

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)  
COMMERCIAL LIST**

**IN THE MATTER OF AN APPLICATION UNDER  
SECTION 47 (1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*  
R.S.C. 1985, C.B-3**

**AND IN THE MATTER of SECTION 101 of *THE  
COURTS of JUSTICE ACT*, R.S.O. 1990, C.C-43**

**BETWEEN:**

**PEOPLES TRUST COMPANY**

Applicant

- and -

**PARAGON HEALTH CARE INC. and 1508669 ONTARIO LIMITED**

Respondents

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**MOTION RECORD  
(Returnable September 4, 2012)**

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

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Solicitors for SAC 4 Inc.

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# INDEX

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# **TAB 1**

Court File No. 06-CL-6233

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)  
COMMERCIAL LIST**

**IN THE MATTER OF AN APPLICATION UNDER  
SECTION 47 (1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*  
R.S.C. 1985, C.B-3**

**AND IN THE MATTER of SECTION 101 of *THE  
COURTS of JUSTICE ACT*, R.S.O. 1990, C.C-43**

**B E T W E E N:**

**PEOPLES TRUST COMPANY**

Applicant

- and -

**PARAGON HEALTH CARE INC. and 1508669 ONTARIO LIMITED**

Respondents

**NOTICE OF MOTION**

**DELOITTE & TOUCHE INC.** in its capacity as Interim Receiver and Receiver and Manager (the "**Receiver**") of the current and future assets, undertakings and properties (the "**Assets**") of each of Paragon Health Care Inc. ("**Paragon**"), Paragon Health Care (Ontario) Inc. ("**Paragon Ontario**") and 1508669 Ontario Limited ("**1508669**") will make a motion to the Court on Tuesday, September 4<sup>th</sup>, 2012 at 10:00 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto.

**THE PROPOSED METHOD OF HEARING:** The motion is to be heard orally.



**THE MOTION IS FOR:**

1. Orders, substantially in the form attached hereto as **Schedule "A"**:
  - (a) abridging the time for and validating service of this Notice of Motion and the motion materials filed in support of this motion and dispensing with further service thereof;
  - (b) approving the Receiver's actions and activities with respect to the receivership of Paragon, Paragon Ontario as set out in the Eighth Report of the Receiver dated August 21, 2012 (the "**Eighth Report**");
  - (c) approving the Receiver's Interim Statement of Receipts and Disbursements in respect of Paragon and Paragon Ontario for the period of January 24, 2006 to August 3, 2012 as set out in the Eighth Report;
  - (d) authorizing and directing the Receiver to distribute funds to Peoples Trust Company ("**Peoples**") in the amount of \$7,900,000 held by the Receiver as recommended in the Eighth Report;
2. Such further and other relief as counsel may request and this Honourable Court may permit.

**THE GROUNDS FOR THE MOTION ARE:**

**Background**

1. Pursuant to an Order of this Honourable Court made on January 23, 2006 and effective 9:00 a.m. on January 24, 2006 (the "**Appointment Order**"), Mintz & Partners Limited was appointed as Interim Receiver and Receiver and Manager of the assets, undertakings and properties of Paragon, Paragon Ontario and 1508669 pursuant to subsection 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.1985, C. B-3 (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 19111190, c. C. 43 (the "**CJA**").

2. Pursuant to an Order of the Honourable Madam Justice Karakatsanis dated July 2, 2008, following the merger of the accounting practices of Deloitte & Touche LLP and Mintz & Partners LLP, the name of the Receiver was changed to Deloitte & Touche Inc. (**"Deloitte"**).

### **Sale of Casa Verde**

3. As set out in prior reports of the Receiver, the Receiver has entered into and the Court has approved an agreement (the **"GEM Sale"**) to sell the long-term care home and the retirement home owned and operated by Paragon and Paragon Ontario (**"Casa Verde"**) to Gem Health Care Group Limited (**"GEM"**).
4. On March 15, 2011 the Receiver consented to the assignment GEM Sale to Downsview Long Term Care Centre Limited (**"Downsview"**) an entity related to GEM.
5. The conditions to the closing of the GEM Sale have been satisfied, and the Ministry of Health and Long-Term Care (**"MOHLTC"**) has approved the issuance of a new long-term care home licence to Downsview subject to certain conditions being met.
6. On July 25, 2012 the sale of Casa Verde closed. The Receiver and Diversicare Canada Management Co., Inc. continue to address matters relating to the receivership of Casa Verde including ensuring that all required filings to the MOHLTC and other government bodies are made on a timely basis.

### **Distribution to Peoples**

7. Peoples has valid and enforceable security against the property, assets and undertakings of Paragon and the business of Casa Verde, including a charge/mortgage of land, dated May 27, 1994 and registered May 30, 1994 as instrument number TB953231 in favour of First National Financial Corporation by Paragon for the principal amount of \$10,217,600 as subsequently amended and assigned to Peoples by assignment of charge/mortgage of land registered June

15, 2000 as instrument number TR061724, and related personal property security (the **"Casa Verde First Mortgage"**).

8. As of July 30, 2012, the outstanding balance of the Casa Verde First Mortgage was \$16,121,574.17, inclusive of principal and interest.
9. The Receiver seeks this Honourable Court's authorization and direction to distribute surplus funds in the amount of \$7,900,000 to People, which it now holds arising from the sale of Casa Verde, as partial payment on account of interest arrears on the outstanding balance of the Casa Verde First Mortgage.

**Activities**

10. The Receiver has operated the nursing home and retirement home businesses of Paragon and 1508669 in a prudent and sustainable manner since its appointment.

**THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:**

1. The Eighth Report of the Receiver dated August 21, 2011;
2. Such further and other evidence as counsel may advise and this Honourable Court may permit.

Dated: August 28, 2012

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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.

**TO: THE SERVICE LIST**

PEOPLES TRUST COMPANY

- and -

PARAGON HEALTH CARE INC. and 1508669 ONTARIO LIMITED

**ONTARIO**

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

(PROCEEDING COMMENCED AT TORONTO)

**NOTICE OF MOTION**

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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

# TAB A

## Schedule "A"

Court File No. 06-CL-6233

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE

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)  
)  
)

TUESDAY, THE 4<sup>TH</sup> DAY

JUSTICE

OF SEPTEMBER, 2012

IN THE MATTER OF AN APPLICATION UNDER  
SECTION 47 (1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*  
R.S.C. 1985, C.B-3

AND IN THE MATTER of SECTION 101 of *THE*  
*COURTS of JUSTICE ACT*, R.S.O. 1990, C.C-43

BETWEEN:

PEOPLES TRUST COMPANY

Applicant

- and -

PARAGON HEALTH CARE INC. and 1508669 ONTARIO LIMITED

Respondents

## DISTRIBUTION ORDER

**THIS MOTION** made by Deloitte & Touche Inc. ("**Deloitte**"), appointed as interim receiver and receiver and manager (the "**Receiver**") pursuant to section 101 of the *Courts of Justice Act*, without security, of the property, assets and undertaking of Paragon Health Care Inc. ("**Paragon**"), Paragon Health Care (Ontario) Inc. ("**Paragon Ontario**") and 1508669 Ontario Limited ("**1508669**") pursuant to the terms of the Order of the Honourable Mr. Justice Cumming dated January 23, 2006 and effective 9:00 a.m.

on January 24, 2006 (the "**Initial Order**"), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Motion, the Eighth Report of the Receiver dated August 21, 2012 (the "**Eighth Report**"), filed, and upon hearing the submissions of counsel for the Receiver, no other parties attending,

1. **THIS COURT ORDERS** that service of the Notice of Motion and the Motion Record herein is hereby abridged, if necessary, and that this motion is properly returnable today and that service, including the form, manner and time that such service was actually effected on all parties, is hereby validated, and where such service was not effected such service is hereby dispensed with.
  2. **THIS COURT ORDERS** that the Eighth Report is hereby accepted and approved.
  3. **THIS COURT ORDERS** that the conduct of the Receiver and its agents to date, as detailed in the Eighth Report, be and the same is hereby approved.
  4. **THIS COURT ORDERS** that the Receiver's Interim Statements of Receipts and Disbursements for the period January 24, 2006 to August 3, 2012 in respect of Paragon, and Paragon Ontario as respectively set out in **Appendices "Q" and "R"** to the Eighth Report, filed, are hereby approved.
  5. **THIS COURT ORDERS** that the Receiver is authorized and hereby directed to distribute the sum of \$7,900,000.00 to Peoples Trust Company, as partial payment on account of its secured claims against Paragon.
-



<div>PEOPLES TRUST COMPANY</div>	<div>- and -</div>	<div>Court File No.: 06-CL-6233</div> <div>PARAGON HEALTH CARE INC. and 1508669 ONTARIO LIMITED</div>
<div>ONTARIO</div> <div>SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)</div> <div>(PROCEEDING COMMENCED AT TORONTO)</div> <div>DISTRIBUTION ORDER</div> <div><div>Gowling Lafleur Henderson LLP Barristers and Solicitors 1 First Canadian Place 100 King Street West, Suite 1600 Toronto, Ontario M5X 1G5</div><div>Clifton P. Prophet / Frank Lamie LSUC No.: 34845K / 54035S</div><div>Telephone: (416) 862-7525 Facsimile: (416) 862-7661</div><div>Solicitors for Deloitte &amp; Touche Inc. in its capacity as Interim Receiver and Receiver and Manager of the current and future assets, undertakings and properties of Paragon Health Care Inc., Paragon Health Care (Ontario) Inc. and 1508669 Ontario Limited</div></div>		

# **TAB 2**

Court File No. 06-CL-6233

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
[COMMERCIAL LIST]**

BETWEEN:

**PEOPLES TRUST COMPANY**

Applicant

- and -

**PARAGON HEALTH CARE INC. AND 1508669 ONTARIO LIMITED**

Respondent

**EIGHTH REPORT TO THE COURT OF THE RECEIVER  
(dated August 21, 2012)**

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- APPENDIX "Q": Receiver's Interim Statement of Receipts and Disbursements for Paragon Health Care Inc. for the period January 24, 2006 to August 3, 2012
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- APPENDIX "S": Peoples Trust Company Statement for Discharge Purposes effective July 31, 2012

## INTRODUCTION

1. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated January 23, 2006 (the “**Appointment Order**”), Mintz & Partners Limited (“**MPL**”) was appointed as Interim Receiver and Receiver and Manager (the “**Receiver**”) of all the assets, undertakings and property of Paragon Health Care Inc. (“**Paragon**”), Paragon Health Care (Ontario) Inc. (“**Paragon Ontario**”) and 1508669 Ontario Limited (“**1508669**”) (individually or collectively, the “**Debtor**”) effective 9:00 am on January 24, 2006 (the “**Appointment Date**”). A copy of the Appointment Order is attached hereto as **Appendix “A”**. By Order of the Court dated July 2, 2008, following the merger of the accounting practices of Deloitte & Touche LLP and Mintz & Partners LLP, the name of the Receiver was changed to Deloitte & Touche Inc. (“**Deloitte**”).
2. As at the Appointment Date, Paragon’s assets comprised the Casa Verde Health Centre, a 252-bed nursing home (“**Casa Verde Nursing Home**”) and a 94-bed retirement home (“**Casa Verde Retirement Home**”) (collectively, with Casa Verde Nursing Home, “**Casa Verde**”) located at 3595 Keele Street, Toronto, Ontario. 1508669’s assets comprise the West Park Health Centre (“**West Park**”), a 93-bed nursing home located at 103-111 Pelham Road, St. Catharines, Ontario (collectively, with Casa Verde, the “**Homes**” or “**Facilities**”).
3. As at the Appointment Date, Paragon Ontario was a non-operating entity that employed certain nursing staff used by Casa Verde.
4. On April 4, 2007, Justice Cumming granted an Order (the “**April 4, 2007 Order**”) approving, among other things (i) a distribution to Peoples Trust Company (“**Peoples**”), the first secured creditor, of \$200,000 from the Receiver’s trust account relating to 1508669; (ii) the Receiver’s activities from the Appointment Date to March 26, 2007; and (iii) the fees and disbursements of the Receiver and those of its counsel. In support of the motion that resulted in the April 4, 2007 Order, the Receiver submitted its First Report to the Court dated March 26, 2007 (“**First Report**”).

5. On August 21, 2007, Justice Lederman granted an Order approving the Receiver's commencement of a marketing and sale process for the Homes (the "**Sale Process Order**"). In support of the motion that resulted in the Sale Process Order, the Receiver submitted its Second Report to the Court dated July 27, 2007 (the "**Second Report**").
6. The Receiver's Third Report to the Court dated August 24, 2007 was submitted in response to a motion brought by a former employee who was seeking leave to issue a Statement of Claim to commence a wrongful dismissal action against the Receiver.
7. On July 2, 2008, Justice Karakatsanis granted an Order (the "**July 2 Order**") approving, among other things (i) a distribution to Peoples of \$800,000 from the Receiver's trust account relating to 1508669; (ii) the fees and disbursements of the Receiver and those of its counsel; (iii) the Receiver's actions and activities in the Receiver's Fourth Report; and (iii) changing the name of the Receiver to Deloitte. In support of the motion that resulted in the July 2 Order, the Receiver submitted its Fourth Report to the Court (the "**Fourth Report**") dated June 25, 2008.
8. On December 23, 2009, Justice Cumming granted an Order (the "**December 23 Order**") approving, among other things (i) a distribution to Peoples of \$1,000,000 from the Receiver's trust account relating to Paragon; (ii) the fees and disbursements of the Receiver and those of its counsel; and (iii) the Receiver's actions and activities from June 26, 2008 to December 14, 2009. In support of the motion that resulted in the December 23 Order, the Receiver submitted its Fifth Report to the Court (the "**Fifth Report**") dated December 14, 2009.
9. On February 22, 2011, Justice Mesbur granted an Order (the "**February 22 Order**") approving, among other things, (i) a distribution to Peoples of \$2,000,000 from the Receiver's trust account relating to Paragon; (ii) the fees and disbursements of the Receiver and those of its counsel; and (iii) the Receiver's actions and activities from December 15, 2009 to February 15, 2011. Also on February 22, 2011, Justice Mesbur granted an Approval and Vesting Order (the "**Casa Verde Sale Order**") approving the Receiver entering into and completing an Agreement of Purchase and Sale (the "**GEM APS**") for the sale of Casa Verde to GEM Health Care Group Limited ("**GEM**") and vesting in GEM the Debtor's right, title

and interest in the Purchased Assets (as defined in the Casa Verde Sale Order) subject to the closing of the transaction with GEM and the Receiver filing with the Court a Receiver's Certificate (the "**Receiver's Certificate**"). In support of the motion that resulted in the February 22 Order and the Casa Verde Sale Order, the Receiver submitted its Sixth Report to the Court (the "**Sixth Report**") dated February 15, 2011. A copy of the Sixth Report without appendices is attached hereto as **Appendix "B"**. Copies of the February 22 Order and the Casa Verde Sale Order are attached hereto as **Appendix "C"** and **Appendix "D"**, respectively.

10. On November 9, 2011, Justice Wilton-Siegel granted an Order (the "**November 9 Order**") approving, among other things, (i) a distribution to Peoples of \$1,250,000 from the Receiver's trust account relating to Paragon; (ii) the fees and disbursements of the Receiver and those of its counsel; and (iii) the Receiver's actions and activities from December 16, 2009 to October 14, 2011. Also on November 9, 2011, Justice Wilton-Siegel granted an Approval and Vesting Order (the "**West Park Sale Order**") approving the Receiver entering into and completing an Agreement of Purchase and Sale (the "**West Park APS**") for the sale of West Park to CVH GP Inc., general partner of CVH (No. 1) LP ("**CVH**"), assignee of SAC 4 Inc., and vesting in CVH the Debtor's right, title and interest in the Purchased Assets (as defined in the West Park Sale Order) subject to the closing of the transaction with CVH and the Receiver filing with the Court a Receiver's Certificate. In support of the motion that resulted in the November 9 Order and the West Park Sale Order, the Receiver submitted its Seventh Report to the Court (the "**Seventh Report**") dated November 1, 2011. A copy of the Seventh Report without appendices is attached hereto as **Appendix "E"**. Attached hereto as **Appendix "F"** is the Supplemental Report to the Receiver's Seventh Report to the Court dated November 9, 2011 which advised the Court of i) a further amending agreement to the West Park APS that was entered into to address certain concerns of the Ministry of Health and Long-Term Care (the "**MOH**"), and ii) SAC 4 Inc.'s intention to assign its right, title and interest in the West Park APS to CVH (which assignment was completed on November 14, 2011). Copies of the November 9 Order and the West Park Sale Order are attached hereto as **Appendix "G"** and **Appendix "H"**, respectively.



## PURPOSE

11. The purpose of this Eighth Report of the Receiver (the “**Eighth Report**”) is to:
- report to the Court on the closing of the transaction for the sale of Casa Verde to GEM;
  - provide the Court with a brief update on the status of the West Park APS; and
  - request approval of a proposed distribution to Peoples of \$7,900,000 from the Receiver’s trust account relating to Paragon.

## TERMS OF REFERENCE

12. In preparing this Report, the Receiver has relied upon records of the Debtor and unaudited financial information prepared by the Debtor and/or Diversicare Canada Management Services Co., Inc. (“**Diversicare**”). The Receiver has not performed an audit or other verification of such information. As set out in the First Report, Diversicare has been engaged as day-to-day manager of Casa Verde and West Park on behalf of the Receiver.
13. The Receiver has sought the advice of Gowling Lafleur Henderson LLP (“**Gowlings**”), counsel to Peoples, for general legal matters that have arisen in respect of the receiverships. Where the Receiver has required independent legal advice, the Receiver has sought the counsel of Lang Michener LLP (“**Lang Michener**”) and subsequently, Heenan Blaikie LLP (“**Heenan**”).
14. Capitalized terms not defined in this Report are as defined in the Appointment Order. All references to dollars are in Canadian currency unless otherwise noted.

## MOH APPROVAL

15. Upon issuance of the Casa Verde Sale Order, by letter dated February 28, 2011, the Receiver advised the MOH that it had entered into the GEM APS and of the Receiver’s desire to sell Casa Verde to GEM. The February 28, 2011 letter caused the MOH to commence its

Licensing Approval Process, which the MOH had verbally informed the Receiver could take four to six months to complete.

16. The GEM APS provided, among other things, that i) the MOH shall have approved the purchase by GEM contemplated under the GEM APS, and the MOH shall have approved the Purchaser for transfer of the Licence(s) or for the issue of licences similar to the Licence(s) on or before March 31, 2011 (the "**MOH Approval Date**"), ii) GEM was to be satisfied on or before May 31, 2011 as to any conditions imposed by the MOH on the transaction (the "**MOH Conditions Date**"), and iii) the Closing Date was to be no later than June 30, 2011. Given the MOH's estimated time frame to complete its Licencing Transfer Process, the parties entered into Amending Agreement No. 2 which extended the MOH Approval Date to October 31, 2011, the MOH Conditions Date to September 30, 2011 and the Closing Date to November 30, 2011. In addition, in Amending Agreement No. 2, the Receiver consented to the assignment of the GEM APS to Downsview Long Term Care Centre Limited ("**Downsview**"). Downsview is an entity related to GEM. Attached hereto as **Appendix "I"** is Amending Agreement No. 2.
17. As the MOH had not completed its Licencing Review Process by September 30, 2011, the parties entered into Amending Agreement No. 3 which extended the MOH Conditions Date to November 30, 2011 and the MOH Approval Date to December 20, 2011. With the Licencing Review Process not completed by November 30, 2011, the parties entered into Amending Agreement No. 4 which extended the MOH Conditions Date to January 31, 2012, MOH Approval Date to February 28, 2012 and the Closing Date to March 31, 2012. Attached hereto as **Appendix "J"** are Amending Agreements No. 3 and No. 4.
18. By letter dated December 13, 2011 (the "**MOH Approval Letter**"), the MOH advised Downsview that it had complete its Licensing Transaction Review and approved the issuance of a new licence to Downsview once the following conditions were met:
  - i) the MOH receives, in writing, confirmation of the actual date of the sale closing;

- ii) the MOH receives a letter from the Vendor surrendering the current licence held by the Vendor along with the original current licence for Casa Verde Nursing Home;
- iii) the Purchaser agrees in a form acceptable to the MOH that it will reimburse the Local Health Integration Network or the MOH any amounts owed to either of them by the Vendor resulting from the reconciliation process as set out in s.243 of Ontario Regulation 79/10 under the Act or under the previously applicable legislation and service agreement in respect of Casa Verde Nursing Home; and
- iv) the Purchaser agrees to correct all outstanding findings of non-compliance set out in the inspection reports issued by the MOH to the Vendor, and to comply with all outstanding orders issued by a MOH inspector or the Director against the Vendor, if any, and all inspection reports and orders should be available from the Vendor and they must be posted in the Home pursuant to applicable law.

19. With respect to condition iii) above, the amounts referred to therein involve obligations that are repayable to the MOH due to any overfunding by the MOH of Casa Verde. Overfunding could occur for a number of reasons, including:

- Actual occupancy levels lower than funded levels;
- Failure to spend amounts funded on qualified expenditures; and
- Disallowance of expenditures by the MOH.

#### **MOH CLOSING ADJUSTMENT AND ESTABLISHMENT OF AN ESCROW AGREEMENT**

20. Section 2.8(c) of the GEM APS provided for an adjustment on closing of the estimated amount, as agreed to between the parties, that may be repayable to or receivable from the MOH in regard to any overpayments/credits for the period prior to closing (the "MOH

**Closing Adjustment**”). The MOH Closing Adjustment was intended to provide a credit on closing to Downsview for the obligations Downsview was assuming (if any) pursuant to condition iii) of the MOH Approval Letter.

21. After extensive discussions and negotiations, it became apparent that the parties could not agree on an amount for the MOH Closing Adjustment, primarily due to the uncertainty of the amounts that the MOH would seek to recover from the Purchaser relating to the pre-closing period, as the MOH had not yet finalized its annual reconciliations for 2007 through 2010 and the Long-Term Care Home Annual Report for 2011 had not yet been completed or submitted.
22. In order to address the MOH Closing Adjustment, the parties agreed to institute an escrow arrangement whereby a portion of the purchase price would be held in escrow to reimburse the Purchaser for recoveries taken by the MOH from subsequent funding of the Purchaser; the portion of the escrow fund not paid to the Purchaser would be paid to the Vendor.
23. In order to provide additional time to negotiate the terms of the escrow agreement, the parties entered into Amending Agreement No. 5 which extended the MOH Conditions Date to February 29, 2012 and the MOH Approval Date to March 30, 2012. Attached hereto as **Appendix “K”** is Amending Agreement No. 5.
24. During the course of its negotiations with the Purchaser, in early March 2012, the Receiver contacted the MOH and requested that the MOH provide the status of its reconciliations of funding in respect of the period from the Appointment Date to December 31, 2011.
25. On March 21, 2012, the MOH advised the parties of the status of reconciliations for the years 2006 through 2011 and estimated the total amount of pre-Closing MOH obligations for those years at \$665,649.
26. Notwithstanding the MOH’s estimate of the pre-closing MOH obligations, Downsview maintained the escrow amount should be \$1.75 million. It was Downsview’s position that the MOH’s correspondence did not definitively indicate that the reconciliations for 2006 through 2009 had been finalized and the MOH’s estimate was prepared without the benefit of any

prior review of the actual reconciliations for 2010 and 2011. As a result, Downsview did not want to be in a position to have to pay the MOH for pre-closing amounts should the actual obligations increase as a result of the MOH subsequently attempting to recover further amounts for the 2006 through 2009 period and the MOH's subsequent completion of the reconciliations for 2010 and 2011.

27. Following further negotiations, the parties agreed to set the amount to be placed into escrow at \$1.75 million on the proviso that the escrow amount be reduced to \$1.1 million upon the receipt of correspondence from the MOH, either before or after closing, that clearly indicated that the reconciliations for 2006 through 2009 were final and that Downsview would not be assuming any obligations for those years.
28. Accordingly, the parties entered into Amending Agreement No. 6 with an effective date as of February 29, 2012 which, among other things:
  - i) amended the Closing Date to July 26, 2012;
  - ii) deleted the clauses in the GEM APS concerning the MOH Closing Adjustment and replaced the clauses with an agreement to place into escrow \$1.75 million of the Purchase Price payable on closing (the "**Escrow Fund**") to be held in respect of MOH obligations for the period January 24, 2006 to December 31, 2011 (the "**MOH Closing Adjustment Period**") and to be administered on the terms of an escrow agreement to be dated as of the Closing Date (the "**Escrow Agreement**"), with Gowlings acting as the Escrow Agent;
  - iii) provided for the amount of the Escrow Fund to be reduced to \$1.1 million upon receipt from the MOH of correspondence that confirmed that the reconciliations for the years up to and until December 31, 2009 are finalized or closed; and
  - iv) amended the MOH Conditions Date and the MOH Approval Date to June 20, 2012.

