

# APPENDIX “E”

principles, I determined that the Sealy  
Order was appropriate in the  
circumstances.

*[Signature]*

Jan 15, 2013

For well reasons delineated today,  
the Tim Horrows Tract, the  
Preston Spring Cinders Tract and the  
Dorset Place Tract are  
approved. ~~and subject to~~ Approval  
and Vesting Orders granted under  
orders are subject to provisional  
execution.

Approval Note relating to Revere's  
Report deferred to a later date;  
to be set by Council within

60 days.  
Sealy Order granted with respect to  
Expedited Approval  
A-D. *[Signature]*

CV-12-00009794-00CL

SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243(1) OF THE  
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED  
AND

IN THE MATTER OF SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O.  
1990 c. C.43, AS AMENDE WITH RESPECT TO DONDEB INC. AND ALL THE  
DEBTORS

ENDORSEMENT

BEFORE THE HONOURABLE JUSTICE G. B. MORAWETZ on January 15<sup>th</sup>,  
2013, at TORONTO, Ontario

APPEARANCES:

A. Apps

Counsel for the Defendant

J. Dietrich

N. Rabinovitch

K. Stigler

Counsel for the Receiver A Farber and Partners Inc

Application Pursuant to Section 243(1) of the Bankruptcy and Insolvency Act and Section 101 of the Courts of Justice Act with respect to Dondeb Inc.

1 January 15, 2013

-2- UPON COMMENCING...

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E N D O R S E M E N T

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6 G. B. Morawetz, J. (Orally)

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THE COURT: A Farber and Partners Inc., ("Farber" or "the Receiver"), in its capacity as court appointed receiver of Dondeb Inc. and related debtors, ("Dondeb" or the "Debtor"), brought this motion for approval of its Second Report and the activities of the receiver set out therein, and for an order approving four transactions: The Tim Horton's Transaction, the Preston Springs Transaction, the Devonshire Transaction, and the Dorset Place Transaction.

The motion was originally returned on January 14, 2013. On the return of the motion, counsel of record to Dondeb advised that Mr. Apps was now

Application Pursuant to Section 243(1) of the Bankruptcy and Insolvency Act and Section 101 of the Courts of Justice Act with respect to Dondeb Inc.

1 acting on behalf of Dondeb. An adjournment was  
2 requested.

3  
4 The adjournment was objected to by the Receiver  
5 and by the mortgagees in attendance. The reason  
6 for the objection was primarily that the  
7 transactions in question had certain time limits  
8 that form part of the contractual agreements that  
9 required court approval and the issuance of an  
10 approval and vesting order on a timely basis.

11  
12 The motion for approval of the Devonshire  
13 Transaction did proceed on January 14, 2013. The  
14 transaction was approved and the approval and  
15 vesting order was issued.

16  
17 Counsel for the Receiver advised there was a  
18 condition in the Tim Horton's Transaction and the  
19 Preston Springs Transaction that vesting orders be  
20 granted no later than January 15, 2013 and the  
21 Dorset Place Transaction had an approval deadline  
22 of January 21, 2013.

Application Pursuant to Section 243(1) of the Bankruptcy and Insolvency Act and Section 101 of the Courts of Justice Act with respect to Dondeb Inc.

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Under the circumstances I determined that it was appropriated to adjourn the motion for a period of twenty-four hours to today, namely, January 15<sup>th</sup>, so as to provide Mr. Apps with the opportunity to put forth argument on behalf of Dondeb. Mr. Apps filed an affidavit of Mr. Dancy sworn January 14, 2013.

A considerable portion of the affidavit does not, in my view, address the matters at issue on this motion. Rather the affidavit focuses to a large extent on historical aspects of the file, including the CCAA proceedings initiated by Dondeb which resulted in C. Campbell J., declining to issue an initial order under the CCAA and instead pronounce a global receivership order. Extensive reasons were provided by C. Campbell J. To the extent that Mr. Dancy is challenging past events, it is noted that no appeal was filed from the order of C. Campbell J. appointing Farber as

Application Pursuant to Section 243(1) of the Bankruptcy and Insolvency Act and Section 101 of the Courts of Justice Act with respect to Dondeb Inc.

1 Receiver, nor has any request been made to extend  
2 the time for appeal.

3  
4 In my view these issues are not before the court.  
5 To the extent that Mr. Dancy wishes to challenge  
6 the adequacy of the legal representation that he  
7 received during these proceedings, it appears to  
8 me that his remedy, if any, does not lie in the  
9 proceedings before the court today. In that  
10 respect, it is noted that the former solicitor has  
11 contacted the Law Society Practice Advisory  
12 Department to advise them of the concerns raised  
13 by Mr. Dancy and Mr. Apps has confirmed that the  
14 former solicitor has fully cooperated with him in  
15 the preparation for today's motion.

16  
17 To the extent that Mr. Dancy in his affidavit  
18 challenges the role of the receiver, including any  
19 potential conflict issues, it seems to me that if  
20 this challenge, is to go forward, Mr. Dancy will  
21 first have to obtain leave pursuant to section 215  
22 of the Bankruptcy and Insolvency Act ("BIA") and

Application Pursuant to Section 243(1) of the Bankruptcy and Insolvency Act and Section 101 of the Courts of Justice Act with respect to Dondeb Inc.

1                   pursuant to the provisions of the order appointing  
2                   the Receiver.

3  
4                   In the circumstances, however, I do feel that it  
5                   is prudent to defer the request of the Receiver to  
6                   receive approval of its Report until such time as  
7                   Mr. Apps has had an opportunity to fully consider  
8                   the issue.

9  
10                  The focus of the hearing today then shifted to the  
11                  Motion to approve the three transactions.

12  
13                  Section 247(b) of the BIA provides that a receiver  
14                  shall deal with the property of the insolvent  
15                  person in a commercially reasonable manner. The  
16                  receiver's duty is not to obtain the best price  
17                  but to do everything reasonably possible in the  
18                  circumstances to obtain the best price.

19                  *Skyepharm PLC v. Hyal Pharmaceutical Corp.*, 12  
20                  C.B.R. (4<sup>th</sup>) 87. The duties of the court in  
21                  reviewing a proposed sale of assets by a receiver



Application Pursuant to Section 243(1) of the Bankruptcy and Insolvency Act and Section 101 of the Courts of Justice Act with respect to Dondéb Inc.

1 that is opposed by other interested parties are as  
2 follows:

3

4 1) It should consider whether the receiver has  
5 made a sufficient effort to obtain the best  
6 price and has not acted improvidently,

7

8 2) It should consider the interests of all  
9 parties,

10

11 3) It should consider the efficacy and  
12 integrity of the process of which offers have  
13 been obtained, and

14

15 4) It should consider whether there has been  
16 unfairness in the working out of the process.

17

18 *Royal Bank v. Soundair Corp.*, 7 C.B.R. (3<sup>rd</sup>) 1,  
19 (Ont C. A.) *National Bank of Canada v. Global*  
20 *Fasteners and Clamps, Ltd.*, 24 C.B.R. (4<sup>th</sup>) 228.

21 The court must not, however, enter into the  
22 marketplace. It must not sit as if it were

Application Pursuant to Section 243(1) of the Bankruptcy and Insolvency Act and Section 101 of the Courts of Justice Act with respect to Dondeb Inc.

1 hearing an appeal from the decision of the  
2 receiver, reviewing in detail every element of the  
3 process by which the receiver has arrived at its  
4 recommendation. *Crown Trust Co. v. Rosenberg* 67  
5 C.B.R. (N.S.) 320. If the receiver has acted  
6 fairly and reasonably and not arbitrarily, the  
7 court will ordinarily approve the recommendation  
8 of the receiver. *Integrated Building Corp. v.*  
9 *Bank of Nova Scotia*, 75 C.B.R. (N.S.) 158.

10  
11 It is only in exceptional circumstances that the  
12 court will intervene and proceed contrary to the  
13 recommendation of the receiver. *Crown Trust*  
14 *supra*.

