

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) THURSDAY, THE 30TH DAY
)
JUSTICE WILTON-SIEGEL) OF DECEMBER, 2010

BETWEEN:

THE EQUITABLE TRUST COMPANY

Applicant

- and -



**TUESDAY EQUITIES LTD. as General Partner for and on behalf of
PRINCE ROYAL LIMITED PARTNERSHIP**

Respondents

APPROVAL AND VESTING ORDER

(Hidden Valley Resort)

THIS MOTION, made by Deloitte & Touche Inc. in its capacity as the Court-appointed receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of Tuesday Equities Ltd. and Prince Royal Limited Partnership (together, the "**Debtors**"), acquired for, or used in relation to the following businesses carried on by the Debtors, including all proceeds thereof: (i) The Benmiller Inn & Spa; (ii) The Elora Mill Inn; and (iii) the Hidden Valley Resort (collectively, the "**Property**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale between the Receiver and Paul D. Rice, in trust for a corporation to be incorporated under the laws of the Province of

Ontario (“**Rice**”) made as of October 13, 2010, as amended by the amending agreement dated November 30, 2010 and as assigned by Rice to 2263480 Ontario Inc. (the “**Purchaser**”) by assignment of agreement of purchase and sale, (together, the “**Sale Agreement**”) and appended to the Report of the Receiver dated December 17, 2010 (the “**Report**”), and vesting in the Purchaser the Debtors’ right, title and interest in and to the assets described in the Sale Agreement (the “**Purchased Assets**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, the Applicant and any other party appearing,

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and that the Sale Agreement is commercially reasonable and in the best interests of the Debtors and their stakeholders. The execution of the Sale Agreement by the Receiver is hereby authorized and approved, and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver’s certificate to the Purchaser substantially in the form attached as Schedule A hereto (the “**Receiver’s Certificate**”), all of the Receiver’s and all of the Debtors’ right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule B hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Cumming dated May 26, 2010; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the “**Encumbrances**”), which term shall not include the

permitted encumbrances, easements and restrictive covenants listed on Schedule D and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Muskoka (No. 35) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the “**Real Property**”) in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Debtors' records pertaining to the Debtors' past and current employees, including personal information of the “**Assumed Employees**” as defined in the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtors.

7. **THIS COURT ORDERS** that, notwithstanding:


- (a) the pendency of these proceedings;

- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtors and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtors;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.


8. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

9. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.



ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

DEC 30 2010

PER / PAR: 

Schedule A – Form of Receiver’s Certificate

Court File No. CV-10-8592-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

THE EQUITABLE TRUST COMPANY

Applicant

- and -

**TUESDAY EQUITIES LTD. as General Partner for and on behalf of
PRINCE ROYAL LIMITED PARTNERSHIP**

Respondents

**RECEIVER’S CERTIFICATE
(Hidden Valley Resort)**

RECITALS

A. Pursuant to an Order of the Honourable Justice Cumming of the Ontario Superior Court of Justice (the "**Court**") dated May 26, 2010, Deloitte & Touche Inc. was appointed as the receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of Tuesday Equities Ltd. and Prince Royal Limited Partnership (together, the "**Debtors**"), acquired for, or used in relation to the following businesses carried on by the Debtors, including all proceeds thereof: (i) The Benmiller Inn & Spa; (ii) The Elora Mill Inn; and (iii) the Hidden Valley Resort (collectively, the "**Property**").

B. Pursuant to an Order of the Court dated December 30, 2010, the Court approved the agreement of purchase and sale between the Receiver and Paul D. Rice, in trust for a corporation to be incorporated under the laws of the Province of Ontario ("**Rice**") made as of October 13, 2010, as amended by the amending agreement dated November 30, 2010 and as assigned by Rice

to 2263480 Ontario Inc. (the “**Purchaser**”) by assignment of agreement of purchase and sale (together, the “**Sale Agreement**”) and provided for the vesting in the Purchaser of the Receiver’s and the Debtors’ right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in sections 8, 9 and 10 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in sections 8, 9 and 10 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at [TIME] on [DATE], 2011.

