

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.

JUSTICE H.J. WILTON-SIBER

WEDNESDAY, THE 9TH DAY *WJ-S*

OF NOVEMBER, 2011

BETWEEN:

PEOPLES TRUST COMPANY

Applicant

– and –



PARAGON HEALTH CARE INC. AND 1508669 ONTARIO LIMITED

Respondents

APPROVAL AND VESTING ORDER

THIS MOTION, made by Deloitte & Touche Inc. in its capacity as the Court-appointed interim receiver and receiver and manager (the “**Receiver**”) of the current and future assets, undertakings and properties of 1508669 Ontario Limited (the “**Debtor**”) for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between the Receiver and SAC 4 Inc. made as of April 1, 2011, as amended, appended as **Appendix “H”** to the Report of the Receiver dated November 1, 2011 (the “**Seventh Report**”), vesting in CVH GP Inc., general partner of CVH (No. 1) LP, assignee of SAC 4 Inc. (the “**Purchaser**”) the Debtor’s 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 Seventh Report and on hearing the submissions of counsel for the Receiver, no one appearing for any other person on the service list, although properly served:

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 Debtor and its 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 Appendix "H" to the Seventh Report, being an un-redacted copy of the Sale Agreement, shall be treated as confidential and shall be sealed and segregated from the public record, pending the closing of the Transaction contemplated by the Sale Agreement. *OTAS*
To the Court shall also be sealed pending further order of the Court.
3. 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 Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement 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 January 23, 2006; (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". 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.

4. THIS COURT ORDERS AND DECLARES that Paragraph 3. above does not apply to the permitted encumbrances, easements and restrictive covenants listed on **Schedule D**, and any overpayments made to the Debtor after January 23, 2006, by the Ontario Ministry of Health and Long-Term Care (the "**MOH**").
5. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Registry Division of Niagara North (No. 30) of a Transfer/Deed of Land in the form prescribed by the *Land Registration Reform Act* (Ontario) duly executed by the Receiver, the Land Registrar for the Land Registry Division of Niagara North (No. 30) is hereby directed to enter the Purchaser or in whose name it may direct 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.
6. 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.
7. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.
8. 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 Debtor's records pertaining to the Debtor's 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 Debtor.

9. 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 Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

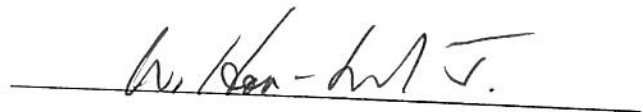
the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, 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.


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

11. 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 À TORONTO
ON / BOOK NO.:
LE / DANS LE REGISTRE NO.:

NOV 09 2011



PER/PAS: 

SCHEDULE A

FORM OF RECEIVER'S CERTIFICATE

ONTARIO

Court File No. ●

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

BETWEEN:

●

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Plaintiff

Defendant

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Cumming of the Ontario Superior Court of Justice (the "**Court**") dated January 23, 2006, Mintz & Partners Limited, now Deloitte & Touche Inc., was appointed as the interim receiver and receiver and manager (the "**Receiver**") of the current and future assets, undertakings and properties of 1508669 Ontario Limited (the "**Debtor**")

B. Pursuant to an Order of the Court dated November 9, 2011, the Court approved the agreement of purchase and sale made as of April 1, 2011 (the "**Sale Agreement**") between the Receiver and SAC 4 Inc. and providing for the vesting in CVH GP Inc., general partner of CVH (No. 1) LP, assignee of SAC 4 Inc. (the "**Purchaser**") of the Debtor's 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 section 4 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 section 4 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.

This Certificate was delivered by the Receiver to the Purchaser at ● <Insert time.> on ● <Insert date.>.

DELOITTE & TOUCHE INC., solely in its capacity as court appointed interim receiver and receiver and manager of the current and future assets, undertakings and properties of 1508669 Ontario Limited and not in its personal capacity

Per: _____
Name:
Title:

SCHEDULE B

SUBJECT REAL PROPERTY

103-111 Pelham Road, St. Catharines, Ontario & 34-36 Witworth Street, St. Catharines, Ontario

Lots 814, 815, 816, 817, 818, & 819, Township Plan 94 and Lots 857, 858, 859, 860 & 861, Township Plan 94, St. Catharines, Property Identifier Number 46172-0268(LT); Lots 738 and 739, Township Plan 94, St. Catharines, Property Identifier Number 46172-0309(LT) City of St. Catharines (formerly Township of Grantham), Regional Municipality of Niagara

SCHEDULE C

CLAIMS TO BE DELETED AND EXPUNGED FROM TITLE TO REAL PROPERTY

1. 1508669 Ontario Limited under transfer 759592 Ontario Inc. instrument number RO699418 and application for change of name of owner instrument number NR20355.
2. West Park Holdings Ltd. under Judgment for Foreclosure registered as Instrument Number NR230588.
3. Peoples Trust Company under
 - (i) charge instrument number RO699419 as assigned by transfer of charge instrument number RO768790 and amended by agreement instrument number RO768792;
 - (ii) general assignment of rents instrument number RO699420 as assigned by instrument number RO768791.
4. HMQ-Minister of National Revenue, Canada Customs and Revenue Agency, Toronto North Tax Services office, 5001 Yonge Street, North York, ON M2N 6R9 under execution number 05-0000237 for \$67,775.07.
5. Mintz & Partners Limited in its capacity as interim receiver and receiver and manager of 1508669 Ontario Limited under Instrument Number NR92230.

SCHEDULE D

PERMITTED ENCUMBRANCES, EASEMENTS AND RESTRICTIVE COVENANTS RELATED TO THE REAL PROPERTY

(unaffected by the Vesting Order)

1. Agreements re Site Plan registered as Instrument Numbers RO200232 and RO321002.
2. Site Plan Agreement registered as Instrument Number RO416442 as amended by Agreements registered as Instrument Numbers RO424442, RO460394 and RO502090.
3. By-law registered as Instrument Number RO457591.

Zoning Regulations notice of which registered as Instrument Number RO493091

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PEOPLES TRUST COMPANY

- and -

PARAGON HEALTH CARE INC. and 1508669 ONTARIO LIMITED

ONTARIO

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(PROCEEDING COMMENCED AT TORONTO)

APPROVAL AND VESTING ORDER

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Solicitors for Deloitte & Touche Inc. in its capacity as Interim Receiver and Receiver and Manager of current and future assets, undertakings and properties of Paragon Health Care Inc., Paragon Health Care (Ontario) Inc. and 1508669 Ontario Limited