

# **Lamco Investments Ltd.**

## **SECOND REPORT OF THE RECEIVER**

**March 28, 2011**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF THE PROPOSAL OF LAMCO INVESTMENTS LTD. A  
COMPANY CONTINUED PURSUANT TO THE LAWS OF THE PROVINCE OF  
ONTARIO WITH A HEAD OFFICE IN THE CITY OF MISSISSAUGA IN THE  
PROVINCE OF ONTARIO**

**SECOND REPORT OF PRICEWATERHOUSECOOPERS INC.  
AS RECEIVER  
OF LAMCO INVESTMENTS LTD.**

**March 28, 2011**

**INTRODUCTION**

**BACKGROUND**

1. Lamco Investments Ltd. (“**Lamco**” or the “**Company**”) was subject to a proceeding under Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B.-3, as amended, (the “**BIA**”) as a result of it filing a Notice of Intention to Make a Proposal on August 27, 2010 (the “**Proposal Proceedings**”). Soberman Inc. was appointed as the trustee under the Proposal Proceedings (the “**Proposal Trustee**”).
2. On September 24, 2010, the Honourable Justice Little granted the Company an extension of time for the filing of its proposal under the BIA (the “**Proposal**”), which also extended the stay of proceedings under Section 69 of the BIA to October 12, 2010.
3. The Company obtained further extensions of the time for the filing of the Proposal, culminating with the order of the Honourable Justice Morissette on October 22, 2010

(the “**October 22 Order**”), which also authorized and approved a sale process (the “**Sale Process**”) for the marketing and selling of the Company’s assets.

4. On November 15, 2010, the Company brought a motion for the extension of the time for the filing of the Proposal until December 31, 2010. On the same date, General Electric Canada Real Estate Finance Inc., and GE Canada Equipment Financing G.P./G.E. Canada SCNC (together “**GE**”), made a motion pursuant to Section 243(1) of the BIA, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, for the appointment of PricewaterhouseCoopers Inc. (“**PwC**”), as receiver (the “**Receiver**”) without security, of all the assets, undertakings, and properties of the Company (the “**Property**”).
5. As a result of hearing the Company’s motion and GE’s motion on November 15, 2010, this Honourable Court denied the Company’s request for an extension of the time for the filing of the Proposal and, pursuant to an order of the Honourable Mr. Justice Morawetz (the “**Appointment Order**”), PwC was appointed as Receiver. The period commencing on and subsequent to November 15, 2010 (the “**Date of Appointment**”) is referred to herein as the “**Receivership Proceedings**”.

#### **PURPOSE OF REPORT**

6. The Receiver’s first report to this Honourable Court dated February 14, 2011 (the “**First Report**”), which, among other things, provided information in respect of the Receiver’s sale of virtually all of the Property to 1277648 Ontario Ltd. (“**1277648**”), or its assignee, is attached hereto as **Appendix “A”**. In addition, on February 22, 2011, the Receiver filed a supplement to the First Report (the “**Supplement to the First Report**”), which is attached hereto as **Appendix “B”**.
7. This is the Receiver’s second report (the “**Second Report**”), the purpose of which is to provide this Honourable Court with information in respect of:
  - i) The Receiver’s activities from the date of the First Report to the date of this Second Report;

- ii) The Receiver's cumulative statement of receipts and disbursements from the Date of Appointment to March 17, 2011;
- iii) The completion of the Sale Transaction (as hereinafter defined) and the sale of the Property to 3637182 Canada Inc., as a related assignee of 1277648;
- iv) The Receiver's review of the validity and enforceability of the GE's security (the "**GE Security**") in respect of the Property, and the opinion thereon of the Receiver's independent legal counsel, Miller Thomson LLP ("**Miller Thomson**");

and to seek an order of this Honourable Court:

