

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

SECOND REPORT OF IRA SMITH TRUSTEE & RECEIVER INC.

IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF  
STINSON HOSPITALITY INC.,  
DOMINION CLUB OF CANADA CORPORATION,  
THE SUITES AT 1 KING WEST INC. AND  
2076564 ONTARIO INC.

DATED OCTOBER 22, 2007

1.0 INTRODUCTION

This report (the "**Second Report**") is filed by Ira Smith Trustee & Receiver Inc. ("**ISI**"), in its capacity as court-appointed receiver and manager (the "**Receiver**"), pursuant to section 101 of the *Courts of Justice Act*, R.S.O 1990, c. C.43, as amended (the "**CJA**"), of all of the assets, undertakings and properties of Stinson Hospitality Inc. ("**SHI**"), Dominion Club of Canada Corporation ("**DCC**"), The Suites at 1 King West Inc. ("**Suites**") and 2076564 Ontario Inc. ("**Housekeeping**") (collectively referred to as the "**Debtors**").

The Honourable Madam Justice Pepall made an order dated August 24, 2007 (the "**Appointment Order**") appointing the Receiver. A copy of the Appointment Order is attached hereto as **Exhibit "A"**.

The Receiver filed its first report (the "**First Report**") on October 1, 2007, and a Supplement to the First Report dated October 4, 2007. The First Report was approved by order of the Honourable Madam Justice Pepall dated October 5, 2007 (the "**First Approval Order**"), a copy of which is attached hereto as **Exhibit "B"**.

## 1.1 Purpose of this Report

The purpose of this Second Report is to advise this Honourable Court of:

1. the actions and activities of the Receiver since the date of its First Report;
  2. the financial position of each of the Debtors as at September 30, 2007;
  3. the revised projected statements of cash flow for the interim period September 1, 2007 to March 31, 2008, inclusive, reflecting revisions from the status quo projections contained in the First Report, using assumptions which give effect to operational changes planned and to be implemented by the Receiver's hospitality consultant, CK Atlantis Inc. ("CK"), working together with Mr. S. O'Brien, General Manager of the hotel, and Mr. H. Guraya, CFO, Hotel Operations;
  4. the status of discussions with stakeholders regarding the branding opportunity discussed in the First Report, and the proposed brief period of exclusivity for the brand in question (the "**Brand**");
- 
5. the Receiver's view on the motion being made by the residential condominium corporation ("**TSCC 1703**") and Johan Demeester;
  6. the Receiver's activities in connection with the 2007 audit requirement of Suites;
  7. the statement of receipts and disbursements of the Receiver for the period from August 24, 2007 to October 17, 2007; and
  8. the fees and costs of the Receiver and its legal counsel, Goodmans LLP, since the date(s) of the approved accounts contained in the First Report.

## 1.2 Disclaimer

The Receiver has relied upon the financial records and financial statements of the Debtors, as well as other information supplied by management and employees of the Debtors, its accountants, appraisers, valuers, and other advisors. Our procedures did not constitute an audit or review engagement.

Therefore, the Receiver is unable to and does not express an opinion on any financial statements, or elements of accounts referred to in this Second Report, or any of the attached Appendices or Exhibits forming part of this Second Report. Our procedures and enquiries did not include verification work or constitute an audit in accordance with generally accepted auditing standards. In the event any of the information we relied upon was inaccurate or incomplete, the results of our analysis could be materially affected. We reserve the right to review all calculations included or referred to in this Second Report and, if we consider it necessary, to revise our calculations or conclusions in light of new information as such information becomes available.

## 2.0 BACKGROUND INFORMATION

---

In its capacity as Monitor and now as Receiver, ISI has reported in detail to this Honourable Court on the nature of the Debtors' business operations and on the complexities of the legal structure and relationships between each of the corporations comprising the Debtors. The Receiver refers the readers of this Second Report to the First Report and the Monitor's Reports for a complete overview of the business, its background and structure.

### 3.0 ACTIVITIES OF THE RECEIVER

Since its First Report, the Receiver has undertaken the following activities:

- Retained CK to oversee the Hotel Operations, in accordance with the Interim Management Agreement contained in the First Report as approved by this Honourable Court.
- Continuing to provide overall financial controls over the Hotel Operations and to deal with issues arising from the receivership, including, creditor, unit owner and potential purchaser inquiries.
- Completed the transfer to the Receiver of the liquor license previously held by DCC.
- Advancing talks with the Ontario Club such that they must operate on a break even basis for DCC, requiring them to compensate DCC (in arrears) for each month commencing with operations for October of 2007.
- Continuing dialogue with Messrs. B. Smith and A. Wilson, members of the TSCC 1703 Board of Directors (the "**Board**").
- Obtaining agreement of the Applicants (the "**Mirvish Group**") and Mr. B. Smith to the Receiver pursuing the Brand option disclosed in the First Report.
- Providing the Brand with a draft Exclusivity and Confidentiality Agreement, a copy of which is attached as **Exhibit "C"**, in order to advance the provision of the information requested by the Brand so that they can assess their interest in pursuing the 1 King West opportunity.