DELOITTE & TOUCHE INC., solely in its capacity as the Court Appointed Receiver and Manager of the Property (as defined herein) of Tuesday Equities Ltd. and Prince Royal Limited Partnership, with no personal or corporate liability

Per: _____
Name: ►
Title: ►

Schedule B – Purchased Assets

All of the Receiver's (if any) and the Debtors' right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement) including, without limitation, the following real property:

The Hidden Valley Resort, consisting of the real property located at 1755 Valley Road, Town of Huntsville, Province of Ontario, together with the buildings situate thereon containing 94 guest rooms, 2 hospitality suites, a lobby, restaurant, lounge/bar, meeting rooms, function rooms, administrative offices, parking, swimming pools, recreational facilities, retail components and certain other amenities and related facilities, legally described as:

HIDDEN VALLEY RESORT

PIN 48082-0346 (LT) – PT LT 32 CON 1 CHAFFEY; PT LT 32 CON 2 CHAFFEY PT 3 35R8715, PT 1 TO 5, 24 TO 26 35R14094 S/T DM251182, DM251183; S/T DM182153, DM250232, DM251180, DM251181, DM251590, DM251591; HUNTSVILLE; THE DISTRICT MUNICIPALITY OF MUSKOKA

PIN 48082-0049 (LT) – PCL 32961 SEC MUSKOKA; FIRSTLY: PT LT 1 PL M419 CHAFFEY; PT LT 2 PL M419 CHAFFEY PT 10 35R8715; SECONDLY: PT LT 33 CON 2 CHAFFEY PT 6-8 & 10 35R14094 S/T PT 6, 8, 10 35R14094 AS IN LT162591, S/T PT 8 & 10 35R14094 AS IN LT163267, S/T PT 10 35R14094 AS IN LT163268, S/T PT 8 & 10 35R14094 AS IN LT163512 & LT 163513; THIRDLY: PT 1 FT RESERVE AROUND WLY END OF VALLEY RD PL M419 CHAFFEY PT 14 35R14094 S/T PT 14 35R14094 AS IN LT23495; FOURTHLY: PT LT 33 CON 2 CHAFFEY PT 9 35R8715; FIFTHLY: PT 1 FT RESERVE ADJOINING VALLEY RD PL M419 CHAFFEY PT 12 35R8715 S/T PT 3 35R8712 AS IN LT118308; SIXTHLY: PT VALLEY RD PL M419 CHAFFEY CLOSED BY LT168265 PT 13 35R8715 S/T PT 2 35R8712 AS IN LT163270, T/W PT 23 35R14094 AS IN LT163270 & T/W PT 11, 20 & 22 35R14094 AS IN LT163270 (S/T LT103237, LT 103983, LT122177, LT143636, LT147767, LT148784, LT153713, LT153718, LT147766 & LT153717); HUNTSVILLE; THE DISTRICT MUNICIPALITY OF MUSKOKA

Schedule C – Claims to be deleted and expunged from title to Real Property

The following Instruments are to be discharged upon registration of the Vesting Order:

PIN 48082-0346 (LT)

1. Charge in favour of The Equitable Trust Company (“**Equitable**”) securing the principal amount of \$2,800,000.00 registered as Instrument No. MT6144 on August 26, 2005;
2. Notice of Assignment of Rents – General in favour of Equitable registered as Instrument No. MT6145 on August 26, 2005;
3. Charge in favour of 432567 B.C. Ltd. (“**432567**”) securing the principal amount of \$3,000,000.00 registered as Instrument No. MT44418 on January 10, 2008;
4. Charge in favour of Checkers Properties G.P. Inc. (“**Checkers**”) securing the principal amount of \$3,000,000.00 registered as instrument No. MT44419 on January 10, 2008;
5. Transfer of Charge transferring the Charge registered as Instrument No. MT44419 to and in favour of Ashiana Holdings Ltd. (“**Ashiana**”) and Ballycurkeen Investment Corp. (“**Ballycurkeen**”) registered as Instrument No. MT67042 on June 4, 2009;
6. Construction Lien by Peter Barker, carrying on business as Five Star Painting & Renovations (“**Barker**”), claiming the amount of \$13,188.00 registered as Instrument No. MT78799 on February 18, 2010;
7. Certificate of Action in connection with Construction Lien No. MT78799 registered as Instrument No. MT80634 on April 12, 2010;
8. Application to Register Court Order re Order of the Ontario Superior Court of Justice dated May 26, 2010 appointing Deloitte & Touche Inc. as receiver registered as Instrument No. MT83111 on June 3, 2010.
9. Construction Lien by Muskoka Minerals & Mining Inc. (“**Muskoka Minerals**”), claiming the amount of \$1,395.00 registered as Instrument No. MT84016 on June 21, 2010; and
10. Certificate of Action in connection with Construction Lien No. MT84016 registered as Instrument No. MT86805 on August 16, 2010.

