

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

**CIT FINANCIAL LTD.**

Applicant

- and -

**AUSTIN PHARMA DRUGS LTD.**

Respondent

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND  
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE  
*COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

**A. FARBER & PARTNERS INC.  
FOURTH REPORT OF THE RECEIVER  
JUNE 29, 2012**

## **PURPOSE OF THE REPORT**

1. This Fourth Report of A. Farber & Partners Inc. in its capacity as Receiver (the “**Receiver**”) of all of the assets, undertakings and properties of Austin Pharma Drugs Ltd. (“**Austin**” or the “**Debtor**”) is filed for the purpose of:

- a) Updating the court on the Receiver’s activities subsequent to the Receiver’s Third Report;  
and
- b) Seeking approval of (i) the Receiver’s activities to date and (ii) a proposed sale process in respect of the Debtor’s business and assets.

## **DISCLAIMER**

2. The Receiver assumes no responsibility or liability for any loss or damage incurred by or caused to any person or entity as a result of the circulation, publication, re-production or use of or reliance upon this Fourth Report. Any use which any person or entity, other than the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), makes of this Fourth Report, or any reliance on or a decision made based upon this Fourth Report is at such person’s or entity’s own risk.

## **BACKGROUND**

3. The Receiver was appointed pursuant to the Order of the Honourable Mr. Justice Morawetz dated April 17, 2012 (the “**Appointment Order**”). A copy of the Appointment Order is attached hereto as **Appendix A**.

4. The Debtor carries on business as an independent, full service pharmacy and methadone dispensary (the “**Pharmacy**”), on the main floor of a multi-story medical building located at 1525 Albion Road in Toronto, Ontario (the “**Premises**”).

5. Prior to the Receiver’s appointment, a dispute arose between Austin and its landlord with respect to whether Austin had exercised its right to renew the lease of the Premises. When the landlord took the position that the lease had expired, Austin initiated an action against the landlord for relief from forfeiture in court file no. CV-11-431612 (the “**RFF Proceeding**”). The Receiver has previously reported upon the progress of the RFF Proceeding in its First Report dated May 1, 2012 (the “**First Report**”), its Second Report dated June 11, 2012 (the “**Second Report**”), and its Third Report dated June 14, 2012 (the “**Third Report**”). Copies of the Receiver’s First Report, Second Report and Third Report are attached hereto (without exhibits) as **Appendices B, C and D** respectively.

6. On June 15, 2012, the hearing of the RFF Motion was held before the Honourable Mr. Justice Newbould. At that time, the Receiver, supported by CIT Financial Ltd. (“**CIT**”), the Debtor’s primary secured creditor, was successful in obtaining a declaration that Austin’s lease in respect of the Premises had been effectively renewed for a second term of five years effective August 1, 2011. A true copy of the Endorsement of the Honourable Mr. Justice Newbould dated June 15, 2012 in connection with RFF Proceeding, together with a typed transcription thereof, are attached hereto as **Appendix E**.

7. The Receiver has continuously operated the Pharmacy from the date of its appointment until the present time. The Receiver has obtained funding of \$50,000.00 from CIT by way of Receiver’s Certificate secured by the Receiver’s Borrowing Charge in accordance with paragraph 21 of the

Appointment Order. Attached as **Appendix F** is a statement of the Receiver's receipts and disbursements for the period from April 17, 2012 through June 29, 2012.

## **PROPOSED SALE PROCESS**

8. Several parties interested in potentially acquiring Austin's interests and assets have approached the Receiver. The Receiver has deferred any marketing of the Debtor's assets pending resolution of the RFF Motion and has therefore not entertained offers.

9. As the Court has recently declared that Austin has a right to occupy the Premises through the period ending July 31, 2016 in accordance with the renewal of the lease, the Receiver now wishes to proceed with a sale and marketing process in relation to the Debtor's business.

10. The Receiver believes that the market is fully aware of Austin's receivership and RFF Proceedings and, accordingly, has already been contacted by a number of prospective purchasers interested in acquiring the business and location.

11. The Receiver has consulted with CIT with respect to a proposed timeline and process for the marketing of Austin's business and assets. Subject to the approval of this Court, the Receiver recommends proceeding with a sale process in accordance with the steps and timeline outlined below:

6-Jul-12	<ul style="list-style-type: none"><li>• Approval of Sales Process (as detailed below)</li></ul>
6-Jul-12	<ul style="list-style-type: none"><li>• Teaser to be finalized and sent to interested parties list</li><li>• Terms and conditions of sale to be finalized</li><li>• Non-disclosure agreement to be finalized</li></ul>

6-Jul-12	<ul style="list-style-type: none"> <li>• Newspaper ads to be drafted and sent for publishing</li> </ul>
9-Jul-12	<ul style="list-style-type: none"> <li>• CIM to be finalized</li> <li>• Information pertaining to this opportunity will be posted on IR's website, <a href="http://www.farberfinancial.com">www.farberfinancial.com</a>, which will include: <ul style="list-style-type: none"> <li>○ Invitation for offers to purchase the assets/shares on a going concern basis.</li> <li>○ Terms and conditions of sale</li> <li>○ Non-disclosure agreement</li> </ul> </li> </ul>
10-Jul-12	<ul style="list-style-type: none"> <li>• Advertisement (in Globe and Mail)</li> </ul>
9-25-Jul-12	<ul style="list-style-type: none"> <li>• Parties given access to data room and an opportunity to conduct site visits</li> </ul>
26-Jul-12	<ul style="list-style-type: none"> <li>• 4:00 p.m. (E.S.T.) deadline for submissions of offers</li> </ul>
26-Jul-12 – 28-Jul-12	<ul style="list-style-type: none"> <li>• Receiver evaluates offer received</li> <li>• Possible run-off/second round which may include invitation to qualifying bidders to attend auction at Receiver offices</li> </ul>
30-Jul-12	<ul style="list-style-type: none"> <li>• Possible run-off/second round day</li> </ul>
30-Jul-12	<ul style="list-style-type: none"> <li>• Offer selection</li> </ul>
1-Aug-12	<ul style="list-style-type: none"> <li>• Receiver to notify rejected bidders</li> </ul>
7-Aug-12	<ul style="list-style-type: none"> <li>• Receiver to serve motion to obtain approval and vesting order</li> </ul>
13-Aug-12	<ul style="list-style-type: none"> <li>• Hearing of motion for approval and vesting order</li> </ul>
14/15-Aug-12	<ul style="list-style-type: none"> <li>• Receiver to complete sale to the successful bidder at the offices of its counsel</li> </ul>
17-Aug-12	<ul style="list-style-type: none"> <li>• Receiver to return deposits to unsuccessful bidders</li> </ul>

## **RECOMMENDATIONS**

12. The Receiver respectfully requests that this Honourable Court approve the Receiver's activities to date as described above in this report and in the First Report, Second Report and Third Report. The Receiver further respectfully requests that this Honourable Court approve the proposed sale process outlined above.

All of which is respectfully submitted this 29<sup>th</sup> day of June, 2012.

**A. FARBER & PARTNERS INC.,  
IN ITS CAPACITY AS THE COURT APPOINTED RECEIVER OF  
AUSTIN PHARMA DRUGS LTD.**

*A. Farber & Partners Inc.*

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