- Retained Benaco Sales Ltd. to provide a liquidation appraisal to the Receiver on all of the leased Food and Beverage (“F&B”) equipment used by DCC, so that the Receiver can better understand the liquidation values prior to continuing discussions regarding future lease payments with the various lessors of such equipment.

#### 4.0 MOTION RECORD OF TSCC 1703 AND JOHAN DEMEESTER

The Receiver understands that TSCC 1703 and Johan Demeester are making a motion to obtain the following relief:

1. to amend paragraph 5 of the Appointment Order with a view to ensuring that the Receiver is not able to look to the funds received by the Receiver on account of Suites, and which would otherwise be distributed to unit owners, to fund any aspect of the receivership;
2. to amend paragraph 14 of the Appointment Order to allow owners of the residential condominium units who participate in the hotel rental pool through a Rental Management Agreement (“RMA”) with SHI to discontinue, alter, interfere with or terminate the supply of such units, without the requirement to obtain the prior approval of either the Receiver or this Honourable Court; and
3. costs of their motion.

#### 4.1 Suites’ funding of the receivership costs

The First Approval Order authorized the payment of the fees and disbursements of the Receiver and its legal counsel as submitted in the First Report. Such fees and disbursements, including GST, were as follows:

Receiver	\$108,319.28
Goodmans LLP	105,856.68
CK	<u>48,056.68</u>
<b>Total</b>	<b>\$262,232.64</b>

To date, the following has been paid, including GST, on account of such amounts:

Receiver	\$ 61,648.18
Goodmans LLP	60,295.50
CK	<u>48,056.68</u>
<b>Total</b>	<b>\$170,000.36</b>

The source of such funding has been from management fees earned by SHI (from Suites) for the months of August and September, 2007, as well as rental payments by Suites on account of office space used by Hotel Operations, mainly that of the General Manager and the accounting department. Such payments are consistent with the RMA and the practice of Suites prior to the appointment of the Receiver. To date, Suites has not provided any other funding on account of the Receiver's fees, disbursements and costs.

As Monitor, ISI advised this Honourable Court, and all stakeholders, that:

---

The Monitor also believes, based on the apparent direct and indirect sources of revenue available to the Debtors as described in Section 2.2 of this Second Supplementary Report (which the Monitor currently estimates to be an annualized amount of \$1.4 million)<sup>26</sup>, that such funds would be available to a Court-appointed receiver, if the current number of owners remained in the rental pool, as those funds would no longer be paid directly to the Debtors. Furthermore, if the Applicants are successful in obtaining the vesting order they seek, their debt would be extinguished against SHI and DCC, meaning a greater opportunity may exist for recoveries to other stakeholders. Accordingly, the various stakeholder

groups should not be prejudiced by the fees and costs associated with a Court-appointed receiver.

The Receiver, both directly and through its legal counsel, has continued to advise this Honourable Court, and all stakeholders, that it continues to believe this is the case, especially if the effect of operational changes recommended by CK, and agreed to by Messrs. O'Brien and Guraya, are as projected (see discussion below in Section 6.0 of this Report, **Revised Cash flow to March 31, 2008**) as long as the Receiver is allowed to maintain stability and operations are allowed to continue with approximately the same number of unit owners participating in the rental management program. This will further allow the Receiver, through its consultant, CK, to implement necessary changes to the Hotel Operations, with a particular emphasis on the F&B program, while the Receiver explores the various options and implements a protocol for potential purchasers to bid on the available assets, properties and undertakings of the Debtors as part of a Court-sanctioned process.

A significant issue facing the Receiver, as reported previously to this Honourable Court in its capacity as Monitor, is that the period October through March is traditionally a slower time for the 1 King West operations.<sup>2</sup> CK is working with hotel senior management to implement appropriate marketing efforts to increase both banquet and hotel room revenue. There may be instances of cash flow shortages during this time period, but the Receiver continues to believe that, if the proposed CK changes being implemented achieve their projected results, there will

---

<sup>1</sup> Section 2.6, page 10, third paragraph of the Monitor's Second Supplementary Report to Court dated August 16, 2007. The Receiver cautions the readers of this Second Report that this estimate must be read in conjunction with the Disclaimer contained on page 3 of this Second Report.