PIN 48082-0049 (LT)

1. Charge in favour of Equitable securing the principal amount of \$2,800,000.00 registered as Instrument No. MT6144 on August 26, 2005;
2. Notice of Assignment of Rents – General in favour of Equitable registered as Instrument No. MT6145 on August 26, 2005;

3. Charge in favour of 432567 securing the principal amount of \$3,000,000.00 registered as Instrument No. MT44418 on January 10, 2008;
4. Charge in favour of Checkers securing the principal amount of \$3,000,000.00 registered as Instrument No. MT44419 on January 10, 2008;
5. Transfer of Charge transferring the Charge registered as Instrument No. MT44419 to and in favour of Ashiana and Ballycurkeen registered as Instrument No. MT67042 on June 4, 2009;
6. Construction Lien by Barker, claiming the amount of \$13,188.00 registered as Instrument No. MT78799 on February 18, 2010;
7. Certificate of Action in connection with Construction Lien No. MT78799 registered as Instrument No. MT80634 on April 12, 2010;
8. Application to Register Court Order re Order of the Ontario Superior Court of Justice dated May 26, 2010 appointing Deloitte & Touche Inc. as receiver registered as Instrument No. MT83111 on June 3, 2010;
9. Construction Lien by Muskoka Minerals, claiming the amount of \$1,395.00 registered as Instrument No. MT84016 on June 21, 2010; and
10. Certificate of Action in connection with Construction Lien No. MT84016 registered as Instrument No. MT86805 on August 16, 2010.

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property**

Permitted Encumbrances with respect to Hidden Valley Resort (the “Hotel”) means:

- a) All of the instruments set out in this Schedule “D”;
- b) Any easements, servitudes, rights-of-way, licences, restrictions that run with the land and other encumbrances and/or agreements with respect thereto (including, without limiting the generality of the foregoing, easements, rights-of-way and agreements for sewers, drains, gas and water mains or electric light and power or telephone, telecommunications or cable conduits, poles, wires and cables);
- c) Defects or irregularities in title to the Hotel;
- d) Inchoate liens for municipal property taxes, local improvement assessments and/or taxes and/or charges, and/or other taxes, assessments or recoveries relating to the Hotel not yet due or liens for same which are due but the validity of which are being contested in good faith by the Vendor provided that the Vendor has provided security which in the opinion of the Purchaser, acting reasonably, is necessary to avoid any lien, charge or encumbrance arising with respect thereto;
- e) Zoning and building by-laws and ordinances, municipal by-laws and regulations, development agreements, subdivision agreements, site plan agreements, notices, and/or building restrictions;
- f) Inchoate liens for public utilities not due as at the Closing Date;
- g) The exceptions, limitations and qualifications set out in the *Land Titles Act* and/or set out on the parcel registers for the Hotel and any amendments thereto;
- h) All reservations, limitations, provisos and/or conditions set out in the original grant from the Crown; and
- i) All encroachments of buildings or other improvements and/or mislocated fences that may be shown on any existing survey or any up-to-date survey for the Hotel.

Without limiting the foregoing, Permitted Encumbrances include the following:

PIN 48082-0346 (LT)

