

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

CWB MAXIUM FINANCIAL INC.

Plaintiff

- and -

**1970636 ONTARIO LTD. o/a MT. CROSS PHARMACY, UMAIR N. NASIM,
SHRIKANT MALHOTRA, 1975193 ONTARIO LTD. dba MTN RX & HEALTH AND
ANGELO KIRKOPOULOS**

Defendants

**FIRST REPORT OF MSI SPERGEL INC.
IN ITS CAPACITY AS THE COURT-APPOINTED RECEIVER OF
1970636 ONTARIO LTD. o/a MT. CROSS PHARMACY**

July 24, 2018

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APPENDICES

1. Receivership Order of the Honourable Justice Hailey dated June 14, 2018

CONFIDENTIAL APPENDICES

1. MTN RX's patient list for the period from February 1, 2018 to June 28, 2018
2. List of MTN RX patients that appeared in the database of Mt. Cross
3. Revenue reports for each of the patients of MTN RX that appeared in Mt. Cross' database for the period from June 1, 2017 to May 14, 2018
4. List of patients that are unique to MTN RX and did not appear in Mt. Cross' database

1.0 APPOINTMENT AND BACKGROUND

- 1.0.1 This report (this "**Report**") is filed by msi Spergel inc. ("**Spergel**") in its capacity as the Court-appointed receiver (in such capacity, the "**Receiver**") of 1970636 Ontario Ltd. o/a Mt. Cross Pharmacy ("**Mt. Cross**" or the "**Company**").
- 1.0.2 Mt. Cross is a Canadian owned, private corporation carrying on business as a full service retail pharmacy (the "**Mt. Cross Pharmacy**"). Mt. Cross operates from the premises located at 503 Concession Street, Hamilton, Ontario (the "**Premises**").
- 1.0.3 Spergel was appointed as the Receiver without security, of all of the assets, undertakings and properties of the Company (collectively, the "**Property**") by Order of the Honourable Mr. Justice McEwen of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") made June 14, 2018 (the "**Appointment Order**"). The Appointment Order was made upon the application of the Company's general secured creditor, CWB Maxium Financial Inc. ("**Maxium**"). Attached as **Appendix "1"** to this Report is a copy of the Appointment Order.

2.0 PURPOSE OF THIS REPORT AND DISCLAIMER

- 2.0.1 The purpose of this Report is to provide this Court with the comparison of the patient list provided to the Receiver by 1975193 Ontario Ltd. dba MTN RX & Health ("**MTN RX**") for the period from February 1, 2018 to June 28, 2018 with the patient list of Mt. Cross and to seek an order from this Court sealing the Confidential Appendices (as defined herein) to this Report.
- 2.0.2 The Receiver will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this Report for any other purpose.

2.0.3 In preparing this Report, the Receiver has relied upon certain information obtained from the Company's prescription dispensing software. The Receiver has not performed an audit or verification of such information for accuracy, completeness or compliance with Accounting Standards for Private Enterprises or International Financial Reporting Standards. Accordingly, the Receiver expresses no opinion or other form of assurance with respect to such information.

2.0.4 All references to dollars in this Report are in Canadian currency unless otherwise noted.

3.0 MTN RX'S PATIENT LIST

3.0.1 On June 28, 2018 Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice issued an endorsement (the "**Endorsement**") requiring, among other things, MTN RX to provide to the Receiver a list of all patient/client names from February 1, 2018 to June 28, 2018 (the "**Patient List**"), in order for the Receiver to compare the same with its list of files alleged to have been improperly transferred to MTN RX.

3.0.2 On June 29, 2018 the Receiver received an excel spreadsheet from MTN RX containing the Patient List. Subsequent to the receipt of the excel spreadsheet the Receiver requested that MTN RX provide to the Receiver the Patient List directly extracted from its prescription dispensing software (the "**Software**"). On July 6, 2018 the Receiver received a soft copy of the Patient List extracted directly from the Software.

