

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE PROPOSAL OF
U&ME BEVERAGE COMPANY
HAVING ITS PRINCIPAL PLACE OF BUSINESS
IN THE CITY OF MISSISSAUGA, IN THE PROVINCE OF ONTARIO**

**MOTION RECORD
(returnable December 6, 2012)**

November 30, 2012

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

Sanjeev P.R. Mitra (LSUC # 37934U)
Tel: (416) 865-3085
Fax: (416) 863-1515
Email: smitra@airdberlis.com

Ian Aversa (LSUC # 55449N)
Tel: (416) 865-3082
Fax: (416) 863-1515
Email: iaversa@airdberlis.com

*Lawyers for MNP Ltd., in its capacity as the Court-
appointed receiver of U&ME Beverage Company*

SERVICE LIST
(current as of November 29, 2012)

TO: MNP LTD.
701-85 Richmond St. W.
Toronto, ON M5H 2C9

Sheldon Title
Tel: (416) 596-1711
Fax: (416) 596-7894
Email: sheldon.title@mnp.ca

Alan Shiner
Tel: (416) 596-1711
Fax: (416) 596-7894
Email: alan.shiner@mnp.ca

Court-Appointed Receiver of U&ME Beverage Company

AND TO: SCULLY, SCOTT, MURPHY & PRESSER, P.C.
400 Garden City Plaza, Suite 300
Garden City, NY 11530
U.S.A.

Keith A. Weltsch, Esq.
Tel: (516) 742-4343
Fax: (516) 742-4366
Email: kweltsch@ssmp.com

U.S. Lawyers for U&ME Beverage Company

AND TO: MINDEN GROSS LLP
Barristers and Solicitors
2200 – 145 King Street West
Toronto, ON M5H 4G2

Catherine Francis
Tel: (416) 369-4137
Fax: (416) 864-9223
Email: cfrancis@mindengross.com

Kenneth L. Kallish
Tel: (416) 369-4124
Fax: (416) 864-9223
Email: kkallish@mindengross.com

Lawyers for Royal Bank of Canada

AND TO: **HEENAN BLAIKIE LLP**
Bay Adelaide Centre
P.O. Box 2900
333 Bay Street, Suite 2900
Toronto, ON M5H 2T4

Leslie Wittlin
Tel: (416) 643-6961
Fax: (416) 360-8425
Email: lwittlin@heenan.ca

Lawyers for Lee Miller and Darryl McDaniel

AND TO: **McMILLAN LLP**
Brookfield Place
Suite 4400 - 181 Bay Street
Toronto, ON M5J 2T3

Jeffrey Levine
Tel: (416) 865-7791
Fax: (416) 865-7048
Email: jeffrey.levine@mcmillan.ca

Lawyers for Orlando Corporation and Chiefton Investments Limited

AND TO: **CHAITONS LLP**
5000 Yonge St., 10th Flr.
Toronto, ON M2N 7E9

Philip L. Taylor
Tel: (416) 218-1125
Fax: (416) 218-1855
Email: philip@chaitons.com

Lawyers for Asset Services Inc.

AND TO: **ASSET SERVICES INC.**
156 Duncan Mill Road, Suite 15
Toronto, ON M3B 3N2

Glen Shoniker
Tel: (416) 444-6700 ext. 223
Fax: (416) 614-2141
Email: glen@assetservices.ca

AND TO: **CANADA REVENUE AGENCY**
#3400 – 130 King St. W.
Tax Section, P.O. Box 36, Exchange Tower
Toronto, ON M5X 1K6

c/o
Department of Justice
Diane Winters
Tel: (416) 973-3172
Fax: (416) 973-0810
Email: diane.winters@justice.gc.ca

AND TO: **MINISTRY OF FINANCE**
Legal Services Branch
33 King St. W., 6th Floor
Oshawa, ON L1H 8H5

Kevin O'Hara
Tel: (905) 433-6934
Fax: (905) 436-4510
Email: kevin.ohara@ontario.ca

13565575.1

Index

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE PROPOSAL OF
U&ME BEVERAGE COMPANY
HAVING ITS PRINCIPAL PLACE OF BUSINESS
IN THE CITY OF MISSISSAUGA, IN THE PROVINCE OF ONTARIO**

TABLE OF CONTENTS

	<u>TAB NO.</u>
Notice of Motion	1
Draft Order	2
Second Report of MNP Ltd. dated November 30, 2012	3
Appendix "A" - Receivership Order dated September 27, 2012	A
Appendix "B" - Order of Justice Wilton-Segal dated October 29, 2012	B
Appendix "C" - Teaser letter	C
Appendix "D" - Advertisement re notice of the request for offers Globe & Mail, November 6, 2012	D
Appendix "E" - Receiver's Statement of Receipts and Disbursements	E
Confidential Appendix "A" – Summary of Offers	A
Confidential Appendix "B" – Liquidation Services Agreement	B
Confidential Appendix "C" – Corporate Assets Valuations Appraisal	C

Tab 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE PROPOSAL OF
U&ME BEVERAGE COMPANY
HAVING ITS PRINCIPAL PLACE OF BUSINESS
IN THE CITY OF MISSISSAUGA, IN THE PROVINCE OF ONTARIO**

**NOTICE OF MOTION
(returnable December 6, 2012)**

MNP Ltd., in its capacity as the Court-appointed receiver (in such capacity, the “Receiver”) of all of the assets, undertakings and properties of U&ME Beverage Company (the “Debtor”), will make a motion to a judge presiding over the Commercial List on Thursday, December 6, 2012 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

