

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**

TWELFTH REPORT OF THE RECEIVER

APRIL 28, 2014

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”**. A copy of the reasons of the Honourable Justice Campbell released on November 22, 2012 is attached hereto as **Appendix “C”**.
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 25 known real properties (collectively the “**Properties**” and each a “**Property**”). The 24 Properties known at the time of the Receivership Order 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 “D”**. Property numbers and names as defined in Appendix “D” are used throughout this report. Subsequent to the date of the Receivership Order being granted one additional Property was located, being a vacant piece of land located at 20 Scotia Road in Emsdale Ontario (Township of Perry) owned by 1281515 Ontario Inc. (the “**Scotia Road Property**”), as described in a previous report to the Court.
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) and (4.1) of the *Income Tax Act*, subsection 23(3) and (4) of the *Canada Pension Plan* and subsection 86(2) and (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/Wendy’s 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/Wendy’s 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/Wendy’s, 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 “E”** hereto.
10. The Tim Hortons/Wendy’s 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/Wendy’s 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. A copy of the interim distribution Order made on February 13, 2013 (the “**Tim Hortons Distribution Order**”) is attached hereto as **Appendix “F”**.
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; 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.

14. The Georgian Manor property transaction closed on March 27, 2013. The Sussex Place property transaction closed on April 24, 2013.
15. On May 10, 2013, the Court granted orders (i) approving the Agreements of Purchase of Sale of the following properties: Ontario Street, Hatch House Montessori School and Tudhope Manor; (ii) approving an Auction Agreement for certain panelization equipment, as well as approval of a stalking horse sales agreement for the Ace Self Storage property and business and Stalking Horse sales process for same; (iii) approving the distribution of funds held in respect of the Georgian Manor and Sussex Place Properties; and (iv) approving the activities of the Receiver set out in the Fifth Report of the Receiver dated May 3, 2013.
16. The Ontario Street property transaction closed on May 15, 2013 and the Hatch House Montessori School transaction closed on May 21, 2013.
17. On May 29, 2013, the Court granted (i) an order approving an interim distribution in respect of the Ontario Street and Hatch House Montessori School properties; and (ii) an approval and vesting order in respect of the sale of the Lafontaine Terrace property.
18. On June 11, 2013, following a contested hearing, Justice Newbould made two Orders which, among other things, declared that Empire Life was not entitled to an interest differential on four properties: Dorset Place, Sussex Place, Hatch House and Leons, and approved interim distributions on the Tudhope Manor and Lafontaine Terrace properties, which had closed on May 30 and June 4, 2013 respectively.
19. In a motion originally returnable on July 30, 2013, the Receiver sought an approval and vesting order in respect of the Ace Self Storage business and property. Melvyn A. Dancy (“**Dancy**”) appeared in person at the hearing and advised the Court that

he was attempting to retain new counsel and requested an adjournment of the Receiver's motion. Justice Morawetz granted an adjournment until August 6, 2013. At the return of the Motion on August 6, 2013, Dancy advised that he had still not been able to retain new counsel. Notwithstanding same, the approval and vesting Order was granted for the sale of the Ace Self Storage business and property to Pace Savings & Credit Union Limited ("**Pace**"), which sales transaction was the culmination of a previously approved stalking horse sales process. Upon closing of the Ace Self Storage transaction, \$6.2 million was authorized to be distributed to the purchaser, Pace. In addition, an Order of the Court was granted on August 6, 2013 which, among other matters, approved interim distributions to the secured creditor of the Coldwater Property and the Brechin Property and reallocation of proceeds from 2338067 Ontario Inc. to Dondeb Inc., related to the sale of the Dorset Place property.