3.0.3 The Receiver's review of the the Patient List indicates that:

1. for the period from February 1, 2018 to June 28, 2018 MTN RX serviced a total of 261 patients. Attached as **Confidential Appendix "1"** to this Report is the Patient List;

2. of the 261 patients, 200 patients appear to have been patients of Mt. Cross (the "**Mt. Cross Patients**") which indicates that approximately 77% of the patients serviced by MTN RX were patients of Mt. Cross. Attached as **Confidential Appendix "2"** to this Report is a list of the Mt. Cross Patients;
3. Mt. Cross generated a gross revenue of \$600,089.74 from the Mt. Cross Patients for the period from June 1, 2017 to May 14, 2018. Attached as **Confidential Appendix "3"** to this Report are revenue reports for each of the Mt. Cross Patients for the period from June 1, 2017 to May 14, 2018;
4. only 61 (the "**MTN RX Patients**") of the 261 patients on the Patient List did not appear in Mt. Cross' database. It should be noted that out of the 61 patients, 34 patients appear to be under the age of 45. During the Receiver's discussion with the pharmacist at the Mt. Cross Pharmacy, the pharmacist advised that the 34 patients appear to be one-time walk-in clinic patients which may or may not obtain medication from MTN RX in the future. The Receiver did not independently confirm the status of these 34 patients with MTN RX. Attached as **Confidential Appendix "4"** (collectively with Confidential Appendices 1, 2 and 3 the "**Confidential Appendices**") to this Report is a list of the MTN RX Patients.
5. 3 of the 61 MTN RX Patients appear to be of age 118 with the same date of birth as January 1, 1900. It appears that these patients were entered in the Software in error.

4.0 RECOMMENDATIONS

- 4.0.1 As noted above, the Receiver has prepared this Report in order to provide this Court with a comparison of the patient list provided by MTN RX with the patient list of Mt. Cross so that the Court has this information in respect to Maxium's pending motion to appoint a receiver over MTN RX.
- 4.0.2 Aside from requesting an Order from this Court to seal the Confidential Appendices to this Report, the Receiver makes no recommendations.

Dated at Toronto this 24th day of July, 2018.

msi Spergel Inc.,
solely in its capacity as court-appointed
Receiver of 1970636 Ontario Ltd o/a Mt.
Cross Pharmacy and not in its personal
or corporate capacity

Per:



Philip H. Gennis, J.D., CIRP, LIT
Senior Principal

APPENDIX 1

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.

)

THURSDAY, THE 14TH

JUSTICE MCEWEN

)

DAY OF JUNE, 2018

)

BETWEEN



CWB MAXIUM FINANCIAL INC.

Plaintiff

- and -

**1970636 ONTARIO LTD. o/a MT. CROSS PHARMACY,
UMAIR N. NASIM, SHRIKANT MALHOTRA, 1975193 Ontario dba MTN RX &
HEALTH AND ANGELO KIRKOPOULOS**

Defendants

ORDER
(appointing Receiver)

THIS MOTION made by the Plaintiff 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 of the assets, undertakings and properties of 1970636 Ontario Ltd. o/a Mt. Cross Pharmacy ("Mt. Cross") and ~~1975193 Ontario d.b.a. MTN RX & Health ("1975")~~ ^{together,} the "Debtors" acquired for, or used in relation to a business carried on by the Debtors, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavits of Daniel Gilchrist sworn May 15, 2018, Maureen McLaren sworn May 16, 2018 and Maureen McLaren, sworn June 6, 2018 and the Exhibits thereto, the First Report of Spergel dated June 6, 2018 and the Supplemental Report dated June 11, 2018,

and on hearing the submissions of counsel for the Plaintiff, no one appearing for the Debtors although duly served as appears from the affidavits of service of Maureen McLaren sworn June 7, 2018 and June 13, 2018, Hunter Norwick sworn June 7, 2018 and Craig Mills sworn June 12, 2018 and June 13, 2018 and on reading the consent of Spergel to act as the Receiver,