1. **THE MOTION IS FOR** an Order, among other things:
 - (a) if necessary, abridging the time for service and filing of this notice of motion and the motion record or, in the alternative, dispensing with same;
 - (b) approving the Supplementary Report of the Receiver dated October 26, 2012 (the “**Supplementary Report**”) and the Second Report of the Receiver dated November 30, 2012 (the “**Second Report**”) and approving the actions of the Receiver described therein;
 - (c) sealing Confidential Appendix “A”, “B” and “C” to the Second Report for a period of 90 days, or until further order of this Court;

- (d) amending paragraph 24 of the Order of the Honourable Mr. Justice Morawetz granted on September 27, 2012 in these proceedings (the “**Receivership Order**”) to permit the Receiver to borrow up to the sum of \$400,000 for the purpose of funding the exercise of its powers and duties;
- (e) approving the Liquidation Services Agreement between the Receiver and Asset Services Inc. (the “**Liquidator**”) dated November 30, 2012 (the “**Liquidation Services Agreement**”), and authorizing the Receiver to complete the transactions contemplated therein;
- (f) authorizing and directing the Receiver to distribute to Royal Bank of Canada (“**RBC**”), without further Order of this Court, certain funds on account of the Debtor’s secured indebtedness for principal, interest and costs owing to RBC; and
- (g) such further and other relief as counsel may advise and this Honourable Court may permit.

2. **THE GROUNDS FOR THE MOTION ARE:**

- (a) pursuant to the Receivership Order, MNP was appointed as receiver, without security, of all of the assets, undertakings and properties of the Debtor (the “**Property**”);
- (b) pursuant to an Order of this Court dated October 29, 2012 (the “**Sale Process Order**”), a marketing and sale process (the “**Sale Process**”) for the Debtor’s Property was approved;
- (c) the details of the Sale Process were set out in the First Report of the Receiver dated October 22, 2012 (the “**First Report**”);
- (d) the Receiver has completed the Sale Process in accordance with the terms of the Sale Process Order, the details of which are outlined in the Second Report;
- (e) the Sale Process has culminated in the Liquidation Services Agreement, which the Receiver has accepted, subject to approval by this Court;

- (f) the Liquidation Services Agreement is the highest and best offer for the Debtor's Property, and it represents a fair net realizable value for the Debtor's assets;
- (g) a sealing order is required because Confidential Appendix "A", "B" and "C" to the Second Report contain certain commercially sensitive information, the release of which could prejudice the stakeholders of the Debtor;
- (h) the Receiver has filed with the Court its Supplementary Report and its Second Report outlining, among others things: (i) the background to the Debtor's business, operations and financial position; (ii) the actions of the Receiver since the First Report; (iii) the Sale Process; (iv) the status of the secured claims against the estate of the Debtor and (v) the Receiver's proposed scheme of distribution;
- (i) the Receiver has obtained an independent legal opinion from Aird & Berlis LLP confirming the validity and enforceability of the security of RBC;
- (j) the other grounds set out in the Second Report;
- (k) the inherent and equitable jurisdiction of this Honourable Court;
- (l) section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;
- (m) section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (n) rules 1.04, 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (o) such further and other grounds as counsel may advise and this Honourable Court may permit.

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

- (a) the Supplementary Report;

- (b) the Second Report; and
- (c) such further and other material as counsel may submit and this Honourable Court may permit.

Date: November 30, 2012

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

Sanjeev P.R. Mitra (LSUC # 37934U)

Tel: (416) 865-3085
Fax: (416) 863-1515
E-mail: smitra@airdberlis.com

Ian Aversa (LSUC # 55449N)

Tel: (416) 865-3082
Fax: (416) 863-1515
E-mail: iaversa@airdberlis.com

*Lawyers for MNP Ltd., in its capacity as
the Court-appointed receiver of U&ME
Beverage Company*

TO: ATTACHED SERVICE LIST

**IN THE MATTER OF THE PROPOSAL OF U&ME BEVERAGE
COMPANY, HAVING ITS PRINCIPAL PLACE OF BUSINESS IN
THE CITY OF MISSISSAUGA, IN THE PROVINCE OF ONTARIO**

Court File No. 32-1652926

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

NOTICE OF MOTION

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

Sanjeev P.R. Mitra (LSUC # 37934U)

Tel: 416.865.3085

Fax: 416.863.1515

E-mail: smitra@airdberlis.com

Ian Aversa (LSUC # 55449N)

Tel: 416.865.3082

Fax: 416.863-1515

E-mail: iaversa@airdberlis.com

*Lawyers for MNP Ltd., in its capacity as the Court-appointed receiver
of U&ME Beverage Company*

Tab 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) THURSDAY, THE 6TH DAY
JUSTICE) OF DECEMBER, 2012

**IN THE MATTER OF THE PROPOSAL OF
U&ME BEVERAGE COMPANY
HAVING ITS PRINCIPAL PLACE OF BUSINESS
IN THE CITY OF MISSISSAUGA, IN THE PROVINCE OF ONTARIO**

ORDER

THIS MOTION, made by MNP Ltd., in its capacity as the Court-appointed receiver (in such capacity, the “**Receiver**”) of all of the assets, undertakings and properties of U&ME Beverage Company (the “**Debtor**”), for an Order, *inter alia*: (i) approving the Supplementary Report of the Receiver dated October 26, 2012 (the “**Supplementary Report**”) and the Second Report of the Receiver dated November 30, 2012 (the “**Second Report**”) and the actions of the Receiver described therein; (ii) sealing Confidential Appendix “A”, “B” and “C” to the Second Report for a period of 90 days, or until further order of this Court; (iii) amending paragraph 24 of the Order of the Honourable Mr. Justice Morawetz granted on September 27, 2012 in these proceedings (the “**Receivership Order**”) to permit the Receiver to borrow up to the sum of \$400,000 for the purpose of funding the exercise of its powers and duties; (iv) approving the Liquidation Services Agreement between the Receiver and Asset Services Inc. (the “**Liquidator**”) dated November 30, 2012 (the “**Liquidation Services Agreement**”), a copy of which is appended to the Second Report; and (v) authorizing and directing the Receiver to distribute, without further Order of this Court, certain funds on account of the Debtor’s secured indebtedness for principal, interest and costs, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Supplementary Report and the Second Report and on hearing the submissions of counsel for the Receiver and counsel for Royal Bank of Canada (“**RBC**”), no one appearing for any other person on the service list, although duly served as appears from the affidavit of service of Eunice Baltkois sworn November 30, 2012, filed,

1. **THIS COURT ORDERS** that the time for service and filing 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.