<sup>2</sup> Section 2.3, page 6 of the Monitor's Second Supplementary Report to Court dated August 16, 2007.

continue to be sufficient cash flow and cash reserves without the Receiver needing to look at reducing unit owners' distributions in order to fund receivership costs.

In that regard, the Receiver notes that the activities and actions of a number of parties to these proceedings have required the Receiver and its legal counsel to take steps and invest a significant amount of professional time and effort for matters that clearly were not initiated by the Receiver, and would otherwise not have been required. These have included both litigation and non-litigation matters. As Madam Justice Pepall stated in her Endorsement of October 5, 2007: "As mentioned in open court, part of the reason for the quantum [of professional fees] is the failure of most of the parties to co-operate with one another which results in greater cost." However, as an officer of the Court, the Receiver has a duty and a responsibility to deal with such matters as they arise. This has resulted in professional fees far in excess of what could reasonably have been projected in August. The Receiver is hopeful that most of those actions have been dealt with and that there will be less need for the high volume of professional time. However, to the extent that the Receiver is required to continually respond to matters such as the assignments in bankruptcy and the appeal of the annulments, professional fees will continue to be incurred at a rate higher than the Receiver would like to see.

While the Receiver is sensitive to the concerns of TSCC 1703, the Receiver submits that the motion for the amendment to paragraph 5 of the Appointment Order is premature and the relief requested should not be granted at this time. The Receiver has other options which do not currently involve the reduction of owners' distributions as a result of the need to fund the costs of the receivership (as further discussed below in this Second Report). At a meeting held on October 10, 2007, attended by Messrs. D. Mirvish and H. Kates representing the Mirvish Group, Mr. B. Smith representing TSCC 1703 and Mr. I. Smith of the Receiver, and their respective

legal counsel (the “**October 10 meeting**”), the options were disclosed to the Mirvish Group and TSCC 1703. The Receiver is prepared to undertake to this Honourable Court, that prior to attempting to utilize any of Suites’ funds, that would result in a reduction of the owners’ distributions, the Receiver would advise the Mirvish Group and TSCC 1703 of the issue and that the Receiver would make application to this Honourable Court, on proper notice to the service list, providing evidence to support the need to do so.

Having placed the provision in the draft Appointment Order circulated after the August 24 endorsement of Madam Justice Pepall, the Receiver recognizes that paragraph 5 of the Appointment Order provides that, subject to further order of the Court, the Receiver is authorized and directed to continue making distributions to unit owners on the terms of the existing RMA’s. Thus, until further order of the Court, which is not being sought at this time, the Receiver will continue making distributions to unit owners in the hotel pool.

Having said that, the Receiver does note that the RMA’s provide discretion to the rental manager to deduct from the revenues of the hotel program (ie. Suites), any fees or costs associated with the Hotel Operations. In particular, in describing the expenses which the rental manager may deduct from the Gross Rental Revenue (as defined in the RMA’s) to determine the Net Rental Revenue (as defined in the RMA’s), paragraph 1.2(m)(xiii) of the RMA for Mr. Demeester includes:

(xiii) any further and direct costs of operating the Leasing Program incurred by the Rental Manager;...

A similar provision appears in the standard form RMA. Accordingly, since the Receiver is the rental manager at the present time, the Receiver believes it is entitled to deduct its fees and

disbursements from the revenue of Suites prior to distributions to unit owners. However, as noted above and detailed below, the Receiver is not seeking to do that at this time.

Finally, in Paragraph 2 of his Affidavit (the "**Smith Affidavit**"), Mr. Brian Smith states that he has attached 130 individually signed petitions from individual condominium unit owners who are opposed to receivership costs being funded by Suites in a way that would reduce the owners' distributions. While that is no doubt a material number of units, the Receiver notes that it does not approach even half of the total units in the building.

Regardless, the Receiver respectfully submits that paragraph 5 of the Appointment Order already provides the comfort sought by TSCC 1703 and Johan Demeester, and that their motion to amend paragraph 5 of the Appointment Order should be denied by this Honourable Court.