A copy of each of Amending Agreement No. 6 and the Escrow Agreement are attached hereto as **Appendix "L"**.

29. By (a) letter dated July 10, 2012, the MOH issued a revised letter to Downsview approving the transfer of the licences but which modified condition iii) of the December 13, 2011 approval letter by setting the maximum liability to be assumed by Downsview for MOH obligations relating to the period beginning on January 1, 2011 to the Closing Date at \$1.0 million; and (b) e-mail correspondence dated July 10, 2012, the MOH confirmed that reconciliations for the years 2006 through 2010 were closed and no amounts remained owing to the MOH for those years. A copy of each of the July 10, 2012 letter and e-mail correspondence from the MOH is attached hereto as **Appendix "M"**.
30. Given the MOH's establishment of a maximum obligation of \$1.0 million to be assumed by Downsview on closing, the parties entered into Amending Agreement No. 7 which, among other things, revised the amount of the Escrow Fund to \$1.0 million and amended the MOH Closing Adjustment Period to be from January 1, 2010 to December 31, 2011. Corresponding amendments to the Escrow Agreement were also made. Attached hereto as **Appendix "N"** is a copy of Amending Agreement No. 7.

#### **CLOSING OF THE SALE OF CASA VERDE**

31. On June 22, 2012, pursuant to the terms of the MOH Approval Letter, the Receiver i) advised the MOH that the Closing Date of the transaction was July 26, 2012, and ii) subject to the closing of the transaction and the issuance of a new licence to Downsview, surrendered to the MOH Casa Verde's original Long-Term Care Home Licence.
32. After execution of Amending Agreement No. 7, which set the Closing Date to be no later than July 26, 2012, Downsview informed the Receiver that it wished to change the Closing Date to July 25, 2012, which change was acceptable to the Receiver. On July 16, 2012, the Receiver advised the MOH that the Closing Date had been changed to July 25, 2012.
33. On July 25, 2012, the sale of Casa Verde closed and the Receiver's Certificate was provided to the Purchaser.

34. The Receiver and Diversicare continue to address matters relating to the receivership of Casa Verde, including ensuring that all required filings to the MOH and other government authorities are made on a timely basis.

#### **SALE-RELATED MATTERS**

##### *SEIU*

35. On July 12, 2012, Downsview advised the Receiver that it wished to speak with representatives of the Service Employees International Union Local 1.0N (the "SEIU") prior to the Closing Date.
36. On July 16, 2012, the Receiver advised the SEIU of the scheduled Closing Date of the transaction and of Downsview's desire to convene a meeting with the SEIU. While the Receiver had offered to participate in the meeting, Downsview advised that it did not see a need for the Receiver's participation.

##### *Employees*

37. In view of the pending closing of the GEM APS, on July 11, 2012, the Receiver directed Diversicare to advise Casa Verde's management team of the scheduled closing date.
38. On July 19, 2012, the Receiver attended meetings held with Casa Verde's employees at which the employees were advised of the upcoming closing of the transaction with Downsview. Employees were advised that pursuant to the Receiver's agreement with Downsview, upon the closing of the transaction, Paragon's union and non-union employees would become employees of Downsview and that all of the terms of their employment with the Receiver, including wage rates, vacation pay entitlements, sick credit entitlements, and seniority rights, would be recognized by Downsview.
39. By letter dated July 25, 2012, the Receiver advised non-union employees that as a result of the closing of the sale of Casa Verde, their employment by the Receiver had come to an end. The form of letter provided to non-union employees is attached hereto as **Appendix "O"**. Counsel for the Receiver sent formal notice to counsel for SEIU to advise SEIU of the closing of the transaction and that Downsview had become the successor employer of Casa

Verde's employees.

*Suppliers*

40. By letter dated July 25, 2012, the Receiver advised suppliers to Casa Verde that the assets of Casa Verde were sold to Downsvue, that the Receiver would be paying for goods and services provided prior to July 25, 2012 in the normal course and that the Receiver would not be responsible for goods and services provided to Casa Verde after July 24, 2012. The form of letter provided to suppliers is attached hereto as **Appendix "P"**.

*Closing Proceeds*

41. The GEM APS provided for a Purchase Price of \$9.0 million. After the adjustments set out in the Statement of Adjustments, and after consideration of the \$1.0 million Escrow Fund, the Receiver received net proceeds of \$6,759,391.71 on closing.

*Potential Future Proceeds*

(a) *Escrow Fund*

42. On closing, \$1.0 million of the closing proceeds were delivered to Gowlings to be administered in accordance with the terms of the Escrow Agreement. Amending Agreement No. 6 provides for the release of amounts from the Escrow Fund as follows:
- i) to the Purchaser on receipt of a monthly Long-Term Care Home Payment Notice ("**MOH Monthly Payment Notice**") from the MOH that an amount relating to the period prior to closing will be recovered or withheld from any scheduled monthly payment to be made to Downsvue; and
  - ii) to the Vendor on receipt by the Escrow Agent of correspondence issued by the MOH that confirms that the reconciliations for all periods in the MOH Closing Adjustment Period are finalized or closed and that no further amounts are owing.



43. As the MOH confirmed on July 10, 2012 that the reconciliation for the year 2010 had been finalized and no further amounts are owed, and the last day of the MOH Closing Adjustment Period is December 31, 2011, the \$1.0 million Escrow Fund is being held only in respect of the 2011 year. By e-mail correspondence dated March 21, 2012, the MOH estimated that the amount of its recoveries relating to 2011 will be \$52,756. However, the MOH's estimate was provided without it having reviewed and reconciled the Long-Term Care Home Annual Report for 2011, which is not due to be submitted to the MOH until September 2012.
44. Based on the Receiver's experience with Casa Verde, the MOH's review and reconciliation of Casa Verde's annual report may take up to three years to complete. As a result, the time frame for the final release of amounts from the Escrow Fund is unknown; however, the Escrow Agreement establishes July 25, 2016 as the outside date for the release of the balance of funds in the Escrow Fund. Therefore, while it could be up to four years before the Receiver could receive the balance remaining in the Escrow Fund, the potential further proceeds available to the Receiver, based on the MOH's estimate referred to earlier herein, could be up to \$947,000.

*(b) High Intensity Needs Claims*

45. Casa Verde made certain disbursements in the period of January 1, 2012 until the Closing Date for High Intensity Needs and Lab Costs ("**HIN Costs**") for which it can seek reimbursement from the MOH ("**HIN Claims**"). As of the Closing Date, Casa Verde had submitted \$80,157 of HIN Claims for a portion of 2012 for which it was awaiting reimbursement from the MOH. In addition, Casa Verde had incurred further HIN Costs up to the Closing Date for which HIN Claims had not been submitted to the MOH as of the Closing Date. The MOH's policy for reimbursement of these claims is to include a payment in future MOH Monthly Payment Notices, which amounts would be received by Downsview. Accordingly, the Receiver sought an adjustment on closing in its favour for outstanding HIN Claims.
46. Downsview did not agree to provide an adjustment on closing for outstanding HIN Claims since it was unclear if all of the claims would be approved and the amount of HIN Costs

incurred prior to the Closing Date that had not been submitted to the MOH for reimbursement was not available prior to closing. Accordingly the parties executed an undertaking that Downsview, subject to certain set off rights in respect of post-closing adjustments, would reimburse the Receiver for any HIN Claims paid to Downsview in the twelve months after the Closing Date which related to the period prior to the Closing Date. Therefore, a further \$80,000 plus the amount of pre-closing HIN Claims to be submitted could be received by the Receiver within one year of the Closing Date, subject to Downsview's set off rights for post-closing adjustments.

(c) *July 2012 Rent*

47. The GEM APS provided for an adjustment on closing for usual and customary items which are subject of commercial real property and retirement and long term care facility transactions. As the Receiver had received \$413,292 of payments from residents in the period from July 1, 2012 to July 24, 2012, it intended to provide Downsview with an adjustment on closing of \$93,324 representing the rent payments for the seven days of July during which Downsview would be in possession of the facility; this amount would have been reconciled post-closing to determine if any of the payments received in July related to the period prior to July 1, 2012. July payments relating to pre-July 2012 payment amounts owed would have been reimbursable by Downsview to the Receiver.
48. Downsview did not agree with the Receiver's position and was of the view that it should receive an adjustment not just for amounts collected in respect of July rent but for all amounts billed for July rent (amounts billed in July totalled \$451,112 resulting in an adjustment on closing of \$101,864). In addition, to the extent Downsview received rent payments from residents relating to July 2012 in the six month period after closing, Downsview would remit to the Receiver the portion of the rent payment relating to the period July 1 to July 24.
49. While the Receiver did not agree with Downsview's position, in view of the amount in disagreement (\$8,540), the re-adjustment provision set out above, and the fact that this issue was the final outstanding item to be resolved prior to closing, the Receiver agreed to the

closing adjustment of \$101,864. The Receiver estimates that if all amounts for July rent are collected, it could receive up to a further \$8,540 from Downsview.

*(d) Post-Closing Adjustments*

50. The GEM APS provides for each party to provide an undertaking to readjust any item on or omitted from the statement of adjustments, except for the MOH Closing Adjustment and the adjustment for HIN Claims, for a period of six (6) months from Closing. Since the adjustment on closing relating to payroll was based on an estimate as of the Closing Date, the Receiver anticipates that post-closing adjustment(s) will be required for, at a minimum, payroll.
51. The adjustment period for the HIN claims is one year, and the Escrow Agreement in respect of the MOH Closing Adjustment expires on July 25, 2016.

**INTERIM STATEMENTS OF RECEIPTS AND DISBURSEMENTS**

52. Attached hereto as **Appendices "Q" and "R"** are the Receiver's Interim Statements of Receipts and Disbursements for the period January 24, 2006 to August 3, 2012 (the "**Interim R&Ds**") for each of Paragon and Paragon Ontario, respectively. Due to the inactivity in the Paragon Ontario account, on January 30, 2012, the account was closed and the balance therein was transferred to the Receiver's account relating to Paragon.
53. The Interim R&Ds indicate the Receiver is holding \$8,592,550 of cash, of which \$6,759,392 represents net proceeds from the sale of Casa Verde.
54. The Interim R&Ds reflect transactions through the Receiver's accounts and do not reflect the receipts and disbursements of the operating accounts managed by Diversicare for the Receiver. The Receiver has been funding the operating accounts on a monthly basis based on the cash requirements to operate the facility. As of July 31, 2012, the balance in the operating accounts administered by Diversicare was \$267,031.61.
55. Diversicare is in the process of assessing the amount of funds it will require to satisfy all of the operating costs incurred up until Closing which may require further funding from the

Receiver. Diversicare will maintain the operating accounts until it is satisfied that all operating expenditures have been paid.

#### **PROPOSED DISTRIBUTION TO PEOPLES**

56. The Receiver has approximately \$8,590,000 in its Paragon trust account.
57. With respect to the property, assets and undertaking of Paragon and the business of Casa Verde, Peoples holds the security described in Appendix "O" attached to the Fifth Report, which security includes a charge/mortgage of land made in favour of First National Financial Corporation by Paragon dated May 30, 1994 and registered as Instrument No. TB953231 as subsequently amended and assigned to Peoples and registered June 15, 2000 as Instrument No. TR061724 (the "**Casa Verde First Mortgage**"). The Receiver reported in paragraph 62 of the First Report that it had received an independent legal opinion from Lang Michener that Peoples' security over Paragon's assets was legal, valid and binding.
58. A copy of Peoples' Statement for Discharge Purposes effective July 31, 2012 with respect to the Casa Verde First Mortgage is attached hereto as **Appendix "S"**. As of July 31, 2012, the outstanding balance (principal and interest) under the Casa Verde First Mortgage is \$16,121,574.17. Peoples has informed the Receiver that it would like to receive a payment against the outstanding balance on the Casa Verde First Mortgage.
59. The Receiver has determined that \$7,900,000 would be an appropriate amount to distribute to Peoples as payment against the Casa Verde First Mortgage and is seeking this Court's approval to make that payment. After consideration of the amount of the proposed distribution, the Receiver should have sufficient cash to (i) address post-closing sale adjustments; (ii) address any operating cost obligations in excess of the funds being held in the Diversicare operating accounts; (iii) pay the fees of Diversicare; and (iv) fund professional fees incurred as part of the closing of the GEM APS and future fees to be incurred to complete the receiverships of Paragon and Paragon Ontario.

60. The Receiver is also seeking this Court's approval to make subsequent distributions to Peoples should the Receiver determine that it is in a position to distribute excess cash in its trust account.

#### **STATUS OF THE SALE OF WEST PARK**

61. Upon issuance of the West Park Sale Order, by letter dated December 2, 2011, the Receiver advised the MOH that it had entered into the West Park APS and of the Receiver's wish to sell West Park to CVH. The December 2, 2011 letter caused the MOH to commence its Licensing Approval Process.
62. The Receiver understands that CVH has provided the information and documentation requested by the MOH as part of the Licensing Transfer Process. As of the date of this Eighth Report, the MOH has not communicated its decision to CVH or the Receiver.
63. Given the delays in obtaining approval from the MOH, the Receiver has entered into a number of amending agreements to extend the time frames under the West Park APS for obtaining MOH approval for the transfer of the licence to CVH and the outside closing date. The most recent amending agreement executed between the parties extends the MOH Approval Date for the transaction to October 1, 2012 and the outside closing date to November 1, 2012.

#### **RECEIVER'S REQUEST TO THE COURT**

64. The Receiver is respectfully seeking an order approving the following:
- i) the actions and activities of the Receiver from October 15, 2011 to August 3, 2012 with respect to its activities undertaken for Paragon and Paragon Ontario as outlined in this Eighth Report;
  - ii) the Interim R&Ds for the period January 24, 2006 to August 3, 2012;
  - iii) a distribution to Peoples in the amount of \$7,900,000 to be applied against the balance outstanding on the Casa Verde First Mortgage; and
  - iv) the Receiver making subsequent distributions to Peoples from excess cash on hand.

All of which is respectfully submitted to this Honourable Court.

DATED this 21<sup>st</sup> day of August, 2012.

**DELOITTE & TOUCHE INC.**

**in its capacity as Interim Receiver and Receiver and Manager of  
the assets, undertakings and properties of  
Paragon Health Care Inc., Paragon Health Care (Ontario) Inc.  
and 1508669 Ontario Limited and not in its personal capacity**

*Deloitte & Touche Inc.*

Daniel R. Weisz, CA•CIRP, CIRP  
Senior Vice President

Hartley Bricks, MBA, CA•CIRP, CIRP  
Vice President

# APPENDIX A

Court File No. 06-CL-6233

**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)**

**COMMERCIAL LIST**

THE HONOURABLE ) MONDAY, THE 23<sup>rd</sup> DAY  
 )  
JUSTICE CUMMING ) OF JANUARY, 2006

**PEOPLES TRUST COMPANY**

Applicant

- and -

**PARAGON HEALTH CARE INC. and 1508669 ONTARIO LIMITED**

Respondents

**APPLICATION UNDER section 47 of Bankruptcy and  
Insolvency Act, R.S.C. 1985, c. B-3, and under section  
101 of the Courts of Justice Act, R.S.O. 1990, c. C.43**

**ORDER**

**THIS MOTION**, made by the Applicant for an Order pursuant to section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the Courts of Justice Act, R.S.O. 1990 c. C-43, as amended (the "CJA") appointing Mintz & Partners Limited ("Mintz") as interim receiver and receiver and



manager (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of Paragon Health Care Inc. ("Paragon") and 1508669 Ontario Limited ("150 Ontario") was heard this day at 393 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of James Dysart sworn January 13, 2006 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant and the Respondents, no one appearing for the persons referenced in the Service List appended hereto as **Appendix "A"**, although duly served as appears from the affidavit of service of Carla Clarizia sworn January 17, 2006 (the "Affidavit of Service") and on reading the consent of Mintz to act as the Receiver,

#### **SERVICE AND AMENDMENT**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged so that this motion is properly returnable today, service upon those parties described in the Affidavit of Service is hereby validated and any further service of the Notice of Application and Application Record is hereby dispensed with.

2. **THIS COURT ORDERS** that Paragon Health Care (Ontario) Inc. ("Paragon Ontario") be added as a respondent to these proceedings.

#### **APPOINTMENT**

3. **THIS COURT ORDERS** that pursuant to section 47(1) of BIA and section 101 of the CJA, effective 9:00 a.m. Eastern Standard Time January 24, 2006, Mintz is hereby appointed Receiver, without security, of all of the current and future assets, undertakings and properties of Paragon, 150 Ontario and Paragon Ontario (collectively, the "Debtors"), of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "Property"), including, without limitation, the real property described in **Appendix "B"** hereto.

**RECEIVER'S POWERS**

4. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business or cease to perform any contracts of the Debtors;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this Order, including, without limitation, Diversicare Canada Management Services Co., Inc., or such other third party operator as the Receiver may in its discretion designate (the "Manager");
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;

- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors and to collect any payments or subsidies from the Ontario Ministry of Health and Long Term Care (the "MOH") and any municipalities, provided, however, that notwithstanding anything herein contained, any monies received by the Receiver from the MOH pursuant to this Order shall be used or applied by the Receiver only in accordance with the operation of the Debtors' nursing homes which are currently licensed pursuant to the *Nursing Homes Act*, R.S.O. 1990, c. N-7, as amended and the regulations thereunder (the "NHA") and related policy (and which amounts will be subject to MOH review and reconciliation as provided for by applicable law);
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtors;
- (j) to undertake such repairs and improvements to the Property as the Receiver may, in its discretion, deem appropriate or the MOH may require;
- (k) to apply for such permits, licenses, approvals or permissions as may be required by any governmental authority with respect to the Property, including, without limitation, licenses under the NHA;
- (l) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to

settle or compromise any such proceedings, including, without limitation, any grievances or other labour disputes. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (m) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (n) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$200,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (o) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (p) to report to, meet with and discuss with such secured and unsecured creditors of the Debtors and their advisors as the Receiver deems appropriate on all matters relating to the Property and the receivership,

and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

- (q) to register a copy of this Order and any other Orders in respect of the Property against title to any or all of the Property;
- (r) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;
- (s) to enter into arrangements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors and the power to lend money to or indemnify any such trustee, such trustee borrowings or indemnity not to exceed \$25,000 unless otherwise increased by this Court;
- (t) to vote any shares and exercise any rights which the Debtors may have as shareholder and to otherwise deal with all securities, warrants or other interests held by the Debtors, for its benefit; and,
- (u) to take any steps reasonably incidental to the exercise of these powers,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Debtors, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

5. **THIS COURT ORDERS** that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents and shareholders, any other persons acting on their instructions or behalf including, without limitation, any accountants

or legal counsel, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request, other than documents or information which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that all Persons shall deliver to the Receiver all of the Debtors' books, documents, securities, contracts, orders, corporate and accounting records and all computer records, computer programs, computer tapes, computer disks, data storage media and programs containing any such information, and any other papers, records and information of any kind of the Debtors relating thereto in their possession or control (the foregoing, collectively, the "Records"), and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver access to and use of accounting, computer, software and physical facilities relating thereto.
7. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to obtain access to, recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including,

without limiting the generality of the foregoing, providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

8. **THIS COURT ORDERS** that no proceeding, enforcement process, or extrajudicial proceeding in any court or other tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver or any person engaged by the Receiver, including the Manager, except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY**

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

10. **THIS COURT ORDERS** that all rights and remedies against the Debtors or affecting the Property are hereby stayed and suspended pending written consent of the Receiver or leave of this Court, provided, however, that nothing in this paragraph or this Order shall:
- (a) empower the Receiver or the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on;
  - (b) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, or other mandatory statutory or regulatory provisions of applicable law, and, for greater certainty, this Order shall not be construed so as to prohibit,

restrain, impede or in any way interfere with the MOH, the Director under the NHA, or employees or agents of the MOH (collectively, the "Minister") in exercising any jurisdiction, duty, power, or authority granted under the NHA or the *Health Facilities Special Orders Act*, R.S.O. 1990, c. H.5, as amended, without further order of this Court or the written consent of the Receiver (including, without limitation, the right to suspend a licence, to take control of a home, or to terminate a service agreement), where it has been determined by the Minister to be necessary to protect the health, safety and welfare of residents, and any such exercise by the Minister shall not in any way diminish or derogate from the protections against liabilities afforded to the Receiver under this Order, or under the provision of the BIA, or at law or equity; or,

- (c) prevent the filing of any registration to preserve a security interest or a claim for lien.

#### **NO INTERFERENCE WITH THE RECEIVER**

11. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour renewal rights, alter, interfere with, repudiate, terminate or cease to perform any right, contract, arrangement, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Receiver or leave of this Court, and, without limiting the generality of the foregoing, the MOH is hereby directed to make all payments of funds to which the Debtors are entitled directly to the Receiver and the MOH shall not suspend, cancel or set-off such payments without further order of this Court, provided, however, that nothing in this paragraph shall exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, or other mandatory statutory or regulatory provisions of applicable law from and after the date of this order.

#### **CONTINUATION OF SERVICES**



**EMPLOYEES**

14. **THIS COURT ORDERS** that the Receiver shall not be liable for any non-unionized employee-related liabilities, including, without limitation, wages, severance pay, termination pay, vacation pay, and pension or benefit amounts, other than such amounts as the Receiver may specifically agree in writing to pay, or such amounts as may be determined in a Proceeding before a court or tribunal of competent jurisdiction.
15. **THIS COURT ORDERS** that the Receiver shall not be liable for any unionized employee-related liabilities, including, without limitation, wages, severance pay, termination pay, vacation pay, and pension or benefit amounts, other than in accordance with the terms of the agreements appended as to the Supplementary Affidavit of James Dysart (the "Labour Agreements"), which Mintz is hereby authorized to execute in its capacity as Receiver and, if applicable, Trustee in Bankruptcy, and, for greater certainty, leave shall not be granted to any person, pursuant to s. 215 of the BIA, to commence proceedings against the Receiver or, if applicable, the Trustee in Bankruptcy, in respect of matters forming the subject matter of the Labour Agreements, other than in accordance with the terms thereof.
16. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canadian *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to

it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

17. **THIS COURT ORDERS** that nothing herein contained shall require or obligate the Receiver to occupy or to take control, care, charge, occupation, possession or management of any of the Property which may be environmentally contaminated, or a pollutant or a contaminant, or cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other legislation, statute, regulation or rule of law or equity respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the Canadian *Environmental Protection Act*, the Ontario *Environmental Protection Act*, the Ontario *Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that the Receiver shall promptly advise the Ontario Ministry of the Environment of any obvious or known environmental condition existing on or in any of the Property in accordance with applicable Environmental Legislation.

#### **RECEIVER'S ACCOUNTS**

18. **THIS COURT ORDERS** that any expenditure or liability which shall properly be made or incurred by the Receiver, including (subject to the approval of the Court) the fees of the Receiver and the fees and disbursements of its legal counsel, incurred at the normal rates and charges of the Receiver and its counsel (the "Receiver's Operating Costs"), shall be allowed to it in passing its accounts and shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any

Person, including, without limitation, the security interest of Peoples Trust Company (the "Receiver's Charge").

19. **THIS COURT ORDERS** the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are referred to a judge of the Commercial List of the Ontario Superior Court of Justice.
20. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE RECEIVERSHIP**

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$750,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge.

22. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.
23. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Appendix "C"** hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.
24. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a pari passu basis.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

25. **THIS COURT ORDERS** that the liability that the Receiver may incur as a result of its appointment or as a result of the performance of its duties hereunder other than the Receiver's Operating Costs or any liability arising as a result of its gross negligence or wilful misconduct (the "Receiver's Liabilities"), shall be limited in the aggregate to the Net Realizable Value of the Property. The Net Realizable Value of the Property shall be the proceeds realized in cash from the disposition of the Property after the Receiver's Operating Costs, including monies borrowed hereunder, have been paid.
26. **THIS COURT ORDERS** that the Receiver's Liabilities shall form a charge on the Net Realizable Value of the Property (the "Receiver's Liability Charge") subordinate to the Receiver's Charge and the Receiver's Borrowings Charge.