15  
16 In this case the receiver has filed its Second  
17 Report and two supplements to the Second Report.  
18 I am not going to take the time in this  
19 endorsement to set out all of the facts that the  
20 receiver has relied on in arriving at its  
21 recommendation to proceed with the court

Application Pursuant to Section 243(1) of the Bankruptcy and Insolvency Act and Section 101 of the Courts of Justice Act with respect to Dondeb Inc.

1 application for the approval of the three  
2 transactions in question today.  
3

4 In addition, certain documentation is the subject  
5 of a request for sealing order. It seems to me  
6 that the confidential appendices do contain  
7 confidential information, the disclosure of which  
8 might be detrimental to stakeholders. In this  
9 respect I am satisfied, based on the Sierra Club  
10 principles, that the sealing order ought to be  
11 granted.  
12

13 I am given to understand that certain information  
14 has been provided to Mr. Apps that relates to the  
15 proposed purchase price of the transactions in  
16 question. I have also taken into account all the  
17 marketing efforts that receiver has referenced in  
18 its second report.  
19

20 The receiver is of the view that the market was  
21 extensively canvassed and a competitive process  
22 undertaken. The evidentiary background to the

Application Pursuant to Section 243(1) of the Bankruptcy and Insolvency Act and Section 101 of the Courts of Justice Act with respect to Dondeb Inc.

1 sale of the property with respect to the Tim  
2 Horton's Agreement, the Preston Springs  
3 Agreements, and the Dorset Place Agreement  
4 indicates that the Receiver has made substantial  
5 efforts in obtaining an adequate purchase price  
6 based on the multiple offers received and the  
7 negotiations entered into after showing the  
8 property to a variety of interested parties.  
9

10 With the respect to the Tim Horton's Agreement  
11 specifically, the Receiver is of the view that the  
12 highest and best purchase price has been received  
13 and the proposed purchaser has provided a  
14 substantial deposit and the relevant mortgagees  
15 have approved the Receiver entering into the  
16 agreement.  
17

18 With respect to the Preston Springs Agreement, the  
19 Receiver is of the view that the Preston Springs  
20 Agreement contains the highest and best purchase  
21 price of the offers received and that a  
22 substantial deposit has been provided and that the

Application Pursuant to Section 243(1) of the Bankruptcy and Insolvency Act and Section 101 of the Courts of Justice Act with respect to Dondob Inc.

1                    prompt sale will curtail the ongoing need to fund  
2                    holding costs of this vacant property and the  
3                    mortgagee has approved the entering into of the  
4                    agreement.

5  
6                    With the respect to Dorset Place, the Receiver is  
7                    of the view that the Dorset Place Agreement  
8                    contains the highest and best purchase price of  
9                    the offers received and that a substantial deposit  
10                   has been provided and the relevant mortgagees have  
11                   provided their approval to the entering into the  
12                   transaction.

13  
14                   I have also taken into account certain financial  
15                   information that Mr. Dancy provided on the return  
16                   of the CCAA Application which detailed a value  
17                   that he himself had ascribed to certain  
18                   properties. I am satisfied that the purchase  
19                   price for the Tim Horton's Agreement and the  
20                   Dorset Place Agent are reasonably consistent with  
21                   the values put on the properties by Mr. Dancy.

22                   With respect to Preston Springs agreement, it does

Application Pursuant to Section 243(1) of the Bankruptcy and Insolvency Act and Section 101 of the Courts of Justice Act with respect to Dondeb Inc.

1 appear that the purchase price is somewhat less  
2 that the value ascribed by Mr. Dancy. However, I  
3 am satisfied based on the reasons provided by the  
4 Receiver that it cannot be said to be an  
5 unreasonable amount.  
6

7 With respect to the Preston Springs Property the  
8 position put forth by Mr. Dancy is that there are  
9 alternatives available. Mr. Dancy's Affidavit  
10 references a commitment from Pacific Financial  
11 Group and a commitment of up to \$650, 000. Mr.  
12 Apps indicated that other arrangements could be  
13 put in place to satisfy obligations owing to the  
14 second mortgagee and there were some suggestion  
15 that there had been some discussion with the  
16 second mortgagee, but the fact remains that  
17 counsel to the second mortgagee supports the sale.  
18

19 Further, there are also some practical  
20 difficulties with the proposal put forth by Mr.  
21 Apps with respect to Preston Springs as it would  
22 require that property to be extracted from the

Application Pursuant to Section 243(1) of the Bankruptcy and Insolvency Act and Section 101 of the Courts of Justice Act with respect to Dondé Inc.

1                    receivership proceedings. The receivership  
2                    proceedings involve a number of properties and  
3                    although there may very well be a transaction that  
4                    could produce a higher monetary result than the  
5                    one put forth by the receiver, I must take into  
6                    account that there would be considerable risks in  
7                    not approving the transaction.

8  
9                    For example, there is the "drop dead" purchase  
10                    date and also an indication that it does not  
11                    appear that the conditions in the PNC financing  
12                    commitments with respect to free and clear title  
13                    or insurance, among other things, could be  
14                    fulfilled. This has to be contrasted with the  
15                    high degree of certainty that the transaction as  
16                    recommended by the Receiver will proceed and  
17                    produce the expected results to the secured  
18                    creditors on this property.

19  
20                    On balance, I am satisfied that the Receiver has  
21                    conducted a proper sales prospect with respect to  
22                    all the properties involved and has considered the

Application Pursuant to Section 243(1) of the Bankruptcy and Insolvency Act and Section 101 of the Courts of Justice Act with respect to Dondeb Inc.

1 interests of all parties. I am also satisfied  
2 that the process has been fairly worked out. I  
3 have not been persuaded that Mr. Dancy has  
4 demonstrated that the transactions should not be  
5 approved. It cannot be overlooked that the  
6 negotiations involved with respect to these  
7 properties have been ongoing for a considerable  
8 period of time and Mr. Dancy and Dondeb elected to  
9 wait until "one minute before midnight" before  
10 objecting to the transactions involved.

11  
12 Accordingly, the three transactions are approved.

13  
14 The Receiver has also requested that the court  
15 grant an order and declaration that the relief  
16 granted is subject to provisional execution. The  
17 Receiver expresses concern that if a notice of  
18 appeal is filed, it will have the effect of  
19 rendering this order moot, as the requirement of  
20 two of the agreement is that the vesting order be  
21 obtained today and not be subject to appeal.  
22



Application Pursuant to Section 243(1) of the Bankruptcy and Insolvency Act and Section 101 of the Courts of Justice Act with respect to Dondeb Inc.

1 In support of the argument that the declaration  
2 should be made, the Receiver references  
3 *Computershare Trust Company of Canada and*  
4 *Beachfront Developments, Inc.*, 70 C.B.R. (5<sup>th</sup>) 284,  
5 a decision of Newbould J. Newbould J. adopted  
6 what appears to be a variation of the test for  
7 injunctive relief that is set out in *RJR*  
8 *MacDonald, Inc. v. Canada (Attorney General)*  
9 (1994) 1 S.C.R. 311.

10  
11 The three part test being that,

- 12  
13 1) A serious issue has been identified,  
14 2) Irreparable harm,  
15 3) Balance of convenience.  
16

17 This test has been adopted in cases not unlike the  
18 one before me. In *BDC Venture Capital, Inc. v.*  
19 *Natural Convergence Inc.* 2009 ONCA 637. Lang J.A.  
20 referenced *After Eight Interiors Inc. v. Glenwood*  
21 *Homes, Inc.* (2006) 391 AR 202. Lang J.A. stated  
22 that the criteria included whether there was a

Application Pursuant to Section 243(1) of the Bankruptcy and Insolvency Act and Section 101 of the Courts of Justice Act with respect to Dondeb Inc.

1           serious issue to be appealed, whether the moving  
2           party would suffer irreparable harm if the stay  
3           was not lifted, and whether the moving party would  
4           suffer greater harm than the responding party if  
5           the stay was not lifted.

6  
7           In the *After Eight* decision, Fruman J.A. stated  
8           that courts generally in applications under  
9           section 195 of the BIA focus on the relative  
10          prejudice to the parties and the interests of  
11          justice generally. In my view it is appropriate  
12          to consider this test, in these circumstances, to  
13          be a variation of the RJR test.