20. On December 2, 2013, the Court granted (i) an order approving a distribution from the remaining proceeds of sale of the Lafontaine Terrace Property; (ii) approval and vesting orders in respect of the sales of the Orillia Prep School, Orillia Retirement Residence, Whispering Pines, Pepper/Palmer and the 240 Yeoman Street properties; and (iii) an order that the motion brought by Dancy seeking leave to file a complaint against Farber be dismissed on a with prejudice basis and without costs unless Dancy provided written notice on or before January 10, 2014 of his intention to bring on the motion. Dancy did not provide such notice.
21. On March 24, 2014, the Court granted an order (i) authorizing the Receiver to consolidate the Segregated Accounts for Ontario Street, Coldwater, Devonshire Place, Sussex Place, 240 Yeoman Street, Brechin and Dorset Place into one account (the "**Dondeb General Account**"); (ii) authorizing the Receiver to transfer \$108,565.68 from the Dondeb General Account to the Tim Hortons/Wendy's property Segregated Account to reimburse the Tim Hortons/Wendy's property in respect of deemed trust amounts owing by Dondeb to Canada Revenue Agency (the "**CRA**") which were paid to the CRA pursuant to the Order of Justice Morawetz made on February 13, 2013; (iii) authorizing the Receiver to distribute \$180,000 to

Faithlife Financial in partial satisfaction of the charge/mortgage granted by 2009031 Ontario Inc. in favour of Faithlife Financial against the Tudhope Manor property; (iv) authorizing the Receiver to distribute \$180,000 to CRA in partial satisfaction of amounts deemed to be held in trust by 118 in favour of CRA; (v) authorizing the Receiver to distribute the amount of \$160,000 to Empire Life in partial satisfaction of the charge/mortgage granted by Dondeb in favour of Empire Life from the proceeds of the Hatch House Montessori School property; (vi) authorizing the Receiver to distribute from the proceeds of sale in respect of the Tim Hortons/Wendy's property the amount of \$12,500 to Sun Life Assurance Company of Canada ("**Sun Life**") in full and final satisfaction of all amounts owing to Sun Life by Dondeb; and (vii) authorizing the Receiver to distribute from the proceeds of sale in respect of the Tim Hortons/Wendy's property the amount of \$100,000 to The Bank of Nova Scotia, Trustee ("**BNS**") in full and final satisfaction of all amounts secured in respect by a charge/mortgage granted by 2339506 Ontario Inc. in favour of BNS as against the Tim Hortons/Wendy's Property. Also on March 24, 2014 approval and vesting orders in respect of the sales of the Rockin Boats, Remo's Ristoronti, Scotia Rd. and Barrie Business Centre properties were granted. As well, an approval and vesting order in respect of a transaction involving the Feed-in-Tariff contract ("**FIT Contract**") between Dondeb and Ontario Power Authority related to the Rockin Boats property was made. Copies of the orders made on March 24, 2014 are attached as **Appendices "G", "H", "I", "J", "K" and "L"**.

22. In summary, to date, of the 25 Properties, sales have been completed in respect of the following 23 Properties: Tim Hortons/Wendy's, Dorset Place, Preston Springs Gardens, Devonshire Place, Coldwater, Brechin, Georgian Manor, Sussex Place, Ontario Street, Hatch House Montessori School, Tudhope Manor, the Lafontaine Terrace, the Ace Self Storage, Orillia Prep School, Orillia Retirement Residence, Whispering Pines, Pepper/Palmer, Yeomen Street, Rockin Boats, Remo's Ristoronti property, Scotia Rd., and the Barrie Business Centre.

2. PURPOSE OF REPORT

23. The Purpose of this twelfth report to the Court of the Receiver (the “**Twelfth Report**”) is to report to the Court on the activities of the Receiver since the filing of the Receiver’s Eleventh Report to the Court and to provide support for the Receiver’s request for an Order:

- (i) approving the Twelfth Report and the activities of the Receiver set out therein;
- (ii) authorizing the Receiver to distribute the amount of \$2,630,000 to First Source Mortgage Corporation and Mark Cosman (“**First Source/Cosman**”) and 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 BBC property from the funds held by the Receiver in the account maintained for the BBC property;
- (iii) 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 from the funds held by the Receiver in the account maintained for the Remo’s Ristoronti property; and
- (iv) authorizing the Receiver to distribute the amount of \$250,000 to The Toronto-Dominion Bank (“**TD**”) in partial satisfaction of the charge/mortgage 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 from the proceeds of sale of the Rockin Boats property.