#### **GENERAL**

27. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28. **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 or elsewhere 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.
29. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.
30. **THIS COURT ORDERS** that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, as provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis.
31. **THIS COURT ORDERS** that any interested party may apply to this Court, within 30 days of mailing to them of a copy of this Order, to vary or amend this Order on seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

  
JOSEPH P VAN TASSEL  
REGISTRAR

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

JAN 24 2006

PER/PAR: 

**APPENDIX "A"****SERVICE LIST**

**TO: PARAGON HEALTH CARE INC.**  
3595 Keele Street  
Toronto, Ontario  
M3J 1M7

**Attention: Gerald Harquail, President**

**AND TO: 1508669 ONTARIO LIMITED**  
103-111 Pelham Road  
St. Catherines, Ontario  
L2S 1S9

**Attention: Gerald Harquail, President**

**AND TO: SACK GOLDBLATT MITCHELL**  
Suite 1130, Box 180  
20 Dundas St. W.  
Toronto, Ontario  
M5G 2G8

**Attention: Michael Kainer**

**Tel: (416) 977-6070**

**Fax: (416) 591-7333**

Solicitors for Service Employees International Union, Local 1.0n,  
Canadian Union of Public Employees and its Local 1263 and the Nursing  
Homes and Related Industries Pension Plan

**AND TO: MINISTRY OF FINANCE, Insolvency Unit**  
33 King Street West, 6<sup>th</sup> Floor  
Oshawa, Ontario  
L1H 8H5

**AND TO: DEPARTMENT OF JUSTICE (CANADA)**

Ontario Regional Office  
The Exchange Tower, Box 36  
130 King Street West, Suite 3400  
Toronto, Ontario  
M5X 1K6

**Attention: Diane Winters**

Tel: (416) 973-3172  
Fax: (416) 973-0810

**AND TO: LANG MICHENER LLP**

BCE Place, P.O. Box 747  
Suite 2500, 181 Bay Street  
Toronto, Ontario  
M5J 2T7

**Attention: Les Wittlin**

Tel: (416) 360-8600  
Fax: (416) 365-1719

Solicitors for Mintz & Partners Limited

**AND TO: Ginette Harquail**

c/o Paragon Health Care Inc.  
3595 Keele Street  
Toronto, Ontario  
M3J 1M7

**AND TO: MINISTRY OF HEALTH AND LONG TERM CARE**

56 Wellsley Street West, 9<sup>th</sup> Floor  
Toronto, Ontario  
M7A 2J9

**Attention: Tim Burns, Director, Long Term Care Homes Branch**

**AND TO: CAPPELLACCI DAROZA LLP**

462 Wellington Street West, Suite 500  
Toronto, Ontario  
M5V 1E3

**Attention: Ernest J. Cappellacci**

Tel: 416-955-9500  
Fax: 416-955-9503

Solicitors for Diversicare

**APPENDIX "B"****LEGAL DESCRIPTIONS OF PROPERTY**

Part Lot 17, Concession 3, W.Y.S., Township of York, designated as Part 1, Plan 64R-9597, City of Toronto, Property Identifier Number 10181-0039(LT), municipally known as 3595 Keele Street, Toronto, Ontario.

Lots 814-819 and 857-861, TP Plan 94 Grantham, City of St. Catharines, Property Identifier Number 46172-0268(LT) municipally known as 103-111 Pelham Road, St. Catharines, Ontario and Lots 738-739, TP Plan 94, Grantham, City of St. Catharines, Property Identifier Number 46172-0309(LT), municipally known as 34-36 Whitworth Street, St. Catharines, Ontario.



## APPENDIX "C"

## RECEIVER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that [RECEIVER'S NAME], the interim receiver and receiver and manager (the "Receiver") of all of the assets, undertakings and properties of [DEBTOR'S NAME] appointed by Order of the Ontario Superior Court of Justice (the "Court") dated the \_\_\_\_ day of \_\_\_\_\_, 2006 (the "Order") made in an action (the "Action") having Court file number 06-CL-\_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration, expenses and liabilities.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property (as defined in the Order) as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 2006.

[RECEIVER'S NAME], solely in its capacity as  
Receiver of the Property (as defined in the  
Order), and not in its personal capacity

Per: \_\_\_\_\_

Name:

Title:

TOR\_LAW 6220395\1

<p><b>BETWEEN:</b></p> <p><b>PEOPLES TRUST COMPANY</b> Applicant</p> <p>- AND -</p> <p><b>PARAGON HEALTH CARE INC. and 1508669 ONTARIO LIMITED</b> Respondents</p> <p><b>APPLICATION UNDER section 47 of the <i>Bankruptcy and Insolvency Act</i>, R.S.C. 1985, c. B-3, and under section 101 of the <i>Courts of Justice Act</i>, R.S.O. 1990, c. C.43</b></p>		<p><b>Court File No.: 06-CL-6233</b></p>
		<p><b>ONTARIO</b></p> <p><b>SUPERIOR COURT OF JUSTICE</b> (Commercial List)</p> <p>PROCEEDING COMMENCED AT TORONTO</p>
		<p><b>ORDER</b></p>
		<p><b>GOWLING LAFLEUR HENDERSON LLP</b> Barristers and Solicitors Suite 1600, 1 First Canadian Place 100 King Street West TORONTO, Ontario M5X 1G5</p> <p><b>Massimo C. Starnino (LSUC # 41048G)</b> Tel: (416) 862-3630 Fax: (416) 863-3630</p> <p>Solicitors for Peoples Trust Company</p>

# APPENDIX B

Court File No. 06-CL-6233

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
[COMMERCIAL LIST]**

BETWEEN:

**PEOPLES TRUST COMPANY**

Applicant

- and -

**PARAGON HEALTH CARE INC. AND 1508669 ONTARIO LIMITED**

Respondent

**SIXTH REPORT TO THE COURT OF THE RECEIVER  
(dated February 15, 2011)**

**INTRODUCTION**

1. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated January 23, 2006 (the "**Appointment Order**"), Mintz & Partners Limited ("**MPL**") was appointed as Interim Receiver and Receiver and Manager (the "**Receiver**") of all the assets, undertakings and property of Paragon Health Care Inc. ("**Paragon**"), Paragon Health Care (Ontario) Inc. ("**Paragon Ontario**") and 1508669 Ontario Limited ("**1508669**") (collectively, the "**Companies**") effective 9:00 am on January 24, 2006 (the "**Appointment Date**"). A copy of the Appointment Order is attached hereto as **Appendix "A"**. By Order of the Court dated July 2, 2008, following the merger of the accounting practices of Deloitte & Touche LLP and Mintz & Partners LLP, the name of the Receiver was changed to Deloitte & Touche Inc. ("**Deloitte**").

2. Paragon's assets comprise the Casa Verde Health Centre, a 252-bed nursing home ("**Casa Verde Nursing Home**") and a 94-bed retirement home ("**Casa Verde Retirement Home**") (collectively, with Casa Verde Nursing Home, "**Casa Verde**") located at 3595 Keele Street, Toronto, Ontario. 1508669's assets comprise the West Park Health Centre ("**West Park**"), a 93-bed nursing home located at 103-111 Pelham Road, St. Catharines, Ontario (collectively, with Casa Verde, the "**Homes**" or "**Facilities**").
3. Paragon Ontario is a non-operating entity that employs certain nursing staff used by Casa Verde.
4. On April 4, 2007, the Honourable Justice Cumming granted an Order (the "**April 4, 2007 Order**") approving, among other things (i) a distribution of \$200,000 from 1508669 to Peoples Trust Company ("**Peoples**"), the first secured creditor; (ii) the Receiver's activities from the Appointment Date to March 26, 2007; and (iii) the fees and disbursements of the Receiver and those of its counsel. In support of the motion that resulted in the April 4, 2007 Order, the Receiver submitted its First Report to the Court dated March 26, 2007 ("**First Report**").
5. On August 21, 2007, the Honourable Justice Lederman granted an Order approving the Receiver's commencement of a marketing and sale process for the Homes (the "**Sale Process Order**"). In support of the motion that resulted in the Sale Process Order, the Receiver submitted its Second Report to the Court dated July 27, 2007 (the "**Second Report**").
6. The Receiver's Third Report to the Court dated August 24, 2007 was submitted in response to a motion brought by a former employee who was seeking leave to issue a Statement of Claim to commence a wrongful dismissal action against the Receiver.
7. On July 2, 2008, the Honourable Justice Karakatsanis granted an Order (the "**July 2 Order**") approving, among other things (i) a distribution of \$800,000 from 1508669 to Peoples; (ii) the fees and disbursements of the Receiver and those of its counsel; and (iii)

changing the name of the Receiver to Deloitte. In support of the motion that resulted in the July 2 Order, the Receiver submitted its Fourth Report to the Court (the "**Fourth Report**") dated June 25, 2008.

8. On December 23, 2009, the Honourable Justice Cumming granted an Order (the "**December 23 Order**") approving, among other things (i) a distribution of \$1,000,000 from Paragon to Peoples; (ii) the fees and disbursements of the Receiver and those of its counsel; and (iii) the Receiver's actions and activities of the Receiver from June 26, 2008 to December 14, 2009. In support of the motion that resulted in the December 23 Order, the Receiver submitted its Fifth Report to the Court (the "**Fifth Report**") dated December 14, 2009. A copy of the Fifth Report without appendices is attached hereto as **Appendix "B"**.
9. The purpose of this Sixth Report of the Receiver (the "**Sixth Report**") is to:
  - update the Court on the operation of the Homes;
  - update the Court on the status of the marketing and sale process for the Homes;
  - request the Court issue an order approving an Agreement of Purchase and Sale (the "**GEM APS**") as between the Receiver and GEM Health Care Group Limited ("**GEM**" or the "**Purchaser**") and, to the extent the conditions of the GEM APS are satisfied, vesting in the Purchaser all the right, title and interest of Paragon and Paragon Ontario in the assets free and clear of all liens, security interests and other encumbrances, save and except for the permitted encumbrances referred to in the GEM APS;
  - request approval of a proposed distribution of \$2,000,000 from Paragon to Peoples; and
  - request the Court's approval of the fees and activities of the Receiver, and those of its counsel.

## TERMS OF REFERENCE

10. In preparing this Report, the Receiver has relied upon records of the Companies and unaudited financial information prepared by the Companies and/or Diversicare Canada Management Services Co., Inc. ("**Diversicare**"). The Receiver has not performed an audit or other verification of such information. As set out in the First Report, Diversicare has been engaged as day-to-day manager of Casa Verde and West Park on behalf of the Receiver.
11. The Receiver has sought the advice of Gowling Lafleur Henderson LLP ("**Gowlings**"), counsel to Peoples, for general legal matters that have arisen in respect of the receiverships. Where the Receiver has required independent legal advice, the Receiver has sought the counsel of Lang Michener LLP ("**Lang Michener**").
12. Capitalized terms not defined in this Report are as defined in the Appointment Order. All references to dollars are in Canadian currency unless otherwise noted.

## OPERATIONS

13. The Receiver has continued to operate the Facilities pursuant to the powers and duties under the Appointment Order.

### Casa Verde

#### *Occupancy*

14. At the Appointment Date, Casa Verde Nursing Home was approximately 67% occupied and Casa Verde Retirement Home was approximately 50% occupied. Upon its appointment, the Receiver commenced a capital expenditure and repair program with a goal of improving the physical premises at Casa Verde and increasing occupancy. To that end, as of December 31, 2010, and as discussed later herein, the Receiver has made capital expenditures of approximately \$1,188,000 since the Appointment Date.
15. As of January 31, 2011, Casa Verde Nursing Home is approximately 91% occupied while



Casa Verde Retirement Home is at 55% occupancy. For 2010, Casa Verde Nursing Home averaged approximately 94% occupancy while Casa Verde Retirement Home averaged approximately 55% occupancy. These occupancy levels are virtually identical to those reported approximately one year ago in the Fifth Report. The increase in occupancy since the Appointment Date can be attributed to the following:

- a more concerted marketing campaign by Casa Verde, including marketing of the local Community Care Access Centre which places new applicants in homes;
- a change over to a more experienced senior management team;
- the creation of model suites for a better presentation to potential residents;
- improved appearance of Casa Verde Nursing Home through repairs and maintenance authorized by the Receiver and effected through Diversicare; and
- a general decrease in available beds in competitor nursing homes in the North Toronto area.

16. The Receiver continues to work with Diversicare to develop strategies to try to increase the occupancy of Casa Verde Retirement Home.

#### *Ministry of Health and Long-Term Care*

##### Compliance

17. On February 3 and 4, 2010, the Ministry of Health and Long-Term Care ("MOHLTC") completed its annual inspection of Casa Verde Nursing Home. The MOHLTC identified certain unmet standards or criteria but did not identify any areas of non-compliance. With respect to the unmet standards identified by the MOHLTC, a Plan of Corrective Action was submitted by Casa Verde which was accepted by the MOHLTC. A copy of the correspondence from the MOHLTC dated April 20, 2010 and the Long-Term Care Home Review Summary Report is attached hereto as **Appendix "C"**. The annual inspection for

2011 has not yet taken place and could occur at any time during the year.

#### Service Accountability Agreement and Licensing

18. Pursuant to the *Long-Term Care Homes Act, 2007*, S.O 2007, c.8 (the "LTCHA"), all operators of long-term care homes ("HSP") were required by July 1, 2010 to enter into a Service Accountability Agreement ("SAA") with the Local Health Integration Network (the "LHIN") that services the area in which the HSP is located. The SAA sets out the terms under which the LHIN will provide funding to the HSP and the performance obligations of the HSP in return for that funding. On July 13, 2010, following various communications between the Receiver and the Central LHIN regarding the applicability of certain wording in the SAA taking into account Paragon's receivership, the Receiver executed a SAA effective as of July 1, 2010 with the Central LHIN. The SAA expires on March 31, 2013.
19. On July 1, 2010, pursuant to section 99 of the LTCHA, the MOHLTC issued a Long-Term Care Home Licence to Paragon for 252 beds. The effective period of the licence is from July 1, 2010 to June 30, 2025.

#### *Accreditation*

20. Casa Verde Nursing Home received long-term care home accreditation from Accreditation Canada in October 2007. Accreditation Canada is an independent agency recognized by the MOHLTC that assesses the quality of services provided in nursing homes. The next accreditation survey of Casa Verde Nursing Home is to be completed by August 31, 2011. On April 8, 2009, Casa Verde Retirement Home received accreditation from the Ontario Retirement Communities Association and was admitted to its membership. The next accreditation survey of Casa Verde Retirement Home is not required before 2012.

#### *Legal Action*

21. On December 6, 2010, the Receiver was forwarded a Statement of Claim in which it and

Diversicare were named as defendants in an action brought by a former Casa Verde resident regarding an altercation between two residents that took place at Casa Verde. The Receiver forwarded the statement of claim to its insurer which has advised the Receiver that it has engaged legal counsel to defend the action.

#### *Human Rights Complaint*

22. On August 5, 2010, the Receiver was advised that on June 10, 2010 a former Casa Verde employee had filed an Application under the Human Rights Code, R.S.O. 1990, c. H 10, as amended, (the "**HR Application**") naming Casa Verde Retirement Residence and Long-Term Care and the Service Employees International Union, Local 1 as respondents to the HR Application. The grounds of discrimination alleged in the HR Application are disability and age. The Receiver has engaged counsel to defend the HR Application.

#### *Operating Results*

23. Attached hereto as **Appendix "D"** is an operating statement summary for Casa Verde Nursing Home for the period January 24, 2006 to November 30, 2010 (the "**Results Period**"). Casa Verde Nursing Home has generated positive net income (before consideration of interest, depreciation and capital expenditures) of approximately \$4.9 million over the Results Period.
24. Over the Results Period, the Receiver has incurred approximately \$260,000 in restructuring costs which relate to appraisal fees and severance and termination costs for terminated employees.
25. In addition to the operating expenses referred to on the Operating Statement Summary, as set out earlier in this report, the Receiver has expended approximately \$1,188,000 in capital expenditures for Casa Verde. The significant expenditures relate to remediation of Casa Verde's roof, replacement of certain HVAC components, refurbishment and improvement of certain wings of the building to bring these areas back into use in order to allow for full occupancy at Casa Verde, and the purchase of new furniture and fixtures.

26. Attached hereto as **Appendix "E"** is an operating statement summary for Casa Verde Retirement Home for the Results Period. Casa Verde Retirement Home has experienced a net operating loss of approximately \$1.66 million (before consideration of interest, depreciation and capital expenditures) over the Results Period as a result of occupancy levels in the 50% to 60% range since the Appointment Date. The Receiver is continuing to work with Diversicare to develop strategies to increase occupancy or otherwise employ the unused space at Casa Verde Retirement Home for other revenue generating projects.

#### West Park

##### *Occupancy*

27. Since the Appointment Date to 2010, occupancy at West Park had remained relatively constant at an average occupancy rate in excess of 97%. However, due to a cessation of admissions imposed by the MOHLTC over the January to March 2010 period (as discussed further below), occupancy for 2010 averaged approximately 94%.

##### *Ministry of Health and Long-Term Care*

#### Compliance Matters

28. As discussed in the Fifth Report, by letter dated November 13, 2009 from the MOHLTC, West Park was placed under enforcement inspection for a period of 90 days. The MOHLTC indicated that the reason for placing West Park under enforcement inspection was the lack of progress in addressing previously identified areas of non-compliance and unmet criteria.
29. By letter dated January 6, 2010, for the reasons as outlined in that letter, the MOHLTC advised that it was ceasing authorizing admissions at West Park for a thirty-day period. The MOHLTC further advised that it was continuing with enhanced enforcement monitoring of West Park. A copy of the January 6, 2010 letter from the MOHLTC is attached hereto as **Appendix "F"**.

30. The issues identified by the MOHLTC that lead to the enhanced enforcement and cessation of admissions were related to care and nursing. To address these issues, in addition to developing and submitting plans of corrective action which were accepted by the MOHLTC, Diversicare provided increased administrative and nurse consulting support as well as implemented a reorganization of the internal management of West Park, which included replacing the Administrator, the Director of Care and the Assistant Director of Care positions.
31. By letter dated March 5, 2010, the MOHLTC advised that it was permitting admissions to resume at West Park at a rate of one admission per week for the first two weeks and then two admissions per week for the following two weeks. The MOHLTC further advised that West Park would continue to be subject to unannounced enforcement inspections. A copy of the March 5, 2010 letter is attached hereto as **Appendix "G"**.
32. By letter dated May 4, 2010, the MOHLTC advised that it was permitting West Park to resume regular admission practices. The MOHLTC further advised that West Park would continue to be subject to enforcement inspections for a period of 90 days effective March 5, 2010. A copy of the May 4, 2010 (incorrectly dated May 4, 2009) letter is attached hereto as **Appendix "H"**.
33. On July 21 through 28, 2010, the MOHLTC conducted a follow up inspection of West Park and identified a number of areas of non-compliance. On October 12, 2010, the MOHLTC issued an Order(s) of the Inspector pursuant to section 153 and/or 154 of the LTCHA. A copy of the Inspection Report and Order(s) of the Inspector is attached hereto as **Appendix "I"**. Diversicare has advised that all of the Orders have been complied with and all required work referred to in the Orders has been completed. West Park is now only subject to regular MOHLTC inspection reviews.

Service Accountability Agreement and Licensing

34. On July 13, 2010, following various communications between the Receiver and the LHIN regarding the applicability of certain wording in the SAA taking into account 1508669's

receivership, the Receiver executed a SAA effective as of July 1, 2010 with the Hamilton Niagara Haldimand Brant LHIN. The SAA expires on March 31, 2013.

35. On July 1, 2010, the MOHLTC issued a Long-Term Care Home Licence to 1508669 for 101 beds. The effective period of the licence is from July 1, 2010 to June 30, 2025.

### *Operating Results*

36. Attached hereto as **Appendix "J"** is an operating statement summary for West Park for the Results Period. Over the Results Period, West Park has generated positive net operating income of approximately \$890,000 (before consideration of interest, depreciation and capital expenditures). Until 2010, West Park had generated relatively constant positive results. However, due to the compliance matters in late 2009 and throughout most of 2010 including the cessation of admissions for a two month period in early 2010, and the increased costs incurred to address those compliance matters, West Park experienced a net loss of approximately \$240,000 in the eleven month period ending November 30, 2010. As the compliance matters have been addressed and occupancy at West Park has returned to near capacity, the Receiver anticipates that results for 2011 should return to those levels experienced in the 2006 to 2009 period.
37. In addition to the operating expenses referred to on the Operating Statement Summary, over the Results Period, the Receiver has expended approximately \$410,000 in capital expenditures for West Park. The significant expenditures relate to remediation of the roof, replacement of substantially all of the windows of the building, elevator repairs and replacement of flooring in certain sections of West Park.

### **MARKETING AND SALES PROCESS**

38. Following the issuance of the Sale Process Order, the Receiver conducted a marketing and sales process (the "**First Sale Process**"), the details of which were set out in the Fourth Report. The First Sale Process failed to result in acceptable offers for the Homes.

39. On May 30, 2008, the Receiver, with the concurrence of Peoples, engaged John A. Jensen Realty Inc. ("**Jensen**") to list the Homes for sale under separate six month listing agreements. Jensen's expertise is the marketing and sale of nursing and retirement home facilities. With the agreement of Peoples, the Receiver has extended its listing agreements with Jensen with respect to the Homes to April 29, 2011. Jensen has advertised the Homes on its website, sent marketing information on the Homes to its proprietary database of contacts of parties interested in senior's housing opportunities and has also advertised the Homes on Loop Net, which purports to be the largest and most heavily trafficked commercial online real estate listing service.
40. For purposes of this Sixth Report, the Receiver has not included the names of potential purchasers, or offered purchase prices for the Homes, in order to not compromise the current or future sales efforts by the Receiver.

#### Casa Verde

41. On February 26, 2009, the Receiver entered into a letter of intent for the sale of Casa Verde. The Receiver provided the potential purchaser with a draft agreement of purchase and sale and various materials for it to conduct its due diligence and commenced to negotiate an agreement of purchase and sale. However, on April 3, 2009, the potential purchaser terminated its letter of intent in accordance with its terms.
42. On July 3, 2009, the Receiver entered into a letter of intent with a second party ("**Second Party**") for the sale of Casa Verde. The Receiver provided the Second Party with various materials for it to conduct its due diligence and with a draft agreement of purchase and sale. In late November 2009, and following extensive negotiations and discussions with the Second Party, the Second Party informed the Receiver that it would not at that time be proceeding any further with the transaction. The Receiver terminated the Second Party's letter of intent in accordance with its terms.
43. On January 20, 2010, the Receiver received an expression of interest for Casa Verde from GEM.

44. In order to consider the GEM offer, the Receiver commissioned an independent appraisal of Casa Verde by Carmichael Wilson Property Consultants Ltd. ("CWPC"). On April 23, 2010, CWPC provided its market value appraisal to the Receiver which had an effective date of March 12, 2010. The cover letter to the CWPC appraisal (the "CWPC Letter"), which summarizes the appraisal, forms **Appendix "K"** of this report. A copy of the CWPC Letter will be made available to the Court subject to a request for a Sealing Order pending the closing of the GEM transaction.
45. Based on the CWPC appraisal, the Receiver wished to proceed to pursue a sale of Casa Verde to GEM, and sought Peoples' approval to the proposed transaction. In mid-July 2010, the Receiver received Peoples' consent for the Receiver to complete a sale based on GEM's letter of intent. Jensen advised GEM that the Receiver was prepared to move forward and work toward completion of an agreement of purchase and sale. Throughout July and August 2010, the Receiver negotiated the terms of an agreement of purchase and sale with GEM that would be acceptable to the Receiver and Peoples. On October 20, 2010, with Peoples' approval, the Receiver and GEM executed the GEM APS. Due to various delays in completing the GEM APS, on October 28, 2010, the Receiver and GEM entered into Amending Agreement No. 1 which extended to January 24, 2011 the period during which GEM was permitted to conduct its due diligence and seek financing. Copies of the GEM APS and Amending Agreement No. 1 are attached hereto as **Appendix "L"**, redacted to maintain confidentiality with respect to the purchase price, pending the closing of the GEM transaction. An unredacted copy of the GEM APS will be made available to the Court, subject to a request for a Sealing Order.
46. Paragraph 4.3(a) of the GEM APS provides for the following:
- "On or within 30 days following satisfaction or waiver by the Purchaser of the Due Diligence Condition and the Financing Condition, an order will have been made by the Court approving this Agreement and the Transaction and vesting in the Purchaser all the right, title and interest of the Debtor in the Assets free and clear of all liens, security interests and other encumbrances,



save and except for the Permitted Encumbrances, such order to be substantially in the form of the order attached hereto as Exhibit A.”

GEM waived the Due Diligence Condition and the Financing Condition on January 24, 2011. As a result, the Receiver is seeking this Court’s approval of the GEM APS through the granting of an approval and vesting order. The approval and vesting order being sought provides that title will only vest with the Purchaser upon the Receiver delivering to the Purchaser a certificate (the “**Receiver’s Certificate**”) that certifies the following (defined terms are as defined in the Receiver’s Certificate):

- i) 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;
- ii) 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.

- 47. Pursuant to the GEM APS, GEM has paid deposits totalling \$450,000 which funds are being held in trust by Gowlings pending completing of the transaction.
- 48. Should this Honourable Court approve the GEM APS, the Receiver will work with GEM to comply with the MOHLTC’s Nursing Home/Bed Licensing Review Process (“**Nursing Home Licensing Process**”), a copy of which is attached hereto as **Appendix “M”**. The MOHLTC has recently advised the Receiver that the Nursing Home Licensing Process could take four to six months, or even longer, to complete before the license transfer is approved.
- 49. Paragraph 4.3(c) of the GEM APS provides for the following:

“On or before March 31, 2011, the MOH shall have approved the purchase by the Purchaser contemplated under this Agreement and the MOH shall have approved the Purchaser for transfer of the Licence(s) or for issue of licences similar to the Licence(s).”