2. **THIS COURT ORDERS** that the Supplementary Report and the Second Report be and are hereby approved and the actions of the Receiver described therein be and are hereby approved.

3. **THIS COURT ORDERS** that Confidential Appendix “A”, “B” and “C” to the Second Report be and is hereby sealed for a period of 90 days, or until further order of this Court.

4. **THIS COURT ORDERS** that paragraph 24 of the Receivership Order be and is hereby deleted and replaced with the following:

“24. **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 \$400,000.00 (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.”

5. **THIS COURT ORDERS** that the Liquidation Services Agreement and the transaction contemplated therein (the “**Transaction**”) be and are hereby approved, and the execution of the Liquidation Services 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.

6. **THIS COURT ORDERS AND DECLARES** that upon the Liquidator completing the sale of any of the assets to a purchaser, and upon receipt of the purchase price by the Liquidator and delivery by the Liquidator of a bill of sale or similar evidence of purchase to the purchaser (the “**Purchaser Bill of Sale**”) all of the Debtor’s right, title and interest in and to the assets described in the Purchaser Bill of Sale shall vest absolutely in such 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 Mr. Justice Morawetz dated September 27, 2012; and (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.

7. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the monies payable to the Receiver under the Liquidation Services Agreement from the sale of the assets shall stand in the place and stead of such assets, and that from and after delivery of the Purchaser Bill of Sale all Claims shall attach to the net proceeds from the sale of the assets with the same priority as they had with respect to the assets immediately prior to the sale, as if the 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.

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 assets in a 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 *Bulk Sales Act* (Ontario).

10. **THIS COURT ORDERS** that the Receiver be and is hereby authorized and directed to make distributions to RBC, without further Order of this Court, on account of the Debtor's secured indebtedness owing to RBC for principal, interest and costs up to the amount of the Debtor's secured indebtedness owing to RBC, subject to any reserves, in the discretion of the Receiver.

11. **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.

**IN THE MATTER OF THE PROPOSAL OF U&ME BEVERAGE
COMPANY, HAVING ITS PRINCIPAL PLACE OF BUSINESS IN
THE CITY OF MISSISSAUGA, IN THE PROVINCE OF ONTARIO**

Court File No. 32-1652926

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

ORDER

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ONM5J 2T9

Sanjeev P.R. Mitra (LSUC # 37934U)

Tel: (416) 865-3085

Fax: (416) 863-1515

E-mail: smitra@airdberlis.com

Ian Aversa (LSUC # 55449N)

Tel: (416) 865-3082

Fax: (416) 863-1515

E-mail: iaversa@airdberlis.com

*Lawyers for MNP Ltd., in its capacity as the Court-appointed receiver
of U&ME Beverage Company*

Tab 3

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE PROPOSAL OF
U&ME BEVERAGE COMPANY
HAVING ITS PRINCIPAL PLACE OF BUSINESS
IN THE CITY OF MISSISSAUGA, IN THE PROVINCE OF ONTARIO

SECOND REPORT OF THE RECEIVER

I. INTRODUCTION

1. On application by Royal Bank of Canada (“RBC”), pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act* (the “BIA”) and section 101 of the *Courts of Justice Act* (the “CJA”), MNP Ltd. (“MNP”) was appointed as receiver (in such capacity, the “Receiver”), without security, of all of the assets, undertakings and properties of U&ME Beverage Company (the “Debtor”) acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the “Property”) pursuant to an Order of the Honourable Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) (the “Court”) dated September 27, 2012 (the “Receivership Order”). A copy of the Receivership Order is attached hereto as Appendix “A” and has been published on the Receiver’s website.
2. The Debtor is a Nova Scotia corporation registered to carry on business in the Province of Ontario. The Debtor’s business is chiefly located at the address municipally known as 450A Export Boulevard, Mississauga, Ontario (the “Premises”) and involves the filling and distribution of pouch pack containers for juice and water.
3. The previous tenant at the Premises was Garden Spring Beverage Corporation (“Garden Spring”), which carried on a pouch pack business focused on the sale of alcoholic beverages. In early 2011, the Debtor purchased substantially all of the manufacturing

assets from Garden Spring, including, certain equipment, intellectual property and accounts receivable.

4. Prior to the issuance of the Receivership Order, on August 7, 2012, the Debtor filed a Notice of Intention to Make a Proposal (the “**NOI**”) under subsection 50.4(1) of the BIA. MNP acted as proposal trustee under the NOI. The NOI was filed to enable the Debtor to stabilize its business while it searched for a third party investor or an arm’s length purchaser of all its assets. The Debtor’s financial difficulties were a result of, among other things, inefficiencies in its manufacturing processes and an insufficient revenue base. Accordingly, the Debtor had negative cash flow and could not cover its operational and overhead expenses as they became due. Based on its unaudited draft financial statements, the Debtor’s losses from operations were in excess of \$9,000,000 for its first 18 months of operations.
5. The Debtor obtained an Order from the Court extending the deadline to file a proposal to September 21, 2012. However, the Debtor failed to file a proposal and had insufficient funds to meet its ongoing obligations in support of a further extension. As such, the Debtor was adjudged bankrupt on September 22, 2012.
6. MNP was appointed trustee of the Debtor’s bankruptcy estate by the Official Receiver (in such capacity, the “**Trustee**”), which appointment was affirmed at the first meeting of creditors held on October 10, 2012.
7. By Order of Justice Wilton-Segal, dated October 29, 2012 (the “**October 29th Order**”), the Receiver was authorized to conduct the sales process (the “**Sales Process**”) described in the First Report dated October 22, 2012 (the “**First Report**”), and to return to Court upon completion of the Sales Process the week of December 3, 2012 to report on the outcome of the Sales Process. A copy of the October 29th Order is attached as **Appendix “B”**.

