

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

ONTARIO  
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 AMENDED WITH RESPECT TO DONDEB INC. AND ALL THE  
DEBTORS LISTED AT SCHEDULE "A" HERETO**

**A. FARBER & PARTNERS INC.  
COURT APPOINTED RECEIVER**

**FIFTH REPORT OF THE RECEIVER**

**MAY 3, 2013**

## 1. INTRODUCTION

1. By Court Order dated October 18, 2012, A. Farber & Partners Inc. (“**Farber**”) was appointed receiver (“**Receiver**”) of all of the assets undertakings and properties of Dondeb Inc. (“**Dondeb**”), and those debtors listed on **Appendix “A”** (collectively, the “**Debtors**”). The Court Order was subsequently amended and restated to be dated October 17, 2012 consistent with the endorsement of the Honourable Justice Campbell (hereinafter referred to as the “**Receivership Order**”), which is attached as **Appendix “B”**.
2. The Debtors were in the primary business of acquiring or developing properties for rent or sale. The Debtors’ properties and operations are located throughout Southern Ontario.
3. The global receivership encompasses 12 legal entities which owned 24 known real properties (collectively the “**Properties**” and each a “**Property**”). The Properties included: four retirement homes and/or independent living homes; two multiple unit apartment buildings; two private schools; five commercial properties; one residential condo unit; one golf course; and nine properties under development comprising vacant land. The list of known properties and assigned numbers is attached as **Appendix “C”**. Property numbers and names as defined in Appendix “C” are used throughout this report.
4. By Order dated October 26, 2012, the Court, among other matters, authorized Receiver Borrowings, with the consent of the mortgagees, by way of a revolving credit up to \$500,000, secured by the Properties, with the foregoing limit excluding borrowings for the completion of the Barrie Business Centre (Property #9). The Receiver was also granted authority, without the consent of The Empire Life Insurance Company (“**Empire Life**”), to borrow by way of revolving credit of up to \$60,000 for the purpose of funding interim expenditures in respect of the real property located at 301 Byron Street South, Whitby, Ontario and the Hatch House

Montessori School operated thereon (Property #13). Collectively, such borrowings were to be secured by way of a fixed and specific charge (“**Receiver’s Borrowing Charge**”) as security for payment of monies, in priority to all security interests, trusts and lien claims including but not limited to deemed trust claims under subsection 227(4) of (4.1) of the *Income Tax Act*, subsection 23(3) of (4) of the *Canada Pension Plan* and subsection 86(2) of (2.1) of the *Employment Insurance Act*, but subordinate in priority to the Receiver’s Charge (as defined in the Receivership Order) and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the *Bankruptcy and Insolvency Act* (the “**BIA**”).

5. On January 8, 2013, the Receiver filed its Second Report to Court (the “**Original Second Report**”) seeking, among other things, approval of agreements of purchase and sale for the following four Properties: (i) Devonshire Place property (Property #4); (ii) Tim Hortons/Wendys property (Property #10); (iii) Dorset Place property (Property #22); and (iv) Preston Springs Gardens property (Property #24).
6. On January 11, 2013, the Receiver filed a supplement to its Second Report (the “**First Supplement**”) addressing minor amendments to the transactions involving the Tim Hortons/Wendys and the Preston Springs Gardens Properties.
7. On January 14, 2013, (i) without objection from any party, the Court granted the approval and vesting order approving the Devonshire Place property sale; and (ii) the Debtors advised the Court that they were in the process of retaining new counsel and requested an adjournment of one week for the remaining relief; Justice Morawetz granted an adjournment until January 15, 2013 for the approval of the remaining agreements of purchase and sale.
8. On the morning of January 15, 2013, the Debtors, having retained new counsel, filed a responding affidavit and in reply the Receiver filed a second supplement to the Second Report (the “**Second Supplement**” and together with the Original Second Report and the First Supplement, the “**Second Report**”).

9. After hearing submissions on January 15, 2013, Justice Morawetz delivered his endorsement orally (the “**January 15 Endorsement**”), *inter alia* (i) approving the Tim Hortons/Wendys, the Dorset Place and the Preston Springs Gardens agreements of purchase and sale; and (ii) adjourning the requested approval of the Receiver’s activities as set out in the Second Report so that new counsel for the Debtors had time to consider the matters addressed therein with such approval to be brought back before the Court within 60 days. A copy of the January 15 Endorsement is attached as **Appendix “D”** hereto.
10. The Tim Hortons/Wendys property transaction closed on January 17, 2013. The Dorset Place property transaction closed on January 22, 2013. The Preston Springs Gardens property transaction closed on January 28, 2013.
11. By Court Order dated February 13, 2013, among other matters, the Receiver’s activities were approved as set out in the Second Report and the Third Report of the Receiver dated February 6, 2013, and interim distributions of proceeds held for the Dorset Place, Preston Springs Gardens and Tim Hortons/Wendys Properties were approved. Approval and vesting orders were also granted on February 13, 2013, in respect of transactions involving the Coldwater (Property #3) and Brechin (Property #12) Properties. Attached hereto as **Appendix “E”** is a copy of the interim distribution order from February 13, 2013 (the “**First Interim Distribution Order**”) and attached as **Appendix “F”** is a copy of the endorsement dated February 13, 2013.
12. The Coldwater property transaction closed on February 15, 2013. The Brechin property transaction closed on February 28, 2013. The Devonshire Place property transaction closed on March 1, 2013.
13. On March 25, 2013, the Court granted orders (i) approving an interim distribution in respect of the Coldwater and Devonshire Place properties (the “**Second Interim Distribution Order**”); and (ii) approving the activities of the Receiver set out in the Fourth Report of the Receiver dated March 15, 2013. In addition, on March 25,

2013, the Court granted approval and vesting orders as requested by the Receiver in respect of transactions for the sale of the Sussex Place (Property #8) and the Georgian Manor (Property #17) Properties. Copies of the three orders granted on March 25, 2013, as well as the endorsement of the Honourable Justice Mesbur from March 25, 2013, are attached as **Appendices “G” – “J”** hereto.

14. The Georgian Manor property transaction closed on March 27, 2013. The Sussex Place property transaction closed on April 24, 2013.
15. In summary, to date, of the 24 Properties, sales have been completed in respect of the following eight Properties: Tim Hortons/Wendys property, Dorset Place property, Preston Springs Gardens property, Devonshire Place property, Coldwater property, Brechin property, Georgian Manor property and Sussex Place property.

## **2. PURPOSE OF REPORT**

16. The Purpose of this fifth report to the Court of the Receiver (the “**Fifth Report**”) is to:
  - a) Report on the activities of the Receiver in the Dondeb global receivership since the filing of its Fourth Report;
  - b) Report on agreements of purchase and sale entered into by the Receiver, subject to Court approval, for the following 3 Properties and request approval and vesting orders from the Court in respect of each:
    - i. Ontario St. (Property #2) - 6 Ontario St. Orillia, Ontario;
    - ii. Hatch House Montessori School (Property # 13) - 301 Byron Street South, Whitby, Ontario; and
    - iii. Tudhope Manor (Property #20) - 127 Peter Street North, Orillia, Ontario.
  - c) Report on the closing of the transactions involving the Georgian Manor and Sussex Place Properties, the current cash position of each property, the prior

ranking claims, the mortgage loan positions and related security and seek an Order:

- i. Authorizing the Receiver to distribute from the funds held in respect of Georgian Manor:
  - \$447,646.02 to Duca Financial Services Credit Union Ltd. (“**Duca**”) in full and final satisfaction of the charge/mortgage granted by 1267818 Ontario Ltd. (“**1267818**”) in favour of Duca in the original principal sum of \$450,000 registered on August 15, 2008 as Instrument No. SC672960 against the Georgian Manor property (the “**Duca Charge**”); and
  - \$20,000.00 to Fred Rankel (“**Rankel**”) in partial satisfaction of the charge/mortgage granted by Dondeb and 1267818 in favour of Rankel, in the original principal sum of \$800,000.00, registered on December 14, 2011 as Instrument No. SC951914 against the Georgian Manor property.
  
- ii. Reallocating the interim distribution of \$500,000 made to Ontario Wealth Management Corporation (“**OWMC**”) pursuant to the First Interim Distribution Order, as follows:
  - \$174,267.88 is to be allocated to the charge/mortgage (the “**OWMC Sussex Mortgage**”) granted by Dondeb in favour of OWMC, in the original principal sum of \$800,000.00, registered on January 17, 2007 as Instrument No. PR1199477 against the Sussex Place property; and
  - \$325,732.12 is to be allocated to the charge/mortgage (the “**OWMC Pepper/Palmer Mortgage**”) granted by King City Holdings Ltd. in favour of OWMC, in the original principal sum of \$300,000.00, registered on August 29, 2008 as Instrument No.