In view of the information recently provided by the MOHLTC regarding the anticipated timing of completion of the Nursing Home Licensing Process, and on the assumption that this Honourable Court approves the GEM APS and directs the Receiver to complete the sale to GEM, the Receiver will request that GEM enter into an amending agreement to extend the date by which the MOHLTC will have approved the purchase by GEM and the issuance of a new licence to GEM, from March 31, 2011 to October 31, 2011 or such other date mutually acceptable to the Receiver and GEM.

50. To the extent that this Honourable Court does not approve the Receiver completing the GEM APS, or if the GEM APS is approved by the Court but is not completed for other reasons, public disclosure of the contents of the GEM APS, including the purchase price, could materially negatively impact the Receiver's re-marketing of Casa Verde. For that reason, as stated above, the Receiver is seeking an Order of this Honourable Court to seal Appendices "K" and "L" until the Receiver's Certificate has been filed with this Honourable Court.

#### West Park

51. On February 26, 2009, the Receiver entered into a letter of intent with a party for the sale of West Park (the "WP Party"). The Receiver provided the WP Party with a draft agreement of purchase and sale and various documents requested by the WP Party in order that the WP Party could conduct its due diligence on West Park. The letter of intent provided that the parties would enter into a definitive agreement of purchase and sale ("West Park APS") by March 24, 2009 (the "APS Deadline"). By the APS Deadline, the parties had not entered into the West Park APS, however, the Receiver and the WP Party agreed that they would continue to negotiate and that the WP Party would continue

to conduct its due diligence on the property notwithstanding the passing of the APS Deadline. Despite this extension, and following extensive negotiations and discussions, the parties could not agree on the terms of a West Park APS and in mid-August 2009, the parties mutually agreed to terminate the transaction.

52. In September 2009, Peoples sought the Receiver's consent to commence a foreclosure action on its second mortgage on West Park (the "**Foreclosure Action**"). After receiving advice from Lang Michener, the Receiver provided its consent to the Foreclosure Action on September 5, 2009.
53. Peoples subsequently issued a statement of claim in connection with the Foreclosure Action which it served on the Receiver and 1508669. Peoples then sought to obtain default judgement in regards to the Foreclosure Action. On December 3, 2009, Peoples assigned the second mortgage to West Park Holdings Ltd. ("**WP Holdings**") which entity continued the Foreclosure Action. The Foreclosure Action was completed on December 22, 2009 which had the effect of extinguishing the second mortgage on West Park (and Casa Verde, as both properties secured the same debt) and made WP Holdings the registered owner of West Park. Gowlings has advised that the Peoples first mortgage against 1508669 is unaffected by the Foreclosure Action.
54. Following WP Holdings' foreclosure on the second mortgage, the Receiver, at the request of Peoples, investigated the possibility of a redevelopment of West Park into a Class "A" long-term care home. In that regard, the Receiver commissioned OCA Architects to prepare a report on the feasibility and costs to convert West Park into a Class "A" long-term care home.
55. The Receiver also commissioned an independent appraisal of Casa Verde by CWPC. On April 23, 2010, CWPC provided its market value appraisal to the Receiver which had an effective date of March 12, 2010.
56. On September 3, 2010, the Receiver received a letter of intent for the purchase of West Park from an interested party ("**Party "A"**").

57. After reviewing the terms of the Party "A" letter of intent with Peoples, on November 26, 2010, the Receiver made a counter-offer to Party "A". On December 15, 2010, Party "A" provided a revised letter of intent to which the Receiver responded with a counter-proposal on December 17, 2010 with a deadline for response of December 21, 2010.
58. Also on December 17, 2010, the Receiver received a letter of intent from a second party ("Party "B") for the purchase West Park. Since earlier that day the Receiver had provided a counter-proposal to Party "A", it waited until the expiration of the counter-proposal it provided to Party "A" before it would deal with the letter of intent from Party "B".
59. On December 20, 2010, Party "A" advised that it would not accept the Receiver's counter-proposal to its letter of intent. As a result, on December 23, 2010, the Receiver provided Party "B" with a counter-proposal to its letter of intent. The deadline for acceptance of the Receiver's counter-proposal was January 14, 2011.
60. On January 11, 2011, the Receiver received a letter of intent from a third party ("Party "C") for the purchase of West Park.
61. On January 12, 2011, the Receiver received a counter-proposal from Party "B" to the Receiver's counter-proposal of December 23, 2010.
62. The letters of intent/proposals received from Party "A", Party "B" and Party "C" were relatively close in offering price. After discussing its options with Peoples, on January 13, 2011, the Receiver through Jensen advised all three parties that they would be provided with one last chance to present their best, final offer. The Receiver also provided each party with a draft form of agreement of purchase and sale acceptable to the Receiver in order that each party could understand the terms and conditions required by the Receiver, and the Receiver could assess, in addition to the offered purchase price, any changes to that agreement that each party would be seeking. The deadline for the receipt of final offers was January 21, 2011.

63. On January 21, 2011, the Receiver received two final offers. On January 24, 2011, the Receiver received a third final offer. Based on its review of those offers and discussions of those offers with Peoples, the Receiver has accepted one of those offers. The Receiver and the successful offeror are in the process of finalizing an agreement of purchase and sale. At the appropriate time, the Receiver will make an application to this Honourable Court to seek this Honourable Court's approval of the proposed transaction for the sale of West Park.

#### **INTERIM STATEMENTS OF RECEIPTS AND DISBURSEMENTS**

64. Attached hereto as Appendices "N", "O" and "P" are the Receiver's Interim Statements of Receipts and Disbursements for the period January 24, 2006 to February 11, 2011 (the "R&D") for each of Paragon, Paragon Ontario and 1508669, respectively. The R&Ds reflect transactions through the Receiver's accounts and do not reflect the receipts and disbursements of the operating accounts managed by Diversicare for the Receiver, which are maintained on an accrual basis and are reflected in the operating statement summaries referred to in paragraphs 23 and 36 of this Sixth Report.
65. On the 22<sup>nd</sup> day of each month, MOHLTC funding is deposited into the Receiver's trust account, the amount of which is based on the census at the Homes and is fairly consistent from month to month. Each month, Diversicare provides the Receiver with a cash flow forecast for the Homes and a funding request to meet the cash flow requirements of each of the Homes. The Receiver provides the requisite funding to Diversicare and holds the balance in its trust account.
66. Due to the compliance issues at West Park in 2010 which resulted in a drop in occupancy and increased costs to deal with those compliance issues, in late 2010, it became clear that West Park's cash receipts were insufficient to meet its obligations. As a result, in November 2010, the Receiver borrowed \$375,000 from Peoples and provided to Peoples a Receiver's certificate. The borrowed amount will be used to fund anticipated shortfalls from receipts at the end of 2010 and in the first quarter of 2011. At this time, the

Receiver is unable to anticipate when it will be in a position repay the funding provided by Peoples.

67. As set out in the R&D's, the current cash balances in the Receiver's trust accounts as at February 11, 2011 in respect of each of the Companies is as follows:

Company	Cash Balance
Paragon	\$ 2,802,950
Paragon Ontario	3,801
1508669	51,485
Total	\$ 2,858,236

As discussed below, the Receiver is proposing to make a distribution to Peoples of a portion of the cash being held in the Receiver's Paragon trust account.

#### **PROPOSED DISTRIBUTION TO PEOPLES**

68. The Receiver has approximately \$2.8 million in its Paragon trust account.
69. With respect to the property, assets and undertaking of Paragon and the business of Casa Verde, Peoples holds the security described in Appendix "O" attached to the Fifth Report, which security includes a charge/mortgage of land made in favour of First National Financial Corporation by Paragon dated May 30, 2004 and registered as Instrument No. TB953231 as subsequently amended and assigned to Peoples and registered June 15, 2000 as Instrument No. TR061724 (the "**Casa Verde First Mortgage**"). The Receiver reported in paragraph 62 of the First Report that it had received an independent legal opinion from Lang Michener that Peoples' security over Paragon's assets was legal, valid and binding.

70. A copy of Peoples' Statement for Discharge Purposes effective February 14, 2011 with respect to the Casa Verde First Mortgage is attached hereto as **Appendix "Q"**. As of February 14, 2011, the outstanding balance (principal and interest) under the Casa Verde First Mortgage is \$17,020,316.87. Peoples had previously informed the Receiver that it would like to receive a payment against the outstanding balance on the Casa Verde First Mortgage should there be sufficient excess cash flow that is not required to operate Casa Verde.
71. The Receiver has determined that \$2,000,000 would be an appropriate amount to distribute to Peoples as payment against arrears interest on the Casa Verde First Mortgage and is seeking this Honourable Court's approval to make that payment. After consideration of the amount of the proposed distribution, the Receiver should have sufficient cash to (i) continue to fund Casa Verde's operations; (ii) address any capital costs or other costs that may be required in respect of the sale of Casa Verde or as required by the MOHLTC; and (iii) address any "clawback" claims that may be made by the MOHLTC in respect of MOHLTC funding provided to the Receiver in respect of the period following the Appointment Date.

#### **STATEMENTS OF ACCOUNT OF THE RECEIVER AND ITS COUNSEL**

72. The Receiver's fees for services rendered for the period October 1, 2009 to October 31, 2010 are particularized in the Affidavit of Hartley Bricks sworn February 14, 2011 and the invoices attached as exhibits thereto. The total amount of the invoices for this period is \$169,885.53 in respect of Paragon and \$115,828.78 in respect of 1508669.
73. The fees and disbursements of Gowlings, counsel for Peoples Trust, in respect of work performed for the Receiver, for the period December 31, 2009 to December 31, 2010 are particularized in the Affidavit of Harry Vanderlugt sworn February 14, 2011 and the invoices are attached as exhibits thereto. The total amount of the invoices for this period is \$42,052.07 in respect of Paragon and \$19,003.57 in respect of 1508669, inclusive of GST/HST.

74. Lang Michener has not incurred any fees for Paragon or 1508669 since those reported in the Fifth Report.
75. The Receiver has reviewed the invoices of Gowlings and finds the work performed and charges to be appropriate and reasonable.
76. The Receiver has sought and received the approval of Peoples prior to taking interim draws against the fees of the Receiver and Gowlings.
77. The Receiver is seeking this Honourable Court's approval of its activities to February 14, 2011 and its fees as set out above.

#### **RECEIVER'S REQUEST TO THE COURT**

78. The Receiver is respectively seeking an order approving the following:
  - i) the actions and activities of the Receiver from December 15, 2009 to February 14, 2011;
  - ii) the Receiver entering into and completing the GEM APS and the granting of an approval and vesting order;
  - iii) sealing Appendices "K" and "L" to this Sixth Report until such time as the GEM APS is completed and the Receiver's Certificate is issued by the Receiver and filed with this Honourable Court;
  - iv) a distribution to Peoples in the amount of \$2,000,000 to be applied against interest outstanding on the Casa Verde First Mortgage; and
  - v) the fees and disbursements of the Receiver for the period from October 1, 2009 to October 31, 2010, and the fees and disbursements of Gowlings for the period from December 31, 2009 to December 31, 2010.



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All of which is respectfully submitted to this Honourable Court.

DATED this 15th day of February, 2011.

**DELOITTE & TOUCHE INC.**

**in its capacity as Interim Receiver and Receiver and Manager of  
the assets, undertakings and properties of  
Paragon Health Care Inc., Paragon Health Care (Ontario) Inc.  
and 1508669 Ontario Limited and not in its personal capacity**

*Deloitte + Touche Inc.*

Daniel R. Weisz, CA•CIRP, CIRP  
Senior Vice President

Hartley Bricks, MBA, CA•CIRP, CIRP  
Vice President

# APPENDIX C

Court File No. 06-CL-6233

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE  
JUSTICE MESBUR

)  
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)

TUESDAY, THE 22<sup>ND</sup> DAY  
OF FEBRUARY, 2011

IN THE MATTER OF AN APPLICATION UNDER  
SECTION 47 (1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*  
R.S.C. 1985, C.B-3

AND IN THE MATTER of SECTION 101 of *THE*  
*COURTS of JUSTICE ACT*, R.S.O. 1990, C.C-43

BETWEEN:

PEOPLES TRUST COMPANY

Applicant

- and -

PARAGON HEALTH CARE INC. and 1508669 ONTARIO LIMITED

Respondents

**DISTRIBUTION ORDER**

THIS MOTION made by Deloitte & Touche Inc. ("Deloitte"), appointed as interim receiver and receiver and manager (the "Receiver") pursuant to section 101 of the *Courts of Justice Act*, without security, of the property, assets and undertaking of Paragon Health Care Inc. ("Paragon"), Paragon Health Care (Ontario) Inc. ("Paragon Ontario") and 1508669 Ontario Limited ("1508669") pursuant to the terms of the Order of the Honourable Mr. Justice Cumming dated January 23, 2006 and effective 9:00 a.m.

on January 24, 2006 (the "Initial Order"), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Motion, the Sixth Report of the Receiver dated February 15, 2011 (the "**Sixth Report**") and the Affidavits of Harry Vanderlugt sworn February 1, 2011, filed, and Hartley M. Bricks sworn February 14, 2011, filed, and upon hearing the submissions of counsel for the Receiver, no other parties attending.

1. **THIS COURT ORDERS** that service of the Notice of Motion and the Motion Record herein is hereby abridged, if necessary, and that this motion is properly returnable today and that service, including the form, manner and time that such service was actually effected on all parties, is hereby validated, and where such service was not effected such service is hereby dispensed with.
2. **THIS COURT ORDERS** that the Sixth Report is hereby accepted and approved.
3. **THIS COURT ORDERS** that the conduct of the Receiver and its agents to date, as detailed in the Sixth Report, be and the same is hereby approved.
4. **THIS COURT ORDERS** that the Interim Statements of Receipts and Disbursements of the Receiver for the period January 24, 2006 to February 11, 2011 in respect of Paragon, Paragon Ontario and 1508669 as respectively set out in **Appendices "N", "O" and "P"** to the Sixth Report, filed, be and the same are hereby accepted and approved.
5. **THIS COURT ORDERS** that the fees of the Receiver relating to the receivership of Paragon and 1508669 for the period from October 1, 2009 to October 31, 2010 in the amount of \$169,885.53 in respect of Paragon and \$115,828.78 in respect of 1508669, as set out in the Affidavit of Hartley M. Bricks sworn February 14, 2011, filed, be and the same are hereby approved.

6. **THIS COURT ORDERS** that the fees and disbursements of Gowling Lafleur Henderson LLP, counsel to the Receiver, in the amount of \$42,052.07 in respect of Paragon and \$19,003.57 in respect of 1508669, as set out in the Affidavit of Harry Vanderlugt sworn February 14, 2011, filed, be and the same are hereby approved for the period December 31, 2009 to December 31, 2010.

7. **THIS COURT ORDERS** that the Receiver is authorized and hereby directed to distribute the total sum of \$2,000,000.00 to Peoples Trust Company, as partial payment on account of its secured claims against Paragon.

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

FEB 22 2011

PER / PAR:



<p><b>PEOPLES TRUST COMPANY</b></p>	<p><b>Court File No.: 06-CL-6233</b></p> <p><b>- and -</b></p> <p><b>PARAGON HEALTH CARE INC. and 1508669 ONTARIO LIMITED</b></p>
<p><b>ONTARIO</b></p> <p><b>SUPERIOR COURT OF JUSTICE</b></p> <p>(PROCEEDING COMMENCED AT TORONTO)</p>	
<p><b>DISTRIBUTION ORDER</b></p>	
<p><b>Gowling Lafleur Henderson LLP</b>  Barristers and Solicitors  1 First Canadian Place  100 King Street West, Suite 1600  Toronto, Ontario  M5X 1G5</p> <p><b>Clifton P. Prophet / Frank Lamie</b>  <b>LSUC No.: 34345K / 54035S</b></p> <p>Telephone: (416) 862-7525  Facsimile: (416) 862-7661</p> <p>Solicitors for Deloitte &amp; Touche Inc. in its capacity as Interim Receiver and Receiver and Manager of the current and future assets, undertakings and properties of Paragon Health Care Inc., Paragon Health Care (Ontario) Inc. and 1508669 Ontario Limited</p>	

# APPENDIX D

Court File No. 06-CL-6233

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE  
  
JUSTICE MESBUR

TUESDAY, THE 22<sup>ND</sup> DAY  
  
OF FEBRUARY, 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 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*

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.

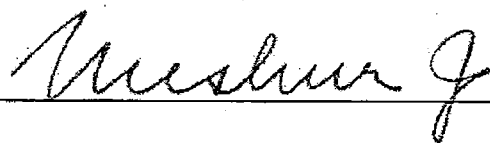
9. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

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, 2<sup>nd</sup> 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.

PEOPLES TRUST COMPANY

- and -

PARAGON HEALTH CARE INC. and 1508669 ONTARIO LIMITED

ONTARIO

SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

(PROCEEDING COMMENCED AT TORONTO)

APPROVAL AND VESTING ORDER

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

# **APPENDIX E**

Court File No. 06-CL-6233

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
[COMMERCIAL LIST]**

BETWEEN:

**PEOPLES TRUST COMPANY**

Applicant

- and -

**PARAGON HEALTH CARE INC. AND 1508669 ONTARIO LIMITED**

Respondent

**SEVENTH REPORT TO THE COURT OF THE RECEIVER  
(dated November 1, 2011)**

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**APPENDICES**

- APPENDIX "A": Appointment Order dated January 23, 2006
- APPENDIX "B": Sixth Report of the Receiver dated February 15, 2011
- APPENDIX "C": Order of the Honourable Justice Mesbur dated February 22, 2011
- APPENDIX "D": Casa Verde Sale Order dated February 22, 2011
- APPENDIX "E": Casa Verde Nursing Home Operating Statement Summary for the period January 24, 2006 to August 31, 2011
- APPENDIX "F": Casa Verde Retirement Home Operating Statement Summary for the period January 24, 2006 to August 31, 2011
- APPENDIX "G": West Park Health Centre Operating Statement Summary for the period January 24, 2006 to August 31, 2011
- APPENDIX "H": Agreement of Purchase and Sale between the Receiver and SAC 4 Inc. dated April 1, 2011, as amended
- APPENDIX "I": Receiver's Interim Statement of Receipts and Disbursements for Paragon Health Care Inc. for the period January 24, 2006 to September 30, 2011
- APPENDIX "J": Receiver's Interim Statement of Receipts and Disbursements for Paragon Health Care (Ontario) Inc. for the period January 24, 2006 to September 30, 2011
- APPENDIX "K": Receiver's Interim Statement of Receipts and Disbursements for 1508669 Ontario Limited for the period January 24, 2006 to September 30, 2011
- APPENDIX "L": Peoples Trust Company Statement for Discharge Purposes dated October 13, 2011

## INTRODUCTION

1. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated January 23, 2006 (the "**Appointment Order**"), Mintz & Partners Limited ("**MPL**") was appointed as Interim Receiver and Receiver and Manager (the "**Receiver**") of all the assets, undertakings and property of Paragon Health Care Inc. ("**Paragon**"), Paragon Health Care (Ontario) Inc. ("**Paragon Ontario**") and 1508669 Ontario Limited ("**1508669**") (individually or collectively, the "**Debtor**") effective 9:00 am on January 24, 2006 (the "**Appointment Date**"). A copy of the Appointment Order is attached hereto as **Appendix "A"**. By Order of the Court dated July 2, 2008, following the merger of the accounting practices of Deloitte & Touche LLP and Mintz & Partners LLP, the name of the Receiver was changed to Deloitte & Touche Inc. ("**Deloitte**").
2. Paragon's assets comprise the Casa Verde Health Centre, a 252-bed nursing home ("**Casa Verde Nursing Home**") and a 94-bed retirement home ("**Casa Verde Retirement Home**") (collectively, with Casa Verde Nursing Home, "**Casa Verde**") located at 3595 Keele Street, Toronto, Ontario. 1508669's assets comprise the West Park Health Centre ("**West Park**"), a 93-bed nursing home located at 103-111 Pelham Road, St. Catharines, Ontario (collectively, with Casa Verde, the "**Homes**" or "**Facilities**").
3. Paragon Ontario is a non-operating entity that employs certain nursing staff used by Casa Verde.
4. On April 4, 2007, the Honourable Justice Cumming granted an Order (the "**April 4, 2007 Order**") approving, among other things
  - i) a distribution of \$200,000 from 1508669 to Peoples Trust Company ("**Peoples**"), the first secured creditor;
  - ii) the Receiver's activities from the Appointment Date to March 26, 2007; and

- iii) the fees and disbursements of the Receiver and those of its counsel. In support of the motion that resulted in the April 4, 2007 Order, the Receiver submitted its First Report to the Court dated March 26, 2007 ("**First Report**").
5. On August 21, 2007, the Honourable Justice Lederman granted an Order approving the Receiver's commencement of a marketing and sale process for the Homes (the "**Sale Process Order**"). In support of the motion that resulted in the Sale Process Order, the Receiver submitted its Second Report to the Court dated July 27, 2007 (the "**Second Report**").
6. The Receiver's Third Report to the Court dated August 24, 2007 was submitted in response to a motion brought by a former employee who was seeking leave to issue a Statement of Claim to commence a wrongful dismissal action against the Receiver.
7. On July 2, 2008, the Honourable Justice Karakatsanis granted an Order (the "**July 2 Order**") approving, among other things
- i) a distribution of \$800,000 from 1508669 to Peoples;
  - ii) the fees and disbursements of the Receiver and those of its counsel; and
  - iii) changing the name of the Receiver to Deloitte. In support of the motion that resulted in the July 2 Order, the Receiver submitted its Fourth Report to the Court (the "**Fourth Report**") dated June 25, 2008.
8. On December 23, 2009, the Honourable Justice Cumming granted an Order (the "**December 23 Order**") approving, among other things
- i) a distribution of \$1,000,000 from Paragon to Peoples;
  - ii) the fees and disbursements of the Receiver and those of its counsel; and
  - iii) the Receiver's actions and activities from June 26, 2008 to December 14, 2009. In support of the motion that resulted in the December 23 Order, the Receiver



submitted its Fifth Report to the Court (the "**Fifth Report**") dated December 14, 2009.

9. On February 22, 2011, the Honourable Justice Mesbur granted an Order (the "**February 22 Order**") approving, among other things

- i) a distribution of \$2,000,000 from Paragon to Peoples;
- ii) the fees and disbursements of the Receiver and those of its counsel; and
- iii) the Receiver's actions and activities from December 15, 2009 to February 15, 2011.

10. Also on February 22, 2011, the Honourable Justice Mesbur granted an Approval and Vesting Order (the "**Casa Verde Sale Order**") approving the Receiver entering into and completing an Agreement of Purchase and Sale (the "**GEM APS**") for the sale of Casa Verde to GEM Health Care Group Limited ("**GEM**") and vesting in GEM the Debtor's right, title and interest in the Purchased Assets (as defined in the Casa Verde Sale Order) subject to the closing of the transaction with GEM and the Receiver filing with the Court a Receiver's Certificate. In support of the motion that resulted in the February 22 Order and the Paragon Sale Order, the Receiver submitted its Sixth Report to the Court (the "**Sixth Report**") dated February 15, 2011. A copy of the Sixth Report without appendices is attached hereto as **Appendix "B"**. Copies of the February 22 Order and the Casa Verde Sale Order are attached hereto as **Appendix "C"** and **Appendix "D"**, respectively.

11. The purpose of this Seventh Report of the Receiver (the "**Seventh Report**") is to:

- i) update the Court on the operation of the Homes;
- ii) update the Court on the status of the sale of Casa Verde;

- 7 -

- iii) request the Court issue an order approving an Agreement of Purchase and Sale dated April 1, 2011, including amendments thereto (the "**West Park APS**") as between the Receiver and SAC 4 Inc. ("**SAC 4**" or the "**Purchaser**") and, to the extent the conditions of the West Park APS are satisfied, vesting in the Purchaser all the right, title and interest of 1508669 in the assets referred to in the West Park APS free and clear of all liens, security interests and other encumbrances, save and except for the permitted encumbrances referred to in the West Park APS;
- iv) request approval of a proposed distribution of \$1,250,000 from Paragon to Peoples; and
- v) request the Court's approval of the Receiver's Interim Statements of Receipts and Disbursements for the period January 24, 2006 to September 30, 2011, the Receiver's activities for the period February 16, 2011 to October 14, 2011, the Receiver's fees for the period November 1, 2010 to June 30, 2010, and the fees of its counsel for the period January 1, 2011 to August 31, 2011.