SERVICE

Except for Ahmed Kassim, appearing in person

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

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, Spergel is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (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 Debtors, 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 Debtors;
- (d) to engage pharmacists, 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 Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors, and to deposit such monies in a separate bank account controlled by the Receiver and pay such disbursements that are necessary for the continued operation of the business of the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (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 Debtors, 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 Debtors, 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 \$50,000.00, provided that the aggregate consideration for all such transactions does not exceed \$100,000.00; 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* 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 summarily dispose of Property that is perishable or likely to depreciate rapidly in value;
- (n) to file an assignment in bankruptcy on behalf of the Debtors;
- (o) to assign and transfer to the Plaintiff all of the Debtors' right, title and interest in a chose in action, including any documents in support thereof, upon the Receiver being satisfied that such chose in action is subject to the Plaintiff's security;
- (p) 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;

- (q) to examine, without an order, under oath on ^{4 days} ~~48 hours~~ notice, the DebtorsTM and any person reasonably thought by the Receiver to have knowledge of the affairs of the DebtorsTM or any person who is or has been an agent or a mandatary, or clerk, a servant, an officer, a director or an employee of the DebtorsTM, including, but not limited to, Umair N. Nasim, Shrikant Malhotra, Angelo Kirkopoulos, Ahmed Kassim, Angela Abrantes, Orlando Den Cassavia, George Vlachodimos, Vadim Kovalev and Faber & Oostdyk o/u Sean Oostdyk Professional Corporation, respecting the DebtorsTM or the DebtorsTM dealings or property, and may require such a person to produce any books, documents, correspondence or papers in that person's possession or power relating in all or in part to the DebtorsTM or the DebtorsTM dealings or property. ^{Should any person object to being examined or making productions, that person may make submissions to the court.}
- (r) to make inquiries of the Bank of Montreal in respect to a bank draft dated May 5, 2017 payable to 1919932 Ontario Ltd. (the "**Bank Draft**"), including, but not limited to, the circumstances in which it was prepared or issued, whether the Bank Draft is authentic, where the funds behind the Bank Draft originated and whether the Bank Draft was negotiated, cashed and/or deposited;
- (s) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (t) 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 DebtorsTM;
- (u) to enter into agreements with any trustee in bankruptcy appointed in respect of the DebtorsTM, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the DebtorsTM;
- (v) to exercise any shareholder, partnership, joint venture or other rights which the DebtorsTM may have;

- (w) to inquire into and report to the Plaintiff and the Court on the financial condition of the Debtors and the Property and any material adverse developments relating to the financial condition of the Debtors and/or the Property; and
- (x) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;
- (y) 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 Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtors, (ii) all of ^{its} ~~their~~ 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, including, but not limited to Umair N. Nasim, Shrikant Malhotra, Angelo Kirkopoulos, Ahmed Kassim, Angela Abrantes, Orlando Den Cassavia, George Vlachodimos, Dr. Vadim Kovalev, Faber & Oostdyk o/u Sean Oostdyk Professional Corporation, Public Prosecution Services of Canada and/or the Crown Attorney's office, the Ontario College of Pharmacists, the Ministry of Health and Long-Term Care, the Ontario Drug Benefit Program and any insurance company (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. In particular, this Court orders that Faber & Oostdyk o/u Sean Oostdyk Professional Corporation shall:

- (i) deliver to the Receiver all of the funds in its possession being held for the benefit of Mt. Cross or 1919932 Ontario Ltd. ("**1919**"); and
- (ii) deliver and/or grant access to 1919's file to the Receiver in respect to an agreement of purchase and sale dated June 2, 2017, between

1919, as vendor, and Mt. Cross, as purchaser, for the purchase all
of the assets of the Vendor.

*Should the law firm disagree,
it can make submissions to the Court.*

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any client records and prescription information ("Client Records"), books, documents, securities, contracts, orders, billing privileges, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, 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, subject to Paragraph 6A herein, 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.

5A. THIS COURT ORDERS that, should the Receiver deem it necessary to seek from any insurance company or its pharmacy benefits manager personal information regarding persons covered pursuant to benefit plans which might have had claims under such plans relating to the Debtors, such information shall be sought pursuant to a motion on notice to the insurance company and its pharmacy benefits manager. Such information shall only be released by the insurance company or its pharmacy benefits manager on the agreement of such insurance company or as provided in the Order so obtained.