14  
15          As Newbould J. indicated in the *Computershare*  
16          decision, (and I agree) I would not presume to  
17          consider whether an appeal in this case on my  
18          decision is or is not without serious merit. If  
19          that is a factor to be considered, I will assume  
20          there is some merit to the appeal. Focusing on  
21          the issue of irreparable harm in this case, the  
22          Receiver has put forth the argument that the

Application Pursuant to Section 243(1) of the Bankruptcy and Insolvency Act and Section 101 of the Courts of Justice Act with respect to Dondeb Inc.

1 transactions may not be consummated if there is a  
2 delay caused by an appeal. This would obviously  
3 cause harm to the mortgagees in question. Whether  
4 it is irreparable is another question.  
5 Irreparable in the context of an injunction  
6 usually that means that it cannot be calculated in  
7 damages.

8  
9 It is at this point that it is necessary to  
10 consider the relative prejudice to the parties.  
11 The Dondeb proceedings were commenced by way of an  
12 application for CCAA relief. This requires that  
13 the applicant Dondeb be insolvent. In these  
14 circumstances, it is questionable as to whether or  
15 not a damage award could be paid or honoured by  
16 Dondeb and one has to consider the position of the  
17 mortgagees in question for whose benefit the  
18 receivership order was granted.

19  
20 In these circumstances it appears to me that that  
21 there would be serious and irreparable harm to the  
22 mortgagees in question if the transactions could

Application Pursuant to Section 243(1) of the Bankruptcy and Insolvency Act and Section 101 of the Courts of Justice Act with respect to Dondeb Inc.

1 not be consummated and as a result, there is  
2 substantial risk that the Receiver would then have  
3 to remarket the properties.  
4

5 The balance of convenience aspect also favours, in  
6 my view, the secured creditors. Again, I have to  
7 emphasize the lateness with which these objections  
8 were raised by Dondeb. It is clear from the  
9 record that the negotiations resulting in the  
10 agreements being put forth for approval today were  
11 entered into some time ago. There is also some  
12 evidence that Mr. Dancy's son has been actively  
13 involved and following along in the marketing  
14 process and has some knowledge of matters.  
15

16 In these circumstances I find that the balance of  
17 convenience favours the position of the secured  
18 creditors and I do give effect to the submission  
19 of Mr. Rabinovitch that the entire declaration  
20 could be moot if it is not subject to provisional  
21 execution, which is therefore granted. Subject to  
22 any questions counsel, that concludes my reasons.

Application Pursuant to Section 243(1) of the Bankruptcy and Insolvency Act and Section 101 of  
the Courts of Justice Act with respect to Dondeb Inc.

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Application Pursuant to Section 243(1) of the Bankruptcy and Insolvency Act and Section 101 of the Courts of Justice Act with respect to Dondeb Inc.

FORM 2

CERTIFICATE OF TRANSCRIPT (SUBSECTION 5 (2))

*Evidence Act*

I, Santiago Orbe, certify that this document is a true and accurate transcript of the recording of *Application Pursuant to Section 243(1) of the Bankruptcy and Insolvency Act and Section 101 of the Courts of Justice Act with respect to Dondeb Inc.* in the Superior Court of Justice of Ontario held at 330 University Avenue, Toronto, Ontario, taken from recording No. 4899\_8-1\_20130115\_161934-10, which has been certified in Form 1.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature of Authorized Person)

Photo static copies of this transcript are not certified and have not been paid for unless they bear the signature of SANTIAGO ORBE in blue ink, and accordingly are in direct violation of Ontario Regulation 587/91, Courts of Justice Act, January 1, 1990.

# APPENDIX “F”

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) FRIDAY, THE 2<sup>ND</sup>  
 )  
JUSTICE D. BROWN ) DAY OF MAY, 2014  
 )

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243(1) OF  
THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED  
AND**

**IN THE MATTER OF SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O.  
1990 c. C.43, AS AMENDED WITH RESPECT TO DONDEB INC. AND ALL THE  
DEBTORS LISTED AT SCHEDULE "A" HERETO**

**ORDER**

THIS MOTION made by A. Farber & Partners Inc. in its capacity as court-appointed receiver (the "**Receiver**") of the debtors referred to at Schedule "A" attached hereto (collectively, the "**Debtors**") for an order *inter alia*: (i) declaring that the time for service of the Notice of Motion and the Motion Record is hereby abridged so that the motion is properly returnable; (ii) approving the twelfth report to Court of the Receiver dated April 28, 2014 (the "**Twelfth Report**") and the activities of the Receiver set out therein; (iii) authorizing the Receiver to distribute the amount of \$2,630,000 to First Source Mortgage Corporation and Mark Cosman ("**First Source/Cosman**") in partial satisfaction of the charge/mortgage granted by Dondeb, in favour of First Source/Cosman in the original principal sum of \$7,100,000 registered on September 1, 2011 as Instrument No. SC928251 (the "**First Source BBC Charge**") against the Barrie Business Centre Property (as that term is defined in the Order of Justice Campbell dated October 17, 2012 (the "**Receivership Order**")) from the funds held by the Receiver in the



account maintained for the Barrie Business Centre Property; (iv) authorizing the Receiver to distribute the amount of \$160,000 to First Source/Cosman in partial satisfaction of the charge/mortgage granted by Dondeb, in favour of First Source/Cosman in the original principal sum of \$150,000 registered on August 24, 2012 as Instrument No. SC1006304 (the “**First Source Tim Hortons Charge**”) against the Tim Hortons/Wendy’s Property (as that term is defined in the Receivership Order) from the funds held by the Receiver in the account maintained for the Remo’s Ristoronti Property (as that term is defined in the Receivership Order); (v) authorizing the Receiver to distribute the amount of \$250,000 to The Toronto-Dominion Bank (“**TD**”) in partial satisfaction of the charge/mortgage (the “**TD Charge**”) granted by Dondeb to The Canada Trust Company as custodian for TD in the original principal amount of \$712,000, registered on November 1, 2005 as Instrument No. SC382515, against the Rockin Boats Property (as that term is defined in the Receivership Order) from the proceeds of sale of the Rockin Boats Property; (vi) declaring that the distributions contemplated by the Order be without prejudice to any rights of subrogation, marshaling, apportionment or assessment that any subordinate creditors may have; and (vii) declaring that nothing in the Order prevents a person from challenging the amount and allocation of the holdbacks and reserves being retained by the Receiver at a future date was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion dated April 28, 2014 and the Twelfth Report, and upon hearing the submissions of the counsel for the Receiver, no other party appearing, although duly served, as appears from the Affidavit of Service of Stephanie Waugh sworn April 28, 2014, filed,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the Twelfth Report and the activities of the Receiver set out therein, be and are hereby approved.

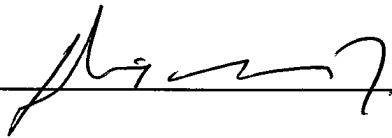
3. **THIS COURT ORDERS** that the Receiver is authorized to distribute the amount of \$2,630,000 to First Source/Cosman in partial satisfaction of the First Source BBC Charge from the funds held by the Receiver in the account maintained for the Barrie Business Centre Property.

4. **THIS COURT ORDERS** that the Receiver is authorized to distribute the amount of \$160,000 to First Source/Cosman in partial satisfaction of the First Source Tim Hortons Charge from the funds held by the Receiver in the account maintained for the Remo's Ristoronti Property.

5. **THIS COURT ORDERS** that the Receiver is authorized to distribute the amount of \$250,000 to TD in partial satisfaction of the TD Charge from the funds held by the Receiver in the account maintained for the Rockin Boats Property.

6. **THIS COURT ORDERS AND DECLARES** that the distributions contemplated by this Order be without prejudice to any rights of subrogation, marshaling, apportionment or assessment that any subordinate creditors may have.

7. **THIS COURT ORDERS** that nothing in this Order prevents a person from challenging the amount and allocation of the holdbacks and reserves being retained by the Receiver at a future date.



A handwritten signature in black ink, appearing to read "J. Smith", is written over a horizontal line.