HT53535 against the Pepper/Palmer Property, thereby fully and finally satisfying the OWMC Pepper/Palmer Mortgage.

iii. authorizing the Receiver to distribute from the funds held in trust in respect of Sussex Place:

- \$2,743,206.16 to Empire Life in full and final satisfaction, but for certain prepayment obligations, of the charge/mortgage granted by Dondeb in favour of Empire Life in the original principal sum of \$3.2 million registered on September 12, 2005 as Instrument No. PR924520 against the Sussex Place property (the “**Empire Mortgage**”);
- \$716,141.20 to OWMC, which in combination with the \$500,000.00 already paid to OWMC by the Receiver from the proceeds of sale from the Preston Springs property, and taking into account the reallocation contemplated above, fully and finally satisfies: (i) the OWMC Sussex Mortgage, (ii) the OWMC Pepper/Palmer Mortgage; (iii) the collateral charge/mortgage granted by Guelph Financial Corporation (“**GFC**”) in favour of OWMC in the original principal sum of \$2,100,000.00, registered on June 15, 2012 as Instrument No. WR695295 against the Preston Springs property, and (iv) the personal property registration made by OWMC on January 15, 2007 against Dondeb for the Roll former by Industrial Equipment Designs Inc. model no. S10-2-1/2-33 serial no. 90-052 year 1990, light gauge steel components (LGS) panelization line (the “**Panelization Machine**”);
- \$835,000.00 to First Source Mortgage Corporation and Mark Cosman, as Trustee for Gucciardi Holdings Inc., as to an undivided 14% interest, Eleanor Cosman, as to an undivided 1.5% interest and Michael Buffa, as to an undivided 1.5% interest (collectively, “**First Source**”) in partial satisfaction of the charge/mortgage

granted by Dondeb in favour of First Source, in the original principal sum of \$7,100,000.00, registered on August 9, 2012 as Instrument No. PR2245287 against the Sussex Place property (the “**First Source Mortgage**”); and

- \$174,267.88 to the account maintained by the Receiver for the Preston Springs Property to reimburse GFC for the distribution made to OWMC from the proceeds of the Preston Springs property pursuant to the First Interim Distribution Order.
- d) Report on an auction agreement entered into between the Receiver and Infinity Asset Solutions Inc. (“**Infinity**”) in respect of the Panelization Machine and a smaller roll former (the “**Auction Agreement**”), and seek an order from the Court expanding the definition of “Property” in the Receivership Order to include the interest of the secured creditors of Dondeb in the Panelization Machine and approving the Auction Agreement;
- e) Report on (i) an agreement of purchase and sale entered into by the Receiver, for the property and business described as Ace Self Storage and Business Centre (including Property #1) (hereinafter referred to as the “**Ace APS**”), with Pace Savings and Credit Union Ltd. (“**Pace Savings**”) which is intended to be a stalking horse sale agreement, and (ii) the proposed stalking horse marketing and sales process (the “**Ace Sales Process**”); and seek an order from the Court approving the Ace APS and the Ace Sales Process; and
- f) Report on the status of the marketing and sale of certain other properties.

### 3. **DISCLAIMER**

17. Farber has relied upon the financial records and information provided by the Debtors, as well as other information supplied by management, appraisers, accountants, auditors and advisors. Farber assumes no responsibility or liability for loss or damage occasioned by any party as a result of the circulation, publication,



re-production or use of this Fifth Report or for any use which any party makes of this Fifth Report, or any reliance on, or a decision to be made, based upon it, other than for the express purposes set out in this Fifth Report.

#### **4. RECEIVER'S ACTIVITIES**

18. Since March 15, 2013, the Receiver's activities have included, among other things:

- Attending to closing of the sale of the Georgian Manor property which closed on March 27, 2013;
- Attending to closing of the Sussex Place property which closed on April 24, 2013;
- Completing the interim distributions authorized by the Court on March 25, 2013;
- Consulting with mortgagees regarding the proposed additional interim distributions;
- Negotiating and finalizing the Ace APS with Pace Savings and formulation of the Ace Sales Process;
- Ongoing marketing and sale of the remaining Properties, including negotiating agreements of purchase and sale for the following Properties: Ontario St., ProSpan/Rockin' Boats, Hatch House Montessori School; Lafontaine Terrace; Tudhope Manor; and Leon's. At this time the agreements of purchase and sale for ProSpan/Rockin' Boats, Lafontaine Terrace and Leon's remain conditional and as a result, Court approval is not being sought by the Receiver for those agreements at this time;
- Ongoing maintenance of Property specific segregated banking and ring-fenced accounting pursuant to Section 3 of the Receivership Order;

- Monitoring receipts and disbursements against forecast, coordinating Receiver's Borrowings, debt service payments where cash flow permits and liaising with mortgagees, as appropriate;
- Overseeing and monitoring of ongoing operations, in concert with the current property and business managers;
- Corresponding with prospective purchasers of the Properties;
- Coordinating all due diligence requests for certain of the Properties in consultation with realty brokers, legal counsel, and the relevant mortgagees;
- Updating the relevant mortgagees on the sales and marketing processes currently being conducted on the Properties;
- Discussions with the Debtors and their counsel as more fully described below;
- Ongoing negotiations and discussions regarding the feed-in-tariff contracts held by Dondob for the ProSpan and Leon's properties and potential realization of value on same; and
- Corresponding by email and telephone with the Debtors' creditors.

## **5. DISCUSSIONS WITH THE DEBTORS**

19. At the attendance before the Honourable Justice Mesbur on March 25, 2013, the Debtors' sought an adjournment of the approval and vesting orders requested on the basis that that the Debtors had entered into a joint venture agreement to facilitate a possible recapitalization transaction in respect of the majority of the remaining Properties. The recapitalization transaction was, according to the Debtors, subject to a 21 day due diligence period and therefore an adjournment of 21 days was requested.
20. Although the adjournment was denied and the approval and vesting orders requested were granted, the Receiver and its counsel met with the Debtors' counsel and representatives of the joint venture partners on March 28, 2013. The process by

which the Receiver was willing to facilitate the requested due diligence was discussed at this meeting and a copy of a non-disclosure agreement was provided to the Debtors' counsel. At the conclusion of the meeting it was agreed that the Debtors' counsel would review the requested non-disclosure agreement and once it was signed, the joint venture partner would contact the Receiver to facilitate due diligence and discuss reimbursement of the Receiver's costs associated with same.

21. On April 25, 2013, counsel to the Receiver contacted Debtors' counsel to advise of this upcoming motion. Prior to that time, neither the Receiver, nor its counsel, had received any communication from the Debtors' counsel, the Debtors directly or the joint venture partner following the March 28, 2013 meeting, despite a number of undertakings from Debtor's counsel to get back to the Receiver and its legal counsel on a number of matters, including the requirements for non disclosure agreements.
22. During the conversation on April 25, 2013, the Debtors' counsel advised Receiver's counsel that the recapitalization plan was still moving forward. On the morning of April 29, 2013, the Receiver's counsel received from the Debtor's counsel correspondence requesting certain due diligence material. No non-disclosure agreement was provided nor were any comments on the form of requested non-disclosure agreement provided. Various exchanges ensued regarding the basis on which information would be released to the Debtors and joint venture partners.
23. In essence, significant information requests were made by Debtors' counsel in the expectation of a prompt release of this information. The Receiver, immediately upon being provided the Debtors' information requests, directed its resources to gathering and compiling the information requests in the priority advised by the Debtors' counsel. The Receiver is concerned, however, that a number of items requested, including property specific reporting, which includes operating revenue and expenses, could be detrimental to the ongoing marketing process for those Properties which have not been sold. As a result, the Receiver's view is that such information should be held confidential and not disclosed widely.

## 6. ADDITIONAL REAL PROPERTY

24. On or about April 26, 2013, the Receiver received a property tax bill addressed to 1281515 Ontario Inc. (“**128**”) for 20 Scotia Road, Emsdale, Ontario (Township of Perry) (“**20 Scotia Rd.**”).
25. A title abstract for 20 Scotia Rd. is attached as **Appendix “K”** hereto. The title abstract shows 128 as the registered owner, having purchased 20 Scotia Rd. pursuant to a power of sale transaction in 2008. No registered charges are shown on the title abstract.
26. The property located at 20 Scotia Rd. was not one of the known Properties at the time of this Application and accordingly is not listed on Schedule “C” to the Receivership Order. However, 128 is one of the Debtors in these Receivership proceedings and the Receiver is therefore taking steps to assess 20 Scotia Rd. and, subject to that review, intends to list such property for sale pursuant to the powers granted to the Receiver in the Receivership Order.

