

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**IN THE MATTER OF  
TWIN RINKS LIMITED PARTNERSHIP and  
2035829 ONTARIO INC. O/A THE GONDOLA BAR AND GRILL  
of the Town of Oakville  
in the Province of Ontario**

**SECOND REPORT TO THE COURT  
SUBMITTED BY KPMG INC.  
INTERIM RECEIVER AND RECEIVER AND MANAGER**

April 13, 2007

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## ***1.0 Introduction and Purpose of Report***

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### **1.1 Introduction**

- 1.1.1** Twin Rinks Limited Partnership (“Twin Rinks” or the “Company”) is a limited partnership pursuant to the laws of the Province of Ontario. Twin Rinks was registered on July 15, 2002 as a limited partnership for the purpose of constructing and operating a twin rink ice complex in Oakville, Ontario. Twin Rinks operates the twin pad ice rink facility at 1663 North Service Road, Oakville, Ontario.
- 1.1.2** On or around October 1, 2004 the construction process was substantially complete and the facility began its operation of the ice rinks. The facility includes 2 ice rinks, 2 shooting pads, concession stand, retail pro shop and restaurant. 2035829 Ontario Inc. operates the restaurant under the name of the Gondola Bar and Grill (the “Gondola”) and is a wholly owned subsidiary of the Twin Rinks.
- 1.1.3** MIB Holdings Inc. was the former general partner until being replaced on October 23, 2006 by 2115579 Ontario Inc. (“the Interim General Partner”) as a result of a shareholder dispute among the limited partners.
- 1.1.4** The Company’s secured creditors include Credit Union Central of Ontario Limited which represents a syndicate of 7 other credit unions (collectively “CUCO”); and, Giffels Build Design Inc. (“Giffels”). The secured creditors are owed approximately \$7.8 million collectively.
- 1.1.5** As a result of various defaults in its loan agreements, its continuing losses and cashflow difficulties, and the litigation in process within the partnership group, the first secured creditor brought forward a motion to enforce its rights upon its security.
- 1.1.6** The Honourable Madam Justice Papell of the Ontario Superior Court of Justice appointed KPMG Inc. as Interim Receiver and Receiver and Manager of Twin Rinks (the “Receiver”) on March 7, 2007. A copy of the order of the Honourable Madam Justice Papell appointing the Receiver is attached as **Appendix A** (the “Initial Order”).
- 1.1.7** The Initial Order authorized the Receiver, among other things, to do the following:
- take possession and control of the property of Twin Rinks and any and all proceeds and receipts arising out of its property;
  - to manage, operate and carry on the business of Twin Rinks;
  - to market any or all of the property of Twin Rinks on such terms and conditions of sale as the Receiver deems appropriate; and,
  - to sell, convey, transfer, lease or assign the property of Twin Rinks.
- 1.1.8** In addition to the standard terms and conditions typically found in the “Model Order”, specific amendments were requested by counsel for the Interim General Partner and certain of the shareholders with respect to the ongoing management of the Twin Rinks operations. Specifically, Paragraph 30 of the Initial Order, which was added at the request of counsel for Twin Rinks ‘Orders that 2115579 Ontario Inc. may remain in place as the operator and manager of the property until the completion of this receivership or further order of the Court’. As outlined in the Receiver’s First Report, based on discussions with the Interim General Partner (“IGP”) and Management, to clarify the normal duties and responsibilities of the IGP prior to the Receiver’s

appointment, it was agreed with the IGP that the role of the IGP would not be required during the receivership period as the duties described by the IGP would be duplicated by the Receiver.

1.1.9 Pursuant to the Initial Order the Receiver had the authority to apply to the Court requesting that the Court make an Order placing the Gondola into receivership. As outlined in the Receiver's First Report, since the Gondola is an integral part of the Twin Rinks operations and is important to the sale process of the Twin Rinks, the Receiver believed that the assets of the Gondola should be included in the administration of this receivership to facilitate the Receiver's sale process and to protect prospective purchasers from any claims arising from current or pending litigation.