## **SCHEDULE "A"**

1281515 Ontario Inc.

2338067 Ontario Inc.

2198392 Ontario Ltd.

King City Holdings Ltd.

Guelph Financial Corporation

Briarbrook Apartments Inc.

2009031 Ontario Inc.

1267818 Ontario Ltd.

1711060 Ontario Ltd.

1182689 Ontario Inc.

Ace Self Storage and Business Centre Inc.

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED AND  
IN THE MATTER OF SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990 c. C.43, AS AMENDED WITH RESPECT TO  
DONDEB INC. AND ALL THE DEBTORS LISTED AT SCHEDULE "A" HERETO

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Court File No: CV-12-9794-00CL

**ONTARIO**

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

PROCEEDING COMMENCED AT TORONTO

**ORDER  
(May 2, 2014)**

DENTONS CANADA LLP  
77 King Street West, Suite 400,  
Toronto Ontario, M5K 0A1

CASSELS BROCK & BLACKWELL LLP  
2100 Scotia Plaza, 40 King Street West,  
Toronto Ontario M5H 3C2

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LAWYERS FOR the RECEIVER

# APPENDIX “G”

Agreement of Purchase and Sale

This Agreement is made as of the 8<sup>th</sup> day of July, 2014 between

A. FARBER & PARTNERS INC. solely in its capacity as court-appointed receiver of DONDEB INC. and not in its corporate capacity (collectively, the "Vendor")

and

SOLERA SUSTAINABLE ENERGIES COMPANY LIMITED  
(the "Purchaser")

**RECITALS**

A. Pursuant to the Order of the Honourable Mr. Justice Campbell of the Ontario Superior Court of Justice (the "Court") dated October 17, 2012 (the "Receivership Order"), A. Farber & Partners Inc. was appointed as receiver (the "Receiver") of the assets, properties and undertakings of Dondeb Inc. (the "Company");

B. Subject to the approval of the Court, the Vendor wishes to sell and the Purchaser wishes to purchase on an "as is, where is basis" the Assumed Contract (as defined below) pursuant to the terms and conditions of this Agreement; and

C. The Vendor's execution of this Agreement shall constitute a conditional acceptance of the Purchaser's offer to acquire the Assumed Contract subject to the approval of the Court.

FOR VALUE RECEIVED, the parties agree as follows:

**SECTION 1 – INTERPRETATION**

**1.1 Definitions**

In this Agreement:

- (1) **Agreement** means this agreement including any recitals and schedules to this agreement, as amended, supplemented or restated from time to time; provided that this agreement shall constitute an offer until accepted by the Vendor;
- (2) **Approval and Vesting Order** has the meaning given to it in Section 5.3(1)(a);
- (3) **Assumed Contract** means the right, title and interest of the Vendor and the Company, if any, in and to the FIT Contract;
- (4) **AVO Deposit** has the meaning given to it in Section 3.4 (1)(c);
- (5) **Business Day** means any day of the year, other than a Saturday, Sunday or any day on which Canadian chartered banks are closed in Toronto, Ontario, Canada;

- (6) **CIA Deposit** has the meaning given to it in Section 3.4(1)(b);
- (7) **Court** has the meaning given to it in Recital A;
- (8) **Closing** means the completion of the Transaction;
- (9) **Closing Date** means the tenth Business Day following the date upon which all of the approvals described in Section 6.2 have been obtained or such earlier or later day as the Vendor and Purchaser may agree;
- (10) **Company** has the meaning given to it in Recital A;
- (11) **Deposit** has the meaning given to it in Section 3.4(1)(a);
- (12) **Effective Date** has the meaning given to it in Section 2.2;
- (13) **ETA** means the *Excise Tax Act* (Canada);
- (14) **Facility** means the proposed 250 kilowatt rooftop solar photovoltaic energy generation facility as further described in the FIT Contract;
- (15) **FIT Contract** means the Feed-In Tariff Contract No. F-001962-SPV-130-502 between Dondel Inc. and the OPA dated June 23, 2011;
- (16) **Governmental Authority** means any Canadian federal, provincial, state, municipal or local, or other government, governmental regulatory or administrative authority, agency or commission or any court, tribunal or judicial or arbitral body;
- (17) **HST** has the meaning given to it in Section 3.3(1) hereof;
- (18) **OPA** means the Ontario Power Authority;
- (19) **Purchase Price** has the meaning given to it in Section 3.2;
- (20) **Purchase Price Advance Payment** has the meaning given to it in Section 3.4;
- (21) **Receiver** has the meaning given to it in Recital A;
- (22) **Receivership Order** has the meaning given to it in Recital A;
- (23) **Taxes** means all taxes, assessments, charges, duties, fees, levies, imposts or other governmental charges, including, without limitation, all federal, state, local foreign and other income, environmental, add-on, minimum, franchise, profits, capital gains, capital stock, capital structure, transfer, gross receipt, use, *ad valorem*, service, service use, HST, lease, recording, customs, occupation, property, excise, gift, windfall profits, premium, stamp, license, payroll, social security, employment, unemployment, disability, value-added, withholding, and other taxes, assessments, charges, duties, fees, levies, imposts or other governmental charges of any kind whatsoever (whether payable directly or by withholding and whether or not requiring the filing of a return) and all estimated taxes, deficiency assessments, additions

to tax, additional amounts imposed by a governmental authority (domestic or foreign), penalties, fines and interest, and shall include any liability for such amounts as a result either of being a member of a combined, consolidated, unitary or affiliated group or of a contractual obligation to indemnify any person, regardless of whether disputed;

(24) **Time of Closing or Closing Time** means 2:00 p.m. Toronto time on the Closing Date or as otherwise determined by mutual agreement of the parties in writing;

(25) **Transaction** means the transaction of purchase and sale contemplated by this Agreement;

## 1.2 Headings and References

The division of this Agreement into sections and subsections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms "this Agreement," "hereof," "hereunder" and similar expressions refer to this Agreement and not to any particular section, subsection or other portion hereof and include any agreement supplemental hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to "Sections" are to sections, subsections and further subdivisions of sections of this Agreement.

## 1.3 Extended Meanings

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders. The term "including" means "including without limitation."

## 1.4 Statutory References

Each reference to an enactment is deemed to be a reference to that enactment, and to the regulations made under that enactment, as amended or re-enacted from time to time.

## SECTION 2-- OFFER

### 2.1 Agreement

This Agreement, shall constitute a valid and binding agreement to purchase by the Purchaser and agreement to sell by the Vendor, subject to the granting of the Approval and Vesting Order approving the sale of the Assumed Contract to the Purchaser on the terms and conditions set forth in this Agreement.

### 2.2 Effective Date

This Agreement shall be effective on the date on which the Approval and Vesting Order is granted and a copy of the Approval and Vesting Order has been emailed or delivered to the Buyer or such later date as agreed to in writing by the parties (the "Effective Date").



**SECTION 3 - SALE AND PURCHASE**

**3.1 Sale and Purchase of Assumed Contract.**

Upon and subject to the terms and conditions of this Agreement including the payment of the Purchase Price, the Vendor shall sell to the Purchaser and the Purchaser shall purchase all of the Vendor's right, title and interest in, if any, and to the Assumed Contract on the Closing Date. The Purchaser acknowledges that it is not purchasing any other property or assets of the Vendor other than the Assumed Contract.

**3.2 Purchase Price**

The purchase price (the "Purchase Price") for the Assumed Contract shall be without adjustment of any kind, which shall be payable in accordance with Section 3.4.

**3.3 Harmonized Sales Tax**

(1) The Purchase Price of the Assumed Contract does not include the Harmonized Sales Tax ("HST") payable by the Purchaser in respect of the purchase of the Assumed Contract pursuant to the ETA. The Purchaser agrees to pay to the Vendor, on the Date of Closing, as a condition of completion of the Transaction by certified cheque or bank draft, all HST payable as a result of this transaction in accordance with the Act.

(2) The Purchaser's obligations under this Section 3.3 shall survive closing.