#### **TERMS OF REFERENCE**

- 12. In preparing this Report, the Receiver has relied upon records of the Debtor and unaudited financial information prepared by the Debtor and/or Diversicare Canada Management Services Co., Inc. ("**Diversicare**"). The Receiver has not performed an audit or other verification of such information. As set out in the First Report, Diversicare has been engaged as day-to-day manager of Casa Verde and West Park on behalf of the Receiver.
- 13. The Receiver has sought the advice of Gowling Lafleur Henderson LLP ("**Gowlings**"), counsel to Peoples, for general legal matters that have arisen in respect of the receiverships. Where the Receiver has required independent legal advice, the Receiver has sought the counsel of Lang Michener LLP ("**Lang Michener**") and subsequently, Heenan Blaikie LLP ("**Heenan**").

14. Capitalized terms not defined in this Report are as defined in the Appointment Order. All references to dollars are in Canadian currency unless otherwise noted.

## OPERATIONS

15. The Receiver has continued to operate the Facilities pursuant to the powers and duties under the Appointment Order.

### Casa Verde

#### *Occupancy*

16. At the Appointment Date, Casa Verde Nursing Home was approximately 67% occupied and Casa Verde Retirement Home was approximately 50% occupied. Upon its appointment, the Receiver commenced a capital expenditure and repair program with a goal of improving the physical premises at Casa Verde and increasing occupancy. To that end, as of August 30, 2011, and as discussed later herein, the Receiver has made capital expenditures of approximately \$1,250,000 since the Appointment Date.
17. As of September 30, 2011, Casa Verde Nursing Home is approximately 96% occupied while Casa Verde Retirement Home is at 53% occupancy. For 2010, Casa Verde Nursing Home averaged approximately 92% occupancy while Casa Verde Retirement Home averaged approximately 55% occupancy. The increase in occupancy since the Appointment Date can be attributed to the following:
- i) a more concerted marketing campaign by Casa Verde, including marketing of the local Community Care Access Centre which places new applicants in homes;
  - ii) a change to a more experienced senior management team;
  - iii) the creation of model suites for a better presentation to potential residents;
  - iv) improved appearance of Casa Verde Nursing Home through repairs and maintenance authorized by the Receiver and effected through Diversicare; and

- v) a general decrease in available beds in competitor nursing homes in the North Toronto area.
18. The Receiver continues to work with Diversicare to develop strategies to try to increase the occupancy of Casa Verde Retirement Home.

*Ministry of Health and Long-Term Care*

19. On September 13, 16 and 19, 2011, the Ministry of Health and Long-Term Care ("MOHLTC") completed a critical incident inspection with respect to an incident involving a resident at Casa Verde. The MOHLTC determined that a resident had been transferred in an unsafe manner that resulted in a fall and injuries which required hospitalization. The resident was assessed in hospital and returned to Casa Verde. The resident required further care and Casa Verde returned the resident to hospital where the resident died nine days after the incident.
20. Diversicare advised the Receiver that the resident was found in bed with injuries consistent with a fall and was transferred to hospital. Management investigated the incident (before the MOHLTC visit) and found that a personal support worker used an improper lifting device to transfer the resident which was contrary to the resident's care plan and contrary to Casa Verde's policies and procedures. Diversicare promptly terminated the personal support worker who failed to follow procedure. That employee filed a grievance over their termination, which grievance was later settled by allowing the employee to resign. Diversicare also terminated two other personal support workers who observed the fall but failed to report the incident to the Administrator until well after the incident had occurred. Those two personal support workers have also filed a grievance regarding their termination which grievance remains unsettled.
21. The MOHLTC cited Casa Verde with three written notices in connection with the fall of the resident: i) failure to comply with O. Reg 79/10, s. 107. Reports re critical incidents; ii) failure to comply with O. Reg 79/10, s. 30. General requirements; and iii) failure to comply with LTCHA, 2007 S.O. 2007, c.8, s.8 Residents' Bill of Rights. Additionally,

the MOHLTC directed Casa Verde to prepare three voluntary plans of corrective action to address the issues identified in the written notices. Diversicare advises that the voluntary plans of corrective action are in the process of being prepared for submission to the MOHLTC.

22. The MOHLTC's annual inspection of Casa Verde for 2011 has not yet taken place and could occur at any time before December 31, 2011.

#### *Accreditation*

23. On August 31, 2011, Casa Verde received notification that the long-term care home has earned accreditation from CARF International, one of two leading accreditation associations recognized by the MOHLTC that assess the quality of services provided by nursing homes. The accreditation is effective August 16, 2011 through August 31, 2014. In April 2011, Casa Verde Retirement Home received notification that its accreditation from the Ontario Retirement Communities Association was renewed for a further two year period.

#### *Legal Action*

24. On December 6, 2010, the Receiver was forwarded a Statement of Claim in which it and Diversicare were named as defendants in an action brought by a former Casa Verde resident regarding an altercation between two residents that took place at Casa Verde. The Receiver forwarded the statement of claim to its insurer which has advised the Receiver that it has engaged legal counsel to defend the action and that a mediation has been scheduled for January 2012.

#### *Human Rights Complaint*

25. As previously reported in the Sixth Report, on August 5, 2010, the Receiver was advised that on June 10, 2010 a former Casa Verde employee had filed an Application under the Human Rights Code, R.S.O. 1990, c. H 10, as amended, (the "**HR Application**") naming Casa Verde Retirement Residence and Long-Term Care and the Service Employees

International Union, Local 1 as respondents. The grounds of the HR Application are discrimination on the grounds of disability and age. Casa Verde has engaged Hicks Morley Hamilton Stewart Storie LLP to defend the HR Application as it was advised by Diversicare that the employee was terminated solely for performance related issues. The Receiver's counsel participated in a mediation on August 18, 2011. At the mediation, no settlement was reached and the Receiver continues to defend the HR Application.

### *Operating Results*

26. Attached hereto as **Appendix "E"** is a summary operating statement for Casa Verde Nursing Home for the period January 24, 2006 to August 31, 2011 (the "**Results Period**"). Casa Verde Nursing Home has generated positive operating income (before consideration of interest, depreciation and capital expenditures) of approximately \$5.7 million over the Results Period.
27. Over the Results Period, the Receiver has incurred approximately \$260,000 in restructuring costs, which are non-recurring costs substantially consisting of appraisal fees and severance and termination costs for terminated employees.
28. In addition to the operating expenses referred to in the summary operating statement, the Receiver has incurred approximately \$1,250,000 in capital expenditures for Casa Verde. The significant expenditures relate to remediation of Casa Verde's roof, replacement of certain HVAC components, refurbishment and improvement of certain wings of the building to bring these areas back into use following the Receiver's appointment in order to allow for full occupancy at Casa Verde, and the purchase of new furniture and fixtures.
29. Attached hereto as **Appendix "F"** is an summary operating statement for Casa Verde Retirement Home for the Results Period. Casa Verde Retirement Home has experienced a net operating loss of approximately \$1.97 million (before consideration of interest, depreciation and capital expenditures) over the Results Period as a result of occupancy levels in the 50% to 60% range since the Appointment Date. The Receiver is continuing

to work with Diversicare to develop strategies to increase occupancy or otherwise employ the unused space at Casa Verde Retirement Home for other revenue generating projects.

### West Park

#### *Occupancy*

30. Since the Appointment Date to 2010, occupancy at West Park had remained relatively constant at an average occupancy rate in excess of 97%. However, due to a cessation of admissions imposed by the MOHLTC over the January to March 2010 period (as discussed further below), occupancy for 2010 averaged approximately 94%.
31. In the latter half of 2010, occupancy at West Park recovered to be at or near 100%; however, commencing in 2011, occupancy at West Park has declined resulting in an average occupancy for the period January 1 to August 31, 2011 of approximately 92%. Diversicare advises that the drop in occupancy is due to a softening of the market in the St. Catharines/Niagara region. West Park's occupancy at the date of this Seventh Report is approximately 95%. At this time, it is unclear when West Park will return to 100% occupancy.

#### *Ministry of Health and Long-Term Care*

32. On March 9 and 14, 2011, the MOHLTC completed a complaint inspection with respect to a complaint filed by a family member of a West Park resident. The MOHLTC reported findings of non-compliance in the areas of fall prevention and use of restraints that resulted in the issuance of nine written notifications, three requests that voluntary plans of corrective action be prepared and five compliance orders. Diversicare has advised that all of the voluntary plans of corrective action were submitted to and approved by the MOHLTC and the compliance orders have been addressed.
33. The MOHLTC's annual inspection of West Park for 2011 has not yet taken place and could occur at any time before December 31, 2011.

*Operating Results*

34. Attached hereto as **Appendix "G"** is a summary operating statement for West Park for the Results Period. Over the Results Period, West Park has generated positive net operating income of approximately \$973,000 (before consideration of interest, depreciation and capital expenditures).
35. Until 2010, West Park had generated relatively constant positive results. However, due to the compliance matters in late 2009 and throughout most of 2010 including the cessation of admissions for a two month period in early 2010 (as described in the Sixth Report), and the increased costs incurred to address those compliance matters, West Park experienced a net loss in 2010 of approximately \$252,000.
36. For fiscal 2011, West Park's operating net income for the period January 1, 2011 to August 31, 2011 is approximately \$95,500 which is lower than forecast operating income by approximately \$75,000. As discussed above, the shortfall is due substantially to lower than anticipated occupancy at West Park due to a softness of its local market.
37. In addition to the operating expenses referred to in the summary operating statement, over the Results Period, the Receiver has incurred approximately \$428,000 in capital expenditures for West Park. The significant expenditures relate to remediation of the roof, replacement of substantially all of the windows of the building, elevator repairs, air conditioner replacement and replacement of flooring in certain sections of the building.

**MARKETING AND SALES PROCESS**

38. Following the issuance of the Sale Process Order, the Receiver conducted a marketing and sales process (the "**First Sale Process**"), the details of which were set out in the Fourth Report. The First Sale Process failed to produce acceptable offers for the Homes.
39. On May 30, 2008, the Receiver, with the concurrence of Peoples, engaged John A. Jensen Realty Inc. ("**Jensen**") to list the Homes for sale under separate six-month listing



agreements. Jensen's expertise is the marketing and sale of nursing and retirement home facilities. With the agreement of Peoples, the Receiver extended its listing agreements with Jensen with respect to the Homes to October 29, 2011. Jensen advertised the Homes on its website, sent marketing information on the Homes to its proprietary database of contacts of parties interested in senior's housing opportunities and also advertised the Homes on Loop Net, which purports to be the largest and most heavily trafficked commercial online real estate listing service.

40. For purposes of this Seventh Report, the Receiver has not included the names of potential purchasers, or offered purchase prices for the Homes, in order not to compromise the current or future sales efforts by the Receiver.

#### Casa Verde

41. The Sixth Report contains the details of the marketing process for Casa Verde, which culminated in the Receiver entering into the GEM APS, which agreement was approved by the Honourable Justice Mesbur through the making of the Casa Verde Sale Order.
42. Since the issuance of the Casa Verde Sale Order, by letter dated February 28, 2011, the Receiver advised the MOHLTC that it had entered into the GEM APS, which letter caused the MOHLTC to commence its Licensing Approval Process.
43. The MOHLTC has advised the Receiver that it has received all of the documents from the Purchaser as required to assess the Purchaser under the Licensing Transfer Process and that approval now lies with the Minister of Health who is evaluating the documents. Should the Minister approve the issuance of new licences to the Purchaser, pursuant to the GEM APS, the transaction is to close within 30 days of receipt of approval.
44. Section 4.1(c) of the GEM APS, as amended, set September 30, 2011 as the date by which GEM was to be satisfied of any conditions imposed by the MOHLTC on the Transaction. In addition, Section 4.3(c) of the GEM APS set November 30, 2011 as the date by which the MOHLTC shall have approved the purchase by GEM and approved GEM for transfer

of the Licence(s) or for the issue of licences similar to the Licence(s). Given the delays in obtaining MOHLTC approval for the transfer of the licences, the Receiver and GEM entered into Amending Agreement No. 3 dated September 29, 2011 that amended the date in Section 4.1(c) to November 30, 2011 and the date in Section 4.3(c) to December 20, 2011.

#### West Park

45. After a prolonged marketing and sale process, as detailed in the Sixth Report, on January 28, 2011, after having consulted with the senior secured creditor, Peoples, the Receiver accepted an offer to purchase West Park from Southbridge Investment Partnership No. 1 on behalf of a purchaser to be established ("Southbridge"). The Receiver understands that Southbridge is a Cambridge, Ontario partnership focused on acquiring long-term care facilities across Canada. The principals of Southbridge formerly owned and operated a company that was a significant operator of long-term care beds in Canada prior to a sale of a substantial portion of its portfolio in 1997. The Receiver understands that Southbridge, through certain limited partnerships, currently operates five long-term care facilities in Ontario. Southbridge is also the selected purchaser for another long-term care home for which Deloitte is receiver and manager under separate receivership proceedings. The purchase of this other home by Southbridge has followed similar timelines to the sale of West Park and both Peoples and CMHC are aware that Southbridge is the proposed purchaser of this other home.
46. Following acceptance of the Southbridge offer, the Receiver and Southbridge negotiated and agreed to the terms of the West Park APS. During those negotiations, Southbridge advised the Receiver that the Purchaser under the West Park APS would be SAC 4. A copy of the West Park APS including amending agreements (as discussed below) are attached hereto as **Appendix "H"**, redacted to maintain confidentiality with respect to the purchase price, pending the closing of the West Park APS. An unredacted copy of the West Park APS will be made available to the Court, subject to a request for a Sealing Order. Capitalized terms found below and not otherwise defined herein have the

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meanings set out in the West Park APS.

47. The West Park APS initially provided for, amongst other things, a Due Diligence Period of 75 days and a Financing Condition period commensurate with the Due Diligence Period. On June 8, 2011, with the Due Diligence Period set to expire on June 15, 2011, SAC 4 advised the Receiver that it had not yet completed its due diligence nor satisfied its Financing Condition. Accordingly, the Receiver and SAC 4 entered into Amending Agreement No. 1 dated May 24, 2011 which extended the Due Diligence Period to July 15, 2011 and adjusted certain other related dates in the West Park APS.
48. Prior to July 15, 2011, SAC 4 advised the Receiver that it was not in a position to waive the Due Diligence Condition and that it wanted to meet with the Receiver to discuss the results of its due diligence process. Accordingly, the Receiver and SAC 4 entered into Amending Agreement No. 2 dated July 15, 2011 which extended the Due Diligence Period to August 12, 2011 in order to provide sufficient time to arrange a meeting between the parties.
49. On August 9, 2011, a meeting was convened between the Receiver and SAC 4 at which time SAC 4 advised the Receiver that during its due diligence review of West Park it had identified a number of issues that in its view necessitated adjustments to the terms and conditions of the West Park APS. The adjustments to the West Park APS that SAC 4 was seeking involved both sale price adjustments and additional conditions in the nature of information flow and operations of West Park prior to and after the eventual closing of the transaction.
50. After the August 9, 2011 meeting, the Receiver discussed with Peoples the adjustments SAC 4 tabled at the meeting. It was agreed that SAC 4 would be advised to prepare a draft amending agreement that contained the revised terms and conditions it was seeking in order that the Receiver could consider and discuss those terms with Peoples. In order to provide SAC 4 with sufficient time to prepare the draft amending agreement, the Receiver and SAC 4 entered into Amending Agreement No. 3 dated August 12, 2011

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which extended the Due Diligence Period to August 19, 2011.

51. On August 18, 2011, SAC 4 provided the Receiver with a draft amending agreement which contained those revised terms and conditions to the West Park APS that SAC 4 was seeking. In order to provide the Receiver with sufficient time to assess the draft amending agreement and discuss its terms with Peoples, the Receiver and SAC 4 entered into Amending Agreement No. 4 dated August 19, 2011 which extended the Due Diligence Period to August 31, 2011. Since the target date of August 31, 2011 proved to not provide sufficient time for the parties to reach an agreement on revised terms and conditions to the West Park APS, the Receiver and SAC 4 entered into Amending Agreement No. 5 dated August 31, 2011 which extend the Due Diligence Period to September 8, 2011.
52. By way of Amending Agreement No. 6 dated September 2, 2011, the Receiver and SAC 4 agreed to amend the West Park APS to adjust the purchase price and certain other terms and conditions that were satisfactory to both the Receiver and SAC 4.
53. One of the terms of Amending Agreement No. 6 provided for the Financing Condition Period to be extended to September 30, 2011. On September 30, 2011, SAC 4 waived the Financing Condition.
54. Paragraph 4.3(a) of the West Park APS provides for the following:

“On or within 45 days following satisfaction or waiver by the Purchaser of the Due Diligence Condition and the Financing Condition, an order will have been made by the Court approving this Agreement and the Transaction and vesting in the Purchaser all the right, title and interest of the Debtor in the Assets free and clear of all liens, security interests and other encumbrances, save and except for the Permitted Encumbrances, such order to be substantially in the form of the order attached hereto as Exhibit A. Such Approval and Vesting Order will include provisions satisfactory to the Purchaser that the assets of the Debtor have not become the property of the

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government as a result of the Debtor not being in good standing.”

Given that SAC 4 waived the Due Diligence Condition on September 2, 2011 and the Financing Condition on September 30, 2011, the Receiver is seeking this Court’s approval of the West Park APS through the granting of an approval and vesting order. The approval and vesting order being sought provides that title will only vest with the Purchaser upon the Receiver delivering to the Purchaser a certificate (the “**Receiver’s Certificate**”) that certifies the following (defined terms are as defined in the Receiver’s Certificate):

- i) 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;
- ii) 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.

55. Pursuant to the West Park APS, SAC 4 has paid deposits totalling \$100,000 which funds are being held in trust by Gowlings pending completion of the transaction.

56. Should this Honourable Court approve the West Park APS, the Receiver will work with SAC 4 to obtain MOHLTC approval for the transfer the licences to SAC 4 pursuant to the provisions of the *Long-Term Care Homes Act, 2007*. Given the Receiver’s recent experience with the sale of Casa Verde, the licensing transfer process could take in excess of six months to complete before the license transfer is approved.

57. Paragraph 4.3(c) of the West Park APS provides for the following:

“On or before February 29, 2012, the MOH shall have approved the purchase by the Purchaser contemplated under this Agreement and the MOH shall have approved the Purchaser for transfer of the Licence(s) or for issue of licences similar to the Licence(s).”

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In view of the Receiver's recent experience concerning the timing for obtaining MOHLTC approval for the transfer of licences, and on the assumption that this Honourable Court approves the West Park APS and directs the Receiver to complete the sale to SAC 4, the Receiver may be required to enter into a further amending agreement(s) with SAC 4 to extend the date by which the MOHLTC will have approved the purchase by SAC 4 and the issuance of a new licence to SAC 4, from February 29, 2012 to some other date(s) mutually acceptable to the Receiver and SAC 4.

58. To the extent that this Honourable Court does not approve the Receiver completing the West Park APS, or if the West Park APS is approved by the Court but is not completed for other reasons, public disclosure of the contents of the West Park APS, including the purchase price, could materially negatively impact the Receiver's re-marketing of West Park. For that reason, as stated above, the Receiver is seeking an Order of this Honourable Court to seal the unredacted copy of **Appendix "H"** until the Receiver's Certificate has been filed with this Honourable Court.

#### **INTERIM STATEMENTS OF RECEIPTS AND DISBURSEMENTS**

59. Attached hereto as **Appendices "I", "J" and "K"** are the Receiver's Interim Statements of Receipts and Disbursements for the period January 24, 2006 to September 30, 2011 (the "**Interim R&Ds**") for each of Paragon, Paragon Ontario and 1508669, respectively. The Interim R&Ds reflect transactions through the Receiver's accounts and do not reflect the receipts and disbursements of the operating accounts managed by Diversicare for the Receiver, which are maintained on an accrual basis and are reflected in the operating statement summaries referred to in paragraphs 26, 29 and 34 of this Seventh Report.
60. On the 22<sup>nd</sup> day of each month, MOHLTC funding is deposited into the Receiver's trust account, the amount of which is based on the census at the Homes and is fairly consistent from month to month. Each month, Diversicare provides the Receiver with a cash flow forecast for the Homes and a funding request to meet the cash flow requirements of each

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of the Homes. The Receiver provides the requisite funding to Diversicare and holds the balance in its trust account.

61. Due to the compliance issues at West Park in 2010 which resulted in a drop in occupancy and increased costs to deal with those compliance issues, in late 2010, it became clear that West Park's cash receipts were insufficient to meet its obligations. As a result, in November 2010, the Receiver borrowed \$375,000 from Peoples and provided to Peoples Receiver's Certificate #1 in the amount of \$375,000. The borrowed amount was used to fund shortfalls from receipts at the end of 2010 and in the first quarter of 2011. At this time, the Receiver does not anticipate it will be in a position to repay the funding provided by Peoples from funds generated by operations prior to completion of the transaction with SAC 4.
62. As set out in the Interim R&Ds, the current cash balances in the Receiver's trust accounts as at September 30, 2011 in respect of each of the Companies is as follows:

Company	Cash Balance
Paragon	\$ 1,730,221
Paragon Ontario	3,813
1508669	161,353
Total	\$ 1,895,387

As discussed below, the Receiver is proposing to make a distribution to Peoples of a portion of the cash being held in the Receiver's Paragon trust account.

#### **PROPOSED DISTRIBUTION TO PEOPLES**

63. The Receiver has approximately \$1.73 million in its Paragon trust account.

64. With respect to the property, assets and undertaking of Paragon and the business of Casa Verde, Peoples holds the security described in Appendix "O" attached to the Fifth Report, which security includes a charge/mortgage of land made in favour of First National Financial Corporation by Paragon dated May 30, 2004 and registered as Instrument No. TB953231 as subsequently amended and assigned to Peoples and registered June 15, 2000 as Instrument No. TR061724 (the "**Casa Verde First Mortgage**"). The Receiver reported in paragraph 62 of the First Report that it had received an independent legal opinion from Lang Michener that Peoples' security over Paragon's assets was legal, valid and binding.
65. A copy of Peoples' Statement for Discharge Purposes effective October 13, 2011 with respect to the Casa Verde First Mortgage is attached hereto as **Appendix "L"**. As of October 13, 2011, the outstanding balance (principal and interest) under the Casa Verde First Mortgage is \$16,474,866.10. Peoples had previously informed the Receiver that it would like to receive a payment against the outstanding balance on the Casa Verde First Mortgage should there be sufficient excess cash flow that is not required to operate Casa Verde.
66. The Receiver has determined that \$1,250,000 would be an appropriate amount to distribute to Peoples as payment against arrears interest on the Casa Verde First Mortgage and is seeking this Honourable Court's approval to make that payment. After consideration of the amount of the proposed distribution, the Receiver should have sufficient cash to (i) continue to fund Casa Verde's operations; (ii) address any capital costs or other costs that may be required in respect of the sale of Casa Verde or as required by the MOHLTC; and (iii) address any "clawback" claims that may be made by the MOHLTC in respect of MOHLTC funding provided to the Receiver in respect of the period following the Appointment Date.



**STATEMENTS OF ACCOUNT OF THE RECEIVER AND ITS COUNSEL**

67. The Receiver's fees for services rendered for the period November 1, 2010 to June 30, 2011 are particularized in the Affidavit of Hartley Bricks sworn October 31, 2011 and the invoices attached as exhibits thereto. The total amount of the invoices for this period is \$100,664.93 in respect of Paragon and \$100,708.44 in respect of 1508669, inclusive of HST (the "**Receiver's Fees**").
68. The fees and disbursements of Gowlings, counsel for Peoples Trust, in respect of work performed for the Receiver, for the period January 1, 2011 to August 31, 2011 are particularized in the Affidavit of Harry VanderLugt sworn October 31, 2011 and the invoices are attached as exhibits thereto. The total amount of the invoices for this period is \$7,288.79 in respect of Paragon and \$12,875.62 in respect of 1508669, inclusive of HST ("**Gowling's Fees**").
69. The fees and disbursements of Heenan, independent counsel to the Receiver, in respect of work performed for the Receiver, for the period February 15 to February 22, 2011 are \$1,231.02 in respect of Paragon and \$662.86 in respect of 1508669, inclusive of HST ("**Heenan's Fees**").
70. The Receiver has reviewed the invoices of Gowlings and Heenan and finds the work performed and charges to be appropriate and reasonable.
71. The Receiver has sought and received the approval of Peoples prior to taking interim draws against the fees of the Receiver and Gowlings.
72. The Receiver is seeking this Honourable Court's approval of its activities to October 14, 2011, the Receiver's Fees, Gowling's Fees and Heenan's Fees as set out above.

**RECEIVER'S REQUEST TO THE COURT**

73. The Receiver is respectively seeking an order:

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- i) approving the actions and activities of the Receiver from February 16, 2011 to October 14, 2011;
- ii) approving the Interim R&D's for the period January 24, 2006 to September 30, 2011;
- iii) approving the Receiver entering into and completing the West Park APS and the Court granting an approval and vesting order;
- iv) sealing **Appendix "H"** to this Seventh Report until such time as the West Park APS is completed and the Receiver's Certificate is issued by the Receiver and filed with this Honourable Court;
- v) approving a distribution to Peoples in the amount of \$1,250,000 to be applied against interest outstanding on the Casa Verde First Mortgage; and
- vi) approving the Receiver's Fees, Gowling's Fees and Heenan's Fees.