II. SCOPE AND TERMS OF REFERENCE

8. In preparing this Second Report, the Receiver has relied, in part, on unaudited financial information, the Debtor’s records and financial information, and is based on discussions

with the Debtor's former employees and its directors and officers. While the Receiver reviewed this information, such work does not constitute an audit or verification of such information for accuracy or completeness. Accordingly, the Receiver expresses no opinion or other form of assurance in respect of such information.

III. PURPOSE OF THIS REPORT

9. The purpose of this second report of the Receiver (the "**Second Report**") is to:
 - a. report on the Receiver's activities since its First Report, including the Receiver's efforts in regards to the approved marketing and sales process of the Property;
 - b. support the Receiver's motion for an order:
 - i. approving the Liquidation Services Agreement (the "**LSA**") between the Receiver and Asset Services Inc. ("**ASI**") for the sale of certain assets of the Debtor (the "**Property**") and authorizing the Receiver to enter into the LSA and take all steps necessary to complete the transactions contemplated therein;
 - ii. that upon ASI completing the sale of any of the assets to a purchaser, and upon receipt of the purchase price by ASI and delivery by ASI of a bill of sale or similar evidence of purchase to the purchaser all of the Debtor's right, title and interest in and to the assets described in the Purchaser Bill of Sale shall vest absolutely in such purchaser;
 - iii. sealing Confidential Appendices "A", "B" and "C" to the Second Report for a period of 90 days, or until further order of this Court;
 - iv. permitting the Receiver to make distributions to RBC, without further Order of this Court, on account of the Debtor's secured indebtedness owing to RBC for principal, interest and costs up to the amount of the Debtor's secured indebtedness owing to RBC, subject to any reserves, in the discretion of the Receiver;

- v. authorizing an increase in the Receiver's borrowing limit in paragraph 24 of the Receivership Order to \$400,000; and
- vi. approving the Receiver's conduct, activities and actions as described herein.

IV. RECEIVER'S ACTIVITIES

10. Since the filing of the First Report and the Supplementary Report of the Receiver, dated October 26, 2012 (the "**Supplementary Report**"), the Receiver has:

- Carried out the Sales Process, as described in greater detail later in this Second Report.
- Borrowed from RBC an additional sum of \$60,000 under Receiver's Certificates, bringing the total amount borrowed to \$135,000. These funds have been used to pay administrative expenses, the largest of which has been rent.
- Continued to arrange for necessary maintenance at the Premises. To inhibit the development of mould in the facility, and also to improve the facility's appearance for inspection purposes, the Receiver arranged for significant amounts of expired product to be disposed of offsite. The plant floors were also cleaned to remove any leaked product.
- Unsuccessfully made continued efforts for the Debtor's officers and directors to verify the manifest of assets compiled by the Receiver. In the course of the Receiver's review of the Debtor's books and records, it learned of equipment transactions with suppliers in Mozambique and Turkey. Counsel for the Debtor's officers and directors claims that the Mozambique equipment was not owned by the Debtor and that he was not familiar with the Turkey equipment. Darryl McDaniel, one of the Debtor's officers, advised that the Turkey equipment was at the Premises with the exception of some broken equipment, which was with a certain supplier. The Receiver followed up with the supplier, who claimed not to have any equipment belonging to the Debtor.

The Receiver will be reviewing whether to expend further resources following the completion of the Sales Process.

- Entered into an agreement with R&D One Inc. (“**R&D One**”) to complete the Scientific Research and Experimental Development (“**SR&ED**”) tax claim on behalf of the Debtor. The Receiver has facilitated R&D One’s requests for information in order for it to finalize and support the claim, which will be filed shortly. The SR&ED claim will be filed as part of the Debtor’s corporate tax filings. The filing of these returns may permit CRA to release the HST refunds discussed in paragraph 33 of the First Report.

Dealings with Chiefton Investments Limited (“Chiefton” or the “Landlord”)

11. Since the First Report, the Receiver has paid Chiefton \$59,536.16 for November rent, in accordance with paragraph 14 of the Receivership Order. The \$59,536.16 includes the Debtor’s monthly obligation for base rent, additional rent, property tax and HST.
12. On or about November 2, 2012, the Receiver was notified by Chiefton that it was in a \$63,331.98 credit position on account of overpayment of realty taxes (the “**Rental Credit**”). The Rental Credit is comprised of overpayments by the Receiver of \$21,110 for October 2012 and November 2012, as well as an overpayment by the Debtor of \$21,110 for September 2012. The lease payments are structured such that the property taxes are funded during the first eight months of the year. The Receiver was advised that the Rental Credit would be applied against December rent and a portion of January rent.
13. Subsequent to notifying the Receiver of the existence of this credit, the Landlord advised the Receiver that it needed to confirm whether the Debtor fully funded the obligations of 2012 property taxes. The Receiver anticipates receiving the Landlord’s position on this matter within the next couple of business days. In the interim, the Receiver has received the Landlord’s consent that payment for December’s rent be deferred until December 5, 2012, at which point the correct credit adjustment may be applied against the payment.
14. The Landlord and Receiver have also had ongoing discussions concerning the Sales Process and the impact of the removal of the Property on the condition of the Premises.

