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (the "**Rules**") 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: .

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.

#### **GENERAL**

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.

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

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.

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.

31. **THIS COURT ORDERS** that ~~the Plaintiff~~Meridian shall have its costs of this ~~motion~~application, up to and including entry and service of this Order, provided for by the terms of ~~the Plaintiff~~Meridian's security or, if not so provided by ~~the Plaintiff~~Meridian'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.

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.

---

**SCHEDULE "A"**  
**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. **THIS IS TO CERTIFY** that ~~[RECEIVER'S NAME], the receiver~~ msi Spergel Inc. (the "Receiver") of all the assets, undertakings and properties ~~[DEBTOR'S NAME] of the Debtor~~ acquired for, or used in relation to a business carried on by the Debtor (including, without limitation, the real property municipally known as 263 Adelaide Street West, Toronto, Ontario and legally described in PIN No. 21411-0294 (LT)), 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 \_\_\_\_\_, 20<\*> 2019 (the "Order") made in an action application having Court file number CL <\*>, 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~~ [St. Catharines], 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:

37248873.1

MERIDIAN CREDIT UNION LIMITED

- and -

ADELAIDE STREET LOFTS INC.

Applicant

Respondent

Court File No. CV-19-00628145-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceedings commenced at Toronto

ORDER

AIRD & BERLIS LLP  
Barristers and Solicitors  
Brookfield Place  
Suite 1800, Box 754  
181 Bay Street  
Toronto, ON M5J 2T9

Steven L. Graff (LSO #31871V)

Tel: 416-865-7724

Fax: 416-863-1515

Email: sgraff@airdberlis.com

Kathryn Esaw (LSO #58264F)

Tel: 416-865-4707

Fax: 416-863-1515

Email: kesaw@airdberlis.com

Lawyers for Meridian Credit Union Limited

37248411.3

Document comparison by Workshare Compare on October-28-19 11:11:02 AM

Input:	
Document 1 ID	interwovenSite://AB-WS1/CM/37248873/1
Description	#37248873v1<CM> - model receivership-order-EN
Document 2 ID	interwovenSite://AB-WS1/CM/37248411/3
Description	#37248411v3<CM> - Draft Receivership Order (Adelaide)
Rendering set	Standard

Legend:	
<a href="#">Insertion</a>	
<del>Deletion</del>	
<del>Moved from</del>	
<a href="#">Moved to</a>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	101
Deletions	91
Moved from	0
Moved to	0
Style change	0

# TAB 6

**SERVICE LIST**  
(current as of October 28, 2019)

<b>TO:</b>	<p><b>THORNTON GROUT FINNIGAN LLP</b> 100 Wellington Street West Suite 3200 Toronto, ON M5K 1K7</p> <p><b>John L. Finnigan</b> Tel: 416-304-1616 Fax: 416-304-1313 Email: <a href="mailto:jfinnigan@tgf.ca">jfinnigan@tgf.ca</a></p> <p><b>Tamara Markovic</b> Tel: 416-304-0601 Fax: 416-304-1313 Email: <a href="mailto:tmarkovic@tgf.ca">tmarkovic@tgf.ca</a></p> <p>Lawyers for the Superintendent of Financial Services</p>
<b>AND TO:</b>	<p><b>CASSELS BROCK &amp; BLACKWELL LLP</b> 40 King Street West, Suite 2100 Toronto, ON M5H 3C2</p> <p><b>John N. Birch</b> Tel: 416-860-5225 Fax: 416-640-3057 Email: <a href="mailto:jbirch@casselsbrock.com">jbirch@casselsbrock.com</a></p> <p><b>Larry Ellis</b> Tel: 416-869-5406 Fax: 416-640-3004 Email: <a href="mailto:lellis@casselsbrock.com">lellis@casselsbrock.com</a></p> <p><b>Stephanie Voudouris</b> Tel: 416-860-6617 Fax: 416-640-3057 Email: <a href="mailto:svoudouris@casselsbrock.com">svoudouris@casselsbrock.com</a></p> <p>Lawyers for Hi-Rise Capital Ltd.</p>
<b>AND TO:</b>	<p><b>YUNUSOV LAW PROFESSIONAL CORPORATION</b> 330 Bay Street, Suite 1400 Toronto, ON M5H 2S8</p> <p><b>Pulat Yunusov</b> Tel: 416-628-5521 Fax: 647-933-1171 Email: <a href="mailto:pulat@lawto.ca">pulat@lawto.ca</a></p> <p>Lawyers for David Pozo</p>



<p><b>AND TO:</b></p>	<p><b>MILLER THOMSON LLP</b>  40 King Street West, Suite 5800  Toronto, ON M5H 3S1</p> <p><b>Jeffrey Carhart</b>  Tel: 416-595-8615  Fax: 416-595-8695  Email: <a href="mailto:jcarhart@millertompson.com">jcarhart@millertompson.com</a></p> <p><b>Gregory Azeff</b>  Tel: 416-595-2660  Fax: 416.595.8695  Email: <a href="mailto:gazeff@millertompson.com">gazeff@millertompson.com</a></p> <p><b>Stephanie De Caria</b>  Tel: 416-595-2652  Fax: 416-595-8695  Email: <a href="mailto:sdecaria@millertompson.com">sdecaria@millertompson.com</a></p> <p>Representative Counsel for Adelaide Investors</p>
<p><b>AND TO:</b></p>	<p><b>MCCARTHY TÉTRAULT LLP</b>  66 Wellington Street West, Suite 5300  Toronto, ON M5K 1E6</p> <p><b>Geoff R. Hall</b>  Tel: 416-601-7856  Fax: 416-868-0673  Email: <a href="mailto:ghall@mccarthy.ca">ghall@mccarthy.ca</a></p> <p><b>Junior Sirivar</b>  Tel: 416-601-7750  Email: <a href="mailto:jsirivar@mccarthy.ca">jsirivar@mccarthy.ca</a></p> <p>Lawyers for Adelaide Street Lofts Inc.</p>
<p><b>AND TO:</b></p>	<p><b>RORY MCGOVERN PC</b>  133 Richmond Street West, Suite 200  Toronto, ON M5H 2L3</p> <p><b>Rory P. McGovern</b>  Tel: 416-938-7679  Fax: 647-559-9694  Email: <a href="mailto:rory@rorymcgovernpc.com">rory@rorymcgovernpc.com</a></p> <p>Lawyers for Nadeem and Uzma Ghori</p>