**3.4 Payment of Purchase Price.**

(1) The Purchaser shall pay the Purchase Price as follows:

- (a) by paying \_\_\_\_\_ prior to the date hereof, which the Vendor hereby confirms receipt of as a deposit (together with the interest earned thereon from time to time, the "Deposit"), which amount will be held in escrow;
- (b) by paying to the Vendor \_\_\_\_\_, on receipt by the Purchaser of the connection impact assessment in relation to the Assumed Contract, as a further deposit (together with interest earned thereon from time to time, the "CIA Deposit"), which amount will be held in escrow;
- (c) by paying to the Vendor \_\_\_\_\_, on the receipt by the Vendor of the Approval and Vesting Order as a further deposit (together with interest earned thereof from time to time, the "AVO Deposit"), which amount will be held in escrow;
- (d) by paying an amount equal to the balance of the Purchase Price plus applicable Taxes, if any, to the Vendor at the Closing.

in each case by certified cheque, bank draft or wire transfer of immediately available funds. The parties agree that the Deposit, CIA Deposit and AVO Deposit (together the "Purchase Price Advance Payment") shall be released from escrow unconditionally and irrevocably upon the receipt of a Notice to Proceed (as that term is defined in the Assumed Contract) from the OPA.

### 3.5 Legal and Other Costs

The Purchaser shall pay its own legal costs, registration costs and fees payable in connection with the Transaction.

### 3.6 "As Is, Where Is".

The Purchaser acknowledges that the Vendor is selling the Assumed Contract on an "as is, where is" basis as the Assumed Contract shall exist on the Closing Date and no adjustments shall be made for any changes in the condition of the Assumed Contract. The Purchaser further acknowledges that it has entered into this Agreement on the basis that the Purchaser has conducted such review of the Assumed Contract, as it deemed appropriate and has satisfied itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to title, encumbrances, description, fitness for any particular use or purpose, merchantability, condition, assignability, value or quality or in respect of any other matter or thing whatsoever concerning the Assumed Contract or the right of the Vendor to sell same. Without limiting the generality of the foregoing: (1) any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act* (Ontario) or similar legislation in any other jurisdiction do not apply hereto and have been waived by the Purchaser and (2) no representation or warranty is made with respect to the accuracy or completeness of any information provided by the Vendor and its respective officers, directors, employees, and agents, to the Purchaser in connection with this transaction. The description of the Assumed Contract contained herein is for the purpose of identification only. No representation, warranty or condition has or will be given by the Vendor concerning completeness or the accuracy of such descriptions.

## SECTION 4- REPRESENTATIONS AND WARRANTIES

### 4.1 Vendor's Representations.

The Vendor represents and warrants to the Purchaser that:

- (a) to the best of the Vendor's knowledge, no actions or proceedings are pending or have been threatened to restrain or prohibit the completion of the Transaction;
- (b) the Vendor is not, and at the time of Closing will not be, a non-resident of Canada within the meaning of that term as used in the *Income Tax Act* (Canada); and
- (c) the Vendor is registered under Part IX of the ETA.

### 4.2 Purchaser's Representations.

The Purchaser represents and warrants to the Vendor that:

- (a) the Purchaser is a corporation existing under the laws of Ontario, and has full corporate power and authority to enter into and carry out this Agreement and the Transaction;
- (b) the entering into of this Agreement and all other documents contemplated hereunder to which the Purchaser is or will be a party and the consummation of the Transaction have been duly authorized by all requisite corporate action;
- (c) other than the Approval and Vesting Order, no approval or consent of and no filing with or application to any Governmental Authority is required for the Purchaser to enter into this Agreement or to complete the Transaction, other than such approvals, consents, filings and applications that have been obtained or made as at the date hereof, copies of which have been provided to the Vendor;
- (d) this Agreement and all other documents contemplated hereunder to which the Purchaser is or will be a party have been or will be, as at the Closing Time, duly and validly executed and delivered by the Purchaser and constitute or will, as at the Closing Time, constitute legal, valid and binding obligations of the Purchaser, as the case may be, enforceable in accordance with the terms hereof or thereof;
- (e) the Purchaser has entered into this Agreement and will be completing the Transaction on its own account, not as an agent; and
- (f) the Purchaser is registered under Part IX of the *Excise Tax Act* (Canada).

#### 4.3 Survival.

The representations and warranties of the parties shall not survive Closing.

### SECTION 5 – CONDITIONS TO CLOSING

#### 5.1 Conditions - Purchaser.

The obligation of the Purchaser to complete the Transaction is subject to the following conditions being fulfilled or performed at or prior to the Time of Closing:

- (a) all representations and warranties of the Vendor contained in this Agreement shall be true as of the Time of Closing with the same effect as though made on and as of that date;
- (b) the Vendor shall have performed each of its obligations under this Agreement to the extent required to be performed on or before the Closing Date; and
- (c) the Vendor shall have delivered or caused to be delivered to the Purchaser each of the items listed in Section 6.2.

The foregoing conditions are for the exclusive benefit of the Purchaser.

**5.2 Conditions - Vendor.**

The obligation of the Vendor to complete the Transaction is subject to the following conditions being fulfilled or performed at or prior to the Time of Closing:

- (a) all representations and warranties of the Purchaser contained in this Agreement shall be true as of the Time of Closing with the same effect as though made on and as of that date;
- (b) the Purchaser shall have performed each of its obligations under this Agreement to the extent required to be performed on or before the Closing Date; and
- (c) the Purchaser shall have delivered or caused to be delivered to the Vendor each of the items listed in Section 6.3

The foregoing conditions are for the exclusive benefit of the Vendor.

**5.3 Conditions - Vendor and Purchaser.**

(1) Neither party shall be obligated to complete the transactions contemplated by this Agreement unless at the Time of Closing:

- (a) an order shall have been made by the Court approving this Agreement and the Transaction and vesting the Assumed Contract in the Purchaser free and clear of all claims (the "Approval and Vesting Order") which is in a form satisfactory to the Purchaser, acting reasonably;
- (b) approval and consent from the OPA to assign the Vendor's rights, titles and interests under the Assumed Contract to the Purchaser has been obtained and is in full force and effect; and
- (c) no Governmental Authority shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, injunction or other governmental order (whether temporary, preliminary or permanent) which is in effect and has the effect of making the transactions contemplated by this Agreement illegal or otherwise restraining or prohibiting consummation of such transactions or which would otherwise materially adversely affect or interfere with the prosecution of the Assumed Contract following Closing.

The foregoing conditions are for the mutual benefit of both parties.

(2) The Vendor covenants that it will use commercially reasonable efforts to fulfil or cause to be fulfilled the conditions contained in Section 5.1 and Section 5.3 hereof and the Purchaser covenants to use commercially reasonable efforts to fulfil or cause to be fulfilled the conditions contained in Sections 5.2 and 5.3 hereof prior to Closing.

#### 5.4 Non-Satisfaction of Conditions.

(1) If any condition set out in Section 5.1 or Section 5.2 is not satisfied or performed prior to the time specified therefor, the party for whose benefit the condition is inserted may in writing:

- (a) waive compliance with the condition in whole or in part in its sole discretion by written notice to the other party and without prejudice to any of its rights of termination in the event of non-fulfilment of any other condition in whole or in part; or
- (b) elect on written notice to the other party to terminate this Agreement before Closing.

(2) If any condition set out in Section 5.3 is not satisfied or performed prior to the time specified therefor, either the Vendor or the Purchaser may elect on written notice to the other party to terminate this Agreement before Closing, unless the parties jointly waive compliance with such condition.

#### 5.5 Termination Obligations.

If the Purchaser validly terminates this Agreement in accordance with Section 5.4 other than as a result of the failure by the Purchaser to (i) complete the Transaction in accordance with the terms of this Agreement, or (ii) perform its obligations under the Development Agreement between the Vendor and the Purchaser dated the date hereof (the "Development Agreement"), then:

- (1) all the obligations of both the Vendor and Purchaser pursuant to this Agreement shall be at an end;
- (2) the Vendor shall repay the Purchase Price Advance Payment to the Purchaser with fifteen (15) days of termination and the Purchaser shall have no further obligation to pay any further sums under this Agreement; and
- (3) neither party shall have any right to specific performance or other remedy against, or any right to recover damages or expenses from the other.

