

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE

JUSTICE MESBUR

TUESDAY, THE 22ND DAY

OF FEBRUARY, 2011

B E T W E E N :

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 Paragon Health Care Inc., Paragon Health Care (Ontario) Inc. and 1508669 Ontario Limited (individually or collectively, the "**Debtor**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**APS**") between the Receiver and GEM Health Care Group Limited (the "**Purchaser**") dated as of October 20, 2010 and appended to the Report of the Receiver dated February 15, 2011 (the "**Sixth Report**"), and vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the APS (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Sixth 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 as appears from the affidavit of Alma Sullivan sworn February 15, 2011, filed:

1. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and that the APS is commercially reasonable and in the best interests of the Debtor and its stakeholders. The execution of the APS 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 that Appendices "K" and "L" to the Sixth Report, being a certain appraisal letter in relation to the Purchased Assets and an unredacted copy of the APS, shall be treated as confidential and shall be sealed and segregated from the public record, pending the closing of the Transaction contemplated by the APS.

When the Receiver delivers the Receiver's Certificate, the Appendices will be unsealed per

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 APS 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", 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.

4. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Registry Division of Toronto 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 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.

5. 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.

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

7. 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 APS. 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.

8. 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, transfer at under value or other challengeable or voidable 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.

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

10. 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.:

FEB 22 2011

PER / PAR:



SCHEDULE A

FORM OF RECEIVER'S CERTIFICATE

Court File No. 06-CL-6233

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

BETWEEN :

PEOPLES TRUST COMPANY

Applicant

PARAGON HEALTH CARE INC. and 1508669 ONTARIO LIMITED

Respondents

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, Deloitte & Touche Inc. (formerly known as Mintz & Partners Ltd.) was appointed as the interim receiver and receiver and manager (the "**Receiver**") of the current and future assets, undertakings and properties of Paragon Health Care Inc. and Paragon Health Care (Ontario) Inc. [**and 15808669 Ontario Limited**] ([**individually or collectively,**] the "**Debtor**").

B. Pursuant to an Order of the Court dated February 22, 2011, the Court approved the agreement of purchase and sale made as of October 20, 2010 (the "**APS**") between the Receiver and GEM Health Care Group Limited (the "**Purchaser**") and provided for the vesting in 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 APS 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 APS.

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 APS;
2. The conditions to Closing as set out in section 4 of the APS 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 Paragon Health Care Inc. and Paragon Health Care (Ontario) Inc. and not in its personal capacity

Per: _____
Name:
Title:

SCHEDULE B

SUBJECT REAL PROPERTY

3595 Keele Street, North York, Ontario

Part of Lot 17, Concession 3, WYS, designated as Part 1 on Plan 64R-9597 together with an easement over Part of Lot 17, Concession 3, WYS, designated as Part 1 on Plan 64R-11024, as described in instrument number TB328847, City of Toronto, Property Identifier Number 10181-0039(LT)

SCHEDULE C

CLAIMS TO BE DELETED AND EXPUNGED FROM TITLE TO REAL PROPERTY

1. Paragon Health Care Inc. / Soins de Sante Paragon Inc. under transfer instrument number TB646693 and application for change of name of owner from 862465 instrument number AT385907.
2. Peoples Trust Company under
 - (i) charge instrument number TB953231 as assigned by transfer of charge instrument number TR61724 and amended by agreements instrument numbers TR53328 and TR61726;
 - (ii) charge instrument number TR16133 as assigned by transfer of charge instrument number TR62550 and postponed by instrument number TR53329;
 - (iii) charge instrument number TR62546;
 - (iv) general assignment of rents instrument number TB953232 as assigned by instrument number TR61725;
 - (v) general assignment of rents instrument number TR62547;
3. The Consumers Gas Company Ltd. under Notice – Lease of Chattels instrument number TR33203.
4. Ginette Harquail under
 - (i) charge instrument number TR10811 as assigned by transfers of charge instrument numbers TR58273 and AT394107, amended by instrument number TR58272 and postponed by instrument numbers TR53330 and TR62548;
 - (ii) charge instrument number TR58274 as assigned by transfers of charge instrument numbers TR58275 and AT394106 and postponed by instrument number TR62548;
 - (iii) charge instrument number TR67253 as assigned by transfers of charge instrument number AT394105.
5. John Alpaugh, Peter Boulton, Kenneth Maiden, Susan Maynard, Judith Moore, Robert Reid, Richard Webb, John Sinclair, Gail Weiler, Rhonda Klosler, Smith, Nixon & Co. LLP, under charge instrument number AT911777.

6. Her Majesty the Queen as represented by the Minister of Finance, Ontario with respect to a claim under the Corporations Tax Act, 5 Park Home Avenue, 2nd Floor, North York, ON M2N 6W8, being file number 01-0009411.
7. Mintz & Partners Limited in its capacity as interim receiver and receiver and manager of Paragon Health Care Inc. and 1508669 Ontario Limited, under instrument number AT1048439.

SCHEDULE D

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

(unaffected by the Vesting Order)

1. Restrictive covenants set out in Application to Annex Restrictive Covenants instrument number TB328846.
2. Notice by Her Majesty the Queen in right of the Department of Transport Canada of Pearson Airport Zoning Regulation instrument number TR57844.

Court File No.: 06-CL-6233		
PEOPLES TRUST COMPANY	- and -	PARAGON HEALTH CARE INC. and 1508669 ONTARIO LIMITED
<div>ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST (PROCEEDING COMMENCED AT TORONTO)</div> <div>APPROVAL AND VESTING ORDER</div> <div>GOWLING LAFLEUR HENDERSON LLP Barristers and Solicitors Suite 1600, 1 First Canadian Place 100 King Street West Toronto, Ontario M5X 1G5 Clifton P. Prophet (LSUC No.: 34845K) Frank Lamie (LSUC No. 54035S) Telephone: (416) 862-7525 Facsimile: (416) 862-7661 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</div>		