1.1.10 Accordingly, the Receiver brought forward a motion to expand the definition of the Debtor as it appears in the Initial Order to include the Gondola, which Order along with other relief was granted by the Honourable Mr. Justice Spence on April 3, 2007 (the "April 3 Order"), a copy of which is attached hereto at **Appendix B**.

## 1.2 Purpose of Receiver's Second Report

1.2.1 This constitutes the Receiver's **Second Report** to the Court in this matter and it is filed to:

- report on the Receiver's activities since the Receiver's First Report and seek the Court's approval for the Receiver's activities and conduct to date;
- seek an Order approving the purchase and sale agreement between the Receiver and the Corporation of the Town of Oakville;
- requesting this Honourable Court issue an Order vesting title to the Twin Rinks Assets in and to the Corporation of the Town of Oakville; and,
- obtain approval of the Receiver's Statement of Receipts and Disbursements for the period March 7, 2007 to April 10, 2007.

## 2.0 Receiver's Activities

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### 2.1 Background

2.1.1 Upon being appointed as Receiver on March 7, 2007, KPMG Inc. attended at Twin Rinks' premises and arranged to secure and take possession of all the Company's assets, books and records and cash in the corporate bank accounts. The Receiver's initial activities were detailed in the Receiver's First Report, a copy of which is attached at **Appendix C**. Since that time, the Receiver has continued the Twin Rinks operations in the normal course while completing a marketing/sale process for a sale of the Twin Rinks on a going concern basis.

### 2.2 Gondola Receivership

2.2.1 On April 3, 2007, the Receiver met with management of the Gondola and employees on site to advise them of the receivership and to advise that due to the losses on operations, the pending expiration of the liquor licence and the risks associated with serving consumable food and alcohol, the operations of the Gondola would cease immediately. The employees were notified by management not to return to work and that their payroll to April 3, 2007 would be funded by the Receiver.

### 2.3 Gondola Insurance

2.3.1 The Receiver advised the insurance broker of the receivership of the Gondola. The insurance broker advised the Receiver that no additional information or steps were required as the Gondola coverage is included with the Twin Rinks insurance policies.

### 2.4 Gondola Cash and Banking

2.4.1 Pursuant to the April 3 Order, the Receiver notified the Gondola's bank of its appointment and requested that all accounts be frozen except to remain open for deposit only.

2.4.2 The Receiver immediately made arrangements for a separate Court-appointed Receiver's trust account to facilitate all future receipts and disbursements with respect to the Gondola receivership administration. The funds on hand in the Gondola's accounts were transferred to the Receiver's trust account. Any deposits in transit to the old account will be deposited to the Receiver's trust account. The funds on hand will be used to pay deemed trust amounts including outstanding payroll, GST and PST. The Receiver does not expect there to be any funds available for distribution to unsecured creditors.

### 2.5 Gondola Notice

2.5.1 The Receiver has issued the notice pursuant to Section 245 of the *Bankruptcy and Insolvency Act* to all known secured and unsecured creditors of the Gondola.