#### 5.6 Breach by Purchaser.

If the Purchaser fails to complete the Transaction in accordance with the terms of this Agreement except where Section 5.5 applies, or fails to perform its obligations pursuant to the Development Agreement and the Development Agreement is terminated by the Vendor, then the Vendor may by notice to the Purchaser elect to treat the Agreement as having been repudiated by the Purchaser. In that event, the Purchase Price Advance Payment (or such amount of it as shall have been paid to the Vendor) and any other payments made by the Purchaser shall be forfeited to the Vendor on account of its liquidated damages, not as a penalty and the Assumed Contract may be resold by the Vendor without prejudice to any claims which the Vendor may have against the Purchaser by reason of such default.

### SECTION 6— CLOSING

#### 6.1 Closing.

The completion of the Transaction shall take place at the offices Dentons Canada LLP, solicitors for the Vendor, in Toronto, Ontario at Time of Closing.

**6.2 Vendor's Deliveries on Closing.**

At or before the Closing Time, upon fulfilment by the Purchaser of all the conditions herein in favour of the Vendor which have not been waived in writing by the Vendor, the Vendor shall deliver the following, each of which shall be in form and substance satisfactory to the Purchaser, acting reasonably:

- (a) documentation required to evidence the approval required in Section 5.3(1)(b), as executed by the OPA; and
- (b) such further and other documentation as is referred to in this Agreement, or as the Purchaser may reasonably require to give effect to this Agreement.

**6.3 Purchaser's Deliveries on Closing.**

At or before the Closing Time, upon fulfilment by the Vendor of all the conditions herein in favour of the Purchaser which have not been waived by the Purchaser, the Purchaser shall execute and deliver the following, each of which shall be in form and substance satisfactory to the Vendor, acting reasonably:

- (a) payment of the Purchase Price pursuant to Section 3.4;
- (b) payment or evidence of the payment of the Taxes, if any; and
- (c) such further and other documentation as is referred to in this Agreement or as the Vendor may reasonably require to give effect to this Agreement.

**6.4 Purchaser's Acknowledgement.**

The Purchaser acknowledges that the Vendor is selling the Assumed Contract solely pursuant to the Vendor's rights and capacity conferred by the Receivership Order and the Approval and Vesting Order.

**6.5 Assumption of the Assumed Contract.**

On Closing the Purchaser shall assume all the rights, benefits and obligations of the Assumed Contract whether arising before or after Closing, and the Purchaser shall indemnify and hold harmless the Vendor from and against all claims, demands, damages, liability, expenses, costs and fees directly or indirectly relating to, arising out of or in respect of the Assumed Contract, whether such claims, demands, damages, liability, expenses, costs and fees arise or accrue prior to, on or following Closing. The indemnity given by the Purchaser in this Section 6.5 will survive Closing and, notwithstanding the Closing, will continue in full force and effect for the benefit of the Vendor in accordance with the terms of this Agreement.

**6.6 Tender.**

Any tender of documents or money hereunder may be made upon the Vendor or the Purchaser or their respective solicitors on the Closing Date.

**SECTION 7- GENERAL****7.1 Notices.**

Any demand, notice or other communication to be given in connection with this Agreement shall be given in writing and shall be given by personal delivery (in which case it shall be left with a responsible officer of the recipient) or by electronic communication addressed to the recipients as follows:

in the case of the Vendor:

A. Farber & Partners Inc.  
150 York St, Suite 1600,  
TORONTO, ON M5H 3S5

Attention: Hylton Levy  
Facsimile: (416) 496-3839  
Email: [hlevy@farberfinancial.com](mailto:hlevy@farberfinancial.com)

with a copy to:

Dentons Canada LLP  
Toronto-Dominion Centre  
77 King Street West, Suite 400  
Toronto, ON M5K 0A1

Attention: Neil Rabinovitch  
Facsimile: 416-863-4656  
Email: [neil.rabinovitch@dentons.com](mailto:neil.rabinovitch@dentons.com)

in the case of the Purchaser:

Solera Sustainable Energies Company Limited

Attention: Leonard Allen  
Facsimile: 905-421-0042  
Email: [l.allen@soleraenergies.com](mailto:l.allen@soleraenergies.com)

or to such other address, individual or electronic communication number as may be designated by notice given by either party to the other. Any demand, notice or other communication shall be conclusively deemed to have been given, if given by personal delivery, on the day of actual delivery thereof if delivered during normal business hours of the recipient on a Business Day and, if given by

electronic communication, on the day following the transmittal thereof if transmitted during normal business hours of the recipient on a Business Day and on the second Business Day following the delivery or transmittal thereof if not so delivered or transmitted.

**7.2 Time of Essence.**

Time shall be of the essence for every provision hereof.

**7.3 Expenses.**

Except as otherwise expressly provided herein, all costs and expenses (including the fees and disbursements of legal counsel, investment advisers and auditors) incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such expenses.

**7.4 Third Party Beneficiaries.**

Each party hereto intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any person other than the parties hereto and their successors and permitted assigns, and no person, other than the parties hereto and their successors and their permitted assigns shall be entitled to rely on the provisions hereof in any action, suit, proceeding, hearing or other forum.

**7.5 Commission.**

The Purchaser acknowledges that there are no agent's or broker's fees or other commissions payable by the Vendor on the Purchase Price and Purchaser agrees to indemnify and save the Vendor harmless with respect to any claims for compensation or commission by any third party or agent retained by the Purchaser.

**7.6 Further Assurances.**

During the sixty (60) day period after the Closing Date, each party shall from time to time execute and deliver, or cause to be executed and delivered, all such documents and instruments and do, or cause to be done, all such acts and things as the other party may, either before or after the Closing, reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

**7.7 Entire Agreement.**

This Agreement constitutes the only agreement between the parties with respect to the subject matter hereof and supersedes any and all prior negotiations, provisions, covenants, agreements, understandings and representations on that subject, all of which have become merged and finally integrated into this Agreement.

**7.8 Amendments.**

This Agreement may only be amended, modified or supplemented by a written agreement signed by the parties.



**7.9 Waiver.**

No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision (whether or not similar), nor shall such waiver constitute a waiver or continuing waiver unless otherwise expressly provided in writing duly executed by the party to be bound thereby.

**7.10 Governing Law.**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and each of the parties hereby irrevocably attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.

**7.11 Benefit of Agreement.**

This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.

**7.12 Severability.**

If any provision of this Agreement or any document delivered in connection with this Agreement is partially or completely invalid or unenforceable, the invalidity or unenforceability of that provision shall not affect the validity or enforceability of any other provision of this Agreement, all of which shall be construed and enforced as if that invalid or unenforceable provision were omitted. The invalidity or unenforceability of any provision in one jurisdiction shall not affect such provision's validity or enforceability in any other jurisdiction.

**7.13 Counterparts.**

This Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered is an original but all of which taken together constitute one and the same instrument.

**7.14 Assignment and Enurement**

No party may assign its rights or obligations under this Agreement without the prior written consent of the other party. Notwithstanding the forgoing, the Purchaser shall have prior to the granting of the approval and Vesting Order the right to assign, in whole or in part, its rights to acquire the Assumed Contract hereunder to any affiliate of the Purchaser provided that such assignment shall not release the Purchaser from its obligations under this Agreement.

Dated at Pickering, Ontario as of the 3 day of July, 2014.

**Solera Sustainable Energies Company Limited**

Per: 

Name: Leonard Allen

Title: President

The Vendor accepts the foregoing offer to acquire the Assumed Contract in accordance with its terms.

Dated at Toronto, Ontario as of the 8<sup>th</sup> day of July, 2014.

A. Farber & Partners Inc. solely in its capacity as court-appointed receiver of Dondab Inc. and not in its corporate or personal capacity.

Per:



Name: HYLTON LEVY  
Title: PARTNER

# APPENDIX “H”

## Development Agreement

**Between:** Solera Sustainable Energies Company Limited

("Purchaser")

and

A. Farber & Partners Inc. solely in its capacity as court-appointed receiver of DONDEB INC. and not in its corporate capacity  
("Dondeb")

**The Project:**

250 kilowatt rooftop solar photovoltaic energy generation facility to be located at 364 St. Vincent Street, Barrie, Ontario (the "Project"). The Project relates to a Feed-In-Tariff Contract F-001962-SPV-130-502 dated June 23, 2011 (the "FIT Contract").