3. **DISCLAIMER**

24. 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.

4. **RECEIVER'S ACTIVITIES**

25. Since March 24, 2014, the Receiver's activities have included, among other things:

- Attending to the closing of the sale of the Scotia Rd. property on March 26, 2014;
- Attending to the closing of the sale of the Rockin Boats property on March 28, 2014;
- Attending to the closing of the sale of the Remo's Ristoroni property on April 28, 2014;
- Attending to the closing of the sale of the Barrie Business Centre property on April 14, 2014;
- Monitoring receipts and disbursements, coordinating Receiver's Borrowings, property tax and debt service payments where cash flow permits and liaising with mortgagees, as appropriate;
- Overseeing and monitoring of ongoing operations at Orillia Independent Living, in concert with the current business managers;
- Corresponding with prospective purchasers of the remaining Properties; and
- Corresponding by email and telephone with the Debtors' creditors.

Property #9 Barrie Business Centre – Interim Distribution

26. The Barrie Business Centre property (“**BBC**”) is an industrial space located on approximately 9 acres in the City of Barrie, with an original building of

approximately 34,500 square feet and approximately 28,500 square feet of new/additional space that was under construction at the time the Receivership Order was granted which continues to remain incomplete.

27. On January 6, 2014, after consultation with the First Source/Cosman, the Receiver entered into an agreement of purchase and sale with Larry Goldman Inc. in trust (which was assigned to Marquee Davidson Corp. (“**MDC**”)) subject to Court approval (the “**MDC APS**”).
28. On March 24, 2014, the Court approved the MDC APS and the transaction closed on April 14, 2014.
29. Pursuant to the closing of the transaction, Farber was paid \$3,526,761.09 at closing which was net of \$19,321.40 in closing adjustments related to realty taxes and utilities and credit for funds held by the City of Barrie of \$271,082.49. This represented the balance of the purchase price, taking into account the real estate adjustments at closing, the deposits of \$300,000 held by the Receiver’s legal counsel. A copy of the closing statement and cash summary statement for the transaction are attached as **Appendix “M”**.
30. The Receiver has reviewed a payout statement from First Source/Cosman dated April 25, 2014 which indicates that the principal, accrued interest and costs owing under the First Source BBC Charge is \$3,592,887.71 (effective May 1, 2014). A copy of the payout statement is attached as **Appendix “N”**. The Receiver is comfortable that the amount owed by Dondeb to First Source/Cosman that is secured by the First Source BBC Charge is substantially in excess of the proposed interim distribution to First Source/Cosman. The Receiver has not, however, performed a detailed review of the application of prior distributions against the principal, accrued interest, costs and fees and therefore expresses no view as to the exact amount owing by Dondeb to First Source/Cosman that is secured by the First Source BBC Charge.

31. To support the ongoing operations of the BBC property and assessment of cost to complete including retention of architect and engineering consultants, First Source/Cosman has also provided Receiver's Borrowings of \$195,347.02 since commencement of the receivership proceedings, which is in addition to the above loan. The Receiver repaid First Source/Cosman for this amount on April 24, 2014, which, inclusive of interest accrued to April 24, 2014, totaled \$219,509.53.
32. The Receiver has obtained a legal opinion from its independent legal counsel, Dentons Canada LLP ("**Dentons**") that, subject to the customary assumptions and qualifications, the First Source BBC Mortgage is valid in accordance with its terms. A copy of the Dentons security opinion dated March 18, 2013 is attached as **Appendix "O"**.
33. 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 "P"** is a copy of a statement of receipts and disbursement for the period October 17, 2012 to April 25, 2014 for the BBC Property showing a balance of \$2,796,589.20.
34. Set out below is a table summarizing the proposed interim distribution to First Source/Cosman for the BBC Property, taking into account the current net cash position for the property effective April 23, 2014, the mortgagee loan payout position effective May 2, 2014, priority claims, charges and fees, with estimated reserve to be held until such time as all claims and costs are determined.