#### **4.2 Termination of RMA's**

In the First Report, the Receiver advised of the owners' meeting held on September 10, 2007 and confirmed that the Receiver had advised the owners at that time that the Receiver's position was that there would be no new additions to, or withdrawals from, the rental pool during the first 30 days of the receivership, to allow the Receiver to assess the rental pool and the Hotel Operations. In the First Report, the Receiver confirmed its advice to owners that it would allow withdrawals for an owner to complete a sale of their unit, or to occupy on a full-time basis their unit. The Receiver further advised this Honourable Court in the First Report, that the Receiver intends to continue that program.<sup>3</sup> Such decision was approved by this Honourable Court by the First Approval Order. In addition, the Receiver has honoured any requests for withdrawals from the

---

<sup>3</sup> Section 5.4, page 22 of the First Report.

rental management program, which had been validly made under the relevant RMA prior to the appointment of the Receiver.

In Paragraph 13 of the Smith Affidavit contained in the motion record of TSCC 1703 and Johan Demeester, Mr. Smith states that there appears to him to be inconsistencies in the application of the stay provisions of the Orders of this Honourable Court.

With respect, the Receiver submits to this Honourable Court that there are no inconsistencies whatsoever. Put in proper context, the April 23, 2007 Order was designed to allow the Debtors to remain in possession and control of their assets and operations, with the authority to decide how they wished to apply the relevant sections of that Order as it related to the RMA's. Under that Order, the Companies were free to allow unit owners to be added to or withdrawn from the rental management program, under the provisions of the relevant RMA's.

The Appointment Order now vests such decision-making in the Receiver and this Honourable Court. The Receiver's decision with respect to any new additions to or withdrawals from the rental management program has been consistent from the beginning of its mandate, as described above.

It appears that TSCC 1703, Johan Demeester and some other unit owners believe that Suites can be viewed in isolation from the Hotel Operations. Unfortunately, in the Receiver's view, that is not a reasonable approach. Suites, as the recipient of all Hotel Operations revenue and the party which pays all of the fees and costs associated with the Hotel Operations, is inextricably wound up in the Hotel Operations and therefore with each of SHI, DCC and Housekeeping. As the Court-appointed receiver and manager of the Hotel Operations, the Receiver must make decisions which take into consideration various alternatives to improve the overall business at 1

King West, so that the Receiver's mandate to stabilize and enhance the Hotel Operations can be carried out without undue interruption. The Receiver understands the frustration of unit owners who believe they are unwitting participants in a dispute between Messrs. Stinson and Mirvish. However, while these proceedings may have commenced as a dispute between those 2 parties, this matter impacts a number of different stakeholder groups (including the unit owners) and has evolved into a proceeding affecting all such stakeholders under the guidance of this Honourable Court.

The Receiver's efforts are aimed at improving the overall business for everyone, with a view to maximizing the value of the assets overall, not just for one constituency. If successful, the Receiver's efforts would also have the effect of increasing the value of the residential condominium units, as more profitable and stable Hotel Operations and overall rental management environment should have that effect on the value of the residential condominium units.

The relief sought by TSCC 1703 and Mr. Demeester to amend Paragraph 14 of the Appointment Order is intended to permit individual residential condominium unit owners currently in the rental management program to unilaterally withdraw their respective units from the rental management program. If this Honourable Court grants such relief, and a sufficient number of owners withdrew their residential condominium units from the rental management program, the Receiver may be in the position where it is no longer economical or justifiable to continue operating any of the businesses run by Suites, SHI, DCC and Housekeeping. In that event, the result may well be for the Receiver to take steps to terminate the employment of all employees, other than for the few required for ongoing security and maintenance of the property, cease providing services to the Ontario Club, secure off all areas owned by the commercial

condominium corporation T.S.C.C. No. 1726 ("TSCC 1726") and DCC, reduce the required insurance coverage, and ensure that only a narrow access way, which currently exists, was maintained to allow unit owners to access their units. The Receiver would also have to consider, given the complex nature of the ownership structure, whether or not it would in fact be necessary to maintain the current amount of elevators that are in service. The Receiver would then reassess its cash flow needs and the sales process to bring to this Honourable Court for approval. No doubt values would be negatively impacted.

One aspect of this matter is that, if the Court allows unit owners to unilaterally terminate their RMA's, it would cause up to 400 units to go on the leasing market in circumstances where they cannot be leased for less than a 1 year period. Considering the configuration of these units and their use as hotel rooms, it is unlikely that many owners would be able to replace the existing distributions from Suites, thereby causing even greater financial stress for many owners. In Paragraph 15 of the Smith Affidavit, Mr. Brian Smith effectively highlights that issue – many unit owners may already be losing money on a monthly basis and to remove a substantial number of units from the rental management pool will likely increase that loss for many owners on a monthly basis. With respect, this would be an illogical result for TSCC 1703.