These discussions have largely centered around two stainless steel tanks housed in an explosive proof room, as to whether these tanks constitute leasehold improvements or moveable fixtures.

Disputed Patents

15. As the Receiver noted in its Supplementary Report, further investigation into the ownership of the Disputed Patent (as defined in the First Report) is required.
16. No new substantive documentation was obtained to support ownership of the Disputed Patent, nor did the Disputed Patent Owners (as defined in the First Report) agree on any terms under which the Disputed Patent could be included in the Sales Process. As such, the Disputed Patent was excluded from the Sales Process.

Other Patents

17. As noted in paragraph 22 of the First Report, the Receiver was made aware of the need to take immediate steps in order to preserve the various trademarks in favour of the Debtor and notified RBC and Lee Miller that the Receiver required funding if it was to take the necessary steps to preserve the various trademarks.
18. Neither party has come forward to provide the required funding. As such the Receiver has not taken any action in this regard.
19. The Receiver has been requested by SSMP (as defined in the Supplementary Report) to send instructions to take affirmative steps to abandon applications filed by the Debtor relating to a certain mark, ROLLING RAPIDS, which is currently being opposed by Anheuser Busch. Formally abandoning these applications will avoid SSMP being obligated to incur additional costs. The Receiver does not have funds to pursue this litigation and will be canvassing with both RBC and the Directors and Officers whether there is any reason not to abandon these applications. Unless the Receiver receives funding and instructions, it will abandon this application.

V. SALES PROCESS

20. In accordance with the terms of the October 29th Order, the Receiver commenced the Sales Process by:

- a. Compiling a list of potential purchasers;
- b. Developing a Teaser letter, a copy of which is attached as **Appendix "C"**;
- c. Finalizing a Confidential Information Memorandum ("**CIM**");
- d. Compiling the documents/information to be available in the electronic data room;
- e. Advertising notice of the request for offers in the November 6th Globe & Mail newspaper, a copy of which is attached as **Appendix "D"**;
- f. Circulating the teaser letter to 54 parties on November 2, 2012, informing them of the business opportunity and directing them to the Receiver's website to sign the NDA and to receive further information on the Sales Process. The teaser was also placed on the Receiver's website;
- g. Fielding inquiries from interested parties, and circulating a form of non-disclosure agreement ("**NDA**") to those expressing interest in pursuing the acquisition opportunity and placing the NDA on the Receiver's website; and
- h. A copy of the CIM was distributed to the 26 interested parties that returned a signed NDA. The Receiver also arranged for site inspections upon request from interested parties. A total of 18 interested parties conducted site inspections between November 6, 2012 and November 20, 2012.

21. In carrying out the foregoing steps, the Receiver carried out the Sales Process contemplated under the October 29th Order.

22. The CIM contained:

- a. An explanation of the sales process and procedures for completing a transaction;
- b. An overview of the Debtor's business;

- c. A description of the parcels available for sale;
- d. An explanation of the terms and conditions of sale;
- e. The template proposal form;
- f. Draft financial statements for the year ended December 31, 2011 and internal financial statements for the period ending June 30, 2012;
- g. A copy of the Premises lease;
- h. A listing of the tangible assets included in the sale; and
- i. A listing of the intellectual property included in the sale.

Offers

23. A total of twelve offers were received prior to the November 23, 2012 deadline. Eleven of these offers were auction proposals ranging from outright purchase of the Property to straight commission arrangements. A summary of the offers is attached as **Confidential Appendix "A"**. A copy of the LSA is attached as **Confidential Appendix "B"**.
24. Subsequent to evaluating these offers, the Receiver determined that it would be favourable to leave open the possibility of the upside arising from the auction by accepting a net minimum guarantee proposal. In this manner, the Receiver could realize additional recoveries if the net sales from the auction exceed the threshold contemplated under the LSA.
25. The Receiver approached the four parties that submitted the best or highest net minimum offers and asked that each clarify certain terms and conditions contained in their proposals and consider enhancing the terms of their original offers. These parties were asked to resubmit their offers by the end of the day on November 27, 2012. Of particular concern to the Receiver was the negative impact on the net minimum guarantee arising from the removal of the stainless steel tanks from the auction sale. The Receiver asked each of the four parties to specifically identify the value ascribed to these tanks.

26. Prior to commencing the Sales Process, the Receiver commissioned a forced liquidation value appraisal from Corporate Assets Valuations (“**Corporate Assets**”). A copy of this appraisal is attached as **Confidential Appendix “C”**.
27. Each of Confidential Appendices “A”, “B” and “C” contains commercially sensitive information, the release of which would detrimentally affect the stakeholders of the Debtor.
28. The net minimum guarantee offered by ASI compares favourably against the appraised value ascribed to the Property by Corporate Assets.
29. ASI’s offer represents the highest net minimum guarantee offer for the Property.

VI. STATEMENT OF RECEIPTS AND DISBURSEMENTS

30. Attached hereto as **Appendix “E”** is the Receiver’s Statement of Receipts and Disbursements for the period of September 27, 2012 to and including November 27, 2012, which indicates a current balance of \$174.33. This represents the remaining funds advanced by RBC under Receiver’s certificates.
31. Until the issue of the Rental Credit is resolved, the Receiver anticipates that it will have an obligation to continue making monthly rent payments to the Landlord. The realizations arising from the sale of the Property will likely not occur until February, 2013. The Receiver will have to incur ongoing occupation costs until the assets are sold and removed as per the LSA. The payment of the ongoing rent, together with other expenses, may cause the Receiver’s borrowings to likely exceed the \$250,000 limit set out in the Receivership Order. The Receiver, accordingly, seeks from the Court an increase in the borrowing limit to \$400,000 to avoid the necessity of a further attendance on that point if the need does arise.