All of which is respectfully submitted to this Honourable Court.

DATED this 1<sup>st</sup> day of November, 2011.

**Deloitte & Touche Inc.**

in its capacity as Interim Receiver and Receiver and Manager of  
the assets, undertakings and properties of  
Paragon Health Care Inc., Paragon Health Care (Ontario) Inc.  
and 1508669 Ontario Limited and not in its personal capacity

*Deloitte & Touche Inc.*

Daniel R. Weisz, CA•CIRP, CIRP  
Senior Vice President

Hartley Bricks, MBA, CA•CIRP, CIRP  
Vice President

# **APPENDIX F**

Court File No. 06-CL-6233

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
[COMMERCIAL LIST]**

BETWEEN:

**PEOPLES TRUST COMPANY**

Applicant

- and -

**PARAGON HEALTH CARE INC. AND 1508669 ONTARIO LIMITED**

Respondents

**SUPPLEMENTAL REPORT TO THE SEVENTH REPORT TO THE COURT OF  
THE RECEIVER  
(dated November 8, 2011)**

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## INTRODUCTION

1. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated January 23, 2006 (the "**Appointment Order**"), Mintz & Partners Limited ("**MPL**") was appointed as Interim Receiver and Receiver and Manager (the "**Receiver**") of all the assets, undertakings and property of Paragon Health Care Inc. ("**Paragon**"), Paragon Health Care (Ontario) Inc. ("**Paragon Ontario**") and 1508669 Ontario Limited ("**1508669**") (individually or collectively, the "**Debtor**") effective 9:00 am on January 24, 2006 (the "**Appointment Date**"). A copy of the Appointment Order is attached hereto as **Appendix "A"**. By Order of the Court dated July 2, 2008, following the merger of the accounting practices of Deloitte & Touche LLP and Mintz & Partners LLP, the name of the Receiver was changed to Deloitte & Touche Inc. ("**Deloitte**").
2. In the Receiver's Seventh Report to the Court dated November 1, 2011 (the "**Seventh Report**"), the Receiver set out for this Honourable Court the terms of an Agreement of Purchase and Sale dated April 1, 2011, including amendments thereto (the "**West Park APS**") as between the Receiver and SAC 4 Inc. ("**SAC 4**" or the "**Purchaser**") for the sale of West Park Health Centre ("**West Park**") and requested the Court's (i) approval for the Receiver to enter into and complete the West Park APS; and (ii) making an approval and vesting order in connection with the transaction.
3. The purpose of this Supplemental Report to the Seventh Report (the "**Supplemental Report**") is to advise the Court of a further amending agreement to the West Park APS which the Receiver has entered into with SAC 4.
4. Capitalized terms not defined in this Supplemental Report are as defined in the West Park APS, the Seventh Report and the Appointment Order.

### Discussions with the Ministry of Health and Long-Term Care

5. Following service of the Notice of Motion and the Seventh Report, counsel for the Ministry of Health and Long-Term Care ("**MOHLTC**") contacted the Receiver regarding

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the manner in which over-funding by the MOHLTC of West Park from the Appointment Date to the Closing Date, that remained to be recovered by the MOHLTC ("MOHLTC Recoveries"), was addressed in the West Park APS. The MOHLTC was concerned that the West Park APS did not explicitly address which party the MOHLTC could pursue for the MOHLTC Recoveries.

6. Section 2.8(c) of the West Park APS provides for an adjustment on Closing for the amount of the MOHLTC Recoveries. Section 2.8(c) states:

"The Vendor and the Purchaser, each acting reasonably, shall use their best efforts to agree on the estimated amount that may be repayable to or receivable from the MOH in regard to any overpayments/credits for the period prior to the Closing (not including adjustments for monthly amounts paid or payable by the MOH for the month in which the Closing occurs which are adjusted pursuant to Section 2.8(b) hereof) (the "**MOH Closing Adjustment**") on or before the 10<sup>th</sup> Business Day before the Closing Date. On Closing, the Purchase Price shall be adjusted by that amount in favour of the Purchaser if the Vendor is in a net payable position with the MOH at Closing or in favour of the Vendor if the Vendor is in a net receivable position with the MOH at Closing. There shall be no further adjustment in regard to the MOH Closing Adjustment after Closing."

7. Section 2.8(c) was drafted based on the assumption that the Purchaser would, on Closing, assume the Service Accountability Agreement (the "SAA") between the Hamilton Niagara Haldimand Brant Local Health Integration Network (the "LHIN") and 1508669 effective as of July 1, 2010. The SAA is a document which every long-term care home in Ontario must enter into in order to obtain government funding to operate. The SAA governs the terms of funding, including the ability of the MOHLTC (or LHIN) to recover any overpayments made to a nursing home. The SAA was included in Schedule 2 of the West Park APS as an Assumed Contract under the transaction.

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8. On September 30, 2011, pursuant to the terms of the West Park APS, SAC 4 advised the Receiver that it would not be assuming the SAA since SAC 4 intends to enter into a new SAA with the LHIN.
9. The purpose of the MOH Closing Adjustment was to transfer to SAC 4 the obligation to remit the MOHLTC Recoveries once the Transaction was completed. However, SAC 4's notice to the Receiver that it would not be assuming the SAA necessitates that the West Park APS be amended to explicitly set out which party would be, after closing, responsible for remitting the MOHLTC Recoveries.

#### **AMENDING AGREEMENT NO. 7**

10. In order to clarify the transfer to SAC 4 of the liability for the MOHLTC Recoveries upon Closing, the Receiver and SAC 4 have entered into Amending Agreement No. 7 dated November 7, 2011. Amending Agreement No. 7 provides that the definition of "Assumed Obligations" in the West Park APS is amended to include the MOHLTC Recoveries. A copy of Amending Agreement No. 7 is attached hereto as **Appendix "A"**.
  11. Counsel for the MOHLTC has advised the Receiver that it is satisfied that Amending Agreement No. 7 addresses its concerns regarding the MOHLTC Recoveries.
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All of which is respectfully submitted to this Honourable Court.

DATED this 8<sup>th</sup> day of November, 2011.

**DELOITTE & TOUCHE INC.**

**in its capacity as Interim Receiver and Receiver and Manager of  
the assets, undertakings and properties of  
Paragon Health Care Inc., Paragon Health Care (Ontario) Inc.  
and 1508669 Ontario Limited and not in its personal capacity**

*Deloitte & Touche Inc.*

Daniel R. Weisz, CA•CIRP, CIRP  
Senior Vice President

Hartley Bricks, MBA, CA•CIRP, CIRP  
Vice President



# AMENDING AGREEMENT NO. 7

THIS AMENDING AGREEMENT is dated as of November 7, 2011

BETWEEN:

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

(the "Vendor")

- and -

SAC 4 INC., a corporation existing under the laws of Ontario

(the "Purchaser")

## CONTEXT:

A. The parties have made an Agreement of Purchase and Sale of the Assets dated April 1, 2011 as amended by agreements dated May 24, 2011, July 15, 2011, August 12, 2011, August 19, 2011, August 31, 2011 and September 2, 2011 ("Purchase Agreement").

B. The parties wish to further amend the Purchase Agreement as set out below.

C. The words and phrases beginning with capitals have the meanings assigned in the Purchase Agreement unless the context otherwise requires.

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

### 1. Section 1.1 Definitions is amended by deleting:

"Assumed Obligations" means: (i) all obligations and liabilities of the Debtor and the Vendor under the Assumed Contracts that the Purchaser has agreed to assume as of the Closing Date by way of separate and specific written agreement with the Vendor or party or parties to whom the relevant obligations and liabilities are owed; and (ii) the Assumed Liabilities."

and substituting therefore:

"Assumed Obligations" means: (i) all obligations and liabilities of the Debtor and the Vendor under the Assumed Contracts that the Purchaser has agreed to assume as of the Closing Date by way of separate and specific written agreement with the Vendor or party or parties to whom the relevant obligations and liabilities are owed; (ii) the Assumed Liabilities;

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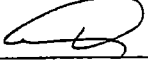
and (iii) any amount repayable to the MOH in regard to any overpayment for the period from the date of the Appointment Order to the Closing Date."

2. Except as specifically amended herein, the Purchase Agreement continues in full force and effect.
3. This Agreement may be executed by the parties in counterparts and delivered by way of pdf email transmission or facsimile, with such counterparts together and such delivery being deemed originals.

Each of the parties has executed and delivered this Agreement, as of the date noted at the beginning of the Agreement.

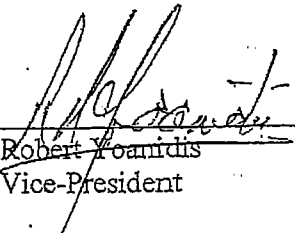
DELOITTE & TOUCHE INC., solely in its capacity as court-appointed interim receiver and receiver and manager of the current and future assets, undertakings and properties of 1508669 Ontario Limited and not in its personal capacity

Per

  
Name: DANIEL WEISS  
Title: SENIOR VICE PRESIDENT

SAC 4 INC.

Per

  
Name: Robert Yonidis  
Title: Vice-President

# APPENDIX G

Court File No. 06-CL-6233

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MR. )  
JUSTICE H. J. WILTON-SIDGEL )

WEDNESDAY, THE 9<sup>TH</sup> DAY  
OF NOVEMBER, 2011

*Handwritten signature*



IN THE MATTER OF AN APPLICATION UNDER  
SECTION 47 (1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*  
R.S.C. 1985, C.B-3

AND IN THE MATTER of SECTION 101 of *THE*  
*COURTS of JUSTICE ACT*, R.S.O. 1990, C.C-43

BETWEEN:

PEOPLES TRUST COMPANY

Applicant

- and -

PARAGON HEALTH CARE INC. and 1508669 ONTARIO LIMITED

Respondents

**DISTRIBUTION ORDER**

**THIS MOTION** made by Deloitte & Touche Inc. ("**Deloitte**"), appointed as interim receiver and receiver and manager (the "**Receiver**") pursuant to section 101 of the *Courts of Justice Act*, without security, of the property, assets and undertaking of Paragon Health Care Inc. ("**Paragon**"), Paragon Health Care (Ontario) Inc. ("**Paragon Ontario**") and 1508669 Ontario Limited ("**1508669**") pursuant to the terms of the Order of the Honourable Mr. Justice Cumming dated January 23, 2006 and effective 9:00 a.m.

on January 24, 2006 (the "Initial Order"), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Motion, the Seventh Report of the Receiver dated November 1, 2011 (the "**Seventh Report**") and the Affidavits of Harry Vanderlugt sworn October 31, 2011, filed, and Hartley M. Bricks sworn October 31, 2011, filed, and upon hearing the submissions of counsel for the Receiver, no other parties attending,

1. **THIS COURT ORDERS** that service of the Notice of Motion and the Motion Record herein is hereby abridged, if necessary, and that this motion is properly returnable today and that service, including the form, manner and time that such service was actually effected on all parties, is hereby validated, and where such service was not effected such service is hereby dispensed with.

2. **THIS COURT ORDERS** that the Seventh Report is hereby accepted and approved.

3. **THIS COURT ORDERS** that the conduct of the Receiver and its agents to date, as detailed in the Seventh Report, be and the same is hereby approved.

4. **THIS COURT ORDERS** that the Interim Statements of Receipts and Disbursements of the Receiver for the period January 24, 2006 to September 30, 2011 in respect of Paragon, Paragon Ontario and 1508669 as respectively set out in **Appendices "I", "J" and "K"** to the Seventh Report, filed, be and the same are hereby accepted and approved.

5. **THIS COURT ORDERS** that the fees of the Receiver relating to the receivership of Paragon and 1508669 for the period from November 1, 2010 to June 30, 2011 in the amount of \$100,664.93 in respect of Paragon and \$100,708.44 in respect of 1508669, as set out in the Affidavit of Hartley M. Bricks sworn November 1, 2011, filed, be and the same are hereby approved.

6. **THIS COURT ORDERS** that the fees and disbursements of Gowling Lafleur Henderson LLP, counsel to the Receiver, in the amount of \$24,027.23 in respect of Paragon and \$14,073.24 in respect of 1508669, as set out in the Affidavit of Harry Vanderlugt sworn February 14, 2011, filed, be and the same are hereby approved for the period December 31, 2009 to December 31, 2010.

7. **THIS COURT ORDERS** that the Receiver is authorized and hereby directed to distribute the total sum of \$1,250,000.00 to Peoples Trust Company, as partial payment on account of its secured claims against Paragon.

ENTERED AT / INSCRIT À TORONTO  
DN / BOOK NO:  
LE / DANS LE REGISTRE NO.:

NOV 09 2011

PER/FAR

W. Hon - LWS

<p>PEOPLES TRUST COMPANY</p>	<p>- and -</p>
	<p>Court File No.: 06-CL-6233</p> <p>PARAGON HEALTH CARE INC. and 1508669 ONTARIO LIMITED</p>
	<p><b>ONTARIO</b></p> <p><b>SUPERIOR COURT OF JUSTICE</b></p> <p>(PROCEEDING COMMENCED AT TORONTO)</p>
	<p><b>DISTRIBUTION ORDER</b></p>
	<p><b>Gowling Lafleur Henderson LLP</b>  Barristers and Solicitors  1 First Canadian Place  100 King Street West, Suite 1600  Toronto, Ontario  M5X 1G5</p> <p><b>Clifton P. Prophet / Frank Lamie</b>  <b>LSUC No.: 34345K / 54035S</b></p> <p>Telephone: (416) 862-7525  Facsimile: (416) 862-7661</p> <p>Solicitors for Deloitte &amp; Touche Inc. in its capacity as Interim Receiver and Receiver and Manager of the current and future assets, undertakings and properties of Paragon Health Care Inc., Paragon Health Care (Ontario) Inc. and 1508669 Ontario Limited</p>

# APPENDIX H



Court File No. 06-CL-6233

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.

JUSTICE *H.J. WILTON-SIBER*

WEDNESDAY, THE 9TH DAY

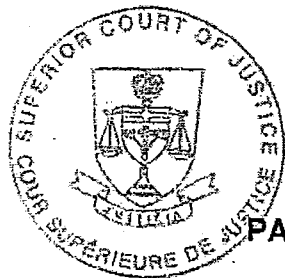
OF NOVEMBER, 2011

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*  
*The appraisal provided 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.:

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RECEIVED



## SCHEDULE A

## FORM OF RECEIVER'S CERTIFICATE

ONTARIO

Court File No. ●

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

BETWEEN:

●

●

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

# APPENDIX I

**AMENDING AGREEMENT NO. 2**

**THIS AMENDING AGREEMENT** is dated as of March 15, 2011

**BETWEEN:**

**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

(the "Vendor")

- and -

**GEM HEALTH CARE GROUP LIMITED**, a corporation existing under the laws of Nova Scotia

(the "Purchaser")

**CONTEXT:**

A. The parties have made an Agreement of Purchase and Sale of the Assets dated October 20, 2010 ("Purchase Agreement").

B. The parties wish to amend the term of the Purchase Agreement which is referred to below.

C. The words and phrases beginning with capitals have the meanings assigned in the Purchase Agreement unless the context otherwise requires.

**FOR GOOD AND VALUABLE CONSIDERATION**, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. Section 1.1 Definitions "Closing Date" is amended by deleting

"June 30, 2011"

and substituting therefor

"November 30, 2011"

2. Section 4.1(c) is amended by deleting

"May 31, 2011"

and substituting therefor

"September 30, 2011"

- 2 -

3. Section 4.3(c) is amended by deleting

"March 31, 2011"

and substituting therefor

"October 31, 2011"

4. The Vendor consents to the assignment of the Purchase Agreement to Downsview Long Term Care Centre Limited, a party related to the Purchaser.
5. Except as specifically amended herein, the Purchase Agreement continues in full force and effect.
6. This Agreement may be executed by the parties in counterparts, with the executed counterpart delivered by each party together constituting this Amending Agreement.

Each of the parties has executed and delivered this Agreement, as of the date noted at the beginning of the Agreement.

**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: DANIEL WEISS  
Title: SENIOR VICE PRESIDENT

**GEM HEALTH CARE GROUP LIMITED**

Per \_\_\_\_\_

Name: Syed Hussain  
Title: President

# APPENDIX J

### AMENDING AGREEMENT NO. 3

THIS AMENDING AGREEMENT is dated as of September 29, 2011

BETWEEN:

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

(the "Vendor")

- and -

GEM HEALTH CARE GROUP LIMITED, a corporation existing under the laws of Nova Scotia

(the "Purchaser")

#### CONTEXT:

- A. The parties have made an Agreement of Purchase and Sale of the Assets dated October 20, 2010 ("Purchase Agreement").
- B. The parties wish to amend the term of the Purchase Agreement which is referred to below.
- C. The words and phrases beginning with capitals have the meanings assigned in the Purchase Agreement unless the context otherwise requires.

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. Section 4.1(c) is amended by deleting

"September 30, 2011"

and substituting therefor

"November 30, 2011"

2. Section 4.3(e) is amended by deleting

"October 31, 2011"

and substituting therefor

"December 20, 2011"

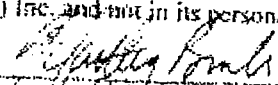
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- 2 -

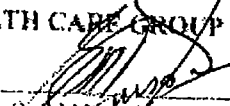
3. Except as specifically amended herein, the Purchase Agreement continues in full force and effect.
4. This Agreement may be executed by the parties in counterparts, with the executed counterpart delivered by each party together constituting this Amending Agreement.

Each of the parties has executed and delivered this Agreement, as of the date noted at the beginning of the Agreement.

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: HARTUEN BILLES  
 Title: VICE PRESIDENT

GEM HEALTH CARE GROUP LIMITED

Per   
 Name: Syed Hussain  
 Title: President

11/11/2011 11:11:11



**AMENDING AGREEMENT NO. 4**

**THIS AMENDING AGREEMENT** is dated as of November 30, 2011

**BETWEEN:**

**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

(the "Vendor")

- and -

**GEM HEALTH CARE GROUP LIMITED**, a corporation existing under the laws of Nova Scotia

(the "Purchaser")

**CONTEXT:**

A. The parties have made an Agreement of Purchase and Sale of the Assets dated October 20, 2010 ("**Purchase Agreement**").

B. The parties wish to amend the term of the Purchase Agreement which is referred to below.

C. The words and phrases beginning with capitals have the meanings assigned in the Purchase Agreement unless the context otherwise requires.

**FOR GOOD AND VALUABLE CONSIDERATION**, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. **Section 4.1(c)** is amended by deleting

"November 30, 2011"

and substituting therefor

"January 31, 2012"

2. **Section 4.3(c)** is amended by deleting

"December 20, 2011"

and substituting therefor

"February 28, 2012"

- 2 -

3. Section 1.1 Definitions "Closing Date" is amended by deleting

"November 30, 2011"

and substituting therefore

"March 30, 2012"

4. Except as specifically amended herein, the Purchase Agreement continues in full force and effect.

5. This Agreement may be executed by the parties in counterparts, with the executed counterpart delivered by each party together constituting this Amending Agreement.

Each of the parties has executed and delivered this Agreement, as of the date noted at the beginning of the Agreement.

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: DANIEL WELLS  
Title: SENIOR VICE PRESIDENT

GEM HEALTH CARE GROUP LIMITED

Per

Name: Syed Hussain  
Title: President

# APPENDIX K

**AMENDING AGREEMENT NO. 5**

**THIS AMENDING AGREEMENT** is dated as of January 30 , 2012

**BETWEEN:**

**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

(the "Vendor")

- and -

**GEM HEALTH CARE GROUP LIMITED**, a corporation existing under the laws of Nova Scotia

(the "Purchaser")

**CONTEXT:**

**A.** The parties have made an Agreement of Purchase and Sale of the Assets dated October 20, 2010 ("Purchase Agreement").

**B.** The parties wish to amend the term of the Purchase Agreement which is referred to below.

**C.** The words and phrases beginning with capitals have the meanings assigned in the Purchase Agreement unless the context otherwise requires.

**D.** The Purchase Agreement has been assigned by the Vendor to Downsview Long Term Care Centre Limited

**FOR GOOD AND VALUABLE CONSIDERATION**, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. **Section 4.1(c)** is amended by deleting

"January 31, 2012"

and substituting therefor

"February 29, 2012"

2. **Section 4.3(c)** is amended by deleting

"February 28, 2012"

and substituting therefor

- 2 -

"March 30, 2012"

3. Except as specifically amended herein, the Purchase Agreement continues in full force and effect.
4. This Agreement may be executed by the parties in counterparts, with the executed counterpart delivered by each party together constituting this Amending Agreement.

Each of the parties has executed and delivered this Agreement, as of the date noted at the beginning of the Agreement.

**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: *Daniel Weiss*Title: *Senior Vice President***GEM HEALTH CARE GROUP LIMITED**

Per

Name: Syed Hussain

Title: President

**DOWNSVIEW LONG TERM CARE CENTRE LIMITED**

Per

Name: Syed Hussain

Title: President

# APPENDIX L

# **AMENDING AGREEMENT NO. 6**

**THIS AMENDING AGREEMENT** with an effective date as of February 29, 2012,

**BETWEEN:**

**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

(the "**Vendor**")

- and -

**GEM HEALTH CARE GROUP LIMITED**, a corporation existing under the laws of Nova Scotia

(the "**Purchaser**")

## **CONTEXT:**

- A.** The parties have made an Agreement of Purchase and Sale of the Assets dated October 20, 2010, as amended ("**Purchase Agreement**").
- B.** The parties wish to amend those terms of the Purchase Agreement which are referred to below.
- C.** The words and phrases beginning with capitals have the meanings assigned in the Purchase Agreement unless the context otherwise requires.
- D.** The Purchase Agreement has been assigned by GEM Health Care Group Limited to Downsview Long Term Care Centre Limited.

**FOR GOOD AND VALUABLE CONSIDERATION**, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

- 1. **Section 1.1 Definitions "Closing Date"** is amended by deleting  

"March 30, 2012"

and substituting therefor

"July 26, 2012"
- 2. **Section 2.8(c)** is amended by deleting the section in full and substituting therefor
  - A.** "The Vendor and the Purchaser have agreed that \$1,750,000.00 of the Purchase Price payable by the Purchaser to the Vendor upon the closing of the transaction

contemplated by the Purchase Agreement (the "**Escrow Fund**") is to be held in escrow to cover amounts that may be repayable to the Ministry of Health and Long-Term Care and/or the Local Health Integration Network (together for purposes of this section 2.8(c) as amended the "**MOH**") in regard to any overpayments for the period January 24, 2006 to December 31, 2011 (the "**MOH Closing Adjustment Period**"). On Closing, the Escrow Fund shall be deposited with Gowling Lafleur Henderson LLP (the "**Escrow Agent**") to be held and administered on the terms of an escrow agreement (the "**Escrow Agreement**") substantially in the form attached as Appendix A to this Amending Agreement No. 6. For greater certainty, other than any amount(s) which may be payable to the Purchaser or the Vendor pursuant to this Amending Agreement No. 6, there shall be no further adjustment in the amount of the MOH Closing Adjustment after Closing and no adjustment for any MOH recoveries attributable to the period after December 31, 2011.

B. On receipt from the MOH of correspondence that confirms that the reconciliations for the years up to and until December 31, 2009 are finalized or closed and that no further amounts are owing (with the parties agreeing that such correspondence may include other phrases or terminology with similar meaning which will be sufficient for the purposes of this section, provided that such other phrases or terminology are satisfactory to both parties hereto, each acting reasonably) (the "**MOH Confirmation**") then:

- (i) if the MOH Confirmation is received prior to the Closing Date, the Escrow Fund shall immediately be reduced from \$1,750,000.00 to \$1,100,000.00; or
- (ii) if the MOH Confirmation is received after the Closing Date, then the Escrow Agent shall release to the Vendor an amount equal to \$650,000.00.

The Purchaser hereby agrees to promptly provide a copy of the MOH Confirmation to the Vendor and the Escrow Agent within 3 Business Days of receiving it.

C. The Vendor shall be responsible (i) to maintain and keep the Books and Records until the Closing Date, and (ii) for completing and submitting all filings to the MOH for the MOH Closing Adjustment Period in regard to any amounts that may be repayable to or receivable from the MOH. For greater certainty, the Purchaser shall be responsible for completing and submitting all filings to the MOH for all years following the MOH Closing Adjustment Period beginning with the filings required for 2012.