Barrie Business Centre	
Proposed Interim Distribution effective April 25, 2014	
Funds held in segregated trust account April 25, 2014	2,796,589.20
Less: Receiver's Holdback for unpaid property, engineering consultants costs and fees, GARE and costs to complete the administration	(160,000.00)
Less: Partial Loan Repayment to First Source	(2,630,000.00)
Current Available Balance	6,589.20

35. The proposed interim distribution contemplates the following: (i) that First Source/Cosman be paid out \$2,630,000 in partial satisfaction of its total loan; and

(ii) that the Receiver reserve approximately \$160,000 for all claims and costs required to complete the administration of the global receivership, including architect and engineering services previously provided on the property, general restructuring administrative expenses (“**GARE**”) and professional fees incurred since April 1, 2014, with a final distribution to be undertaken once all such amounts are determined.

36. The Receiver also proposes that the requested interim distribution order be made without prejudice to any rights of marshaling, subrogation or apportionment that any subordinate creditors may have, in particular, as it relates to the property which may be free and clear if the proposed interim distribution occurs.

Property #6 Remos Ristoranti – Interim Distribution

37. The Remos property is a vacant restaurant approximately 4,100 square feet in size which is located on approximately 0.8 of an acre of land in Orillia, Ontario. The property was owned by Dondeb. The mortgagee of record was Ontario Wealth Management Corporation (“**OWMCO**”) which has registered a charge in the principal amount of \$1,000,000 over the Remo’s Ristoranti property (the “**OWMCO Charge**”).
38. On February 19, 2014, after consultation with the relevant mortgagee, the Receiver entered into an agreement of purchase and sale with SGH Investments Inc. (“**SGH**”), subject to Court approval (the “**SGH APS**”).
39. On March 24, 2014, the Court approved the SGH APS and the transaction closed on April 10, 2014.
40. Pursuant to the closing of the transaction, Farber was paid \$299,655.87 at closing which was net of \$24,344.13 in closing adjustments related to 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 \$36,000 held by the Receiver. A copy of the closing statement and cash summary statement for the transaction are attached as **Appendix “Q”**.

41. To support the ongoing maintenance of the Remo's Ristoronti property, OWMCO has also provided Receiver's Borrowings of \$12,500 since commencement of the receivership proceedings, which is in addition to the above mortgage. The Receiver repaid OWMCO for this amount on April 24, 2014, which inclusive of interest accrued to April 24, 2014 totaled \$14,115.07.
42. The Receiver has obtained a legal opinion from its independent legal counsel, Dentons, that subject to the customary assumptions and qualifications the OWMCO Charge over the Remo's Ristoronti Property was valid in accordance with its terms. A copy of the Dentons security opinion dated December 14, 2012 is attached as **Appendix "R"**.
43. The OWMCO Charge was registered against each of the Remo's Ristoronti, Orillia Prep School and Tim Hortons/Wendy's Property. OWMCO received a distribution from the Tim Horton's Wendy's Property in full and final satisfaction of all amounts owing under the OWMCO Charge pursuant to the Tim Hortons Distribution Order. In accordance with the Tim Hortons Distribution Order, the distribution to OWMCO was made without prejudice to any rights of marshalling or apportionment that subject creditors on the Tim Hortons/Wendy's property may have.
44. On the Tim Hortons/Wendy's property, subsequent to the OWMCO Charge, both BNS and First Source/Cosman had registered charges. The Receiver has obtained a legal opinion from its independent legal counsel, Dentons, that subject to the customary assumptions and qualifications the charges in favour of BNS (the "**BNS Charge**") and First Source/Cosman (the "**First Source/Cosman Tim Hortons Charge**") were valid in accordance with their terms. A copy of the Dentons security opinion dated January 16, 2013 is attached as **Appendix "S"**.
45. The BNS Charge is in the process of being repaid in full pursuant to an Order granted March 24, 2014. The First Source/Cosman Tim Hortons Charge remains outstanding.