The Receiver is also concerned that the request from TSCC 1703 to allow the RMA's to be terminated is directed towards ensuring that TSCC 1703 acquires the Hotel Operations. TSCC 1703 has repeatedly indicated to the Receiver (and to this Honourable Court) not only that it wishes to acquire the Hotel Operations, but that it sees itself as the only buyer, and that it wishes to acquire the Hotel Operations for as little as possible. TSCC 1703's counsel, Mr. Arnold, has advised the Court that their view is that the RMA's can be terminated in a bankruptcy of the rental manager, and Mr. Verdun, the President of TSCC 1703, has publicly stated the same

position and acknowledged that he met with Mr. Stinson and the proposed trustee in bankruptcy to discuss the assignments in bankruptcy executed by Mr. Stinson for the Debtors (which have since been annulled by this Honourable Court and that decision is being appealed by the Debtors). Thus, it is possible to view the motion, as it pertains to paragraph 14 of the Appointment Order, as being in furtherance of TSCC 1703's efforts to acquire the Hotel Operations without necessarily participating in a sales process run by the Receiver.

It appears to the Receiver that if sufficient residential condominium unit owners were allowed to withdraw their units from the rental management program, it could result in the closure of not only the operations of Suites, but also the operations of SHI, DCC and Housekeeping. In that event, all operations would cease and this would substantially reduce the value of the property currently owned by DCC, TSCC 1726, TSCC 1703 and each individual residential condominium unit owner, whether they currently participate in the rental management program or not. It would also result in the loss of employment for a number of people. It seems, on the balance of fairness and equity, and common business sense, that all employees, suppliers, residential condominium unit owners, DCC, TSCC 1726 and TSCC 1703 need to be protected from the potential negative consequences of the relief sought by TSCC 1703 and Johan Demeester. Accordingly, the Receiver respectfully submits that the motion to amend paragraph 14 of the Appointment Order be denied.

#### **4.3 Costs of the motion**

The Receiver is an officer of this Honourable Court, acting not as a principal for its own right but for the benefit of other parties. The Receiver's conduct in this matter has been reported on and approved by this Honourable Court. There is no suggestion that the Receiver has acted

inappropriately in connection with these issues and there are no grounds for such an allegation. Accordingly, the Receiver submits that it is wholly inappropriate for costs to be sought in this matter, and that this Honourable Court should deny such relief. In the alternative, in the event any such costs are awarded, the Receiver respectfully submits that such costs should only come from funds in Suites.

## **5.0 OPERATING RESULTS FOR THE DEBTORS**

The corporate structure and operations of each of the Debtors are fully set out in the Monitor's Reports and the First Report and the Receiver refers the reader to those Reports.

### **5.1 SHI**

As reported by the Monitor in its First Report, SHI's revenue stream consists primarily of management fees charged to the rental management program (\$165/unit per month), and a management incentive fee calculated as 5% of the aggregate net rental revenue of the rental management program. There is no separate financial reporting prepared for SHI as the Receiver is now effectively operating as the rental manager.

### **5.2 DCC**

DCC Operations accounts for the revenue and direct costs of the F&B operations. DCC Operations' financial results are included in DCC Corporate's income statement. DCC's F&B program has been operating at a loss since inception.

Based on available financial information, the Receiver has prepared a summary of DCC's operating results for the nine-month period ended September 30, 2007. During the month of September, the banquet business was unusually strong. In the First Report, the Receiver reported

that for the eight month fiscal period ended August 31, 2007, DCC incurred an operating loss of \$197,548<sup>4</sup>. Due to September's F&B performance, the year to date operating loss was reduced to \$24,483 on revenue of \$2.9 million. During the month of September, 2007, DCC incurred a net operating income of \$173,065 on revenue of \$570,291, as compared to the status quo budgeted operating loss of \$27,005. A full summary is attached hereto as **Exhibit "D"**.

### **5.3 Housekeeping**

Housekeeping provides all of the housekeeping services for the Operations. For the nine-month period ending September 30, 2007, Housekeeping revenue is \$1.64 million and net income before tax is \$446,000.

A full summary is attached hereto as **Exhibit "E"**.

### **5.4 Suites**

Suites acts as a nominee on behalf of the residential condominium unit owners in the rental management program. In the First Report, the Receiver advised that the distribution to the owners for August, 2007, totalling \$485,709.99, was issued by the Receiver in September, 2007.