D. The Funds will be released on account of the MOH Closing Adjustment by the Escrow Agent as follows:

- (i) on receipt of a monthly Long-Term Care Home Payment Calculation Notice ("**MOH Monthly Payment Notice**") from the MOH that any



amount(s) will be recovered or withheld from any scheduled monthly payment to be made to the Purchaser, the Purchaser shall provide a copy thereof to the Vendor and the Escrow Agent. Within three (3) Business Days of receiving a MOH Monthly Payment Notice, the Escrow Agent will release the amount(s) to the Purchaser, as applicable; and

- (ii) on receipt by the Escrow Agent of correspondence from the MOH that confirms that the reconciliations for all periods in the MOH Closing Adjustment Period are finalized or closed and that no further amounts are owing (with the parties agreeing that such correspondence may include other phrases or terminology with similar meaning which will be sufficient for the purposes of this section, provided that such other phrases or terminology are satisfactory to both parties hereto, each acting reasonably), and upon written request by the Vendor, the Escrow Agent will release the balance of the Escrow Fund, if any, to the Vendor in accordance with Section H below.

- E. On receipt of a MOH Monthly Payment Notice that indicates that any amount(s) will be credited to the Purchaser on account of a matter relating to the MOH Closing Adjustment Period, the Purchaser shall promptly provide a copy thereof to the Vendor and within 3 Business Days, following issuance of the credit by the MOH, issue a cheque to the Vendor in the amount credited to the Purchaser by the MOH. The Purchaser's obligation to remit any credits it receives to the Vendor terminates on the Final Release Date (as defined in the Escrow Agreement) except for any credits owing but not yet paid by the Purchaser to the Vendor pursuant to MOH Monthly Payment Notices received by the Purchaser prior to the Final Release Date.
- F. The release of funds from the Escrow Fund upon receipt of the MOH Monthly Payment Notices in accordance with the provisions above will occur notwithstanding that the amount to be recovered or otherwise adjusted by the MOH may be subject to further adjustment, consideration, appeal or dispute.
- G. The Purchaser agrees:
  - (i) to provide to the Vendor, within 3 business days after receipt from the MOH, copies of all MOH Monthly Payment Notices, information requests, and any other letters, disallowances or other notices and/or communications from the MOH regarding recoveries, credits or other adjustments relating to the MOH Closing Adjustment Period;
  - (ii) to provide to the Vendor on Closing a letter addressed to the MOH authorizing (i) the MOH to release to the Vendor all information including, without limitation, all MOH Monthly Payment Notices, information requests, and any other letters, disallowances or other notices and/or communications, relating to the MOH Closing Adjustment Period, and (ii) the Vendor to respond directly to the MOH in connection with all

MOH Monthly Payment Notices, information requests, letters, disallowances or other notices and/or communications relating to the MOH Closing Adjustment Period, substantially in the form attached hereto as Schedule "A"; and

- (iii) to provide to the Vendor and Diversicare access to the books and records received from the Vendor in connection with the Closing relating to the subject matter of any disallowances relating to the MOH Closing Adjustment Period and to work with the Vendor and/or Diversicare in completing responses and submissions to the MOH with regard to any such matter subject to a disallowance.

H. The Purchaser and the Vendor hereby agree that, on the Final Release Date, the Escrow Agent may pay to the Vendor the balance of the Escrow Fund less any amounts not yet paid by the Escrow Agent to the Purchaser in respect of MOH Monthly Payment Notices given to the Escrow Agent prior to the Final Release Date.

3. **Section 2.8(g)** is amended by deleting part (i) and substituting therefor

"Should there be any dispute concerning the calculation of the Employee Liabilities Adjustment and/or the Owned Real Property adjustments that remain unresolved at Closing, the Purchaser and the Vendor shall cooperate in good faith to resolve any such dispute as promptly as possible. If the Purchaser and the Vendor are unable to resolve any dispute regarding calculation of the Employee Liabilities Adjustment and/or the Owned Real Property adjustments within thirty (30) days of Closing or such longer period as the Purchaser and the Vendor shall mutually agree in writing, the Vendor and the Purchaser shall engage a mutually agreeable independent accounting firm (the "**Arbitrator**") to resolve all issues bearing on such dispute and to determine finally the actual Employee Liabilities Adjustment and/or the Owned Real Property adjustments as of the Closing Date. The parties agree that such resolution and determination shall be final and binding on the Vendor and the Purchaser."

4. **Section 4.1(c)** is amended by deleting

"February 29, 2012"

and substituting therefor

"June 20, 2012"

5. **Section 4.3(c)** is amended by deleting

"March 30, 2012"

and substituting therefor

"June 20, 2012"

6. By executing this Agreement, the Purchaser hereby acknowledges and agrees that Section 4.1(c) of the Purchase Agreement has been satisfied.
7. Except as specifically amended herein, the Purchase Agreement continues in full force and effect.
8. This Agreement may be executed by the parties in counterparts, with the executed counterparts delivered by each party together constituting this Amending Agreement.

**THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.**

Each of the parties has executed and delivered this Agreement, as of the 20<sup>th</sup> day of June, 2012 to be effective as of the date noted at the beginning of the Agreement.

**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:

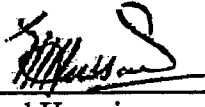
**DOWNSVIEW LONG TERM CARE  
CENTRE LIMITED**

Per

  
Name: Syed Hussain  
Title: President

**GEM HEALTH CARE GROUP LIMITED**

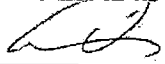
Per

  
Name: Syed Hussain  
Title: President

Each of the parties has executed and delivered this Agreement, as of the 20<sup>th</sup> day of June, 2012 to be effective as of the date noted at the beginning of the Agreement.

**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: Daniel Weisz  
Title: Senior Vice President

**DOWNSVIEW LONG TERM CARE  
CENTRE LIMITED**

Per

Name: Syed Hussain  
Title: President

**GEM HEALTH CARE GROUP LIMITED**

Per

Name: Syed Hussain  
Title: President

**gowlings**

**ESCROW AGREEMENT**

**BETWEEN**

**DOWNSVIEW LONG TERM CARE CENTRE LIMITED**

**— and —**

**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**

**— and —**

**GOWLING LAFLEUR HENDERSON LLP,  
a Limited Liability Partnership with an office at  
1 First Canadian Place, 100 King Street West, Suite 1600,  
Toronto, Ontario M5X 1G5, Canada**

## ESCROW AGREEMENT

**THIS AGREEMENT** dated as of the Closing Date (as defined in the Purchase Agreement as defined below),

**BETWEEN**

**DOWNSVIEW LONG TERM CARE CENTRE  
LIMITED**

(the "Buyer")

- and -

**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

(the "Seller")

(and the Buyer and Seller together the "Parties")

- and -

**GOWLING LAFLEUR HENDERSON LLP**, a Limited Liability Partnership with an office at 1 First Canadian Place, 100 King Street West, Suite 1600, Toronto, Ontario M5X 1G5, Canada

(the "Escrow Agent").

### CONTEXT:

- A. By an agreement of purchase and sale, dated October 20, 2010, made between the Seller and GEM Health Care Group Limited, as amended (the "**Purchase Agreement**"), the Seller agreed to sell and the Buyer agreed to purchase the Purchased Assets. GEM Health Care Group Limited has assigned the Purchase Agreement to Downsview Long Term Care Centre Limited.
- B. It is a condition of the Closing that an escrow fund be established to hold the Escrow Fund to provide for payment of the MOH Closing Adjustment as required under Amending Agreement No.6 to the Purchase Agreement.
- C. The Escrow Agent has agreed to facilitate the purchase and sale of the Purchased Assets pursuant to the provisions of this Agreement.

**THEREFORE**, the Parties and the Escrow Agent agree as follows:

## **ARTICLE 1 DEFINITIONS**

### **1.1 Capitalized Terms**

Capitalized terms used in this Agreement and not otherwise defined have the meanings given to them in the Purchase Agreement.

### **1.2 Defined Terms**

In this Agreement the following terms have the following meanings:

- 1.2.1 **"Agreement"** means this agreement, as it may be supplemented or amended by written agreement between the Parties and the Escrow Agent.
- 1.2.2 **"Claim"** means any claim, demand, action, cause of action, suit, arbitration, investigation, proceeding, complaint, grievance, charge, prosecution, assessment or reassessment (including any appeal or application for review) and includes the Escrow Agent's costs and/or expenses of defending itself against any claim of liability or in any action for interpleader and any costs and/or expenses if it is required to attend or provide evidence in a dispute between the Parties in relation to this Agreement.
- 1.2.3 **"Document"** is defined in Section 7.3.
- 1.2.4 **"Escrow Fund"** is defined in Section 3.1.
- 1.2.5 **"Final Release Date"** is defined in Section 6.1.
- 1.2.6 **"Joint Instructions"** means written instructions given by all the Parties to the Escrow Agent from time to time providing for the investment, reinvestment, liquidation or payment of all or any part of the Escrow Fund.
- 1.2.7 **"Purchase Agreement"** is defined in the recitals.
- 1.2.8 **"Term"** is defined in Section 3.3.

### **1.3 Certain Rules of Interpretation**

- 1.3.1 In this Agreement, words signifying the singular number include the plural and vice versa, and words signifying gender include all genders. Every use of the word "including" in this Agreement is to be construed as meaning "including, without limitation".



1.3.2 The division of this Agreement into Articles and Sections, the insertion of headings and the provision of a table of contents are for convenience of reference only and do not affect the construction or interpretation of this Agreement.

1.3.3 References in this Agreement to an Article or Section are to be construed as references to an Article or Section of this Agreement unless the context requires otherwise.

#### **1.4 Governing Law**

This Agreement is governed by, and is to be construed and interpreted in accordance with, the laws of the Province of Ontario and the laws of Canada applicable in that Province.

#### **1.5 Entire Agreement**

This Agreement constitutes the entire agreement between the Parties and the Escrow Agent pertaining to the administration and disposition of the Escrow Fund by the Escrow Agent, and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties and the Escrow Agent. There are no representations, warranties, or conditions (including any that may be implied by statute) and there are no other agreements between the Parties and the Escrow Agent in connection with the administration and disposition of the Escrow Fund except as specifically set out in this Agreement. None of the Parties or the Escrow Agent has been induced to enter into this Agreement in reliance on, and there will be no liability assessed, either in tort or in contract, with respect to, any warranty, representation, opinion, advice or assertion of fact, except to the extent it has been reduced to writing and included as a term of this Agreement.

### **ARTICLE 2 DISCLOSURE, APPOINTMENT AND ACCEPTANCE**

#### **2.1 Appointment and Acceptance**

The Parties appoint the Escrow Agent to act, and the Escrow Agent accepts the appointment and will act, as escrow agent in accordance with this Agreement.

#### **2.2 Disclosure and Right to Act**

The Buyer acknowledges that the Escrow Agent acts as solicitors for the Seller in all matters arising under or related to the Purchase Agreement except with respect to fulfilling its obligations under this Agreement. The Buyer acknowledges that no solicitor-client relationship arises between the Escrow Agent and the Buyer as a result of the Escrow Agent acting as escrow agent in accordance with this Agreement.

### ARTICLE 3 ESTABLISHMENT OF ESCROW

#### 3.1 Escrow Fund

At the time of Closing, the Seller will deposit into escrow with the Escrow Agent by a wire transfer of immediately available funds, a certified cheque or a bank draft the sum of \$1,000,000.00 which amount, as increased by any earnings or decreased by any disbursements or losses on investments, will be referred to in this Agreement as the "**Escrow Fund**". The Escrow Fund will be held by the Escrow Agent as a trust fund, to be applied in accordance with Section 2.8(c) of the Purchase Agreement, as amended.

#### 3.2 Receipt

The Escrow Agent:

- 3.2.1 will acknowledge in writing receipt of the Escrow Fund immediately upon receipt of same and confirm that the Escrow Fund will be held in accordance with this Agreement; and
- 3.2.2 confirms that it has no ownership interest in the Escrow Fund, but is serving as escrow holder only, and has possession of the Escrow Fund only in accordance with this Agreement.

#### 3.3 Term

The term of this Agreement (the "**Term**") will begin at the time the Escrow Agent acknowledges in writing receipt of the Escrow Fund, and will end on the earlier of:

- 3.3.1 the effective date of the Escrow Agent's resignation, as provided in Section 7.4;
- 3.3.2 the effective date of the Escrow Agent's removal, as provided in Section 7.5; and
- 3.3.3 the termination of the escrow, as provided in Section 6.1.

### ARTICLE 4 INVESTMENT OF ESCROW FUND

#### 4.1 Direction to Invest

Except as expressly provided in this Agreement, and subject to any Joint Instructions, the Escrow Agent is directed to invest the Escrow Fund, including any interest or other proceeds earned, in an interest bearing deposit account or interest bearing instruments with a Canadian chartered bank listed in Schedule 1 to the *Bank Act* (Canada).

#### **4.2 Authorization to Disclose**

Either Party may, at any time, request full particulars of the investments provided for in Section 4.1, and upon receipt of any such request, the Escrow Agent will disclose those particulars in writing to both Parties.

#### **4.3 Liquidation of Investments**

The Escrow Agent is authorized, at any time during the Term, to liquidate any portion of the Escrow Fund consisting of investments in accordance with its customary procedures, to provide funds for any payments required to be made under this Agreement.

#### **4.4 Restricted Access to Funds**

The Parties acknowledge and understand that all or any portion of the Escrow Fund invested in interest bearing instruments (including the instruments described in Section 4.1) and, if available before maturity, may be available only on terms which require payment of break fees, make whole premiums, or similar charges to the issuers of such instruments.

### **ARTICLE 5 RELEASE OF ESCROW FUND**

#### **5.1 Release of Escrow Fund**

At any time during the Term, the Escrow Agent may receive notices, letters or other communications with regard to the application of the Escrow Fund under Section 2.8(c) of the Purchase Agreement, as amended, specifying payment due to the Buyer and/or the Seller, as the case may be, and the Escrow Agent will, within 3 Business Days of receiving those notices, letters or other communications, pay to the Buyer and/or the Seller, as the case may be, the dollar amount set out in such notice, letter or communication.

### **ARTICLE 6 TERMINATION OF ESCROW**

#### **6.1 Termination of Escrow**

If the Term has not already ended by virtue of the Escrow Agent's resignation or removal, the escrow established by this Agreement will terminate on the earlier to occur of (the "Final Release Date"):

- 6.1.1 the payment by the Escrow Agent of the balance of the Escrow Fund, if any, (less any amounts not yet paid by the Escrow Agent to the Purchaser in respect of MOH Monthly Payment Notices given to the Escrow Agent prior to the Final Release Date) to the Seller upon receipt from the MOH of correspondence that confirms that reconciliations for all years of the MOH Closing Adjustment Period have been

finalized or closed and that no further amounts are owing (with the parties agreeing that such correspondence may include other phrases or terminology with similar meaning which will be sufficient for the purposes of this section, provided that such other phrases or terminology are satisfactory to both parties hereto, each acting reasonably); and

- 6.1.2 July 25, 2016, at which time any balance in the Escrow Fund will be paid to the Seller in accordance with Section 2.8(c)H of the Purchase Agreement, as amended.

## ARTICLE 7 DUTIES AND RIGHTS OF THE ESCROW AGENT

### 7.1 Duties of the Escrow Agent

#### 7.1.1 Specific Duties. The Escrow Agent will:

- 7.1.1.1 hold, safeguard, invest, reinvest and pay the Escrow Fund in accordance with this Agreement;
- 7.1.1.2 deduct, at the time any payment of income is made from the Escrow Fund, all amounts from the payment which the Escrow Agent is required to deduct pursuant to applicable withholding tax laws; and
- 7.1.1.3 remit all amounts withheld under Section 7.1.1.2 to the appropriate governmental authority.

#### 7.1.2 No Implied Duties. Except as expressly provided in this Agreement, the Escrow Agent will have no other duties or responsibilities under this Agreement and no implied duties or obligations will be read into this Agreement against the Escrow Agent.

#### 7.1.3 No Duty—Instances. Without limiting the generality of Section 7.1.2, the Escrow Agent will have no duty to:

- 7.1.3.1 give the Escrow Fund any greater degree of care than required under the applicable by-laws and rules of professional conduct established by the Law Society of Upper Canada;
- 7.1.3.2 invest all or any part of the Escrow Fund except as directed in this Agreement;
- 7.1.3.3 enforce any obligation of any Person, except as expressly provided in this Agreement;
- 7.1.3.4 make any representation as to the validity, value, genuineness or collectability of any Document held by or delivered to it; or

- 7 -

- 7.1.3.5 advise any Party as to the wisdom in selling or retaining, or taking or refraining from taking any action, with respect to any property in the Escrow Fund.

## 7.2 Liability of the Escrow Agent

The Escrow Agent will not be liable for any action taken or not taken by it with respect to any matter relating to this Agreement, except for its own wilful misconduct or gross negligence.

## 7.3 Rights of the Escrow Agent

The Escrow Agent will be entitled to:

- 7.3.1 rely upon any Joint Instructions, any judgment, court order or other judicial process, certification, demand, notice, deed, agreement, instrument, security or other writing (each being a "**Document**") delivered to it under this Agreement without being required to determine the:
- 7.3.1.1 authenticity of any Document (whether the Document purports to be an original or a copy);
  - 7.3.1.2 due authorization, execution or delivery of any Document;
  - 7.3.1.3 correctness of any fact stated in any Document; or
  - 7.3.1.4 propriety or validity of the service of any Document;
- 7.3.2 rely upon any signature believed by the Escrow Agent to be genuine;
- 7.3.3 assume that the Person purporting to give any receipt or advice or make any statement or execute any Document in connection with the provisions of this Agreement has been duly authorized to do so;
- 7.3.4 assume that the undersigned representative of any Party which is an entity other than a natural person has full power and authority to instruct the Escrow Agent on behalf of that Party unless written notice to the contrary is delivered to the Escrow Agent;
- 7.3.5 in its capacity as a trustee for the benefit of the Parties, seek advice and directions from a court having jurisdiction;
- 7.3.6 commence or defend any action or proceeding for the determination of any Claims, including a suit or action in interpleader;
- 7.3.7 retain at the Parties' sole expense, and act on the opinion, advice or information obtained from, any independent lawyer or other expert, whether retained by the Escrow Agent or any Party, but will not be bound to act upon such opinion, advice or information and, except as expressly provided in this Agreement, will not be held responsible for any losses occasioned by so retaining or not retaining any such

independent lawyer or other expert or for so acting or not so acting, as the case may be; and

- 7.3.8 employ any assistance as the Escrow Agent may, in its sole discretion, determine to be necessary or advisable to properly discharge its duties under this Agreement and pay, for the account of the Parties, the fees, disbursements and other costs required for such assistance, including legal or other services provided for in Section 7.3.7.

#### **7.4 Resignation of Escrow Agent**

The Escrow Agent may resign at any time upon 5 Business Days' prior written notice, and:

- 7.4.1 if the Escrow Agent has received Joint Instructions within the 5 Business Day period to deliver the Escrow Fund to a named successor escrow agent, the Escrow Agent's resignation will take effect on the date of delivery of the Escrow Fund to the successor escrow agent; or
- 7.4.2 if the Escrow Agent has not received the Joint Instructions described above within the 5 Business Day period, the Escrow Agent's sole responsibilities after the expiry of that period will be to hold and safeguard (and not to invest or reinvest) the Escrow Fund until the Joint Instructions are received pursuant to Section 7.4.1 above.

#### **7.5 Removal of the Escrow Agent**

The Parties may remove the Escrow Agent at any time by Joint Instructions, and:

- 7.5.1 if those Joint Instructions name a successor escrow agent, the Escrow Agent's removal will take effect on the date of delivery of the Escrow Fund to the successor escrow agent;
- 7.5.2 if those Joint Instructions do not name a successor escrow agent the Escrow Agent's sole responsibilities will be to hold and safeguard (and not to invest or reinvest) the Escrow Fund until the Joint Instructions are received pursuant to Section 7.5.1 above.

#### **7.6 Discharge from Duties**

At the time the Escrow Agent's resignation or removal, as the case may be, takes effect, the Escrow Agent will be discharged of and from any and all further duties and obligations arising in connection with this Agreement.

#### **7.7 Disagreement**

If any disagreement between the Parties results in adverse claims or demands made in relation to the Escrow Fund or if the Escrow Agent is in doubt as to what action it should take under this Agreement, the Escrow Agent:

- 7.7.1 will be entitled to retain the Escrow Fund until the Escrow Agent has received Joint Instructions directing payment of the Escrow Fund and the Escrow Agent will rely and act on the Joint Instructions without further question by paying the Escrow Fund as directed; and
- 7.7.2 will be entitled to continue to act as legal counsel to the Seller and Peoples Trust Company in connection with any matter unconnected to any such disagreement, and its appointment as Escrow Agent will in no way hinder its ability to do so.

**7.8 Costs**

The Seller hereby acknowledges and agrees that it shall be solely responsible for all fees, expenses, costs and disbursements of the Escrow Agent, Diversicare and any consultants, agents and/or advisors retained by the Seller in connection with the matters dealt with hereunder.

**7.9 Indemnity**

Except to the extent that any Claim which can be brought under Section 7.2 is successfully asserted against the Escrow Agent, the Parties will jointly and severally indemnify and hold harmless the Escrow Agent (and any successor escrow agent) from and against any and all Claims incurred or sustained by the Escrow Agent in respect of any matter or thing done by it under, pursuant to or in connection with this Agreement, or otherwise arising in connection with its office as Escrow Agent.

**7.10 Certain Obligations of the Parties**

**Use of Escrow Agent's Name.** No printed or other matter in any language (including prospectuses, notices, reports and promotional material) that mentions the Escrow Agent's name or the rights, powers or duties of the Escrow Agent will be issued by or on behalf of the Parties unless the Escrow Agent will first have given its specific written consent.

**ARTICLE 8  
OWNERSHIP FOR TAX PURPOSES**

**8.1 Rights and Obligations**

The Seller will:

- 8.1.1 be treated as the owner of the Escrow Fund for purposes of all applicable taxes;
- 8.1.2 report, if applicable, all income, if any, that is earned on, or derived from, the Escrow Fund as its income in the taxation year or years in which such income is properly includible; and
- 8.1.3 pay any taxes attributable to the Seller pursuant to this Article 8.

## **ARTICLE 9 GENERAL**

### **9.1 Notices**

Any notice provided in connection with this Agreement will be provided in accordance with Section 6.8 of the Purchase Agreement, with delivery to the Escrow Agent to be made to the Escrow Agent at:

Gowling Lafleur Henderson LLP  
1 First Canadian Place  
100 King Street West, Suite 1600  
Toronto, Ontario M5X 1G5

Attention: Cliff Prophet and Harry VanderLugt  
Facsimile No.: 416-862-7661

### **9.2 Severability**

Each provision of this Agreement is distinct and severable. If any provision of this Agreement, in whole or in part, is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect:

- 9.2.1 the legality, validity or enforceability of the remaining provisions of this Agreement;  
or
- 9.2.2 the legality, validity or enforceability of that provision in any other jurisdiction.

### **9.3 Submission to Jurisdiction**

Each of the Parties and the Escrow Agent irrevocably submits and attorns to the exclusive jurisdiction of the courts of the Province of Ontario to determine all issues, whether at law or in equity, arising from this Agreement.

### **9.4 Remedies Cumulative**

The rights and remedies of the Parties and the Escrow Agent under this Agreement are cumulative and not alternative.

### **9.5 Amendment and Waiver**

No supplement, modification, amendment, waiver, discharge or termination of this Agreement is binding unless it is executed in writing by each of the Parties and the Escrow Agent. No waiver of, failure to exercise or delay in exercising, any provision of this Agreement constitutes a waiver of any other provision (whether or not similar) nor does any waiver constitute a continuing waiver unless otherwise expressly provided.



**9.6 Assignment and Enurement**

None of the Parties and the Escrow Agent may assign this Agreement, or any of its rights or obligations under this Agreement, without the prior written consent of the Parties, or the Escrow Agent and the other Party, as the case may be, save and except that the Seller may, upon the approval or direction of the court, transfer all or any of its right and obligations hereunder to a Person approved by the court. This Agreement enures to the benefit of and is binding upon the Parties and the Escrow Agent and their respective successors and permitted assigns.

**9.7 Counterparts**

This Agreement may be executed and delivered by the Parties in one or more counterparts, each of which when so executed and delivered will be an original.

**9.8 Survival**

Section 7.8 and any other provisions that would reasonably be expected to remain in force will survive the termination of the escrow created under this Agreement. The termination of the escrow created under this Agreement will not affect the rights of any Party or the Escrow Agent to make a claim for damages arising from a breach of any provision of this Agreement which occurred prior to that termination.

**THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.**

Each of the Parties has executed and delivered this Agreement as of the date noted at the beginning of the Agreement.

**DOWNSVIEW LONG TERM CARE  
CENTRE LIMITED**

Per: 

Name: Syed Hussain

Title: President

**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: \_\_\_\_\_

**GOWLING LAFLEUR HENDERSON  
LLP**

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Partner

Each of the Parties has executed and delivered this Agreement as of the date noted at the beginning of the Agreement.