- i) Approving the Supplement to the First Report, this Second Report and the Receiver's activities as described therein;
- ii) Approving the accounts of the Receiver for the period from November 15, 2010 to February 28, 2011;
- iii) Approving the accounts of the Receiver's legal counsel, Miller Thomson, for the period from November 15, 2010 to February 16, 2011;
- iv) Approving the Receiver's Statement of Receipts and Disbursements from November 15, 2010 to March 17, 2011;
- v) Approving an interim distribution to GE in an amount of \$3,000,000 (the "**GE Distribution**");
- vi) Authorizing the Receiver to make such subsequent distributions to GE as the Receiver determines are appropriate, subject to maintaining sufficient reserves to satisfy the Outstanding Disbursements (as hereinafter defined) and complete the administration of the Receivership Proceedings;
- vii) Declaring that all steps taken by and activities of the Receiver and all amounts distributed, or to be distributed, by the Receiver are approved and that PwC

shall have no further liability in respect thereof, save for any gross negligence or wilful misconduct;

- viii) Discharging the Receiver, subject to the Receiver completing its administration of the estate herein and distributing the Net Proceeds, and subject to the Receiver filing a Certificate evidencing same with the Court; and
- ix) Declaring that PwC is released and discharged from any and all liability that PwC now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of PwC while acting in its capacity as Receiver.

## **RESTRICTIONS**

8. In preparing this report, the Receiver has relied upon unaudited and draft, internal financial information obtained from the Company's books and records and discussions with former management and staff. The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information provided to it and expresses no opinion, or other form of assurance, in respect of the information contained in this report.
9. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms used but not otherwise defined herein are as defined in the Appointment Order.

## **RECEIVER'S ACTIVITIES SINCE THE DATE OF THE FIRST REPORT**

### **OPERATIONS**

10. Since the Date of the First Report, and up to the time of the closing of the Sale Transaction, the Receiver has continued to oversee the operations of the Hotel, and the provision of its services, including maintaining lodging and room availability and continuing the operation of the restaurant, lounge, meeting rooms and swimming pool.
11. As described in the First Report, on November 24, 2010, the Receiver obtained a Liquor Sales License from the Alcohol and Gaming Commission of Ontario ("AGCO")

in the name of the Receiver. In connection with the completion of the Sale Transaction, on March 8, 2011 the Receiver cancelled its Liquor Sales Licence with the AGCO.

#### **DEALINGS WITH RAMADA INTERNATIONAL**

12. As described in the First Report, on or about November 22, 2011, legal counsel for Ramada International (“**Ramada**”) contacted the Receiver to discuss the Receiver’s intentions with respect to the ongoing operation and sale of the Hotel.
13. The Company’s book and records indicate that the Company was indebted to Ramada in the amount of approximately \$300,000 (the “**Ramada Arrears**”) as at the Date of Appointment, primarily as a result of the Company apparently not paying various royalties and other fees pursuant to the Company’s license agreement with Ramada (the “**License Agreement**”), since late 2008.
14. Subsequent to the Date of Appointment, the Receiver has not made any payments to Ramada in respect of the License Agreement. On or around January 31, 2011, the Receiver made a proposal to Ramada with respect to amounts the Receiver would be willing to pay to Ramada in respect of the Receivership Proceedings, which Ramada did not accept. On February 2, 2011, Ramada’s legal counsel advised the Receiver that the Receiver’s proposal was not acceptable to Ramada. The Receiver has not received any further correspondence from Ramada with respect to this matter since Ramada’s correspondence to the Receiver on February 2, 2011.

#### **STATUTORY DUTIES**

15. To the best of its knowledge and belief, the Receiver has complied with all of its statutory duties and obligations pursuant to the BIA as of the date of this Second Report. Prior to filing its Certificate of Discharge, described more fully below, the Receiver will complete its statutory duties, including preparing and filing its final report pursuant to section 246(3) of the BIA.