## 7. PROPERTY SALE TRANSACTIONS (FOR APPROVAL)

27. As part of the marketing and sales process, template forms of agreement of purchase and sale (“**APS**”) were provided to prospective purchasers of the Properties to ensure as far as possible, terms and conditions of sale were standardized and easily comparable. In addition, pursuant to the Receivership Order, the Receiver and its legal counsel have consulted with the relevant mortgagees regarding the marketing and sales process and the negotiation of the final APS for each Property as negotiations progress.
28. Set out below are further details on the Ace APS which will be a baseline for the proposed Ace Sales Process, as well as APSs entered into, subject to Court approval, for the Ontario Street, Hatch House Montessori School and Tudhope Manor Properties.

**Property # 1 Ace Self Storage – 256 – 270 Hughes Road, Orillia, Ontario**

29. The Ace Self Storage operation serves as a storage business renting out climate controlled indoor as well as outdoor storage space. The operation also rents out office space to corporate clients. The facility is located on three adjacent parcels of land at 256 Hughes Road, 270 Hughes Road and 4575 Huronia Road which are in Orillia, Ontario. The facility is located on approximately 11.8 acres with frontage of approximately 1100 feet. It has a total of 479 rental units comprising a total of 84,822 square feet.
30. The Ace Self Storage real property is owned by Dondeb while the Ace Self Storage and Business Centre business operation is owned by Ace Self Storage and Business Centre Inc. (“BCI”) (the Ace Self Storage real property and business are referred to hereinafter collectively as “**Ace Self Storage**”).
31. There is development and expansion potential with the property having a site plan and zoning which include the addition of 6 storage buildings each with 28 units totaling 5,866 square feet; these 6 units on the plan would add a total of approximately 35,196 square feet of additional space. The 3 storey 10,000 square foot space which already exists could also be expanded to three levels totaling 20,500 square feet of net rentable space from a gross area of 36,760 square feet.
32. As a result of extensive negotiations over the period January through April 2013, the Receiver has been successful in negotiating the Ace APS for sale of Ace Self Storage. The form of agreement is structured as a “stalking horse” asset purchase agreement, which is subject to Court approval. The purchaser under the Ace APS is Pace Savings, the primary secured creditor on the Ace Self Storage property.
33. It is intended that the Ace APS, as further described below, will stand as the opening bid in the Ace Sale Process, to be conducted by the Receiver. Both the Ace APS and Ace Sales Process are more fully described below.

34. By agreement dated May 2, 2013, Pace Savings and the Receiver entered into an agreement whereby the Receiver would sell and the Pace Savings would purchase, subject to Court approval and the results of the Ace Sales Process, substantially all of the right, title and interest of Dondeb and BCI in the Purchased Assets (defined below), in the form of the Ace APS. A copy of the Ace APS is attached as **Appendix “L”**.
35. A summary of the transaction contemplated by the Ace APS is as follows:
- Pace Savings will acquire, as a going concern on an “as is where is” basis, the Purchased Assets for \$6.75 million, subject to adjustments set out in section 3.2 of the Ace APS, plus applicable taxes (hereinafter the “**Purchase Price**”);
  - Pursuant to section 3.2 of the Ace APS, the adjustments as between the Receiver and Pace Savings shall be made as of the Closing Date (as defined therein) to ensure the Purchase Price is sufficient to fully satisfy:
    - i. The principal indebtedness owed to Pace Savings by BCI and Dondeb (the “**Pace Debt**”), which is secured by first, second and third mortgages (the “**Pace Mortgages**”);
    - ii. The amount of all encumbrances against title to the Real Property (as defined therein) ranking in priority to the Pace Mortgages;
    - iii. The amount of all outstanding interest accrued in favour of Pace Savings on the Pace Debt, fees incurred by Pace Savings under the terms of the Pace Mortgages and the costs of Pace Savings in enforcing its rights to repayment of the Pace Debt; and
    - iv. The amount of the Receiver’s fees and disbursements, including legal fees and disbursements, allocable to Ace Self Storage;
  - Pace Savings has paid a deposit in the amount of 10% of the Pace Debt (\$614,343.88), which the Receiver’s legal counsel is holding in trust pending approval and closing of a successful winning bid;

- Pace Savings will pay the Purchase Price in cash (i.e. this is not a credit bid) should it be the Winning Bidder (defined below);
  - Purchased Assets include: all property, assets, and undertaking of BCI wherever situate, the real property municipally known as 256 Hughes Road, Orillia, Ontario (the “**Ace Real Property**”) and all chattels, personal property, equipment, inventory, contracts, rights, intellectual property and all other assets used in conjunction with, or as part of, the operation of the self storage business located at the Ace Real Property, including, without limitation, the contracts including the feed in tariff contract (“**FIT**”) relating to the Ace Real Property;
  - The Ace APS contemplates a Court Order be obtained by no later than May 10, 2013, authorizing the Receiver to enter into the Ace APS and approving the Ace Sales Process;
  - A break fee of \$50,000 is contemplated should Pace Savings not be the successful purchaser and another party submit the Winning Bid; and
  - There are no substantive conditions outstanding at this time other than Court Approval of the Ace APS and a better offer being received through the Ace Sales Process.
36. Should Pace Savings be the successful purchaser, the Ace APS provides that an approval and vesting Order be obtained not later than July 15, 2013. The intention is to affect a going concern sale to ensure, to the extent possible, no interruption to ongoing operations.

*Ace Stalking Horse Marketing & Sales Process*

37. The Ace APS will stand, subject to Court approval, as the opening bid in the Ace Sales Process. In order to further expose Ace Self Storage to the marketplace and the possibility of securing alternative superior offers that will maximize realization for all stakeholders, the Receiver proposes to conduct a marketing and sale process

which is set out in detail in the Ace Sales Process detailed on **Appendix “M”** and summarized below:

- Should the Court grant the requested order approving the Ace Sales Process (the “**Sales Process Order**”), the Receiver will canvass the market for any other potential bidders. Any offers to purchase the Purchased Assets must be submitted in writing to and be received by the Receiver by 5:00 p.m. (E.D.T.) on the twenty-fifth (25<sup>th</sup>) Business Day after the Sales Process Order is granted (the “**Bid Deadline**”);
- Not later than five (5) Business Days after the Sales Process Order is granted, the Receiver shall advertise for sale the Purchased Assets in “The Globe and Mail” (National Edition);
- Not later than five (5) Business Days after the Sales Process Order is granted, the Receiver shall make available to prospective purchasers (collectively, the “**Prospective Purchasers**”), upon receipt of an executed confidentiality agreement from a Prospective Purchaser, access to a data room containing information reasonably required by Prospective Purchasers to consider submitting an offer for the Purchased Assets and to facilitate the conduct of due diligence by the Prospective Purchasers. Pace Savings will also have access to the data room;
- The Receiver in its sole discretion shall determine whether any offers are “Qualified Bids”. A Qualified Bid shall mean an offer to purchase substantially all of the Purchased Assets which is substantially the same or better than the Ace APS, provided that no offer shall qualify as a Qualified Bid unless it meets, among other things, the following minimum criteria:
  - i. Offer must be submitted in writing and include a blackline of the offer to the Ace APS, reflecting the Prospective Purchaser’s proposed changes, and a written commitment to close on the terms and conditions set forth therein;



- ii. Offer must be accompanied by a deposit in the form of certified cheque payable to the Receiver which is equal to at least 10% of the aggregate purchase price payable under the offer;
  - iii. Offer must be open for acceptance by the Receiver until five (5) Business Days after the Auction (as hereinafter defined) or later;
  - iv. Offer must be on terms no less favourable and no more burdensome or conditional than the Ace APS;
  - v. Offer must not contain any contingency relating to due diligence or financing or any other material conditions precedent to the offeror's obligation to complete the transaction that are not otherwise contained in the Ace APS;
  - vi. Offer must contain written evidence of a commitment for financing or other evidence of the ability to consummate the sale with appropriate contact information for such financing sources; and
  - vii. Offer must be for a price equal to or greater than the sum of the Purchase Price, the Break Fee (\$50,000) and an Incremental Amount set at \$50,000 (i.e. the next bid needs to be a bid of \$6.850 million or greater);
- If the Receiver receives one or more Qualified Bids by the Bid Deadline, the Receiver shall extend invitations by phone, fax and/or email by 10:00 a.m. E.D.T. on the third (3<sup>rd</sup>) Business Day after the Bid Deadline, to all bidders who submitted Qualified Bids and to Pace Savings to attend an auction (the "**Auction**");
  - The Auction shall be held at 10:00 a.m. on the fifth (5<sup>th</sup>) Business Day after the Bid Deadline (or such other date and time as the Receiver may in its sole discretion designate) at the offices of the Receiver;