### **5.5 Owners' distributions**

As per the RMA's, the rental manager is required to pay to unit owners their respective share of net rental revenue (as defined in the RMA) from the Hotel Operations.

---

<sup>4</sup> Exhibit "F" of the First Report.



flowing from CK's work and recommendations. These operational changes are mainly in the area of F&B and specifically, eliminating overnight room service, as it is underutilized, an increased marketing effort for new banquet business and other operational changes which should reduce costs and increase the gross margin in the F&B area so that it is more in line with industry standards. These changes, if successful, will increase the status quo budgeted gross profit from 26% to 45% of gross revenue. Banquet business is also a driver of increased hotel room occupancy.

Attached as **Exhibit "F"** are the revised consolidated and individual projected cash flow statements incorporating these new assumptions. While there is a clear improvement over the period in question from the status quo projections contained in the First Report, it appears that funds in excess of the revenues received by SHI, DCC and Housekeeping (net of their expenses of operating the business) will be required to cover all costs of the receivership.

#### **7.0 ALTERNATIVES CURRENTLY AVAILABLE TO THE RECEIVER TO FUND THE RECEIVERSHIP**

The Appointment Order clearly appoints the Receiver over all of the assets of each of the Debtors, including Suites. The Receiver has a charge on all such assets to secure its fees and any borrowings it may make by way of receiver's certificates. The Receiver has consistently advised stakeholders and the Court that it wishes to avoid impacting unit owner distributions – it was for that reason that the Receiver's counsel included paragraph 5 in the drafts of the Appointment Order. Unfortunately, (i) losses worsened for DCC based on the year to date performance as at the end of August 2007, (ii) Housekeeping's September billing to Suites was accelerated and increased prior to August 24 and its bank account was depleted also prior to August 24, and (iii) the matter has been far more litigious than the Receiver anticipated in August, driving

professional fees very high. As noted above, the shortfall has been reduced from the projections in the First Report, however, the revised projections indicate that a shortfall still exists when professional fees are included. Therefore, to cover that shortfall without impacting the distributions to unit owners, the Receiver must either borrow funds from a source or take funds from the FF&E reserve maintained by Suites under the RMA's.

At the October 10 meeting, the Receiver advised of these options. Mr. Arnold for TSCC 1703 inquired about the indemnity, believing that it would be called upon before any funds are taken from Suites. Counsel for the Receiver advised that the indemnity from the Mirvish Group is a form of guarantee and is only to be called upon in the event that the assets under the Receiver's administration are exhausted, and that the Mirvish Group was not prepared to make payments under the indemnity while there were funds available. Since the Appointment Order clearly covers Suites, the Mirvish Group has advised the Receiver that it expects the Receiver to exhaust its recourse against all of those assets before the Mirvish Group will consider funding anything under the indemnity. This is a position which the Receiver believes they are entitled to take under the terms of the Appointment Order.

At the October 10 meeting, the Mirvish Group advised that it was not prepared to fund losses incurred by DCC in the operation of the F&B Service to the Hotel Operations, and as far as it was concerned, it was the Receiver's decision whether or not to operate that program and, if so, how it was going to fund any losses that would be incurred. A discussion ensued between the Mirvish Group and Mr. Brian Smith, representing TSCC 1703, and respective legal counsel, but no resolution occurred at the meeting. Subsequent to the meeting, the Mirvish Group confirmed its position to the Receiver in writing. Attached as **Exhibit "G"** is a copy of the letter of Ed Mirvish Enterprises Ltd. dated October 17, 2007 to the Receiver confirming such advice.

### 7.1 Option 1 - borrowing

The Appointment Order allows the Receiver to borrow up to \$500,000 through the issuance of Receiver's Certificates. The Receiver has been granted a first charge over all of the assets of all four Debtors for its fees, costs and any necessary expenditures (the "Receiver's Charge", as defined in the Appointment Order), and the Receiver's Borrowings Charge (as defined in paragraph 23 of the Appointment Order) ranks in priority to all other charges, other than the Receiver's Charge.

As the Mirvish Group has advised the Receiver that it will not fund losses incurred by DCC, and has taken the position that it does not have to fund the Receiver under its indemnity while other funds are available to the Receiver under the Appointment Order, the Receiver has not yet attempted to borrow funds from the Mirvish Group, but of course reserves this as an option.