46. The Receiver is of the view that pursuant to the doctrine of marshalling, First Source/Cosman has rights of marshalling with respect to the OWMCO Charge as against the Remo's Ristoronti property. Notably, (i) both the Tim Hortons/Wendy's property and the Remo's Ristoronti property were both owned by Dondeb; and (ii) there were no registered encumbrances on the Remo's Ristoronti property subsequent to the OWMCO Charge. As result, the doctrine of marshalling would provide that the debt secured by the OWMCO Charge should be treated as first being satisfied out of the Remo's Ristoronti property, so as to not prejudice First Source/Cosman as a subsequent encumbrancer on the Tim Horton's/Wendy's property.
47. As a result, the Receiver's view is that it is appropriate to distribute the proceeds of sale from the Remo's Ristoronti property to First Source/Cosman pursuant to the First Source/Cosman Tim Hortons Charge. A payout statement for amounts owing by Dondeb to First Source/Cosman that are secured by the First Source/Cosman Tim Hortons Charge dated as of April 25, 2014 (with interest calculated to May 1, 2014) is attached as **Appendix "T"** which shows a balance owing of \$208,020.40 . The Receiver has reviewed the payout statement and is comfortable that the amount owing by Dondeb to First Source/Cosman and secured by the First Source/Cosman Tim Hortons Charge is well in excess of the proposed interim distribution. The Receiver has not however performed a detailed review of all interest, fees and costs accrued owing to First Source/ Cosman and expresses no view as the exact amount owing secured by the First Source/Cosman Tim Hortons Charge.
48. 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 "U"** is a copy of a statement of receipts and disbursement for the period October 17, 2012 to April 25, 2014 for the Remo's Ristoronti Property showing a balance of \$205,461.84.
49. Set out below is a table summarizing the proposed interim distribution to the collateral mortgagee for the Remo's Ristoronti Property, taking into account the

current net cash position for the property effective April 25, 2014, the mortgagee loan payout position effective May 1, 2014, priority claims, charges and fees, with estimated reserve to be held until such time as all claims and costs are determined.

Remos 480 West Street Orillia	
Proposed Interim Distribution effective April 25, 2014	
Funds held in segregated trust account April 25, 2014	205,461.84
Less: Receiver's Holdback for Fees, GARE and Cost to Complete, final property costs	(41,000.00)
Less: Partial Loan Repayment to First Source	(160,000.00)
Current Available Balance	4,461.84

50. The proposed interim distribution contemplates the following: (i) that First Source/Cosman be paid \$160,000.00 in partial satisfaction of its charge against the Tim Hortons/Wendy's property based on a marshalling of the OWMCO Charge discussed above; and (ii) that the Receiver reserve approximately \$41,000 for all claims and costs required to complete the administration of the global receivership, including any general restructuring administrative expenses ("**GARE**"), with a final distribution to be undertaken once all such amounts are determined.
51. The Receiver also proposes that the requested interim distribution order be made without prejudice to any rights of marshaling, subrogation or apportionment that any subordinate creditors may have, in particular, as it relates to the property which may be free and clear if the proposed interim distribution occurs.

Property #5 Rockin Boats – Interim Distribution

52. The Rockin Boats property is an industrial building located at 61 Forest Plain Road in the Township of Oro-Medonte, which is just south of Orillia, Ontario. The property was owned by Dondeb. The mortgagees of record were: TD and First Source Mortgage Corporation ("**First Source**").
53. On November 28, 2103, as amended by agreements dated December 30, 2013, after consultation with the relevant mortgagees, the Receiver entered into an agreement of purchase and sale with JessEm Products Limited ("**JPL**"), subject to Court approval (the "**JPL APS**").