- The Receiver shall conduct the Auction. At the Auction, the bidding shall begin initially with the highest Qualified Bid and subsequently continue in multiples of \$50,000, or such other amount as the Receiver determines to facilitate the Auction (the “**Incremental Amount**”);
- In its sole discretion and based, *inter alia*, on the conduct of the Auction, the total financial and contractual terms of the Qualified Bids and various factors relevant to the speed and certainty of completing the sale of the Purchased Assets, the Receiver shall determine and accept the highest and/or best bid with respect to the Purchased Assets (the “**Winning Bid**”), subject to Court approval; and
- The Receiver shall make a motion to the Court to obtain approval of the Winning Bid and an approval and vesting order as expeditiously as possible after the Auction. If no Qualified Bid is received by the Bid Deadline (other than the Ace APS), the Auction will not be held. Accordingly, the Ace APS will be the Winning Bid and the Receiver shall seek, as expeditiously as possible, approval of the Court to consummate the transaction contemplated by the Ace APS.

*Pace Savings – Indebtedness and Security*

38. In preparation for this motion, the Receiver requested Pace Savings confirm its loan position effective May 1, 2013 in respect of Dondeb and BCI. The loan position inclusive of accrued interest and costs totals \$6.143 million at May 1, 2013. A copy of the loan statement is attached as **Appendix “N”**.
39. The Receiver has obtained a legal opinion from its independent counsel, Dentons Canada LLP (“**Dentons**” and formerly Fraser Milner Casgrain LLP), that subject to the customary assumptions and qualifications, the security interest of Pace Savings over the Ace Real Property and operating business assets of BCI, is valid in accordance with the terms of the security agreement in place. A copy of the Dentons security opinion dated March 14, 2013 is attached as **Appendix “O”**.

Receiver's Comments on the Ace Stalking Horse Agreement and Proposed Sales Process

40. The Receiver's view is that the Ace Sales Process is reasonable in the circumstances and will expose the Purchased Assets to the market in a transparent, fair and complete manner. Assuming that the Sales Process Order is granted on May 10, 2013 (as required by section 5.3 of the Ace APS) as requested, bidders will have until June 17, 2013 to submit a bid for the Purchased Assets. The Receiver is of the view that this is sufficient time to properly canvass the market and provide prospective bidders with a reasonable opportunity to review the data room and perform due diligence.
41. Although the Purchase Price of \$6.75 million is subject to some adjustment, the proposed break fee of \$50,000 is less than 1% of the Purchase Price. Based on the Receiver's review of customary ranges of break fees, the proposed break fee of less than 1% is very reasonable.
42. As a result of the above, the Receiver's view is that the Ace APS should be approved as a stalking horse agreement of purchase and sale and that the Ace Sales Process should be approved in order to ensure that the market is properly canvassed and that the value of the property be maximized in a reasonable fashion.

**Property # 2 Ontario Street – 6 Ontario St. Orillia, Ontario**

43. The Ontario Street property is vacant land located in Orillia, Ontario. The property is owned by Dondeb. The mortgagee of record is Fred Rankel. A title abstract for the Ontario Street property is attached as **Appendix "P"**.
44. The Ontario Street Property was listed with Remax Orillia ("**Remax**") on January 22, 2013 for \$135,000 with the consent of the relevant mortgagee, Fred Rankel. Remax's marketing process included: listing on the Muskoka-Orillia MLS system; listing on the internet MLS.ca; local advertising in the Orillia Packet and Times and signage.

45. Approximately 15 parties made enquiries, with five parties attending and inspecting the vacant lot. Ultimately an offer was submitted on March 25, 2013. The listing agent in concert with the Receiver continued to negotiate with this party which culminated in a revised and much improved offer being made on April 19, 2013.
46. On April 23, 2013, after consultation with the relevant mortgagee, Fred Rankel, the Receiver accepted an offer from Fresco Fine Food Corp. (the “**Ontario Street Purchaser**”) subject to Court approval, pursuant to an APS dated as of April 19, 2013 (the “**Ontario APS**”).
47. A copy of the Ontario APS with the purchase price redacted is attached as **Appendix “Q”**. A copy of the unredacted Ontario APS is attached as **Confidential Appendix “A”**. Consistent with the other transactions wherein court approval is being sought, the Receiver is seeking a sealing order of the Confidential Appendix pending the earlier of the completion of the transaction contemplated by the Ontario APS or further Order of the Court in order to ensure that value of the Property is not impacted if the transaction contemplated by the Ontario APS does not close.

*Evaluation of the Ontario APS*

48. The Receiver is of the view that the Ontario APS, should be approved by the Court as: (i) the Receiver is of the view that the market was extensively canvassed and a competitive process undertaken; (ii) the purchase price is the best offer received, is close to the listing price, and is on terms most acceptable to the Receiver; (iv) the Ontario Street Purchaser has provided a substantial deposit; and (vi) the relevant mortgagee has approved the Receiver entering into the Ontario APS.

**Property #13 Hatch House Montessori School - 301 Byron Street South in Whitby, Ontario**

49. The Hatch House Montessori School (Property #13) is a private school with approximately 100 students ranging from pre-school to grade 8. The Hatch House Montessori School is located at 301 Byron Street South in Whitby, Ontario, (the

“**Byron Street Property**”). Both the Hatch House Montessori School and the Byron Street Property are owned by 1182689 Ontario Inc. (“**1182689**”). A title abstract for the Byron Street Property is attached as **Appendix “R”**.

50. The first mortgagee on the Byron Street Property is Empire Life, which has a balance of \$493,269.76 effective April 30, 2013, which does not include additional costs and charges incurred as a result of the receivership . The Canada Revenue Agency (the “**CRA**”) also has registered a lien on the property for \$518,235. A CRA Notice of Assessment received from CRA on September 24, 2012 shows a balance owing by 1182689 (which owns both Orillia Prep School and Hatch House Montessori School) of \$853,658.39. This includes interest and penalties. A copy of the notice is attached as **Appendix “S”**.
51. Recognizing the specialized nature of the subject property, the Receiver reached out to the Canadian Council of Montessori Administrators (“**CCMA**”) for guidance before commencing a sales process. The CCMA recommended a realtor by the name of Joseph Ward who had over 30 years of experience and specialized in selling Private Schools and Daycares.
52. On December 10, 2012, the Hatch House School and the Byron Street Property were listed with Remax Realty Enterprises Inc. (“**RREI**”), with Joseph Ward acting as the broker. The Hatch House Montessori School was listed for \$199,000 and the Byron Street Property was listed for \$1,299,000, with the consent of Empire Life. RREI’s marketing process included: listing on MLS effective December 11, 2012; sending two email notifications to a list of over 3,000 contacts with connections in the private school/daycare industry; posting an advertisement in The Business Exchange commercial magazine; and posting advertisements on a commercial website plus three realty websites.
53. A total of 54 parties expressed interest, 37 parties signed confidentiality agreements (“**CA**”) and were provided information packages, with 18 parties completing tours and inspections of the premises. One non-binding letter of intent and one offer was

received, both for the Hatch House Montessori School. Only one offer, signed by Zsuzsanna Vigh, the principal of the Hatch House Montessori School, was received for both the Hatch House Montessori School and the Byron Street Property. The offer from Zsuzsanna Vigh was deemed the best offer given the combination of pricing, purchase of both the Hatch House Montessori School and the Byron Street Property in a single APS, and the terms most acceptable to the Receiver and relevant mortgagee.

