

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) TUESDAY, THE 27TH
JUSTICE MCEWEN) DAY OF APRIL, 2021

FIRSTONTARIO CREDIT UNION LIMITED

Applicant

- and -

NEW TECUMSETH LAND CORPORATION

Respondent

**APPROVAL, VESTING AND
INTERIM DISTRIBUTION ORDER**

THIS MOTION, made by msi Spergel Inc. in its capacity as the Court-appointed receiver (the "Receiver") without security, of all of the assets, undertakings and properties of New Tecumseth Land Corporation (the "Debtor") for an order:

- (a) approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale between the Receiver and NTA Development Corporation (the "Purchaser") dated November 20, 2020 as amended by Addendum dated January 4, 2021, filed with the Court and appended to the Second Report of the Receiver dated April 15, 2021 (the "Second Report"), which was approved by the Court by Order dated January 6, 2021 and as further amended by:
 - i. Addendum No. 3, appended to the Second Report, by which the "Deposit" was increased to \$1,000,000.00;

- ii. Addendum No. 4, appended to the Second Report, by which the “Purchase Price” was increased to \$13,800,000.00 and the cash to be delivered by the Purchaser on Closing was increased, inclusive of the Deposit, to \$9,000,000.00;
- iii. Addendum No. 5, appended to the Second Report, by which:
 1. terms and conditions relative to the delivery and issuance of \$4,800,000.00 of Emergia Shares as part of the satisfaction of the Purchase Price were amended; and
 2. the “Closing” Date was amended to the date that is four (4) days after the Court approval of the Transaction.

(The aforesaid Agreement of Purchase and Sale, Addendum dated January 4, 2021, Addendum No 3, Addendum No. 4 and Addendum No. 5 are collectively, the “Sale Agreement”); and

- (b) vesting in the Purchaser, the Debtor’s right, title and interest in and to the assets described in the Sale Agreement (the “Purchased Assets”);
- (c) authorizing a partial distribution of the net proceeds of realization of the Receiver from the Transaction,

was heard this day at Toronto, Ontario, via Zoom videoconference during COVID-19 pandemic.

ON READING the Notice of Motion, the Second Report and appendices thereto, including the Agreement of Purchase and Sale dated November 20, 2020, the Addendum, Addendum No. 3, Addendum No. 4 and Addendum No. 5 and on hearing the submissions of counsel for those parties listed on the counsel slip, and no one appearing for any other person on the service list, although properly served as appears from the affidavit of service sworn April 16, 2021, filed:

1. **THIS COURT ORDERS AND DECLARES** that any requirement for service of the Notice of Motion, the Second Report and Motion Record be and is hereby

abridged, that the Motion is properly returnable today and that all parties requiring notice of this Motion have been duly served and that service on all parties is hereby validated and any further service is hereby dispensed with.

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "Receiver's Certificate"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule B hereto, shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Hailey dated April 23, 2020; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D hereto) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Registry Division of Simcoe (No. 512) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the “Real Property”) in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.
5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.
6. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.
7. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, the Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.
8. **THIS COURT ORDERS** that, notwithstanding:
 - (a) the pendency of these proceedings;

- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

9. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Retail Sales Tax Act* (Ontario).
10. **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.
11. **THIS COURT ORDERS** that the conduct, activities and actions of the Receiver as set out in the Second Report be and are hereby authorized and approved.
12. **THIS COURT ORDERS** that the Receiver's Statement of Receipts and Disbursements, as detailed in the Second Report, are hereby approved.
13. **THIS COURT ORDERS** that the Receiver's Fees and that of its counsel SimpsonWigle LAW LLP and of its counsel Wildeboer Dellelce LLP as detailed in

the Second Report, are hereby approved and the Receiver is authorized to pay the same as well as the Receiver's fees and those of its Counsel as approved by the Order of Justice Hainey dated January 6, 2021.

14. **THIS COURT ORDERS** that after payment of the Receiver's Fees as approved by the Order of Justice Hainey dated January 6, 2021 and those of the Receiver and its Counsel as hereby approved and subject to the Receiver maintaining sufficient reserves to satisfy all charges as set out in the Appointment Order and as the Receiver deems necessary to complete the administration of the Receivership proceedings, the Receiver is hereby authorized to make a distribution to:

- (a) FirstOntario Credit Union Limited for repayment of the Receiver's Borrowings from FirstOntario Credit Union Limited in the amount of \$40,000.00 plus interest thereon in accordance with the Receiver's Certificate;
- (b) The Town of New Tecumseth on account of outstanding property taxes in the amount of \$9,422.15 plus accrued interest thereon to the date of payment;
- (c) FirstOntario Credit Union Limited in the amount of \$6,902,611.98 plus accrued interest on the principal amount thereof from December 14, 2020 at a per diem rate of \$1,324.38 to the date of payment plus FirstOntario Credit Union Limited additional legal enforcement expense to the conclusion of the Motion in the amount of \$2,000.00 plus disbursements and HST.

in full and final satisfaction of the indebtedness and liabilities owed to them respectively by the Debtor.



Schedule A – Form of Receiver’s Certificate

Court File No. CV-20-639679-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

FIRSTONTARIO CREDIT UNION LIMITED

Applicant

- and -

NEW TECUMSETH LAND CORPORATION

Respondent

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Hainey of the Ontario Superior Court of Justice (the "Court") dated April 23, 2020, msi Spergel Inc. was appointed as the receiver (the "Receiver") of the undertaking, property and assets of New Tecumseth Land Corporation (the "Debtor").