The Receiver recently approached Mr. P. Kohls, Assistant Vice President Commercial Financial Services, HSBC Bank Canada ("HSBC"), to enquire as to a loan from HSBC. On its appointment, as disclosed in the First Report, the Receiver maintained the accounts established by DCC, Suites and Housekeeping at HSBC. Mr. Kohls is the Receiver's contact. The Receiver inquired of Mr. Kohls as to whether or not HSBC would be prepared to provide borrowing facilities to the Receiver and, if so, on what terms and conditions. The Receiver also specifically requested if HSBC would provide the borrowing facility on the basis that only the assets, properties and undertakings of SHI, DCC and Housekeeping were provided by virtue of the Receiver's Certificate(s), but not those of Suites.

After consultation within HSBC and with its external legal counsel, Mr. Kohls advised the Receiver that HSBC will grant to the Receiver a \$500,000 overdraft facility on the following basis:

- Security - assignment of \$500,000 credit balances;
- Interest - Prime
- Processing Fee - \$500
- Precedent Conditions -
  - confirmation by the Bank's solicitor that the Receiver has to right to borrow and security is assignable.
  - the Borrower is responsible for all reasonable legal fees and disbursements.

HSBC has advised that it will only be prepared to lend if it receives cash collateral in the same amount as is borrowed. The only entity in receivership that has the assets to meet the security requirements of HSBC is Suites. Attached as **Exhibit "H"** is the email correspondence between the Receiver and HSBC outlining the proposed financing arrangements. The Receiver has not approached any other potential lender at this time, as HSBC is the potential lender most familiar with the operations of the Debtors.

In the circumstances, the Receiver does not think it would be appropriate to borrow funds using cash on hand as collateral and pay interest on the loans.

## 7.2 Option 2 – funds on hand in Suites

As disclosed in the First Report, and as disclosed in **Exhibit "I"** attached to this Second Report, Suites maintains two types of funds under the RMA's: (i) general operating funds derived from income from Hotel Operations, less expenditures required to operate the rental management

program, with the owners' distributions being funded through the balance; and (ii) the Capital Expense Reserve Fund (as defined in the individual RMA's) required under the individual RMA's on account of future capital expenditures as defined in the individual RMA's (the "FF&E reserve"). At October 17, 2007, the balance of funds on hand in the FF&E reserve totalled \$764,772. Under the terms of the RMA's, while the FF&E reserve is to be held in a segregated account, the funds are not held in trust and the RMA's specifically provide that owners who terminate the RMA's have no ability to recover a portion of the FF&E reserve.

At the October 10 meeting, and subsequent to then, Mr. Latham advised Mr. Arnold that the Receiver could look to such funds to aid in the funding of the receivership costs, so as not to adversely affect any funds which would be distributable to the owners. The motion material of TSCC 1703 and Johan Demeester fails to refer to this option.

#### **8.0 RECEIVER'S STATEMENT OF RECEIPTS AND DISBURSEMENTS**

The consolidated statement of receipts and disbursements of the Receiver for the period from August 25, 2007 to October 17, 2007, is attached hereto as **Exhibit "I"**.

#### **9.0 EXPRESSION OF INTEREST BY BRANDED HOTEL**

As disclosed in the First Report, a representative of the Receiver and CK held a conference call with representatives of the Brand on September 25, 2007. The Brand expressed interest in pursuing 1 King West, however one of its conditions precedent is that it be granted a certain period of exclusivity, to permit it to prepare a pro forma budget for its proposed concept at 1 King West and a non-binding Letter of Intent to provide to the Receiver.

CK has provided its views on certain matters within the business of the Debtors that would need to be addressed in order to turn the Hotel Operations into a branded hotel, including the need to apply for the required municipal approvals, and the associated time line with attempting to obtain such approvals.

As a result of the October 10 meeting, the Mirvish Group has agreed that discussions with the Brand should be advanced by the Receiver on an exclusive basis, but only for an initial period of 30 days. Mr. Brian Smith also advised the Receiver that he believed it appropriate that the Receiver deal with the Brand on the same initial 30 day exclusivity period. TSCC 1703 has neither consented to nor opposed this effort.

An Exclusivity and Confidentiality agreement has been prepared by Goodmans LLP and was provided to representatives of the Brand for their comments. The Brand has concurred with the concept of entering into such an agreement substantially in the form attached as **Exhibit "C"**. As noted in the First Report, the Receiver recommends that this opportunity be explored on a short-term basis.

## **10.0 ONTARIO CLUB**

The Receiver again met with representatives of the Ontario Club on Tuesday October 2, 2007, to continue a dialogue regarding alternatives and solutions.

The Receiver has advised the Ontario Club that it will be required to fund any losses incurred by DCC in providing ongoing F&B services to the Ontario Club effective November 1, 2007.