## STATEMENT OF CASH RECEIPTS AND DISBURSEMENTS

16. The Receiver's statement of receipts and disbursements for the period from November 15, 2010 to March 17, 2011 (the "**Receiver's R&D**") is summarized as follows:

<b>Statement of Receipts and Disbursements</b>	
<b>November 15, 2010 to March 17, 2011</b>	
<b>Receipts:</b>	
Cash on hand, November 15, 2010	9,909
Collection of pre-receivership accounts receivable	53,725
Operating revenue from room rentals, food and beverage sales, and other miscellaneous	600,926
Sale of Property to 3637181 Canada Inc.	3,977,481
<b>Total Receipts</b>	<b>4,642,041</b>
<b>Disbursements:</b>	
Pay roll including contract services and gratuities	378,614
Food and beverage purchases	52,076
Services and supplies	76,035
Utilities	73,283
Other	34,538
Insurance	6,369
Harm onized Sales Tax (net of credits)	96,521
<b>Total Disbursements</b>	<b>717,436</b>
<b>Excess of Receipts over Disbursements</b>	<b>3,924,605</b>
Less:	
Commission to CBRE Hotels	97,500
Pay ment of Property tax arrears	315,329
Receiv er's fees and disbursements	215,340
Fees and disbursements of Receiv er's legal counsel	60,804
<b>Net Receipts over Disbursements before secured charges</b>	<b>3,235,632</b>
Pay ment of Section 81.4 Claims	22,451
<b>Net Receipts over Disbursements</b>	<b>3,213,181</b>

17. Pursuant to paragraph 21 of the Appointment Order, the Receiver was authorized to borrow up to \$100,000, if required, (the "**Receiver's Borrowings**") for the purpose of funding the exercise of its powers and duties pursuant to the Appointment Order. The Receiver borrowed \$50,000 from GE shortly after the Date of Appointment in order to make a payroll payment, among other things. On March 15, 2011, the Receiver repaid the Receiver's Borrowings, with interest.

18. The Receiver currently estimates that there are approximately \$150,000 in accrued obligations, primarily related to estimated utility costs and obligations related to the procurement of supplies and inventories associated with the Hotel's ongoing operations, subsequent to the Date of Appointment and up to the date of closing of the Sale Transaction, as a result of timing differences between the date obligations were incurred and the payment thereof, and accrued and unpaid fees of the Receiver's legal counsel (the "**Outstanding Disbursements**").

## **THE COMPLETION OF THE SALE TRANSACTION**

19. On January 28, 2011, the Receiver and 1277648 executed a binding asset purchase agreement (the "**1277648 APA**") in respect of the sale of substantially all of the Property (the "**Sale Transaction**") to 1277648 or a related assignee. Subsequently, the Receiver was advised by 1277648's legal counsel that the Sale Transaction would be entered into by 3637182 Canada Inc. ("**3637182**"), an assignee related to 1277648. On February 22, 2011, pursuant to an order of the Honourable Madam Justice Mesbur, this Honourable Court approved the Sale Transaction.
20. Pursuant to the terms of the 1277648 APA, the Sale Transaction was to close within 10 days of the Court's approval of the Sale Transaction, or March 4, 2011, or such later date as agreed to by the parties. The Receiver and 3637182 mutually agreed to extend the closing of the Sale Transaction to March 8, 2011, on which date the Sale Transaction closed and possession of the Property was provided to representatives of 3637182.
21. After adjustments, the total proceeds of sale realized by the Receiver in respect of the Sale Transaction were approximately \$3.98 million.
22. In connection with the completion of the Sale Transaction, a total of 45 out of 48 hotel employees were retained by 3637182.
23. As described in the First Report, the License Agreement with Ramada was not assigned to 3637182 as part of the Sale Transaction.