VII. SECURED CREDITORS

32. As noted in the First Report, in connection with certain credit facilities provided to the Debtor by RBC pursuant to a letter agreement dated March 23, 2011 and accepted April 5, 2011 (the “**RBC Credit Agreement**”), the Debtor provided RBC with the following security:

- a) a General Security Agreement over the Debtor’s assets;
- b) a Cash Collateral Agreement in the amount of \$700,000 being held in a term deposit;
and
- c) a Master Lease Agreement.

33. Based on the statement of affairs provided to the Receiver, the Debtor is indebted to RBC for a total of approximately \$2,285,000 as at the date of the statement of affairs.

34. The Trustee sought an opinion with respect to the validity of the security held by RBC. Subject to the usual qualifications, the security opinion provided by Aird & Berlis LLP provides that the security is good and valid and enforceable against the Trustee.

35. There is only one other registration filed in the *Personal Property Security Act* (“**PPSA**”) registry against the Debtor, which is a registration in favour of Chiefton, the Debtor’s landlord. The Receiver has been advised by representatives of Chiefton that any security interest it has in the assets would rank immediately subordinate to RBC’s.

36. Based on the PPSA search, the RBC appears to be the first registered secured creditor of the Debtor and, accordingly, appears to hold the first-ranking security interest in the Property. The Receiver is unaware of any other party that has a security interest ranking in priority to RBC.

Other Priority Claims

Canada Revenue Agency

37. The Receiver is not currently aware of any Crown claims against the Debtor. CRA may wish to conduct a trust examination of these books and records for the purpose of determining its deemed trust claim, if any, for unpaid source deductions.

38. CRA's claim, if any, for HST and corporate taxes would rank as an ordinary unsecured claim given the Debtor's bankruptcy. In respect of CRA's claim, only CRA's claim for unpaid source deductions would rank as a deemed trust claim and be paid in priority to RBC's secured claim.

Interim Distribution

39. The Receiver seeks an order permitting the Receiver to make distributions to RBC, without further Order of this Court, on account of the Debtor's secured indebtedness owing to RBC for principal, interest and costs up to the amount of the Debtor's secured indebtedness owing to RBC, subject to any reserves, in the discretion of the Receiver.

Wage Earner Protection Program Act

40. The Trustee filed with Service Canada amounts due to the Debtor's former employees on account of unpaid wages, vacation pay and termination pay. The aggregate amounts due to employees are reflected below:

- a) Wages: \$2,856.86;
- b) Vacation Pay: \$13,441.25; and
- c) Termination Pay: \$36,096.20

41. The \$2,000 per employee priority charge provided for in the BIA in respect to wages applies only to current assets. There are no current assets included in the auction sale.

VIII. CONCLUSION

42. The Receiver respectfully requests that this Court issue an Order:

- Approving the Receiver's Supplementary Report and Second Report and the actions of the Receiver set out therein;
- Approving the LSA and the transactions contemplated therein;
- Sealing Confidential Appendices "A", "B", and "C" to the Second Report for a period of 90 days, or until further order of this Court;

- Permitting the Receiver to make distributions to RBC, without further Order of this Court, on account of the Debtor's secured indebtedness owing to RBC for principal, interest and costs up to the amount of the Debtor's secured indebtedness owing to RBC, subject to any reserves, in the discretion of the Receiver;
- Authorizing an increase in the Receiver's borrowing limit in paragraph 24 of the Receivership Order to \$400,000; and
- Such further and other relief as this Court deems just.

All of which is respectfully submitted at Toronto, Ontario this 30th day of November, 2012.

**MNP Ltd., in its capacity as
the Court-appointed receiver of
U&ME Beverage Company,
and not in its personal or corporate capacity**

Per:



Sheldon Title, CA, CIRP
Senior Vice-President

Tab A



November 23, 2011
s.243(1) BIA (National Receiver) and s. 101 CJA (Ontario) Receiver

Court File No. 32-1652926

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) THURSDAY, THE 27TH
)
MR. JUSTICE MORAWETZ) DAY OF SEPTEMBER, 2012

**IN THE MATTER OF THE PROPOSAL OF
U&ME BEVERAGE COMPANY
HAVING ITS PRINCIPAL PLACE OF BUSINESS
IN THE CITY OF MISSISSAUGA, IN THE PROVINCE OF ONTARIO**

ORDER
(appointing Receiver)

THIS MOTION made by Royal Bank of Canada ("RBC") 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 MNP Ltd. ("MNP") as receiver (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of U&ME Beverage Company (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of David Flewelling sworn September 24, 2012 and the Exhibits thereto and on hearing the submissions of counsel for RBC, counsel for Orlando Corporation and counsel for MNP, no one appearing for any other interested

persons although duly served as appears from the affidavit of service of Karen Fox sworn September 25, 2012 and on reading the consent of MNP to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion 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, MNP 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 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 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 \$100,000.00, 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*, 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 foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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. 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.

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.

13. THIS COURT ORDERS that the Receiver shall have to right to vacate the premises leased by the Debtor at 450 ~~Export~~ ³⁰ Export Blvd., Mississauga, Ontario (the "Leased Premises") by delivering at least ~~10~~ ³⁰ days prior written notice of its intention to do so to Chiefton Investments Limited ("Chiefton"), or such shorter time frame as the Receiver and Chiefton Investments Limited ("Chiefton") in care of McMillan LLP, attention: Jeffrey Levine may agree, 

14. THIS COURT ORDERS that until the Receiver has delivered such notice to Chiefton and the notice has expired, the Receiver shall pay to Chiefton occupation rent in the sum of \$59,536.16 monthly, on the first day of each month, in advance, provided that if the notice has been issued and the notice period ends prior to the end of the month, then the rent for the portion of the notice period may be calculated on a *per diem* basis. In the event that rent has been paid for a period of time that exceeds the notice period stipulated in the notice and the actual occupation of the Premises by the Receiver, then Chiefton shall refund the excess payment to the Receiver within five days following the expiry of the notice period or the date the Premises are vacated, whichever is later.