### 3.0 Sale of Assets

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- 3.1 Pursuant to the Initial Order, the Receiver was authorized to market any or all of the assets and operations of Twin Rinks (the "Twin Rinks Assets"), including advertising and soliciting offers and negotiating such terms and conditions of sale as the Receiver in its discretion deemed appropriate.
- 3.2 The Receiver did not commission a formal appraisal of the Twin Rinks Assets. The facility is clearly a special purpose facility, unique in its marketplace. Based on the Receiver's knowledge, including investigation of the marketplace, there have been very few arena sales in the past few years, and no sales of a directly comparable facility.
- 3.3 Any formal appraisal process would consider comparable sales, replacement cost, and capitalized cashflow, in preparing an appraisal. Given the lack of comparable sales, and the fact that the arena is unique, the Receiver is of the view that an appraiser would focus on capitalized cashflow. The critical components of the calculation being projected earnings before interest, depreciation and taxes ("EBITDA"); and, the return an investor required on his investment, or the "cap rate". The Twin Rinks facility has not operated profitably since opening. Accordingly, historical EBITDA would not be an appropriate indication of its potential. The Receiver believed that the best and most likely only effective way to determine value would be to let the market determine the facility's EBITDA potential, and let it select a market driven capitalization rate, and thereby determine its value.
- 3.4 To accomplish this, the Receiver prepared and implemented a marketing and sales process. An information package (the "IP") together with a form of offer, lot listings and a confidentiality agreement was distributed to 48 prospective purchasers that were either identified by the Receiver and/or contacted the Receiver as a result of the Receiver's advertisement of its Invitation for Proposals posted in the March 9, 2007 and March 13, 2007 national edition of the Globe & Mail. A copy of the IP is attached as **Appendix D**.
- 3.5 The IP contemplated that all proposals must provide an allocation of the purchase price to each "Lot" of Twin Rinks Assets. Each Lot of assets represents those assets that specific parties were asserting a first ranking security interest in either through a security agreement or an equipment lease. The Lots were established to determine the market value of the Twin Rinks assets and to facilitate and expedite the determination of entitlement to proceeds generated from the sale of the Twin Rinks Assets, subject to the validity of security and to any future order from the Court.
- 3.6 The sale process resulted in the submission of 9 proposals. A summary of the 9 proposals submitted to the Receiver is attached hereto at **Appendix E**. Two of the nine proposals did not include deposits and could not be accepted as they did not comply with the terms and conditions of the Receiver's process. Of the seven remaining offers, the purchase price offered ranged from \$3.4M to \$7.5M.
- 3.7 A proposal submitted to the Receiver by one of the former limited partners included the assumption of all secured debt having a first charge on any of the Lot's assets. The total of the secured debt being assumed exceeds the offer the Receiver is recommending herein. However, the terms and conditions of the Receiver's sale process were not adhered to. Specifically, the proposal did not provide the requisite 15% deposit in certified funds. The Receiver contacted the prospective purchaser and requested the deposit. The prospective purchaser advised that it would only provide a deposit after CUCO agreed to provide financing and its offer had been accepted.

The Receiver advised that these demands were unfair to other proposers who adhered to the terms of the proposal process; and that it was rejecting the proposal.

3.8 The proposal submitted from a second group of former limited partners who would also have detailed, proprietary knowledge of the Twin Rinks potential value, ranked third of the seven qualifying offers received.

3.9 In reviewing the proposals submitted, and after considering the estimated closing adjustments, the offer submitted by the Corporation of the Town of Oakville (the "Town") represented a premium of in excess of \$750,000 over the second highest offer and considerably more than the third place bidder. Accordingly, the Receiver has accepted it and is in the process of entering into a purchase and sale agreement with the Town (the "Town Agreement"), which agreement will be subject to approval of this Honourable Court. A copy of the Town Agreement will be filed with the Court prior to the motion.

3.10 A summary of the purchase price offered by the Town between each Lot of assets is presented below:

Lot#	Amount	Secured Creditor	Description
1 & 2	\$7,350,000	CUCO	Twin Rinks Assets and operations
3	\$25,000	Central Technology Services - MIB001	Signage – Logo
4	\$30,000	Central Technology Services - MIB002	Aluma-Zorb Low "E" Ceilings
5	\$10,000	Northstar Leasing Corporation	Digital signage system
6	Not included	Varia Administrative Services Corp. - MI446194	Digital telephone system
7	Not included	Aureus Financial Corporation - 11044	Zamboni
8	\$15,000	Equirex Leasing Corporation - YV120409 and ZB260506	AV Equipment
9	\$10,000	Leasebank Capital Corporation - M10628-10628	Surveillance system and Skate sharpening machine
10	\$60,000	Bank of Montreal	Gondola assets
Total	\$7,500,000		

3.11 The purchase price will be subject to certain closing adjustments for unearned deposit rentals collected by the Receiver and certain payments made by the Receiver for the benefit of the various programs that commence subsequent to the closing date.