**Construction of the Solar Energy Installation:**

Purchaser agrees, on behalf of Dondeb, to cause the construction of the Project at its expense with its selected Engineering, Procurement and Construction firm ("EPC"). Dondeb will be advised of the EPC selected by the Purchaser. Purchaser will provide complete EPC services, including construction financing, in order to bring the project to commercial operation as soon as reasonably practicable following the effective date of this Development Agreement. Purchaser agrees to prepare the notice to proceed application required in relation to the FIT Contract and shall ensure that all security required by the Ontario Power Authority, in this respect, in connection with the FIT Contract is posted promptly. Further, the Purchaser shall ensure that all domestic content and other development, design and construction obligation of Dondeb in relation to the Project under the FIT Contract are discharged by Purchaser on behalf of Dondeb, including all such obligations required to achieve commercial operation pursuant to the terms of the FIT Contract. Accordingly, the Purchaser shall indemnify and hold Dondeb and A. Farber & Partners Inc. harmless against all costs, claims, losses or damages they may incur as a result of any act or omission of the Purchaser, including with respect to the construction of the Project under the FIT Contract, the connection of the Project to the distribution system or the forfeiture of any performance security posted in relation to the Project.

**Performance of the Work:**

The Purchaser shall and it shall require the EPC and each of its subcontractors to use, only personnel who are qualified and properly trained and who possess every licence, permit, registration, certificate or other approval required by applicable law or any governmental authority to enable such persons to perform their work involving any part of the Purchaser's obligations under this Development Agreement. For greater certainty, the Purchaser shall perform all engineering and design services, using qualified architects, engineers, environmental, health and safety professionals and other professionals licensed in Ontario selected and paid for by the Purchaser.

The Purchaser shall furnish advance notice to both Dondeb and the Ontario Power Authority (at least ten (10) business days) prior to commencement of any tests or inspections required in accordance with the FIT Contract.

The Purchaser shall perform all work in accordance with industry standards, applicable law, applicable permits, any permits, the FIT Contract, and any requirements of Powerstream Inc. related to connection.

The Purchaser shall obtain, maintain, pay for (including all fees and deposits) and as applicable, renew all applicable permits which may be required for the performance of the work to achieve commercial operation under the FIT Contract and otherwise in connection with the operation of the Project from the commercial operation date.

**Conditions Precedent:**

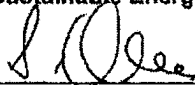
This Development Agreement shall become effective on the later of the date the Asset Purchase Agreement between the parties hereto becomes effective and the date that A. Farber & Partners Inc. obtains an order of court approving this Development Agreement and the transactions contemplated herein.

**Lease:**

Upon the achievement of commercial operation under the FIT Contract, the Purchaser shall lease the Project to Dondeb, including the exclusive right to use for the purposes of the generation of power pursuant to the FIT Contract. Such lease shall terminate on the date upon which the FIT Contract is assigned to the Purchaser, which the parties anticipate to be at commercial operation under the FIT Contract or shortly thereafter, subject always to the Agreement of Purchase and Sale executed by the parties on the date hereof.

Accepted and agreed on the 8<sup>th</sup> day of July, 2014.

Solera Sustainable Energies Company Limited



Per:

Name: LEONARD ALLEN  
Title: PRESIDENT  
I have authority to bind the Purchaser.

A. Farber Partners Inc.



Name: HYTON LEVY  
Title: Receiver/Trustee of DANDGE INC.  
I have authority to bind the company.

# APPENDIX “I”





120 Adelaide Street West  
Suite 1600  
Toronto, Ontario M5H 1T1  
T 416-967-7474  
F 416-967-1947  
www.powerauthority.on.ca

**FIT CONTRACT FORM OF  
FACILITY AMENDMENT CONSENT AGREEMENT**

OPACM-Form-Facility Amendment Consent Agreement (2011-12)

**THIS CONSENT AGREEMENT (this “Agreement”) is made as of the 8<sup>th</sup> day of July, 2014 (the “Effective Date”).**

**BETWEEN:**

**DONDEB INC.**, by its receiver A. Farber and Partners Inc., in its capacity as receiver and not in its corporate capacity, a corporation formed under the laws of Ontario

(the “**Supplier**”)

**- and -**

**ONTARIO POWER AUTHORITY**, a statutory corporation without share capital incorporated under the laws of the Province of Ontario

(the “**OPA**”)

**WHEREAS** the Supplier and the OPA entered into a Feed-In Tariff Contract dated June 23, 2011 and designated FIT Identification# F-001962-SPV-130-502 (the “**FIT Contract**”);

**AND WHEREAS** subject to the approval of the Court (as defined below) the Supplier wishes to make a certain Contract Facility Amendment (the “**Requested Contract Facility Amendment**”);

**AND WHEREAS** subsection 2.1(b) of Schedule 1 of the FIT Contract prohibits a Contract Facility Amendment without the Supplier first notifying the OPA in writing and obtaining the OPA’s consent in writing;

**AND WHEREAS** pursuant to an order of the Ontario Superior Court of Justice (the “**Court**”) dated October 17, 2012 (the “**Order**”), A. Farber & Partners Inc. was appointed as receiver and manager (the “**Receiver**”) of the assets, properties and undertakings of the Supplier;

**AND WHEREAS** the OPA is willing to consent to the Requested Contract Facility Amendment on the terms and subject to the conditions set out herein;

**NOW THEREFORE THIS AGREEMENT WITNESSES** that, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) the parties hereto covenant and agree as follows:

**1. Defined Terms and References to FIT Contract**

All capitalized terms not defined herein shall have the respective meanings ascribed thereto in the FIT Contract. References to particular articles, sections or subsections of the FIT Contract shall be deemed to be references to FIT Contract Schedule 1 –Terms and Conditions.

## 2. Representations, Warranties and Covenants

The Supplier hereby represents and warrants to and agrees and covenants with the OPA, acknowledging that the OPA is relying on such representations as a condition of entering into this Agreement, that:

- (a) the Recitals hereto are true and correct;
- (b) subject to approval by the Court, all requirements for the Supplier to make any filing, declaration or registration with, give any notice to or obtain any license, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to entering into this Agreement have been satisfied;
- (c) no Supplier Event of Default under the FIT Contract or occurrence, action or thing that, with the passage of time or expiration of cure period, would become a Supplier Event of Default has occurred or is occurring, nor (as a condition precedent thereto) shall have occurred or be occurring on the Effective Date except pursuant to sections 9.1(g) or (h) of Schedule 1 of the FIT Contract;
- (d) except as otherwise provided for in Schedule B hereto, no Force Majeure is occurring on the Effective Date and the Supplier is not on the Effective Date aware of any reason that any Force Majeure may occur after the Effective Date;
- (e) the representations set out in section 6.1 of Schedule 1 of the FIT Contract are restated by the Supplier with effect as of the date hereof, provided however:
  - (i) references to “Agreement” in section 6.1 of Schedule 1 of the FIT Contract shall be deemed to be references to this Agreement;
  - (ii) disclosed against such warranties and limiting them accordingly is the insolvency of the Supplier and the appointment of the Receiver and any ancillary actions, suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator arising in relation to the same;
  - (iii) section 6.1(f) of Schedule 1 of the FIT Contract is to the best of the Supplier’s knowledge complete and accurate save to the extent amended by this Agreement;
  - (iv) the reference in section 6.1(g) of Schedule 1 of the FIT Contract, to the Contract Date shall be deemed to be a reference to the Effective Date;

- (f) there are no actual or potential actions, causes of action, suits, debts, dues, accounts, bonds, covenants, contracts, claims or demands whatsoever of the Supplier or any of its respective Affiliates against or in respect of the OPA, by reason of, or in any way arising out of the FIT Contract or any other contract between the Supplier or its respective Affiliates and the OPA as at the date hereof (collectively, "Claims"), and the Supplier is on the Effective Date not aware, after due inquiry, of any, actual or potential Claims, or any act, event, circumstance or thing which, with notice or the passage of time or lapse of cure period, would give rise to a Claim, that it or its Affiliates, or either of their successors, heirs, executors, estate trustees, administrators or assigns, had, have or may have;
- (g) the Requested Contract Facility Amendment is not a modification, variation or amendment which would, or would be likely to:
  - (i) materially adversely affect the ability of the Supplier to comply with its obligations under the FIT Contract;
  - (ii) increase the Gross Nameplate Capacity of the Facility or otherwise cause Electricity generated by another facility to affect the Facility's meter reading, until such time as the Supplier and the OPA agree, acting reasonably, on any changes to the metering configuration or Exhibit B that are necessary to ensure that payments under this Agreement reflect only Delivered Electricity from the Contract Facility prior to any such Contract Facility Amendment; or
  - (iii) increase the Gross Nameplate Capacity of the Facility such that a lower Contract Price would have applied to the Contract Facility if, at the time of the original Application, the Contract Facility had an increased Contract Capacity corresponding to such increased Gross Nameplate Capacity.