<p><b>AND TO:</b></p>	<p><b>AIRD &amp; BERLIS LLP</b>          Brookfield Place          181 Bay Street, Suite 1800          Toronto, ON M5J 2T9</p> <p><b>Steven Graff</b>          Tel: 416.865.7726          Fax: 416.863.1515          Email: <a href="mailto:sgraff@airdberlis.com">sgraff@airdberlis.com</a></p> <p><b>Kathryn Esaw</b>          Tel: 416.865.4707          Fax: 416.863.1515          Email: <a href="mailto:kesaw@airdberlis.com">kesaw@airdberlis.com</a></p> <p>Lawyers for Meridian Credit Union Limited</p>
<p><b>AND TO:</b></p>	<p><b>KAGAN SHASTRI LLP</b>          188 Avenue Road          Toronto, ON M5R 2J1</p> <p><b>Rahul Shastri</b>          Tel: 416-368-2100 ext. 223          Fax: 416-324-4200          Email: <a href="mailto:rshastri@ksllp.ca">rshastri@ksllp.ca</a></p> <p>Lawyers for Anoop Sayal</p>
<p><b>AND TO:</b></p>	<p><b>CANADA REVENUE AGENCY</b>          c/o Department of Justice          Ontario Regional Office          The Exchange Tower, Box 36          130 King Street West, Suite 3400          Toronto ON M5X 1K6</p> <p><b>Diane Winters</b>          Tel: (416) 952-8563          Email: <a href="mailto:diane.winters@justice.gc.ca">diane.winters@justice.gc.ca</a></p>
<p><b>AND TO:</b></p>	<p><b>MINISTRY OF FINANCE</b>          Legal Services Branch          College Park, 777 Bay Street, 11<sup>th</sup> Floor          Toronto ON M5G 2C8</p> <p><b>Kevin J. O'Hara, Counsel</b>          Tel: (416) 327-8436          Email: <a href="mailto:kevin.ohara@ontario.ca">kevin.ohara@ontario.ca</a></p>

<b>AND TO:</b>	<b>263 HOLDINGS INC.</b> c/o Ioannis Neilas 263 Adelaide Street West Suite 503 Toronto, ON M5H 1Y2
<b>AND TO:</b>	<b>DIMITRIOS NEILAS</b> 386 Bedford Park Avenue Toronto, ON M5M 1J8
<b>AND TO:</b>	<b>IOANNIS NEILAS</b> 386 Bedford Park Avenue Toronto, ON M5M 1J8
<b>AND TO:</b>	<b>COMMUNITY TRUST COMPANY</b> 2350 Matheson Boulevard East Mississauga, ON L4W 5G9

## EMAIL SERVICE LIST

[jfinnigan@tgf.ca](mailto:jfinnigan@tgf.ca); [tmarkovic@tgf.ca](mailto:tmarkovic@tgf.ca); [jbirch@casselsbrock.com](mailto:jbirch@casselsbrock.com); [lellis@casselsbrock.com](mailto:lellis@casselsbrock.com);  
[svoudouris@casselsbrock.com](mailto:svoudouris@casselsbrock.com); [pulat@lawto.ca](mailto:pulat@lawto.ca); [jcarhart@millertompson.com](mailto:jcarhart@millertompson.com);  
[gazeff@millertompson.com](mailto:gazeff@millertompson.com); [sdecaria@millertompson.com](mailto:sdecaria@millertompson.com); [ghall@mccarthy.ca](mailto:ghall@mccarthy.ca); [jsirivar@mccarthy.ca](mailto:jsirivar@mccarthy.ca);  
[rory@rorymcgovernpc.com](mailto:rory@rorymcgovernpc.com); [sgraff@airdberlis.com](mailto:sgraff@airdberlis.com); [kesaw@airdberlis.com](mailto:kesaw@airdberlis.com);  
[rshastri@ksllp.ca](mailto:rshastri@ksllp.ca); [diane.winters@justice.gc.ca](mailto:diane.winters@justice.gc.ca); [kevin.ohara@ontario.ca](mailto:kevin.ohara@ontario.ca)

37376618.2

**MERIDIAN CREDIT UNION LIMITED**

- and -

**ADELAIDE STREET LOFTS INC.**

Applicant

Respondent

Court File No. CV-19-00628145-00CL

---

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

**Proceedings commenced at Toronto**

---

**APPLICATION RECORD**

---

**AIRD & BERLIS LLP**  
Barristers and Solicitors  
Brookfield Place  
181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

**Steven L. Graff (LSO # 31871V)**

Tel: (416) 865-7726

Fax: (416) 863-1515

Email: [sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)

**Kathryn Esaw (LSO # 58264F)**

Tel: (416) 865-4707

Fax: (416) 863-1515

Email: [kesaw@airdberlis.com](mailto:kesaw@airdberlis.com)

*Lawyers for Meridian Credit Union Limited*