## REQUEST FOR FEE APPROVAL

24. The Receiver and its counsel, Miller Thomson, have maintained detailed records of their professional time and costs since the Receiver's appointment.
25. Pursuant to paragraphs 18, 19 and 20 of the Appointment Order, any expenditure or liability properly made or incurred by the Receiver, including the fees of the Receiver and the fees and disbursements of its legal counsel, are authorized to be paid on a periodic basis subject to the approval of this Honourable Court.
26. The total fees of the Receiver during the period from November 15, 2010 to February 28, 2011 (the "**Receiver's Fee Period**") amount to \$202,422.50, together with expenses and disbursements in the amount of \$12,916.96, both excluding harmonized sales tax ("HST"), (collectively, the "**Receiver's Fees and Disbursements**"). The time spent by the Receiver's personnel during the Receiver's Fee Period is more particularly described in the Affidavit of Tracey Weaver of the Receiver (the "**Weaver Affidavit**"), sworn in support hereof and attached hereto as **Appendix "C"**. Exhibit "C" to the Weaver Affidavit is a summary of the personnel, hours, and hourly rates charged by the Receiver in respect of the Receivership Proceedings, for the Receiver's Fee Period.
27. The total fees for services provided by Miller Thomson during the period November 15, 2010 to February 16, 2011 (the "**Miller Thomson Fee Period**"), amount to \$59,621.65, together with expenses and disbursements in the amount of \$1,182.39 (both excluding HST) (collectively, the "**Miller Thomson Fees and Disbursements**"). The time spent by Miller Thomson personnel during the Miller Thomson Fee Period is more particularly described in the Affidavit of Craig Mills, a Miller Thomson partner (the "**Mills Affidavit**"), sworn in support hereof and attached hereto as **Appendix "D"**. Exhibit "D" to the Mills Affidavit provide a summary of the personnel, hours, and hourly rates charged by Miller Thomson in respect of the Receivership Proceedings, for the Miller Thomson Fee Period.

28. The Receiver respectfully submits that the Receiver's Fees and Disbursements and the Miller Thomson Fees and Disbursements are reasonable in the circumstances and have been validly incurred in accordance with the provisions of the Appointment Order. Accordingly, the Receiver seeks the approval of the Receiver's Fees and Disbursements and of the Miller Thomson Fees and Disbursements.

## **REQUEST FOR APPROVAL OF DISTRIBUTION TO GE**

### **OBLIGATIONS OWING TO GE**

29. Details of the Company's obligations to GE are set out in the affidavit of Edward Khediguian sworn on October 4, 2010 (the "**Khediguian Affidavit**"), a copy of which, without Exhibits, is attached hereto as **Appendix "E"**.

30. In summary, the Company's obligations to GE are secured by the following agreements and other documents (collectively, the "**GE Security**"), including but not necessarily limited to:

- i) A mortgage/charge of Land registered March 3, 2005 in the principal amount of \$4,200,000 (the "**Mortgage**");
- ii) An assignment of Rents registered March 3, 2005; and
- iii) A General Security Agreement dated February 24, 2005.

31. GE has advised the Receiver that, as of February 28, 2011, the amount of principal and accrued interest owing by Lamco under the credit facilities provided to it by GE is \$3,708,599.05.

### **SECURITY OPINION**

32. The Receiver has obtained an independent legal opinion (the "**Security Opinion**") from Miller Thomson with respect to the validity and enforceability of the GE Security.

33. Subject to the customary qualifications and limitations contained therein, it is Miller Thomson's opinion that the GE Security is valid and enforceable.

## PRIORITY

34. Based on its review of registrations made under the Personal Property Security Act (Ontario) (the “**PPSA**”), The Bank of Nova Scotia (“**BNS**”) has registered first in time against the personal property of Lamco. GE initially registered its security interest under the PPSA subsequent to BNS. However, BNS postponed its security to the GE Security pursuant to a letter agreement between those parties dated February 25, 2005, which indicates that BNS postpones any security interest relating to the property of Lamco to the GE Security. In addition, on April 5, 2005, BNS amended its registration under the PPSA, the effect of which was to postpone all past, present and future security interests held by it, to the GE Security. In addition, BNS registered a postponement of its mortgage in favour of GE against title to the real property. As a result, the Mortgage appears to grant GE a first charge in and to the Company’s real property.
35. The GE Security is subject to prior charges and security interests or claims against the Property, which include:
  - i) The Receiver’s Charge;
  - ii) The Receiver’s Borrowing Charge; and
  - iii) Claims pursuant to section 81.3 (“**81.3**”) and section 81.4 (“**81.4**”) of the BIA (the “**81.3 Claims**” and the “**81.4 Claims**”, respectively).
36. The fees of the Receiver and Miller Thomson have been paid up to February 28, 2011 and February 16, 2011, respectively and the Receiver has included in its estimate of the Outstanding Disbursements its estimated fees and disbursements and those of Miller Thomson, to complete the administration of the Receivership Proceedings. In addition the Receiver’s Borrowings have been repaid as described above.