## 11.0 OTHER MATTERS

Mr. Stinson's legal counsel served Notices of Appeal to the Ontario Court of Appeal in respect of the Appointment Order and in respect of the Endorsement of the Honourable Madam Justice Pepall annulling the assignments in bankruptcy filed by Mr. Stinson on behalf of each of the Debtors on September 18, 2007.

The Receiver's current understanding is that Mr. Stinson has abandoned his appeal of the Appointment Order, and that the appeal of the annulment of the bankruptcies is presently scheduled to be heard by the Court of Appeal on December 4, 2007.

## 12.0 INSURANCE

In the First Report the Receiver advised this Honourable Court that the Receiver had maintained the Debtors' existing property and liability insurance coverage, with slight amendments, after obtaining the advice of the Receiver's insolvency program insurance broker, Firstbrook, Cassie & Anderson Ltd. The main amendments were to eliminate the coverage of motor vehicles used in the Hotel Operations, as the vehicles were not owned by any of the Debtors and were not being used by the Receiver. The Receiver notes that each unit owner should make their own determination as to whether they require any additional insurance for their unit(s).

Attached hereto as **Exhibit "J"** is a copy of the relevant endorsements and certificates obtained by the Receiver from the Debtors' insurance broker.

## 13.0 AUDIT REQUIREMENT OF SUITES

In accordance with the individual RMA's, the rental manager is required to produce annual audited financial statements to unit owners within 120 days of the end of each fiscal year

(December 31). Mr. M. Wolfe, on behalf of the Receiver, met with Mr. S. Stein of BDO Dunwoody LLP, Chartered Accountants, the incumbent auditor, to discuss the audit requirements for the fiscal 2007 year, and to obtain an estimate of the cost of the audit. Mr. Wolfe and Mr. Guraya, also met with representatives of SBLR LLP, Chartered Accountants, to determine their desire to perform the audit mandate, and to determine their estimate of cost.

After such meeting, Mr. Guraya advised that SBLR LLP was acceptable to him. Attached as **Exhibit "K"** is the email of BDO Dunwoody LLP confirming the basis upon which they are prepared to conduct the audit. The Receiver believes that achieving cost certainty is desirable, and recommends to this Honourable Court that it enter into an audit engagement letter with SBLR LLP substantially in the form included in **Exhibit "L"**. The Receiver and Mr. Guraya both agree that the proposal of SBLR LLP provides more cost certainty, and that both firms are qualified to act as auditor.

#### **14.0 FEES AND DISBURSEMENTS OF THE RECEIVER**

Attached hereto as **Exhibit "M"** is the Affidavit of Mr. Ira Smith, President of ISI, attesting to the fees and disbursements of the Receiver for the period from September 16, 2007 to October 15, 2007.

#### **15.0 FEES AND DISBURSEMENTS OF GOODMAN'S LLP**

Attached hereto as **Exhibit "N"** is the Affidavit of Ms. Caterina Costa of Goodmans LLP, attesting to the fees and disbursements of Goodmans LLP for the period from September 25, 2007 to October 19, 2007.

## 16.0 CONCLUSION AND RECOMMENDATIONS

For the reasons set out in this Second Report, the Receiver respectfully requests that this Honourable Court dismiss the motion brought by TSCC 1703 and Johan Demeester in its entirety, and that this Honourable Court approve:

1. the actions and activities of the Receiver as described in this Second Report;
2. the Receiver entering into the Exclusivity and Confidentiality agreement with the Brand, substantially in the form contained in **Exhibit "C"** in this Second Report;
3. the Receiver entering into an engagement letter with SBLR LLP, Chartered Accountants, substantially in the form contained in **Exhibit "L"** in this Second Report;
4. the professional fees and disbursements of the Receiver from September 16, 2007 to October 15, 2007 as contained in this Second Report;
5. the professional fees and disbursements of the Receiver's legal counsel, Goodmans LLP, from September 25, 2007 to October 19, 2007 as contained in this Second Report; and
6. such other advice and direction from this Honourable Court that the Receiver or its legal counsel deems appropriate in the circumstances.

\*\*

\*\*

\*\*

All of which is respectfully submitted at Toronto, Ontario this 22nd day of October, 2007.

**IRA SMITH TRUSTEE & RECEIVER INC.,**  
solely in its capacity as the Court-Appointed Receiver  
of Stinson Hospitality Inc., Dominion Club of Canada  
Corporation, The Suites at 1 King West Inc., and  
2076564 Ontario Inc., and not in its personal Capacity

Per: \_\_\_\_\_

Ira Smith  
President