54. On December 28, 2012, after consultation with Empire Life, the Receiver entered into an APS with Zsuzsanna Vigh, on behalf of two corporations to be incorporated, subject to Court approval (the “**Vigh APS**”). A copy of the Vigh APS with the purchase price redacted is attached as **Appendix “T”**. A copy of the unredacted Vigh APS is attached as **Confidential Appendix “B”**. Consistent with the other transactions wherein court approval is being sought, the Receiver is seeking a sealing order of the Confidential Appendix pending the earlier of the completion of the transaction contemplated by the Vigh APS or further Order of the Court in order to ensure that value of the Property is not impacted if the transaction contemplated by the Vigh APS does not close. Also attached as **Appendix “U”** is the first amendment to the Vigh APS, which corrected minor inaccuracies in the Vigh APS.
55. The Vigh APS contemplated a due diligence period of 30 business days. For reasons described below, the due diligence period was extended via a second amendment to the Vigh APS, with the consent of Empire Life. Attached as **Appendix “V”** is the second amendment to the Vigh APS.
56. During the original due diligence period, it was discovered that according to the Ministry of Education’s records, the licence to operate the school did not belong to 1182689 (the “**Licensing Issue**”). In early March of 2013, the Receiver was able to resolve the Licensing Issue to the satisfaction of Ms. Vigh. As part of the this resolution, the Vigh APS was amended to include the purchase of the shares of Rossland Montessori School Inc., an entity owned by 1182689 and recognized by the Ministry of Education to be the holder of the right to operate the Hatch House

Montessori School pursuant to section 16 of the *Education Act*. Attached as **Appendix “W”** is the third amendment to the Vigh APS.

57. Also during the due diligence period, as reported in the Receiver’s Fourth Report, the Receiver was advised that Dondeb failed to adhere to a 2010 environmental order from the Technical Standards and Safety Authority (the “**TSSA Order**”), as Dondeb did not file the appropriate soil test results of soil related to an underground fuel storage container. The Receiver, through its counsel, engaged G2S Environmental Consulting Inc. (“**G2S**”) to remove the contaminated soil identified in the TSSA Order, dispose of the contaminated soil and perform the testing required in the TSSA Order. The testing was completed by early March of 2013, but it was discovered that one sample from the excavation at the edge of the property had a contaminant in excess of the Ministry of Environment guidelines. G2S recommended the testing be expanded beyond the edge of the property into land belonging to the Town of Whitby. Further testing was undertaken with the consent of the Town of Whitby. The additional testing found no further detectable levels of contaminates. The results of the testing were shared with the Town of Whitby and the TSSA with TSSA considering the matter resolved.
58. Ms. Vigh also identified several issues raised during a building audit which she had commissioned. The Receiver reviewed the report of the building auditor and it was agreed between the Receiver and Ms. Vigh (with the consent of Empire) that a purchase price adjustment of \$26,500 would be provided to account for upgrades recommended for the electrical and fire suppression systems of the building. Attached as **Appendix “X”** is a redacted copy of the fourth amendment to the Vigh APS which, among other things, reduces the purchase price by \$26,500 and waives the purchaser’s conditions. A copy of the unredacted fourth amendment is attached as **Confidential Appendix “C”**.

Evaluation of the Vigh APS

59. The Receiver is of the view that the Vigh APS, as amended, should be approved by the Court as: (i) the Receiver is of the view that the market was extensively canvassed and a competitive process undertaken; (ii) the purchase price is the best offer received, is close to the listing price, and is on terms most acceptable to the Receiver; (iii) the Purchaser has provided a substantial deposit; (iv) Ms. Vigh, as current operator/manager of the school is in the best position to obtain the necessary approvals from the Ministry of Education; (v) a challenging property and unique underlying business can be sold en-bloc preserving the prospects for continuing the Montessori school, related employment and enrolment as opposed to uncertainty that all the school stakeholders have had to endure; and (vi) the relevant mortgagee has approved the Receiver entering into the Vigh APS.

**Property # 20 Tudhope Manor – 127 Peter Street North, Orillia, Ontario**

60. Tudhope Manor is a 39 unit nursing home located in Orillia, Ontario. The property is owned by 2009031 Ontario Inc. The mortgagee of record is Faithlife Financial (formerly Lutheran Life Insurance Society of Canada Inc.). A title abstract for the Tudhope Manor Property is attached as **Appendix “Y”**.
61. In November of 2012, the Receiver, with consent from the mortgagee, engaged Wellington Appraisal (“**Wellington**”) to prepare a valuation report on the Tudhope Manor Property. Wellington submitted its appraisal report on November 29, 2012, providing its valuation of the Tudhope Manor Property (the “**Wellington Appraisal**”). A copy of the unredacted Wellington Appraisal is attached as **Confidential Appendix “D”**.
62. In December 2012, the Receiver, with consent from the mortgagee, engaged the Altus Group (“**Altus**”) to prepare a valuation report on the Tudhope Manor Property. Altus submitted its appraisal report on January 8, 2013, providing its valuation of the Tudhope Manor Property (the “**Altus Appraisal**”). A copy of the unredacted Altus Appraisal is attached as **Confidential Appendix “E”**.



63. The Receiver is seeking a sealing order of these Confidential Appendices pending a further Order of the Court or closing of the transaction contemplated by the CRI APS (as defined below) in order to ensure that value of the Property is not impacted if the transaction contemplated by the CRI APS does not close.
64. The Property was listed with N. S. Smith Realty Ltd. (“**Smith Realty**”) on February 11, 2013 for \$1.3 million with the consent of the relevant mortgagee. Smith Realty’s marketing process included: listing on MLS effective February 15, 2013; advertising in “The Globe & Mail” (February 26 and 28, 2013); and sending email notification to 320 retirement home owners, members of the Ontario Retirement Communities Association and 20 clients of Smith Realty.
65. A total of 55 parties provided expressions of interest, 23 parties signed CA’s and were provided information packages, with 10 parties completing tours and inspections of the premises. Two offers were submitted by March 21, 2013.
66. As of March 19, 2013, after consultation with the relevant mortgagee, the Receiver entered into an APS with Comfortable Retirement Inc. (“**CRI**”), subject to Court approval, pursuant to an agreement of purchase and sale (the “**CRI APS**”).
67. The CRI APS was deemed the better of the two offers received given the combination of pricing and the terms most acceptable to the Receiver and relevant mortgagee. The CRI APS contemplated a due diligence period of 21 business days following acceptance by the purchaser which occurred on March 21, 2013.
68. Pursuant to an Assignment and Amendment Agreement dated April 15, 2013, the Receiver, CRI and Tudhope Retirement Inc. agreed, among other matters to: (a) amend the purchase price; (b) assign CRI’s right, title and interest in the CRI APS to Tudhope Retirement Inc. (the “**Tudhope Purchaser**”); (c) change the date by which an Approval and Vesting Order must be granted to no later than May 24, 2013 unless an earlier or later date is agreed to by the Receiver and the Tudhope Purchaser; and (d) modify the closing date to be May 30, 2013 or such earlier or later dates as subsequently agreed to in writing by the parties. A copy of the

redacted Assignment and Amendment Agreement is attached as **Appendix “Z”**. A copy of the unredacted Assignment and Amendment Agreement is attached as **Confidential Appendix “F”**.

69. A copy of the CRI APS with the purchase price redacted is attached as **Appendix “AA”**. A copy of the unredacted CRI APS is attached as **Confidential Appendix “G”**. Consistent with the other transactions wherein court approval is being sought, the Receiver is seeking a sealing order of the Confidential Appendices pending the earlier of the completion of the transaction contemplated by the CRI APS or further Order of the Court in order to ensure that value of the Property is not impacted if the transaction contemplated by the CRI APS does not close.
70. As noted, the CRI APS requires that an approval and vesting order be granted by the Court in respect of same by May 24, 2013 or such later date as agreed to by the parties and a closing date of May 30, 2013.

#### *Evaluation of the CRI APS*

71. The Receiver is of the view that the CRI APS, as amended, should be approved by the Court as: (i) the Receiver is of the view that the market was extensively canvassed and a competitive process undertaken; (ii) the purchase price is the better offer received, is close to the listing price, and is on terms most acceptable to the Receiver; (iii) the CRI APS is greater than the Wellington and Altus appraisal valuation reports; (iv) the Purchaser has provided a substantial deposit; (v) time is of the essence as the property has continued to incur cash losses, which the mortgagee has had to fund in the amount of approximately \$30,000 to date; and (vi) the relevant mortgagee has approved the Receiver entering into the CRI APS.

## **8. PANELIZATION MACHINE**

72. The Panelization Machine is located at 61 Forest Plain Road in Orillia, Ontario at the ProSpan/Rockin’ Boats Property.