3.12 The transaction excludes the following assets of the Companies:

- (A) Varia Lease # MI446194. The digital phone system.
- (B) Aureus Lease #11044. The Zamboni.
- (C) the Receiver's cash-on-hand and certain other assets such as accounts receivable and inventory not specifically included in the Town Agreement.

The leased assets not included in the sale will be released to the equipment lessors after Court approval.

- 3.13 Subject to the claims of MIB Holdings Inc. (discussed below) and the approval of this Court, the amounts allocated to the specific secured creditors by lot will be distributed to the secured creditors pursuant to a further Court order.
- 3.14 The Receiver has obtained the consent of CUCO who represents the secured creditors on Lots 1 and 2. CUCO's claim represents 93% of the total first ranking secured creditors. The Receiver has also received consents from two equipment lessors to date. The Receiver has not received notice of any formal objection to the order sought.
- 3.15 The Receiver respectfully requests that this Honourable Court approve the Town Agreement and issue an Order vesting title to the Twin Rinks Assets in and to the Corporation of the Town of Oakville.

## ***4.0 MIB Holdings Inc. Lien Assertion***

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- 4.1 On April 10, 2007, the Receiver was advised by counsel that MIB Holdings Inc. ("MIB"), the former general partner of Twin Rinks, will be asserting a lien on the proceeds of the sale of the Twin Rinks Assets. The lien claim is for \$107,800 and relates to unpaid management fees. The Receiver has instructed its counsel to investigate the basis for the MIB priority claim and to provide an opinion with respect to same. The Receiver intends to address the issue of the MIB priority claim before or at the motion for Court approval of the distribution of the sale proceeds.

## ***5.0 Statement of Receipts and Disbursements***

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- 5.1 **Appendix F** attached, presents a summary of the Receiver's Statement of Receipts and Disbursements for the period March 7, 2007 to April 10, 2007. As is illustrated, the Receiver has generated cash receipts of approximately \$295,000, primarily related to the opening cash on deposit and deposits for ice rental programs.
- 5.2 The Receiver has made disbursements of approximately \$176,000 primarily for salary/wages and subcontractor related payments. Accordingly, the Receiver has generated a net excess of receipts and disbursements of approximately \$119,000.
- 5.3 It is important to note that although there have been significant cash receipts over a short period of time, this level of receipts is not expected to continue. The majority of the receipts represent pre-payments for Spring and Summer programs and are unearned. Pursuant to the Town Agreement, there will be an adjustment for unearned revenues at the time of closing. Pre-payments received by the Receiver for any programs that cannot be accommodated will have to be refunded.
- 5.4 After considering the professional and operating costs of the receivership, it is expected that the operations will generate a cash deficiency during the receivership period.

## ***6.0 Order Sought***

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**6.1** We submit this **Second Report** to this Honourable Court in support of our Motion respectfully requesting this Honourable Court to:

- i. Approve the Receiver's activities and conduct as outlined in this Second Report;
- ii. Approve the purchase and sale agreement between the Receiver and the Corporation of the Town of Oakville;
- iii. Issue an Order vesting title to the purchased assets in and to the Corporation of the Town of Oakville upon the Receiver filing its Receiver's Certificate;
- iv. Approve the Receiver's Statement of Receipts and Disbursements for the period March 7, 2007 to April 10, 2007.

All of which is respectfully submitted this 13<sup>th</sup> day of April, 2007.

**KPMG INC.  
COURT-APPOINTED INTERIM RECEIVER AND  
RECEIVER AND MANAGER OF TWIN RINKS LIMITED PARTNERSHIP and 2035829  
ONTARIO INC. O/A THE GONDOLA BAR AND GRILL**



Per: Kevin J. Treacy  
*Senior Vice President*