15. THIS COURT ORDERS that until delivery of such notice by the Receiver and expiry of the notice period, the Receiver shall be entitled to use and occupy the Leased Premises, without interference from Chiefton.

RECEIVER TO HOLD FUNDS

16. 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

17. 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

18. 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

19. 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

20. 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

21. 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.

22. 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.

23. 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

24. 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 \$250,000.00 (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.

25. 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.

26. 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.

27. 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

28. THIS COURT ORDERS that the Receiver be at liberty to serve 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 electronic 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 notice by courier, personal delivery or electronic 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.

29. THIS COURT ORDERS that RBC, the Receiver, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Receiver may post a copy of any or all such materials on its website at [INSERT WEBSITE ADDRESS].

GENERAL

30. 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.

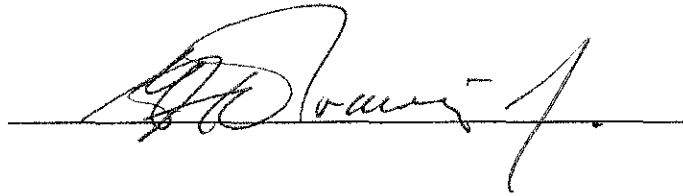
31. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from continuing to act as a trustee in bankruptcy of the Debtor.

32. 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.

33. 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.

34. THIS COURT ORDERS that RBC shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of RBC's security to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

35. 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.

A handwritten signature in black ink, appearing to read "G. D. Brown J.", is written over a horizontal line. The signature is cursive and somewhat stylized.

#1943441 | 4082652

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

36. THIS IS TO CERTIFY that [RECEIVER'S NAME], the receiver (the "Receiver") of the assets, undertakings and properties [DEBTOR'S NAME] acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ____ day of _____, 20__ (the "Order") made in an action 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.

37. 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.

38. 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.

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

40. 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.

41. 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.

42. 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 _____, 2012.

MNP LTD., solely in its capacity as Receiver
of the Property, and not in its personal
capacity

Per: _____

Name:

Title:

**IN THE MATTER OF THE PROPOSAL OF
U&ME BEVERAGE COMPANY
HAVING ITS PRINCIPAL PLACE OF BUSINESS
IN THE CITY OF MISSISSAUGA, IN THE PROVINCE OF ONTARIO**

Court File No. 32-1652926

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

MINDEN GROSS LLP
Barristers and Solicitors
2200 - 145 King Street West
Toronto, ON M5H 4G2

Catherine Francis (LSUC# 26900N)
cfrancis@mindengross.com

Tel: 416-369-4137
Fax: 416-864-9223

Lawyers for Royal Bank of Canada

Tab B

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.
JUSTICE WILTON-SIEGEL

)
)
)

MONDAY, THE 29TH DAY
OF OCTOBER, 2012



**IN THE MATTER OF THE PROPOSAL OF
U&ME BEVERAGE COMPANY
HAVING ITS PRINCIPAL PLACE OF BUSINESS
IN THE CITY OF MISSISSAUGA, IN THE PROVINCE OF ONTARIO**

ORDER

THIS MOTION, made by MNP Ltd., in its capacity as the Court-appointed receiver (in such capacity, the “Receiver”) of all of the assets, undertakings and properties of U&ME Beverage Company (the “Debtor”), for an Order, *inter alia*: (i) approving the First Report of the Receiver dated October 22, 2012 (the “First Report”) and the actions of the Receiver described therein; (ii) approving the marketing and sale process set out in the First Report (the “Sale Process”); (iii) sealing Confidential Appendix “B” to the First Report until the completion of the Sale Process, or until further order of this Court; (iv) empowering and authorizing the Receiver to enter into an agreement with a qualified third party to prepare and file a Scientific Research and Experimental Development tax claim on behalf of the Debtor; and (v) compelling the Debtor and all of its officers and directors to respond to the Receiver’s inquiries regarding the Debtor’s property, including, without limitation, the Debtor’s patent and trademark portfolio, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report and on hearing the submissions of counsel for the Receiver, counsel for Royal Bank of Canada, counsel for Steps Capital Investors, LLC, 1778363 Ontario Inc. Lee Miller and Darryl McDaniel, and counsel for Orlando Corporation, no one

appearing for any other person on the service list, although duly served as appears from the affidavit of service of Susy Moniz sworn October 22, 2012, filed,

1. **THIS COURT ORDERS** that the time for service and filing 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.

2. **THIS COURT ORDERS** that the First Report be and is hereby approved and the actions of the Receiver described therein be and are hereby approved.

3. **THIS COURT ORDERS** that the Sale Process set out in the First Report be and is hereby approved.

4. **THIS COURT ORDERS** that Confidential Appendix "B" to the First Report be and is hereby sealed until the completion of the Sale Process, or until further order of this Court.

5. **THIS COURT ORDERS** that the Receiver be and is hereby empowered and authorized to enter into an agreement with R&D One Inc., or another qualified third party, to prepare and file a Scientific Research and Experimental Development tax claim on behalf of the Debtor.


~~6. **THIS COURT ORDERS** that patent bearing U.S. serial number 13/640/515 and International application number PCT/US2012.051303, being the Disputed Patent as defined in the First Report, shall be included in the Sale Process as a separate lot provided that the proceeds, if any, from the sale of the Disputed Patent shall be held separately and not distributed pending determination of entitlement to the proceeds.~~

HTW

7. **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.