**3. Contract Facility Amendment**

- (a) The OPA is hereby notified of the Requested Contract Facility Amendment as set out on the revised FIT Contract Cover Page contained in Schedule A hereto.
- (b) Subject to Section 2, the OPA consents to the Requested Contract Facility Amendment.

**4. Condition Precedent to Effectiveness**

This Agreement and the provisions hereof shall be deemed to only become effective upon receipt of the approval of the Court, on motion made on notice to all creditors who have registered a security interest against the Supplier, with respect to the matters contemplated herein.

**5. Confidential Information**



This Agreement and the provisions hereof shall be deemed to be Confidential Information of both Parties hereunder. The Parties shall keep confidential and secure and not disclose this Agreement or the provisions hereof other than in accordance with Article 7 of the FIT Contract and the OPA hereby consents to the disclosure of this Agreement required in connection with any court approval of this Agreement or otherwise in connection with the receivership of the Supplier. For clarity, in addition to any other remedies available at law or equity, the remedies available to the Parties pursuant to Section 7.4 of Schedule 1 of the FIT Contract shall apply to this Section 5.

**6. Entire Agreement**

This Agreement, together with the FIT Contract constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement. There are no warranties, conditions, or representations (including any that may be implied by statute) and there are no agreements in connection with the subject matter of this Agreement except as specifically set forth or referred to in this Agreement and the FIT Contract. No reliance is placed on any warranty, representation, opinion, advice or assertion of fact made by a Party to this Agreement, or its directors, officers, employees or agents, to the other Party to this Agreement or its directors, officers, employees or agents, except to the extent that the same has been reduced to writing and included as a term of this Agreement and the FIT Contract.

**7. FIT Contract in Full Force and Effect**

The parties hereto confirm that the FIT Contract remains in full force and effect in accordance with its terms.

**8. Execution and Delivery**

This Agreement may be executed by the parties hereto in counterparts and may be executed and delivered by facsimile and all such counterparts and facsimiles shall together constitute one and the same agreement.

**9. Other**

- (a) Breach of any representation, warranty, covenant or other provision hereof shall be deemed to be a Supplier Event of Default under the FIT Contract, provided that no cure period shall be applicable thereto, and pursuant to which the OPA may *inter alia* pursue any remedy available to it under Section 9.2 of Schedule 1 of the FIT Contract, including without limitation drawing on the Completion and Performance Security.
- (b) Except where the context requires otherwise, the provisions contained in sections 1.2, 1.3, 1.4, 1.5, 1.6, 1.8, 1.9, 1.10, 1.11, 1.12, 14.6, 15.1, 15.2, 15.3, 15.4, 15.10, 15.11, 15.13 and 15.14 of Schedule 1 of the FIT Contract apply in the construction and interpretation of this Agreement, provided references therein to the "Agreement" shall be construed and deemed to be references to this Agreement.

10. **Governing Law**

This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

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

**ONTARIO POWER AUTHORITY**

**DONDEB INC., by A. Farber and Partners Inc., in its capacity as court-appointed receiver and manager and not in its corporate capacity**

By:



Name:

**Michael Killeavy**

Title:

**Director, Contract Management  
Electricity Resources**

By:



Name:

**HYLTON LEVY**

Title:

**PARTNER**

I have the authority to bind the corporation.

I have the authority to bind the corporation.

### Schedule A

#### to FIT Contract Form of Facility Amendment Consent Agreement

#### Revised FIT Contract Cover Page Information

- 
5. **SUPPLIER'S ADDRESS** \_\_\_\_\_ Fax: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Email: \_\_\_\_\_
6. **SUPPLIER INFORMATION**  Not a Non-Resident of Canada  
 Non-Resident of Canada
7. **GROSS NAMEPLATE CAPACITY** \_\_\_\_\_ kW
8. **INCREMENTAL PROJECT**  Yes  No
9. **CONTRACT CAPACITY** \_\_\_\_\_ kW
10. **CONTRACT PRICE** \_\_\_\_\_ ¢/kWh  Peak Performance Factor applies  
 Peak Performance Factor does not apply
11. **(a) ABORIGINAL PRICE ADDER (as of the Contract Date)** \_\_\_\_\_ ¢/kWh Aboriginal Participation Level (if applicable) \_\_\_\_\_ %
- (b) COMMUNITY PRICE ADDER (as of the Contract Date)** \_\_\_\_\_ ¢/kWh Community Participation Level (if applicable) \_\_\_\_\_ %
12. **PERCENTAGE ESCALATED** \_\_\_\_\_ %
13. **MINIMUM REQUIRED DOMESTIC CONTENT LEVEL** \_\_\_\_\_ %
14. **BASE DATE**
15. **AUTOMATIC NTP FACILITY**  Yes  No

16. RENEWABLE FUEL
- Biogas
  - Biogas (On-Farm)
  - Landfill gas
  - Renewable Biomass
  - Solar (PV) (Rooftop)
  - Solar (PV) (Ground Mount)
  - Waterpower
  - Wind (Off-Shore)
  - Wind (On-Shore)

17. LOCATION:

|                    |  |
|--------------------|--|
| Municipal Address: | <b>364 St. Vincent Street</b>                      |
|                    | <b>Barrie, ON L4M 7G3</b>                          |
| Legal Description: | <b>PT E 1/2 LT 21 Con 4 Vespra as in RO1226347</b> |
|                    | <b>Except PT 1, 51R29039 S/T RO618824 Vespra</b>   |
|                    | <b>PIN No: 58810-0161 (LT)</b>                     |

|   |                                      |
|---|--------------------------------------|
| 18. IMPACT ASSESSMENT PRIORITY START TIME | IMPACT ASSESSMENT PRIORITY STOP TIME |
|---|--------------------------------------|

19. CONNECTION POINT

- IESO-Controlled Grid
- Distribution System

(if so state LDC: \_\_\_\_\_)

- Host Facility (behind-the-meter)

Technical Description of Connection Point: **See attached Exhibit A for details of Connection Point Change**

20. HOST FACILITY (IF APPLICABLE)

|                    |
|--------------------|
| Name:              |
| Municipal Address: |
| Legal Description: |

## Exhibit A

### Changes to FIT Contract Cover Page Section 19 - Connection Point

#### Existing Connection Point Details:

Project is connected to:

Name of LDC:

Generator Connecting on:

Proposed Connection Point is a:

Feeder Name: **23M8**

Connection Voltage Level in kV:

GPS coordinates of the connection point: **44.404306, -79.691004**

GPS coordinates of Project: **44.404306, -79.691004**

Name of TS: **MIDHURST TS**

#### New Connection Point Details:

Project is connected to:

Name of LDC:

Generator Connecting on:

Proposed Connection Point is a:

Feeder Name: **23M6**

Connection Voltage Level in kV:

GPS coordinates of the connection point: **44.406817, -79.686814**

GPS coordinates of Project: **44.406817, -79.686814**

Name of TS: **MIDHURST TS**



**Schedule B**  
**to FIT Contract Form of Facility Amendment Consent Agreement**  
**Force Majeures**

Nil.