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.

6A. THIS COURT ORDERS that in respect to the Client Records, the Receiver shall: (i) take all steps reasonably necessary to maintain the integrity of the confidential aspect of the Client Records; (ii) if necessary, appoint a pharmacist licensed and qualified to practice in the Province of Ontario to act as custodian (the “Custodian”) for the Client Records; (iii) not allow anyone other than the Receiver or the Custodian to have access to the Client Records; (iv) allow the Debtor~~s~~ supervised access to the Client Records for any purposes required pursuant to the *Regulated Health Professions Act, 1991*, the *Pharmacy Act, 1991* or any other governing Ontario or Canadian statute, that requires the Debtor~~s~~, from time to time, to perform certain obligations.

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 DEBTORS OR THE PROPERTY

9. THIS COURT ORDERS that no Proceeding against or in respect of the Debtors 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 Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. THIS COURT ORDERS that all rights and remedies against the Debtors, 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 Debtors to carry on any business which the Debtors is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors 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 Debtors, 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 Debtors 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, claims processing services, payment processing services, payroll services, insurance, transportation services, utility or other services to the Debtors 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 Debtors' 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 Debtors 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 Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' 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 Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

16. THIS COURT ORDERS that, pursuant to section 42 of the Ontario *Personal Health Information Protection Act* ("PHIPA"), the Receiver shall only disclose personal health information to prospective purchasers or bidders who are potential successor(s) to the pharmacy business of the Debtors (the "Pharmacy") as Health Information Custodian(s) (as defined in the PHIPA) for the purposes of allowing the potential successor to assess and evaluate the operations of the Pharmacy. Each potential successor to whom such personal health information is disclosed is required in advance of such disclosure to review and sign an acknowledgement of this Order indicating that it agrees to keep the information confidential and secure and not to retain any of the information longer than is necessary for the purposes of the assessment or evaluation, and if such potential successor does not complete a Sale, such potential successor shall return all such information to the Receiver, or in the alternative shall destroy all such information. Such acknowledgement shall be deemed to be an agreement between the Receiver and the potential successor for the purposes of section 42 of PHIPA.

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. 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

18. 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

19. 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.

20. 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.

21. 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

22. 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 \$250,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

23. 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.

24. 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.

25. 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

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

27. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors 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.

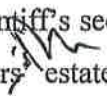
GENERAL

28. 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.

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

30. 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.

31. 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.

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

33. 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.

34. THIS COURT ORDERS that the Receiver, its counsel and counsel for the Plaintiff are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtors' creditors or other interested parties and their

advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).

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ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

JUN 14 2018

PER / PAR:

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SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that msi Spergel inc., the Receiver (the "**Receiver**") of the assets, undertakings and properties 10970636 Ontario Ltd. o/a Mt. Cross Pharmacy and 1975193 Ontario d.b.a. MTN RX & Health acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated 14th day of June, 2018 (the "**Order**") made in an action having Court file number CV-18-597922-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.

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

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

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

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

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

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

DATED the ____ day of _____, 2018.

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

Per: _____

Name:

Title:

CWB MAXIUM FINANCIAL INC.

and

1970636 ONTARIO LTD.
o/a MT. CROSS PHARMACY, et al.
Defendants

Court File No: CV-18-597922-00CL

Plaintiff

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

Proceeding commenced at Toronto

**ORDER
(APPOINTING RECEIVER)**

MILLER THOMSON LLP

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Email: cmills@millerthomson.com

Fax: 416.595.8695

Solicitors for the Plaintiff

CONFIDENTIAL APPENDIX 1

Subject to a request for sealing order.

CONFIDENTIAL APPENDIX 2

Subject to a request for sealing order.

CONFIDENTIAL APPENDIX 3

Subject to a request for sealing order.

CONFIDENTIAL APPENDIX 4

Subject to a request for sealing order.