73. Pursuant to our review of related documentation and discussions with the past management of Dondeb, it appears that Dondeb transferred its interest in the Panelization Machine to Imperial Tool & Die Ltd. (“**Imperial**”) in and around August 13, 2012, in exchange for the settling of a debt of \$485,900 owed by Dondeb to Imperial for work performed on the Panelization Machine by Imperial.
74. The Receiver has not been made aware of any fact which would call into question the transfer of Dondeb’s interest in the Panelization Machine to Imperial. However, as the transfer of the Panelization Machine to Imperial does not appear to have been in the ordinary course of business, it is our understanding, based on discussions with the Receiver’s legal counsel and Imperial’s counsel, that the rights of secured creditors of Dondeb as against the Panelization Machine would continue to exist.
75. The transfer of the Panelization Machine occurred prior to the appointment of the Receiver and the Panelization Machine therefore currently does not form part of the property over which the Receiver was appointed.
76. As the Receiver has entered into a conditional agreement of purchase and sale in respect of the ProSpan/Rockin’ Boats Property, it is important that the Panelization Machine be removed from those premises in order for that transaction (should it become unconditional and approved by the Court) to close.
77. Imperial entered into discussions with OWMC, since OWMC had registered security on the Panelization Machine, with a view to purchasing the Panelization Machine free and clear of any security interests. As part of its due diligence, Imperial became aware of other secured creditors with general security which extended to the Panelization Machine.
78. The Receiver then entered into discussions with Imperial to explore the possibility of the Receiver’s appointment being expanded to include the Panelization Machine and subsequent sale of the Panelization Machine free of any encumbrances to Imperial.

79. In parallel with its negotiations with Imperial, and in preparation for the assessment of the Imperial offer, the Receiver obtained a forced liquidation value appraisal of the Panelization Machine from Infinity, an appraisal and liquidation firm.
80. On April 30, 2013, after considering the matter for some duration, Imperial advised the Receiver of its decision to not proceed with an offer for the Panelization Machine at this time. Imperial did advise the Receiver, however that it did not object to the Receivership being extended over the Panelization Machine so that the machine could be sold free and clear of claims, including Imperial's claims, provided that the claims, including Imperial's claims, attached to the proceeds of sale.
81. Given Imperial's decision not to proceed to purchase the secured creditors' interest in the Panelization Machine, the Receiver obtained a liquidation proposal from Infinity in respect of the Panelization Machine.
82. Given the need to remove the Panelization Machine from the ProSpan/Rockin' Boats premises on an expedited basis to allow the current ProSpan/Rockin' Boats conditional APS to proceed, the Receiver, in consultation with the relevant mortgagees and Imperial, determined that it was appropriate to proceed to liquidate the Panelization Machine with Infinity and entered into the Auction Agreement, subject to Court approval. A copy of the Auction Agreement is attached as **Appendix "BB"**.
83. The Auction Agreement requires that (A) a Court order be made expanding the definition of "Property" as set out in the Receivership Order to cover Dondeb's secured creditor's interest in the Panelization Machine; and (B) a Court order be made (i) approving the Auction Agreement, and (ii) on closing of the relevant transaction or transactions, vesting all right, title and interest of Dondeb's secured creditors in and to the Panelization Machine and all of the right, title and interest of Dondeb in and to the small roll former, in the ultimate purchaser(s), free and clear of all claims, including Imperial's claims.

84. The primary commercial terms of the Auction Agreement are as follows:

- Infinity shall be entitled to charge and retain from all purchasers a 15% buyer's premium on the sale of the Assets (as defined therein) or any parts thereof;
- Infinity shall not be entitled to any commission on any sale of the Assets or parts thereof;
- Infinity will manage the collection of proceeds of sale and will forward a full and final report of sale detailing each transaction, as well as final payment of amounts to be remitted to the Receiver within 21 (twenty one) days following any transaction, and in no event later than July 19, 2013. Infinity shall be entitled to deduct its remuneration and the Expenses (defined below) from the amount payable to the Receiver;
- The Receiver will grant Infinity unrestricted access to the Premises and the Assets rent free during the period commencing on May 2, 2013 and terminating on June 28, 2013, for the purposes of viewing and inspecting the Assets, showing the Assets to prospective purchasers, preparing for and conducting a public auction, and removing or arranging for the removal of the Assets;
- Infinity may sell the Assets by public auction (online or otherwise) conducted from the Premises or private sale;
- Infinity may sell each of the Panelization Machine and small roll former as a whole or in parts;
- Infinity will promote and advertise this event to be an Unreserved Public Auction Sale on an "As Is - Where Is" basis. The event marketing and advertising shall include full color brochures, trade journal advertisements, newspaper advertisements as well as being posted on Infinity's website [infinityassets.com](http://infinityassets.com); and

- The Receiver shall be responsible for all the marketing and related auction expenses incurred by Infinity (the “**Expenses**”), provided that in no event shall such costs exceed \$5,500.00. Subject to the terms hereof, the Expenses will be reimbursed to Infinity from the proceeds of sale of the Assets.

*Evaluation of the Panelization Proposal*

85. The Receiver is of the view that the definition of Property in the Receivership Order should be expanded to include the Panelization Machine, and the Auction Agreement should be approved by the Court as: (i) the Infinity marketing program, expertise and contact base should provide good market exposure for the Panelization Machine; (ii) the Infinity commercial terms appear reasonable given the nature of the assets and the location in Orillia; (iii) time is of the essence as the property needs to be vacated as soon as possible in order to facilitate a sale of the premises; and (iv) the relevant security holders have been consulted with and support the proposed course of action.

**9. CLOSED TRANSACTIONS AND PROPOSED INTERIM DISTRIBUTIONS**

86. The Receiver is now seeking the Court’s approval for an interim distribution of proceeds from the sale of the Georgian Manor property and the Sussex Place property.

87. As the global receivership mandate advances with the approval and sale of individual Properties, the Receiver, in consultation with mortgagees, is mindful of the nature and extent of the cross-collateralization of the Properties among the Debtors. In the years preceding the receivership, as the Debtors continued to face liquidity challenges, in order to support its credit requirements, security was blanketed over multiple properties owned by multiple entities. As a result, there is a significant overlay of collateral mortgages held by different mortgagees.

88. In this respect, pursuant to the First Interim Distribution Order an interim distribution of \$500,000 was made to OWMC from the proceeds of the Preston

Springs Gardens transaction pursuant to a charge/mortgage granted by GFC (the owner of the Preston Springs Gardens property) in favour of OWMC, as collateral security for three separate mortgages in favour of OWMC. As one of the three mortgages (OWMC's mortgage over the Tim Hortons/Wendys property) was being satisfied under the First Interim Distribution Order pursuant to a direct payment from the Tim Hortons/Wendys property sale proceeds, the \$500,000 payment to OWMC was allocated as follows: (i) \$365,000 to partially satisfy the OWMC Sussex Mortgage, and (ii) \$165,000 to partially satisfy the OWMC Pepper/Palmer Mortgage.

89. Such allocation was without prejudice to the reallocation of such payment at a future point in time. At this point, the Receiver proposes to reallocate the \$500,000 as follows:
- \$325,732.12 in order to fully satisfy the OWMC Pepper/Palmer Mortgage; and
  - \$174,267.88 in respect of the OWMC Sussex Mortgage.
90. When taking into account the proposed Sussex Place distribution below, this reallocation will facilitate the full and final payment of OWMC with respect to all amounts owing to it by the Debtors.
91. The Receiver also proposes that the requested interim distribution order be made without prejudice to any rights of subrogation, marshaling or apportionment that any subordinate creditors, including First Source, may have.

**Property #17 Georgian Manor Banquet Hall – 52 Morrow Rd., Barrie, Ontario**

92. Georgian Manor Banquet Hall is a two storey building and was previously leased to a company that operated a banquet hall from the premises. The Property has been vacant since 2010 and is located in Barrie, Ontario. The Property was owned by 1267818. The mortgagees of record were Duca and Fred Rankel.