### **81.3 CLAIMS AND 81.4 CLAIMS**

37. As described above, on November 15, 2010 this Honourable Court denied the Company's request for the extension of the time for the filing of a proposal pursuant to the Proposal Proceedings. Accordingly, pursuant to an endorsement of the Honourable Mr. Justice Morawetz on January 18, 2011, the Company was deemed to have made an assignment in bankruptcy pursuant to the BIA on November 17, 2010. As a result of the bankruptcy of the Company and the appointment of the Receiver, the Receiver reviewed the Company's books and records with a view to determining the quantum of the 81.3 Claims and the 81.4 Claims.
38. As a result of its review, the Receiver has determined that the 81.3 Claims and the 81.4 Claims were virtually identical, with the maximum of such claims totalling \$22,451. As of the date of this Second Report, the Receiver has paid all of the 81.3 Claims or the 81.4 Claims, directly to Lamco's employees. Accordingly, to the best of the Receiver's knowledge and belief, all of the claims in priority to the GE Security under 81.3 and 81.4 have been paid.

### **REQUEST FOR APPROVAL OF A DISTRIBUTION TO GE**

39. The following summarizes the amount available for the GE Distribution:

<b>Calculation of GE Distribution</b> <b>As at March 28, 2011</b>	
Net Receipts over Disbursements	3,213,181
Less: Reserve for Outstanding Disbursements	150,000
<b>Net Available for Distribution</b>	<b>3,063,181</b>

40. Other than the claims described above, the Receiver is not aware of any security interests, liens, charges, encumbrances or other rights of third parties that would have priority over the GE Security with respect to the Property.

41. The Receiver is of the view that, in order to maximize efficiency and avoid the need to seek the approval of this Honourable Court to make a subsequent distribution to GE, it is appropriate, in addition to seeking approval for the GE Distribution, to seek this Honourable Court's approval to make such subsequent distributions to GE as the Receiver determines are appropriate, subject to the Receiver maintaining sufficient reserves to complete the administration of the Receivership Proceedings, including payment of the Outstanding Disbursements.
42. The Receiver respectfully requests this Honourable Court authorize the GE Distribution in the amount of \$3 million, and such subsequent distributions to GE as the Receiver determines are appropriate, subject to maintaining sufficient reserves in order to satisfy the Outstanding Disbursements and complete the administration of the Receivership Proceedings.

## **CONCLUSION**

43. To the best of the Receiver's knowledge and belief, all duties of the Receiver, as set out in the Appointment Order, will be completed upon payment of the Outstanding Disbursements and the completion of its statutory duties pursuant to the BIA. Accordingly, the Receiver respectfully requests that this Honourable Court grant an order:
  - i) Approving the Supplement to the First Report, the Second Report and the Receiver's activities as set out therein;
  - ii) Approving the accounts of the Receiver for the period from November 15, 2010 to February 28, 2011;
  - iii) Approving the accounts of the Receiver's legal counsel, Miller Thomson, for the period from November 15, 2010 to February 16, 2011;
  - iv) Approving the Receiver's Statement of Receipts and Disbursements from November 15, 2010 to March 17, 2011;

- v) Authorizing and directing the Receiver to make the GE Distribution;
- vi) Authorizing the Receiver to make such subsequent distributions to GE as the Receiver determines are appropriate, subject to maintaining sufficient reserves to satisfy the Outstanding Disbursements and complete the administration of the Receivership Proceedings;
- vii) Declaring that all steps taken by and activities of the Receiver and amounts distributed, or to be distributed, by the Receiver are approved and that PwC shall have no further liability in respect thereof, save for any gross negligence or wilful misconduct;
- viii) Discharging the Receiver, subject to the Receiver completing its administration of the estate herein and distributing the Net Proceeds, subject to the Receiver filing a Certificate with the Court evidencing same; and
- ix) Declaring that PwC is released and discharged from any and all liability that PwC now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of PwC while acting in its capacity as Receiver.

All of which is respectfully submitted on this 28<sup>th</sup> day of March, 2011

**PricewaterhouseCoopers Inc.**

In its capacity as Receiver of Lamco Investments Ltd.



Greg Prince  
Senior Vice President