B. Pursuant to an Order of the Court dated April 27, 2021, the Court approved the agreement of purchase and sale made as of November 20, 2020 between the Receiver and NTA Development Corporation (the "Purchaser") as amended by Addendum dated January 4, 2021 and as further amended by Addendum No. 3, Addendum No 4 and Addendum No. 5 (collectively, the "Sale Agreement") and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set

out in sections 12 and 13 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in sections 12 and 13 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser;
3. The Transaction has been completed to the satisfaction of the Receiver; and
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

MSI SPERGEL INC., in its capacity as Court-Appointed Receiver of **New Tecumseth Land Corporation** and not in its personal or corporate capacity and without personal or corporate liability

By: _____

Name:

Title:

I have authority to bind the Corporation.

Schedule B – Purchased Assets

The lands and premises legally described as:

PIN	58145-0050 LT
DESCRIPTION	PT LT 7 CON 13, TECUMSETH PT 1 51R34706; NEW TECUMSETH

and

PIN	58145-0517 LT
DESCRIPTION	PT LT 7 CON 13 TECUMSETH, BEING PT 3 PL 51R39710, T/W RO517196; TOWN OF NEW TECUMSETH

Schedule C – Claims to be deleted and expunged from title to Real Property

Pin #58145-0050 (LT)

Instrument No. SC1187270 is a Charge registered on January 13, 2015 from New Tecumseth Land Corporation in favour of P.D.R. Investments Ltd.

Instrument No, SC1301746 is a Charge registered on May 5, 2016 from New Tecumseth Land Corporation in favour of FirstOntario Credit Union Limited.

Instrument No. SC1301755 is a Notice of Assignment of Rents - General registered on May 5, 2016 from New Tecumseth Land Corporation in favour of FirstOntario Credit Union Limited.

Instrument No. SC1301765 is a Postponement registered on May 5, 2016 from P.D.R. Investments Ltd. in favour of FirstOntario Credit Union Limited.

Instrument No. SC1684599 is an Application General for Court Order registered on June 2, 2020 from the Ontario Superior Court of Justice in favour of MSI Spergel Inc., in its capacity as Court-Appointed Receiver.

Pin #58145-0517 (LT)

Instrument No. SC654190 is a Notice registered on June 12, 2008 from The Corporation of the Town of New Tecumseth in favour of 1406963 Ontario Ltd.

Instrument No. SC1187270 is a Charge registered on January 13, 2015 from New Tecumseth Land Corporation in favour of P.D.R. Investments Ltd.

Instrument No, SC1301746 is a Charge registered on May 5, 2016 from New Tecumseth Land Corporation in favour of FirstOntario Credit Union Limited.

Instrument No. SC1301755 is a Notice of Assignment of Rents - General registered on May 5, 2016 from New Tecumseth Land Corporation in favour of FirstOntario Credit Union Limited.

Instrument No. SC1301765 is a Postponement registered on May 5, 2016 from P.D.R. Investments Ltd. in favour of FirstOntario Credit Union Limited.

Instrument No. SC1684599 is an Application General for Court Order registered on June 2, 2020 from the Ontario Superior Court of Justice in favour of MSI Spergel Inc., in its capacity as Court-Appointed Receiver.

PERSONAL PROPERTY SECURITY REGISTRATIONS AGAINST PERSONAL PROPERTY

File No. 710357067, Registration No. 20150929 1013 1295 7656, renewed by Registration Nos. 20190918 1406 1462 5450 and 20200914 1401 1462 6502 in favour of FirstOntario Credit Union Limited.

File No. 710357121, Registration No. 20150929 1016 1295 7657, renewed by Registration Nos. 20190918 1406 1462 5451 and 20200914 1401 1462 6503 in favour of FirstOntario Credit Union Limited.

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property**

(unaffected by the Vesting Order)

1. any reservation or unregistered restrictions, rights of way, easements or covenants that run with the land;
2. any registered or unregistered agreements or easements with a municipality or a supplier of utility services including without limitation, electricity, water, sewage, gas, telephone or cable television or any other telecommunication service;
3. any laws, by-laws and regulations;
4. any minor easements for the supply of utility service to the land or adjacent lands;
5. any encroachments disclosed by any errors or omissions in existing surveys of the Real Property or neighbouring properties and any title defect, encroachment or breach of zoning or building by-law or any other applicable law, by-law or regulation which might be disclosed by a more up-to-date survey or the Real Property and survey matters generally;
6. any exceptions and qualifications set forth in the *Land Titles Act* (Ontario);
7. any reservation contained in the original grant from the Crown;
8. any Land Registrar's registered orders;
9. any deposited reference plans.

FIRSTONTARIO CREDIT UNION LIMITED
Applicant

- AND -

NEW TECUMSETH LAND CORPORATION
Respondent

27 April 21

Order to go as per the draft filed and signed.

The motion is unopposed and supported by the Receiver. The relief sought is fair and reasonable, and follows Justice Hainey's previous, similar Order.

As agreed by the stakeholders at the hearing this Order is made on a without prejudice basis with respect to Mr. Brunswick's clients' outstanding action and the position that any stakeholder might later make concerning distribution.



ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial Court)

PROCEEDINGS COMMENCED AT TORONTO

**APPROVAL, VESTING AND
INTERIM DISTRIBUTION
ORDER**

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