93. Pursuant to the closing of the transaction, the Receiver received \$523,606.79 at closing, which was net of \$16,393.21 for closing adjustments related to unpaid realty taxes. This represented the balance of the purchase price, taking into account the real estate adjustments at closing and the deposit of \$60,000.00 held by the Receiver since the Receiver's acceptance of the offer. A copy of the closing statement and cash summary statement for the Georgian Manor transaction are attached as **Appendix "CC"**.
94. The first mortgagee of record on the Georgian Manor Property is Duca. In preparation for this motion, the Receiver requested Duca provide to the Receiver a payout statement (loan position) effective to May 10, 2013. This loan position comprises the original loan, which totals \$421,562.10 and the Receiver's Borrowings advance provided by Duca of \$26,083.92. Accordingly, the total payout amount effective May 10, 2013 would be \$447,646.02, and copies of the payout statements are attached as **Appendix "DD"**.
95. The Receiver and its legal counsel have reviewed the mortgagee payout statement from Duca and confirm it appears in order.
96. In addition, Mr. Fred Rankel, owed approximately \$305,324.33 at April 18, 2013, has collateral security over Georgian Manor. It is noted that in support of the original principal sum of this loan amount, Mr. Rankel also has collateral mortgages on the following Properties: (i) Ontario St. (Property #2); (ii) 240 Yeoman St. (Property #11); (iii) Brechin (Property #12), which was sold on February 28, 2013; and (iv) Coldwater (Property #3) which was sold on February 15, 2013. The Receiver reviewed the loan statement and confirms it appears in order.
97. The Receiver has obtained a legal opinion from its independent counsel, Dentons, that subject to the customary assumptions and qualifications, the security interests of Duca and Rankel in the Georgian Manor Property and proceeds of sale are valid in accordance with the terms of the security agreement in place. A copy of the Dentons security opinion dated January 11, 2013 is attached as **Appendix "EE"**.



98. Pursuant to the Receivership Order, the Receiver has set up and maintained segregated bank accounts and ring fenced accounting for each Property. Attached as **Appendix “FF”** is a copy of a statement of receipts and disbursements for the period October 17, 2012 to April 26, 2013 for the Georgian Manor property showing a balance of \$516,325.87.
99. Set out below is a table summarizing a proposed interim distribution to Duca and Fred Rankel for the Georgian Manor property, taking into account the remaining loan payout positions as at May 10, 2013, priority claims, charges and Receiver reserves compared to net cash reserves held for the property at April 26, 2013.

<b>Georgian Manor Banquet Hall Proposed Interim Distribution</b>	
Funds held in segregated trust account April 27, 2013	516,325.87
Less: pre-receivership fees (\$11,000 + HST per property)	(12,430.00)
Less: Receiver's Holdback- Fees, Costs to Complete	(30,000.00)
Less: Duca Financial Services - Payout	(447,646.02)
Less: Fred Rankel	(20,000.00)
<b>Current Available Balance</b>	<b>6,249.85</b>

100. The proposed interim distribution contemplates the following: (i) that the first secured mortgagee, Duca be paid out in full \$447,646.02; (ii) that the second secured Fred Rankel be paid out \$20,000; and (iii) that the Receiver reserve \$30,000 to provide time for all claims and costs to be determined to complete the administration of the global receivership, including CRA claims and other amounts, with a final distribution to be undertaken once all claims and costs are determined, including any fees and general restructuring administrative expenses (“**GARE**”). The relevant mortgagees have been consulted on the above proposed interim distribution.

**Property # 8 Sussex Place – 205 Vodden Street East, Brampton, ON**

101. The Sussex Place Property is a 47 unit, six storey apartment building located in Brampton. The property was owned by Dondeb. The mortgagees of record are Empire Life, OWMC and First Source.
102. On March 15, 2013 the Court approved the sale of the Sussex Place property. The purchase price contemplated by the sale was \$5,412,500. The transaction closed on April 24, 2013.
103. Pursuant to the closing of the transaction, Farber was paid \$4,913,243.65 at closing which was net of \$99,256.35 in closing adjustments related to tenancy apportionment, realty taxes and utilities. This represented the balance of the purchase price, taking into account the real estate adjustments at closing and the deposit of \$400,000 held by the Receiver since the Receiver's acceptance of the offer. A copy of the closing statement and cash summary statement for the transaction are attached as **Appendix "GG"**.
104. In preparation for this motion, the Receiver requested all of the mortgagees to provide the Receiver with payout statements/loan positions, effective as to May 10, 2013. Those loan positions, totaling \$8,395,366.88, are set out in the table below and a copy of the loan confirmations are attached as **Appendix "HH"**.

<b>Sussex Place Property</b>	
<b>Mortgagees Loan Summary - Effective May 10, 2013</b>	
Empire Life - Total Loan	3,090,655.05
OWMC- Sussex Place Loan	525,409.08
OWMC - Pepper Palmer Loan	190,732.12
First Source (Collateral mortgage)	4,588,570.63
<b>Total</b>	<b>8,395,366.88</b>

105. The Receiver and its legal counsel have reviewed the mortgagee payout statements and can report the following:

- The Empire Life statement includes a closed mortgage interest differential calculation amounting to \$303,580.00 (the “**Empire Life Interest Differential Amount**”) based on the interest differential of the mortgage interest rate in the current Loan document and a re-investment rate to the date of maturity (based on the Canada bond yield rate best reflecting the remaining term of the mortgage);
- In addition, the Empire Life statement includes a 3 month interest prepayment amount of \$34,868.19 (the “**Empire Life Interest Prepayment Amount**” and together with the Empire Life Interest Differential, the “**Empire Prepayment Obligations**”) calculated in accordance with the *Mortgages Act*;
- In addition, the Empire Life statement includes estimated future legal fees of \$9,000 with respect to distribution.
- The Receiver and its legal counsel, Dentons, have reviewed the Empire Life statement to ensure it is pursuant to the terms and conditions of the underlying loan documents. The Empire Life loan documentation is silent on the rights of Dondeb to prepay the amounts owing to Empire Life other than section 17 of the Empire Life charge which provides that Dondeb shall not require Empire Life to accept payment of principal moneys without first giving three months’ previous notice in writing, or paying a bonus equal to three months interest in advance on the principal moneys. In the circumstances, the Receiver’s view is that stakeholders should be provided with additional time to consider if they wish to take a position on the entitlement to or the quantum of the Empire Life Prepayment Obligations and therefore the Receiver proposes that this be addressed by subsequent Court Order. This approach is consistent with that in the First Interim Distribution Order. Additionally at this time, the Receiver’s intention is to reserve for Empire Life’s estimated fees of \$9,000.
- The Receiver and its legal counsel have reviewed the payout statements for OWMC for the Sussex Place property and the Pepper/Palmer property and

confirm it appears in order. The outstanding balances noted above, must be adjusted for the proposed reallocation of the amounts paid to OWMC pursuant to the collateral charge over the Preston Springs Gardens property described above.

- The Receiver and its legal counsel have reviewed the payout statement provided by First Source with respect to the Sussex Place property. In this respect, as the Receiver is only proposing a partial distribution of \$835,000 to First Source at this time, the Receiver's review of the payout statement was sufficient only to ensure that the principal amount outstanding was greater than the proposed distribution. The Receiver does not comment, at this time on the interest, other fees and charges noted on the First Source payout statement.

106. The Receiver has obtained a legal opinion from Dentons that subject to the customary assumptions and qualifications the security interest of Empire Life, OWMC and First Source in the Sussex Place Property and proceeds of sale are valid in accordance with the terms of security agreements in place. A copy of the Dentons security opinion dated January 17, 2013 is attached as **Appendix "II"**.
107. Pursuant to the Receivership Order, the Receiver has set up and maintained segregated bank accounts and ring fenced accounting for each property. Attached as **Appendix "JJ"** is a copy of a statement of receipts and disbursement for the period October 17, 2012 to April 30, 2013 for the Sussex Place Property showing a balance of \$4,929,069.55.
108. Set out below is a table summarizing a proposed interim distribution to the mortgagees for the Sussex Place property, taking into account the current net cash position for the property effective April 30, 2013, the confirmed mortgagee loan payout positions effective as at May 10, 2013, priority claims, charges and fees, with an estimated reserve of funds to be held until such time as all claims and costs are determined.