C. Hon - H.M.J.

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

 OCT 29 2012

IN THE MATTER OF THE PROPOSAL OF U&ME BEVERAGE
COMPANY, HAVING ITS PRINCIPAL PLACE OF BUSINESS IN
THE CITY OF MISSISSAUGA, IN THE PROVINCE OF ONTARIO

Court File No. 32-1652926

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

ORDER

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ONM5J 2T9

Sanjeev P.R. Mitra (LSUC # 37934U)

Tel: (416) 865-3085

Fax: (416) 863-1515

E-mail: smitra@airdberlis.com

Ian Aversa (LSUC # 55449N)

Tel: (416) 865-3082

Fax: (416) 863-1515

E-mail: iaversa@airdberlis.com

*Lawyers for MNP Ltd., in its capacity as the Court-appointed receiver
of U&ME Beverage Company*

Tab C



U&ME BEVERAGE COMPANY

RECEIVERSHIP SALE MANUFACTURER AND DISTRIBUTOR OF POUCH PACK BEVERAGES

On September 27, 2012, MNP Ltd. was appointed by the Ontario Superior Court of Justice (the "Court") as receiver (the "Receiver") of the assets, undertakings and properties of U&Me Beverage Company ("U&Me" or the "Company"). In our capacity as Receiver, we are soliciting offers to purchase the Company's assets.

An opportunity exists to acquire U&Me's machinery, equipment and intellectual property/goodwill (collectively, the "Assets").

Assets For Sale

The Company's Assets for sale are located at 450A Export Boulevard, Mississauga, Ontario and include:

- Machinery and Equipment – liquid filling lines, sip pasteurization system, robotic packaging system, racking, and forklifts
- Office furniture and equipment (excluding servers and leased/financed assets); and
- Intellectual Property/Goodwill – Trade names, domain names, and the Company's interest in certain patents.

Process

Access to the data room containing information regarding the Assets will be provided upon signing of a confidentiality agreement. Please refer to our website at www.mnpdebt.ca/en/corporate/corporate-engagements/ume-beverage-company.

The deadline for submission of offers is November 23, 2012 at 5:00 pm (Toronto time). Any sale of the Assets is subject to Court approval.

The Receiver reserves the right to cease or amend this offering at any time and reserves the right to deal with individual prospective purchasers as it may see fit in its sole discretion.

All communications relating to this opportunity should be directed to:



701 – 85 Richmond Street West,
Toronto Ontario, M5H 2C9
Telephone: (416) 515-3813

Henry Louis
henry.louis@mnp.ca

Facsimile: (416) 323-5242

Tab D

**MANUFACTURER AND DISTRIBUTOR OF POUCH PACK BEVERAGES
SOLICITATION FOR OFFERS**

MNP Ltd. ("**MNP**"), in its capacity as Court-appointed receiver, invites offers for the purchase on an "as is, where is" basis the machinery, equipment and intellectual property/goodwill (the "**Assets**") of U&Me Beverage Company ("**U&Me**").

U&Me was a manufacturer and distributor of private label pouch pack beverages, located in Mississauga, Ontario.

All offers will be considered on an individual basis as and when received, and must be received by 5:00 PM (Eastern Standard Time) on November 23, 2012. MNP reserves the right to enter into any agreement for sale of all or part of the Assets prior to this date. The highest or any offer may not necessarily be accepted and MNP may terminate the sale process at any time.

Parties interested in this opportunity may contact Henry Louis at (416) 515-3813 or at henry.louis@mnt.ca to receive further information with respect to the sale process.



701 – 85 Richmond Street West
Toronto ON Canada M5H 2C9
www.mnpdebt.ca

13406030.2

Tab E

**In the matter of the Receivership of
U&Me Beverage Company**

**Interim statement of receipts and disbursements
For the Period September 27, 2012 to November 29, 2012**

Receipts	Note		
Borrowings pursuant to Receiver Certificates	1	<u>\$ 135,000.00</u>	
Total Receipts			\$ 135,000.00
Less:			
Disbursements			
Rent	2	105,373.72	
Appraisal fees		1,500.00	
Computer back-up and security		1,173.00	
Repairs and Maintenance		150.00	
Telephone		1,005.53	
Utilities		3,255.33	
Consultant's fees (Former U&Me employees)		350.00	
Change of locks		250.00	
Insurance		3,850.00	
Advertising		1,580.79	
Filing fees		70.00	
Receiver's fees and expenses		1,370.26	
HST Paid		14,897.04	
Total Disbursements			<u>\$ 134,825.67</u>
Excess of receipts over disbursements			<u>\$ 174.33</u>

1. This represents funds borrowed by the Receiver from Royal Bank of Canada

2. Represents payment of October, 2012 and November, 2012 rent.

CONFIDENTIAL - APPENDIX "A"
(Sealed pursuant to court order)

CONFIDENTIAL - APPENDIX "B"
(Sealed pursuant to court order)

CONFIDENTIAL - APPENDIX "C"
(Sealed pursuant to court order)

IN THE MATTER OF THE PROPOSAL OF U&ME BEVERAGE
COMPANY, HAVING ITS PRINCIPAL PLACE OF BUSINESS IN
THE CITY OF MISSISSAUGA, IN THE PROVINCE OF ONTARIO

Court File No. 32-1652926

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

MOTION RECORD

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

Sanjeev P.R. Mitra (LSUC # 37934U)
Tel: (416) 865-3085
Fax: (416) 863-1515
E-mail: smitra@airdberlis.com

Ian Aversa (LSUC # 55449N)
Tel: (416) 865-3082
Fax: (416) 863-1515
E-mail: iaversa@airdberlis.com

*Lawyers for MNP Ltd., in its capacity as the Court-appointed receiver
of U&ME Beverage Company*