54. On March 24, 2014, the Court approved the JPL APS and the transaction closed on March 28, 2014.
55. Pursuant to the closing of the transaction, Farber was paid \$516,309.64 at closing which was net of \$163,680.36 in closing adjustments related to realty taxes. This represented the balance of the purchase price, taking into account the real estate adjustments at closing and the deposit of \$68,000.00 held by the Receiver's legal counsel. A copy of the closing statement and cash summary statement for the transaction are attached as **Appendix "V"**.
56. The Receiver has reviewed a payout statement from the loan services company that manages the TD Loan, namely PNC Real Estate dated April 25, 2014 which indicates that the principal and accrued interest owing under its mortgage loan is over \$632,545.13 calculated to April 30, 2014, which is substantially in excess of the proposed interim distribution to TD. A copy of the payout statement is attached as **Appendix "W"**. The Receiver has reviewed the payout statement and is comfortable that the amount owing by Dondeb to TD and secured by the TD Charge is substantially in excess of the proposed interim distribution. The Receiver has not however performed a detailed review of all interest, fees and costs accrued owing to TD and expresses no view as the exact amount secured by the TD Charge.
57. The Receiver has obtained a legal opinion from its independent legal counsel, Dentons, that subject to the customary assumptions and qualifications the security interest of TD in the Rockin Boats Property is valid in accordance with its terms. A copy of the Dentons security opinion dated January 16, 2013 is attached as **Appendix "X"**.
58. 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 "Y"** is a copy of a statement of receipts and disbursement for the period October 17, 2012 to April 25, 2014 for the Rockin Boats Property showing a balance of \$289,790.83.

59. Set out below is a table summarizing the proposed interim distribution to TD for the Rockin Boats Property, taking into account the current net cash position for the property effective April 25, 2014, the mortgagee loan payout position effective April 30, 2014, priority claims, charges and fees, with estimated reserve for claims to be held until such time as all claims and costs are determined.

Rockin Boats 61 Forest Plain Road, Orillia	
Proposed Interim Distribution effective April 25, 2014	
Funds held in segregated trust account April 25, 2014	289,790.83
Less: Receiver's Holdback for Fees, GARE and Cost to Complete, final property costs	(38,000.00)
Less: Partial Loan Repayment to TD Bank	(250,000.00)
Current Available Balance	1,790.83

60. The proposed interim distribution contemplates the following: (i) that TD be paid out \$250,000 in partial satisfaction of its collateral loan; and (ii) that the Receiver reserve approximately \$38,000 for all claims and costs required to complete the administration of the global receivership, including any general restructuring administrative expenses (“GARE”), with a final distribution to be undertaken once all such amounts are determined.
61. The Receiver also proposes that the requested interim distribution order be made without prejudice to any rights of marshaling, subrogation or apportionment that any subordinate creditors may have, in particular, as it relates to the property which may be free and clear if the proposed interim distribution occurs.

5. STATUS OF MARKETING AND SALE PROCESS OF THE REMAINING PROPERTIES

62. Summarized below (by Property number and name) is the status of the marketing and sales process of the remaining properties up to April 28, 2014:

21) Orillia Independent Living (20 Simcoe St., Orillia, Ontario) – The Receiver listed the Property with Jensen Realty (“Jensen”) since January 18, 2013. Jensen is continuing to market the property and, in concert with the Receiver, is continuing discussions with multiple interest parties.

23) Leon's (555 Memorial Ave., Orillia, Ontario) – The Receiver has listed the property with a series of brokers since its appointment and the Receiver is currently in negotiations with an interested party introduced by Royal LePage First Contact Realty.

6. RECOMMENDATION

63. 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.