<b>Sussex Place Property Proposed Interim Distribution</b>	
Funds held in segregated trust account April 30, 2013	4,929,069.55
Less: Receiver's Holdback – fees, costs to complete, GARE	(100,000.00)
Less: Pre-receivership fees (\$11,000 + HST per property)	(12,430.00)
Less: Empire Life payout	(2,743,206.16)
Less: Reserve for Empire Life prepayment	(347,448.89)
Less: OWMC (Sussex Place outstanding after reallocation)	(716,141.20)
Less: Guelph Financial Corporation – Preston Springs	(174,267.88)
Less: First Source (collateral mortgage)	(835,000.00)
<b>Current Available Balance</b>	<b>575.42</b>

109. The proposed interim distribution contemplates the following: (i) that the first secured mortgagee, Empire Life, be paid out in full, subject to a holdback reserve created by the Receiver for the Empire Life Prepayment Obligations and estimated future legal fees; (ii) that the second secured mortgagee, OWMC be paid out \$716,141.20; (iii) that the Receiver reimburse the estate of GFC the amount of \$174,267.88, being the portion of the prior interim distribution made to OWMC allocable to the Sussex Place property, as amended by the requested reallocation (as recognition that GFC as a collateral obligee of the obligations to OWMC may benefit from rights of subrogation in respect of such amounts paid); (iv) that First Source be paid the amount of \$835,000 in partial satisfaction of amounts owed to First Source by Dondeb; and (v) the Receiver reserve approximately \$100,000 in order for all claims and costs to be determined to complete the administration of the global receivership, with a final distribution to be undertaken once all claims and costs are determined, including any GARE.
110. The Receiver also proposes that the requested interim distribution order be made without prejudice to any rights of marshaling or apportionment that any subordinate creditors, including First Source, may have, in particular, as it relates to the Pepper/Palmer property which will be free and clear if the proposed interim distribution occurs.

111. The relevant mortgagees and the Debtors have been consulted on the above proposed interim distribution.

## 10. STATUS OF MARKETING AND SALES PROCESS OF ALL PROPERTIES

112. Summarized below (by Property number and name) is the status of the marketing and sales process of each Property as at April 30, 2013.

- 1) **Ace Self Storage** (256 & 270 Hughes Rd and 4575 Huronia Rd, Orillia, Ontario) – Pace Savings and the Receiver, subject to Court approval, have entered into the Ace APS which will form the opening bid in the Ace Sales Process as set out in paragraph 37.
- 2) **Ontario Street** (6 Ontario St., Orillia, Ontario) – Vacant land. The Receiver, subject to Court approval has entered into the Ontario APS as set out in paragraphs 43 to 48.
- 3) **Coldwater** (233, 249 & 261 Coldwater Ave., Orillia, Ontario) – Vacant land. As previously described the Coldwater Property was sold on February 15, 2013.
- 4) **Devonshire Place** (15390 Yonge St., Unit 208, Aurora, Ontario) - As previously described, the Devonshire Place Property was sold on March 1, 2013.
- 5) **ProSpan/Rockin' Boats** (61 Forest Plain Rd., Orillia, Ontario) – The Receiver listed the Property with Remax on November 2, 2012. The Receiver has entered into a conditional agreement of purchase and sale. Should such agreement become unconditional (other than Court approval), the Receiver will return to Court to seek approval of same.
- 6) **Remo's Ristoranti** (480 West St. South, Orillia, Ontario) – Vacant restaurant. The Receiver is in discussions with the mortgagee regarding the appropriate marketing process and has received two listing proposals from listing agents. The Receiver intends to list the Property with a listing agent shortly.
- 7) **Orillia Retirement Residence** (24 Simcoe St., Orillia, Ontario) – The Receiver listed the Property with Sean M. Jensen Realty Inc. (“**Jensen Realty**”) on February 5, 2013. The marketing and sales process has been ongoing with multiple inquiries being handled by Jensen Realty.
- 8) **Sussex Place** (205 Vodden St. East, Brampton, Ontario) – As reported more fully in paragraphs 101 to 111 above, this property was sold on April 24, 2013.
- 9) **Barrie Business Centre** (92 Davidson St., Barrie, Ontario) – The Receiver took possession of the Property under construction, such construction being halted by the Debtor due to cash flow constraints. The Receiver has spent

significant time in consultation with mortgagees regarding the assessment of costs to complete the construction, the potential market value of the completed Property versus an “as is where is” sale, and the potential value of the associated feed-in-tariff contact. Unfortunately, the prospective purchaser that was negotiating with the Receiver in order to submit a stalking horse offer decided not to move forward with the Property citing significant difficulty in determining the costs to complete the construction of the Property. The Receiver has been advised of significant inconsistencies to the architectural and engineering plans when compared to the current Property under construction. Accordingly, the Receiver, with the mortgagee’s consent, has engaged the architect of record and structural engineering firm that Dondeb previously retained in order to investigate the current building structure, compare the building construction to the original plans, and update the design and plan drawings in order to obtain quotes from general contractors to complete the Property under construction.

- 10) **Tim Hortons & Wendys** (525-545 Memorial Ave., Orillia, Ontario) – As previously described, the Tim Hortons/Wendys Property was sold on January 17, 2013.
- 11) **240 Yeoman** (240 Yeoman St., Belleville, Ontario) – Vacant land. The Receiver listed the Property with Coldwell Banker Ekort Realty (“**Coldwell Banker**”) on November 2, 2012. No offers have been received to date. On March 4, 2013, the Receiver, as recommended by Coldwell Banker and with mortgagee consent, agreed to reduce the listing price from \$798,000 to \$649,000 and extend the listing to April 30, 2013.
- 12) **Brechin** (Brechin (near Orillia, Ontario)) – As previously described, the Brechin Property was sold on February 28, 2013.
- 13) **Hatch House Montessori School** (301 Byron Street South, Whitby, Ontario) – The Receiver, subject to Court approval, has entered into the Hatch House APS as set out in paragraphs 49 to 59.
- 14) **Orillia Prep School** (547 Lacie Street, Orillia, Ontario) – The Receiver listed the Property with RCB Realty Inc. on January 30, 2013. No offers have been received to date.
- 15 & 16) **Belleville (Pepper and Palmer)** (Belleville, Ontario) – Vacant land. The Receiver listed the Property with Coldwell Banker on November 2, 2012. The Receiver reduced the listing price in consultation with the listing agent and mortgagee on January 29, 2013 from \$475,000 to \$425,000. No offers have been received to date. On March 4, 2013, the Receiver, as recommended by Coldwell Banker and with mortgagee consent, agreed to extend the listing to April 30, 2013.
- 17) **Georgian Manor Banquet Hall** (52 Morrow Rd., Barrie, Ontario) – As reported in detail above, the property was sold on March 27, 2012.

- 18) **Whispering Pines** (451 Golf Course Rd., Huntsville, Ontario) – Nine hole golf course. The Receiver listed the Property with Century 21 Cottage Country Realty on December 7, 2012. The listing was extended to April 15, 2013. No offers have been received to date. However, effective this reporting, the Receiver anticipates receiving an offer from the first mortgagee of the Property for its review and consideration.
- 19) **Lafontaine Terrace** (169 Borden Ave., Kitchener, Ontario) – The Receiver listed the Property with Jensen Realty on January 11, 2013. The Receiver has entered into a conditional agreement of purchase and sale. Should such become unconditional (other than Court approval) the Receiver will return to Court to seek approval of same.
- 20) **Tudhope Manor** (127 Peter St. North, Orillia, Ontario) – The Receiver, subject to Court approval has entered into the CRI APS as set out in paragraphs 60 to 70.
- 21) **Orillia Independent Living** (20 Simcoe St., Orillia, Ontario) – The Receiver listed the Property with Jensen Realty on January 18, 2013. The marketing and sale process for the Property has been underway for over three months with multiple inquiries being dealt with by Jensen Realty.
- 22) **Dorset Place** (90 Gurnett St., Aurora, Ontario) –As previously described the Dorset Place Property was sold on January 22, 2013.
- 23) **Leon’s** (555 Memorial Ave., Orillia, Ontario) – The Receiver listed the Property with DTZ Barnicke on November 15, 2012. The Receiver, in consultation with the listing agent and mortgagees, reduced the listing price of the Property on January 31, 2013. After dealing with multiple offers, with the consent of the relevant mortgages, the Receiver entered into an APS with 2249649 Ontario Inc. on April 3, 2013 (hereinafter the “**Leon’s APS**”). The Leon’s APS is subject to, among other matters, a due diligence period of 25 business days following execution of the Leon’s APS and provision of lease and financial documents. Should the Leon’s APS become unconditional, other than Court approval, the Receiver will return to court to seek approval of same.
- 24) **Preston Springs Gardens** (102-110 Fountain St. North, Cambridge, Ontario) –As previously described the Preston Springs Property was sold on January 28, 2013.

## 11. RECOMMENDATIONS AND REQUESTED RELIEF

113. In the Receiver’s view, the Receiver has continued to act in accordance with the Receivership Order, as amended, and is working diligently with the relevant mortgagees and advisors to affect the marketing and sale of the individual Properties.



114. The Receiver respectfully recommends that this Court grant an order for the relief requested in Section 2 hereof.

**A. FARBER & PARTNERS INC.**  
**In its capacity as Receiver of the Debtors**  
**Listed on Appendix A and not in its personal capacity**

A. Farber & Partners Inc.,