1. Agreement registered as Instrument No. DM66578 on October 17, 1968;
2. Order registered as Instrument No. DM70304 on June 9, 1969;
3. Agreement with The District Municipality of Muskoka (the “**District**”) registered as Instrument No. DM157761 on February 4, 1981;
4. Agreement with the District registered as Instrument No. DM158978 on April 13, 1981;
5. Transfer of Easement to and in favour of the District registered as Instrument No. DM182153 on June 18, 1984;
6. Agreement with the District registered as Instrument No. DM187680 on March 8, 1985;
7. Agreement with The Corporation of the Town of Huntsville (the “**Town**”) registered as Instrument No. DM187682 on March 8, 1985;
8. Site Plan Agreement with the Town registered as Instrument No. DM187683 on March 8, 1985;
9. Site Plan Agreement with the Town registered as Instrument No. DM228867 on May 2, 1985;
10. Site Plan Agreement with the Town registered as Instrument No. DM237960 on January 26, 1990;
11. Transfer of Easement to and in favour of the District of Muskoka registered as Instrument No. DM250232 on April 26, 1991;
12. Transfer of Easement to and in favour of the Town of Huntsville registered as Instrument No. DM251180 on May 31, 1991;
13. Transfer of Easement to and in favour of Maclean Hunter Cable TV Limited registered as Instrument No. DM251181 on May 31, 1991;
14. Transfer of Easement to and in favour of Maclean Hunter Cable TV Limited registered as Instrument No. DM251590 on June 14, 1991;
15. Transfer of Easement to and in favour of Bell Canada registered as Instrument No. DM251591 on June 14, 1991; and
16. Agreement registered as Instrument No. DM254476 on September 27, 1991.

PIN 48082-0049 (LT)

1. Rights-of-way over Part 14 on Plan 35R-14094 as more particularly described in Instrument No. LT23495 registered on May 19, 1955;
2. Application to Annex Restrictive Covenants registered as Instrument No. LT40622Z on March 30, 1965;
3. Application to Annex Restrictive Covenants registered as Instrument No. LT64649Z on February 18, 1972;
4. Notice in favour of the District registered as Instrument No. LT103237 on February 4, 1981;
5. Notice in favour of the District registered as Instrument No. LT103983 on April 13, 1981;
6. Right-of-way over Part 3 on Plan 35R-8712 as more particularly described in Instrument No. LT118308 registered on June 18, 1984;
7. Notice in favour of the District registered as Instrument No. LT122177 on March 8, 1985;
8. Notice of Agreement with the Town registered as Instrument No. LT122179 on March 8, 1985;
9. Notice of Agreement with the Town registered as Instrument No. LT122180 on March 8, 1985;
10. Notice in favour of the Town registered as Instrument No. LT147766 on May 2, 1989;
11. Document General re Amendment to Site Plan Agreement with the Town registered as Instrument No. LT147767 on May 2, 1989;
12. Document General re Servicing Agreement with the District registered as Instrument No. LT148784 on June 19, 1989;
13. Document General re Site Plan Agreement with the Town registered as Instrument No. LT143636 ON September 22, 1989;
14. Notice in favour of the Town registered as Instrument No. LT153712 on January 26, 1990;
15. Document General re Site Plan Agreement with the Town registered as Instrument No. LT153713 on January 26, 1990;

16. Document General re Agreement with the Town registered as Instrument No. LT153717 on January 26, 1990;
17. Document General re Agreement with the Town registered as Instrument No. LT153718 on January 26, 1990;
18. Transfer of Easement to and in favour of the District registered as Instrument No. LT162591 on April 26, 1991;
19. Transfer of Easement to and in favour of 933704 Ontario Ltd. registered as Instrument No. LT163267 on May 31, 1991;
20. Transfer of Easement to and in favour of Hidden Valley Resort Development Corporation registered as Instrument No. LT163268 on May 31, 1991;
21. Transfer of Easement to and in favour of Hidden Valley Resort Hotel Limited registered as Instrument No. LT163270 on May 31, 1991;
22. Transfer of Easement to and in favour of Maclean Hunter Cable TV Limited registered as Instrument No. LT163512 on June 14, 1991;
23. Transfer of Easement to and in favour of Bell Canada registered as Instrument No. LT163513 on June 14, 1991; and
24. Notice registered as Instrument No. LT165456 on September 27, 1991.

THE EQUITABLE TRUST COMPANY

Applicant

and

TUESDAY EQUITIES LTD., as General Partner for and on behalf of PRINCE ROYAL LIMITED PARTNERSHIP

Respondent(s)

Court File No.: CV-10-8592-00CL

ONTARIO
**SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced at Toronto

**APPROVAL AND VESTING ORDER
(Hidden Valley Resort)**

ThorntonGroutFinnigan LLP
Barristers and Solicitors
Suite 3200, P.O. Box 329
Canadian Pacific Tower
Toronto, ON M5K 1K7

Grant B. Moffat (LSUC# 32380L)
Tel: 416-304-0599
Fax: 416-304-1313

Lawyers for the Receiver.