**DOWNSVIEW LONG TERM CARE CENTRE  
LIMITED**

Per: \_\_\_\_\_

Name: Syed Hussain

Title: President

**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: Daniel Weiss

Title: General Counsel

**GOWLING LAFLEUR HENDERSON LLP**

Per: \_\_\_\_\_

Name: Henry R. Vanden Luet

Title: Partner

# APPENDIX M

**Ministry of Health  
and Long-Term Care**

Health System Accountability  
and Performance Division  
Performance Improvement and  
Compliance Branch

1075 Bay Street, 11<sup>th</sup> Floor  
Toronto ON M5S 2B1

Telephone: (416) 326-1933  
Facsimile: (416) 327-7603

**Ministère de la Santé  
et des Soins de longue durée**

Division de la responsabilisation  
et de la performance du système de santé  
Direction de l'amélioration de la  
performance conformité

1075, rue Bay, 11<sup>e</sup> étage  
Toronto ON M5S 2B1

Téléphone: (416) 326-1933  
Télécopieur: (416) 327-7603



**By e-Mail and Courier**

July 10, 2012

Mr. Syed M. Hussain  
President  
Downsview Long Term Care Centre Limited  
1046 Barrington Street, 3rd Floor  
Halifax NS B3H 2R1

Dear Mr. Hussain:

**Re: REVISED – Licensing Transaction Review – Licence Transfer of Casa Verde Health Centre in North York (Home # 1041)**

This is to inform you that the Ministry of Health and Long-Term Care (the "Ministry") has completed the Licensing Transaction Review of the proposal regarding the transfer of the licence of Casa Verde Health Centre (the "Home"). This proposal was submitted by Deloitte & Touche Inc., the Court-Appointed Interim Receiver and Receiver and Manager of Paragon Health Care Inc. (the "Licensee") and Paragon Health Care (Ontario) Inc. (together as the "Vendor"), to surrender the licence on condition that the licence be reissued to Downsview Long Term Care Centre Limited (the "Proposed Purchaser").

Your proposal regarding the above noted long-term care home will be approved once the following conditions have been met:

1. the Ministry receives, in writing, confirmation of the actual date of the sale closing;
2. the Ministry receives a letter from the Vendor surrendering the current licence held by the Vendor along with the current licence for the Home (must be an original not a photocopy);
3. the Proposed Purchaser assumes liability for any monies up to a maximum of \$1,000,000.00 owed by the Vendor to the Ministry and/or the Central Local Health Integration Network (the LHIN) for the period beginning on January 1, 2011 and ending at the closing date of the transaction that result from any financial reconciliations by the Ministry or the LHIN as permitted by law or pursuant to any agreements entered into between the Ministry or the LHIN and the Vendor (the "Monies"). When requested to do so by the Ministry or the LHIN, Downsview Long Term Care Centre Limited will pay to the Ministry or the LHIN the Monies or enter into an arrangement that is satisfactory to the Ministry or the LHIN for the repayment of the Monies; and

Mr. Syed M. Hussain, Downsview Long Term Care Centre Limited

July 10, 2012

4. the Proposed Purchaser agrees to correct all outstanding findings of non-compliance set out in the inspection reports issued by the Ministry to the Vendor, and to comply with all outstanding orders issued by a Ministry inspector or the Director against the Vendor, if any, and all inspection reports and orders should be available from the Vendor and they must be posted in the Home pursuant to applicable law.

Notwithstanding the above, the Ministry is not approving the prudence of this proposed transaction, including any financial projections submitted. Downsview Long Term Care Centre Limited is cautioned that they must assume full responsibility for these transactions, and all consequences thereof.

Prior to the issuance of the new licence, we require the following updated Corporate Documentation (if it has not been submitted yet):

- If the Proposed Purchaser is a Corporation:
  - Certificate of Incorporation;
  - Articles of Incorporation / Amendment; Letters Patent / Supplementary Letters Patent;
  - Form 1 – Ontario Corporation – Initial Return / Notice of Change / *Corporations Information Act* or Annual Return;
  - For Charitable Corporations all of the above is required, including any documentation to show that they are a registered Charitable Organization;
  - List of current Officers and Directors (including the names, positions held and business telephone numbers of all officers, directors and persons with a controlling interest (10% or more shares, owned or controlled directly or indirectly) in the Proposed Purchaser, along with a statement describing the ownership or beneficial ownership of equity shares of capital stock in the Proposed Purchaser); and
  - Each person who is involved in the Proposed Purchaser shall list all long-term care homes of which
    - a) the person is the licensee;
    - b) the person is the manager;
    - c) the person has a controlling interest in the licensee; or
    - d) the person has a controlling interest in the manager.
- If the Proposed Purchaser is a Limited Partnership:
  - Certificate of Incorporation for the general partner (GP);
  - Articles of Incorporation / Amendment for the GP;
  - Form 3 – Declaration under the *Limited Partnerships Act*;
  - Form 1 – Ontario Corporation – Initial Return / Notice of Change / *Corporations Information Act* or Annual Return for the GP;
  - List of current Officers and Directors for the GP (including the names, positions held and business telephone numbers of all officers, directors and persons with a controlling interest (10% or more shares, owned or controlled directly or indirectly) in the Proposed Purchaser, along with a

Mr. Syed M. Hussain, Downsview Long Term Care Centre Limited

July 10, 2012

- statement describing the ownership or beneficial ownership of equity shares of capital stock in the Proposed Purchaser); and
- Each person who is involved in the GP shall list all long-term care homes of which
  - a) the person is the licensee;
  - b) the person is the manager;
  - c) the person has a controlling interest in the licensee; or
  - d) the person has a controlling interest in the manager.

You will be advised in writing if further information is required.

Please note that any licence that may be issued to the Proposed Purchaser as a result of the foregoing transaction will contain conditions including, but not limited to:

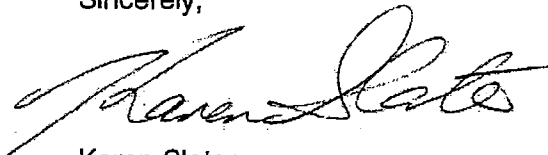
1. the Proposed Purchaser agrees to operate the Home in accordance with the *Long-Term Care Homes Act, 2007* and Ontario Regulation 79/10, the agreements between the Crown and the Proposed Purchaser as licensee of the Home, and any other applicable Act, regulation, agreement, policy or Municipal By-law;
2. the Ministry will be under no obligation to license any additional bed accommodation beyond the licensed capacity of 252 beds operating at Casa Verde Health Centre;
3. if anyone other than the licensee (the Proposed Purchaser) is proposed to manage the Home, the Ministry will receive a management contract for the Home for prior approval pursuant to s. 110 of the Act; and
4. the Proposed Purchaser will submit to the Ministry, for prior review and approval, any plans for proposed renovations or other work referred to in s. 305(3) of Ontario Regulations 79/10 regarding the Home.

Please sign below indicating that you agree to the conditions and return the originals with an original signature (no photocopy please) to Edith Petes, Licensing Program Coordinator, Performance Improvement and Compliance Branch, Ministry of Health and Long-Term Care, 8<sup>th</sup> Floor, 55 St. Clair Avenue West, Toronto, Ontario M4V 2Y7.

If you have any questions, please do not hesitate to contact Edith at (416) 326-1933.

Thank you for your co-operation.

Sincerely,



Karen Slater  
Director (A), Performance Improvement and Compliance Branch  
Director under the *Long-Term Care Homes Act, 2007*

Mr. Syed M. Hussain, Downsview Long Term Care Centre Limited

July 10, 2012

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Acknowledged and agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

**Downsview Long Term Care Centre Limited**

Per: \_\_\_\_\_

Authorized Signing Officer  
(I have authority to bind the Proposed Purchaser)

Please print:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

- c: Kim Baker, CEO, Central Local Health Integration Network (LHIN)  
Peter Kaftarian, Director, Health Capital Investment Branch, MOHLTC  
Wiesia Kubicka, Manager, Organizational Development Unit, Performance Improvement and Compliance Branch (PICB), Ministry of Health and Long-Term Care (MOHLTC)  
Mary Diamond, Manager, Toronto Service Area Office, PICB  
Richard Lee, Senior Financial Consultant, Financial Management Branch, MOHLTC  
Michael Orr, Counsel, Legal Services Branch, MOHLTC  
Anna Prete, Licensing Program Coordinator, PICB, MOHLTC  
Edith Petes, Licensing Program Coordinator, PICB, MOHLTC



**Bricks, Hartley (CA - Toronto)**

---

**From:** Kubicka, Wiesia (MOH) <Wiesia.Kubicka@ontario.ca>  
**Sent:** Tuesday, July 10, 2012 7:33 PM  
**To:** Syed Hussain; Weisz, Daniel (CA - Toronto)  
**Cc:** Bricks, Hartley (CA - Toronto); james.balcom@gemhc.com; Lee, Richard G. (MOH); Orr, Michael J. (MOH); Prete, Anna (MOH); Hopkins, Nancy (MOH); Tennakoon, Chandike (MOH); Petes, Edith (MOH)  
**Subject:** RE: Approval w Conditions Letter re. the licence transfer of Casa Verde NH - REVISED

Hello all

I received a follow up call from Mr. Weisz requesting confirmation that based on the today's letter, the reconciliations for 2006 to 2010 are considered closed and there are no outstanding recoveries for these periods. By way of this email I am confirming this to be true. The only outstanding reconciliations/recoveries are for 2011 and 2012, as set out in the condition #3 in the letter.

Thank you,  
 Wiesia

## Wiesia Kubicka | Manager

Performance Improvement and Compliance Branch | Organizational Development Unit  
 Health System Accountability and Performance Division | MOHLTC  
 11th Floor | 1075 Bay St. | Toronto, Ontario | M5S 2B1  
 Tel: 416.325.8881 | Cell: 416.904.3670 | Fax: 416.327.7603 | Email: [Wiesia.Kubicka@ontario.ca](mailto:Wiesia.Kubicka@ontario.ca)

Private and Confidential: Intended only for the named recipient(s). If otherwise received, please destroy immediately.

---

**From:** Petes, Edith (MOH)  
**Sent:** July 10, 2012 3:58 PM  
**To:** 'Syed Hussain'  
**Cc:** Bricks, Hartley; 'james.balcom@gemhc.com'; 'Kim.Baker@LHINS.ON.CA'; Slater, Karen (MOH); Kubicka, Wiesia (MOH); Diamond, Mary (MOH); Lee, Richard G. (MOH); Kaftarian, Peter (MOH); Orr, Michael J. (MOH); Prete, Anna (MOH); Hopkins, Nancy (MOH)  
**Subject:** RE: Approval w Conditions Letter re. the licence transfer of Casa Verde NH - REVISED  
**Importance:** High

Dear Mr. Hussain,  
 Please find attached the scanned copy of a letter from Karen Slater, Acting Director, that's being couriered out to you today.  
 If you have any questions or concerns, please let me know.  
 Best regards,  
 Edith Petes

Edith Petes  
 Licensing Program Coordinator  
 ODU/PICB/HSAPD/MOHLTC  
 1075 Bay Street, 11th Floor  
 Toronto ON M5S 2B1  
 Phone: 416-326-1933 / Fax: 416-327-7603  
[Edith.Petes@ontario.ca](mailto:Edith.Petes@ontario.ca)

---

**From:** Petes, Edith (MOH)  
**Sent:** December 19, 2011 1:41 PM  
**To:** Syed Hussain  
**Cc:** 'james.balcom@gemhc.com'; 'Kim.Baker@LHINS.ON.CA'; Kampus, Rachel E. (MOH); Kubicka, Wiesia (MOH); Diamond, Mary (MOH); Lee, Richard G. (MOH); Alberding, James (MOH); Orr, Michael J. (MOH); Prete, Anna (MOH); Hopkins, Nancy (MOH); Enriquez-Mary, Leticia (MOH)  
**Subject:** Approval w Conditions Letter re. the licence transfer of Casa Verde NH  
**Importance:** High

Dear Mr. Hussain,  
Please find attached a scanned copy of a letter from Rachel Kampus, Director, that's being couriered out to you today.  
If you have any questions or concerns, please let me know.  
Regards,  
Edith Petes

Edith Petes  
Licensing Program Coordinator  
Organizational Development Unit  
Performance Improvement & Compliance Branch  
Health System Accountability & Performance Division  
Ministry of Health & Long-Term Care  
55 St. Clair Avenue West, Ste. 800  
Toronto, Ontario M4V 2Y7  
Phone: 416-326-1933  
Fax: 416-327-4486  
[Edith.Petes@ontario.ca](mailto:Edith.Petes@ontario.ca)

# APPENDIX N

# **AMENDING AGREEMENT NO. 7**

**THIS AMENDING AGREEMENT** is dated as of July 16, 2012,

**BETWEEN :**

**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

(the "**Vendor**")

- and -

**GEM HEALTH CARE GROUP LIMITED**, a corporation existing under the laws of Nova Scotia

(the "**Purchaser**")

## **CONTEXT:**

- A. The parties have made an Agreement of Purchase and Sale of the Assets dated October 20, 2010, as amended ("**Purchase Agreement**").
- B. The parties wish to amend those terms of the Purchase Agreement which are referred to below.
- C. The words and phrases beginning with capitals have the meanings assigned in the Purchase Agreement unless the context otherwise requires.
- D. The Purchase Agreement has been assigned by GEM Health Care Group Limited to Downsview Long Term Care Centre Limited.

**FOR GOOD AND VALUABLE CONSIDERATION**, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

- 1. The amount of the "**Escrow Fund**" as defined in **Paragraph A. of Section 2.8(c)** is \$1,000,000.00.
- 2. The words "January 24, 2006 to December 31, 2011" in **Paragraph A. of Section 2.8(c)** are replaced with "January 1, 2010 to December 31, 2011" which will be the relevant period for the definition of "**MOH Closing Adjustment Period**".
- 3. **Paragraph B. of Section 2.8(c)** is amended by deleting the paragraph in full and substituting therefor "*intentionally deleted*".
- 4. Section 2.15 is amended by deleting the third sentence in full and substituting therefor

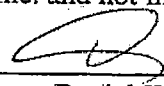
"At least five (5) Business Days before the Closing Date, the Vendor shall deliver to the Purchaser an up-to-date Employee List of all employees as at such date certified by an officer of the Vendor verifying to the extent of its knowledge the accuracy of the contents thereof."

5. Except as specifically amended herein, the Purchase Agreement continues in full force and effect.
6. This Agreement may be executed by the parties in counterparts, with the executed counterparts delivered by each party together constituting this Amending Agreement, and each of which may be delivered by facsimile, e-mail or other functionally equivalent electronic means of transmission.

Each of the parties has executed and delivered this Agreement as of the date noted at the beginning of the Agreement.

**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: Daniel Weisz  
Title: Senior Vice President

**DOWNSVIEW LONG TERM CARE  
CENTRE LIMITED**

**GEM HEALTH CARE GROUP LIMITED**

Per

Name: Syed Hussain  
Title: President

Per

Name: Syed Hussain  
Title: President

- 2 -

"At least five (5) Business Days before the Closing Date, the Vendor shall deliver to the Purchaser an up-to-date Employee List of all employees as at such date certified by an officer of the Vendor verifying to the extent of its knowledge the accuracy of the contents thereof."

5. Except as specifically amended herein, the Purchase Agreement continues in full force and effect.
6. This Agreement may be executed by the parties in counterparts, with the executed counterparts delivered by each party together constituting this Amending Agreement, and each of which may be delivered by facsimile, e-mail or other functionally equivalent electronic means of transmission.

Each of the parties has executed and delivered this Agreement as of the date noted at the beginning of the Agreement.

**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: Daniel Weisz  
Title: Senior Vice President

**DOWNSVIEW LONG TERM CARE  
CENTRE LIMITED**

Per \_\_\_\_\_

Name: Syed Hussain  
Title: President

**GEM HEALTH CARE GROUP LIMITED**

Per \_\_\_\_\_

Name: Syed Hussain  
Title: President

# APPENDIX O

# Deloitte.

Deloitte & Touche Inc.  
181 Bay Street  
Brookfield Place, Suite 1400  
Toronto ON M5J 2V1  
Canada

Tel: 416-601-6150  
Fax: 416-601-6690  
www.deloitte.ca

July 25, 2012

To: [REDACTED]

**Paragon Health Care Inc. o/a Casa Verde Health Centre ("Casa Verde") and  
Paragon Health Care (Ontario) Inc. - Receivership**  
(collectively referred to as "Paragon")

This letter is to advise you that Deloitte & Touche Inc., solely in its capacity as court-appointed interim receiver and receiver and manager of Paragon Health Care Inc. and Paragon Health Care (Ontario) Inc. and not in its personal capacity (the "Receiver"), has entered into an Agreement of Purchase and Sale, as amended, with GEM Health Care Group Limited ("GEM") dated October 20, 2010 for the sale of Paragon's assets to GEM (the "Sale Agreement"). The Sale Agreement was subsequently assigned by GEM to Downsview Long Term Care Centre Limited ("Downsview"). The sale was completed on July 25, 2012 (the "Closing Date").

As a result of the closing of the sale, your employment by the Receiver has come to an end as of the Closing Date. In accordance with the Sale Agreement, we understand that Downsview has or will be making an offer of employment to you effective as of the Closing Date for your continued work at the facility.

We thank you for your assistance during the receivership and wish you the best of luck in the future.

Yours very truly,

**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.

Per:



Hartley Bricks, MBA, CA•CIRP  
Vice President



# APPENDIX P

**Deloitte.**

Deloitte & Touche Inc.  
181 Bay Street  
Brookfield Place, Suite 1400  
Toronto ON M5J 2V1  
Canada

Tel: 416-775-7326  
Fax: 416-601-6690  
www.deloitte.ca

July 25, 2012

**TO SUPPLIERS OF GOODS AND SERVICES TO CASA VERDE HEALTH CENTRE**

**Re: Sale of Casa Verde Health Centre ("Casa Verde") to Downsview Long Term Care Centre Limited**

Please be advised that on July 25, 2012, Deloitte & Touche Inc., in its capacity as court appointed interim receiver and manager of the current and future assets, undertakings and properties of Paragon Health Care Inc. and Paragon Health Care (Ontario) Inc. o/a Casa Verde Health Centre and not in its personal capacity (the "Receiver"), sold the assets of Casa Verde to Downsview Long Term Care Centre Limited ("Downsview").

Please be advised that neither the Receiver nor Diversicare Canada Management Services Co., Inc. ("Diversicare"), acting as agent for the Receiver, is responsible for any goods and services provided by your company to Casa Verde after July 24, 2012. Invoices for any goods and services provided to Casa Verde prior to July 25, 2012 should be sent to 3595 Keele Street, North York, Ontario, M3J 1M7 and will be paid by the Receiver in the normal course. Any questions regarding your invoices for goods or services provided to Casa Verde prior to July 25, 2012 should be directed to Domenica Cioffi of Diversicare at 905-821-1161.

Commencing July 25, 2012, supplier inquiries regarding future goods and services for Casa Verde should be directed to Christiana Burns of Downsview at 416-633-3431.

On behalf of the Receiver and Diversicare, we thank you for your support during the receivership of Casa Verde.

Yours very truly,

**DELOITTE & TOUCHE INC.**

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:



Hartley Bricks, MBA, CA•CIRP  
Vice President

# APPENDIX Q

IN THE MATTER OF THE RECEIVERSHIP OF  
PARAGON HEALTH CARE INC./SOINS DE SANTE PARAGON INC.

**Receiver's Interim Statement of Receipts and Disbursements  
for the period January 24, 2006 to August 3, 2012**

**Receipts**

1. Ministry of Health Funding	\$ 68,139,637
2. Proceeds from sale	6,759,392
3. Cash in bank	71,896
4. Transfer from Paragon Health Care (Ontario) Inc. account	3,792
5. Interest earned	52,211
<b>6. Total receipts</b>	<b>\$ 75,026,927</b>

**Disbursements**

7. Funding to Casa Verde Nursing Home	\$ 53,288,149
8. Funding to Casa Verde Retirement Home	7,135,000
9. Receiver fees	995,060
10. Legal fees	327,053
11. GST	57,761
12. HST	45,159
13. Advertising	7,345
14. Courier	6,395
15. Appraisal fees	5,000
16. Consulting fees	4,045
17. Security	3,424
18. Travel expenses	1,268
19. Telephone	951
20. Photocopies	364
21. Postage	280
22. Bank charges	260
23. Filing fee	70
<b>24. Total disbursements</b>	<b>\$ 61,877,584</b>
<b>25. Receipts less disbursements</b>	<b>\$ 13,149,343</b>
<b>26. Distributions to secured creditor</b>	<b>(4,556,793)</b>
<b>27. Balance on Hand</b>	<b>\$ 8,592,550</b>

# **APPENDIX R**

IN THE MATTER OF THE RECEIVERSHIP OF  
PARAGON HEALTH CARE (ONTARIO) INC.

**Receiver's Interim Statement of Receipts and Disbursements  
for the period January 24, 2006 to August 3, 2012**

**Receipts**

1. Cash in bank	\$	3,479
2. Interest earned		433
3. Total receipts	\$	<u>3,912</u>

**Disbursements**

4. Filing fee	\$	70
5. Bank charges		50
6. Transfer to Paragon Health Care Inc. account		3,792
7. Total disbursements	\$	<u>3,912</u>
8. Balance on Hand	\$	<u>0</u>

# APPENDIX S



July 30, 2012

**Paragon Health Care Inc. - Soins de**  
3595 Keele Street  
North York, ON M3J1M7

**RE: Paragon Health Care Inc. - Soins de**  
3595 keele street North York, ON

**STATEMENT FOR DISCHARGE PURPOSES - Mortgage No. 20795**  
(Effective July 31, 2012 - Interest currently paid to March 01, 2008)

Principal Balance as at March 01 2008	\$8,169,323.74
Interest Rate 8.370% from March 01 2008 to July 31 2012	\$3,104,373.51
Tax Account (A Minus Balance Is a Credit)	\$4,140,053.44
Late Payment Interest	\$716,471.66
Discharge Penalty	\$ 0.00
Statement Fee	\$ 0.00
Discharge Fee	\$ 0.00
Sundry Account (A Minus Balance Is a Credit)	\$-8,648.18

**Total Amount**

**\$16,121,574.17**

Per Diem from July 31, 2012

\$1,873.35

The loan balance outstanding as at July 31, 2012 will be \$16,121,574.17.

THE AMOUNTS IN THIS STATEMENT ARE CALCULATED ON THE BASIS THAT ALL PAYMENTS UP TO AND INCLUDING THE ACTUAL PAYOUT ARE MADE AND HONoured. If any such payments are not made or honoured, then the amounts in this statement will no longer be valid and will be replaced without notice by amounts reflecting such non-payment. WE WILL NOT BE OBLIGED TO PROVIDE A DISCHARGE OF OUR MORTGAGE, NOTWITHSTANDING ANY TERMS OR CONDITIONS ACCOMPANYING PAYOUT, UNLESS AND UNTIL ANY SUCH PAYMENTS ARE MADE OR HONoured, so the obligation to ensure that all such payments are made and honoured is on the party relying on this statement and making payment to us in accordance with it.

All taxes and other charges paid by us from the time of preparation to the closing date and not indicated on this statement are the responsibility of the Mortgagor.

Funds received after 12:00 P.M. of the proposed discharge date will be subject to an additional daily interest charge of \$1,873.35 until paid. If the proposed discharge date is on Friday, funds received after 12:00 P.M. will be subject to additional interest until the next business day. If this is a floating rate mortgage, the daily interest charge is subject to change in the Prime Lending Rate of the Bank of Montreal.

Payment must be in the form of a solicitor's trust cheque or certified cheque. Please include the appropriate form of Discharge Documentation (including PPSA Security if applicable) for execution by Peoples Trust Company.

This statement may not be used past the end of the month in which it was issued.

If this loan is in an MBS Pool, the Discharge Statement may be subject to CMHC approval. If approved, a final Discharge penalty calculation must be requested no more than 5 business days prior to payout. If this is a final penalty calculation, the penalty is valid only for the effective date on this statement.

Martin Mallich  
Manager, Default Management

E. & O.E.

<b>Head Office</b> <input type="checkbox"/> Suite 1400, 888 Dunsmuir St. Vancouver, B.C. V6C 3K4 Telephone: 604-683-2881 Fax: 604-683-5110 Email: people@peoplestrust.com	<b>B.C. Region</b> <input type="checkbox"/> Suite 1115 - Bentall Two, PO Box 231 555 Burrard Street Vancouver, B.C. V7X 1M8 Telephone: 604-685-1068 Fax: 604-683-2787 Email: vancouver@peoplestrust.com	<b>Prairie Region</b> <input type="checkbox"/> Suite 955, 808-4th Ave. S.W. Calgary, AB, T2P 3E8 Telephone: 403-237-8975 Fax: 403-266-5002 Email: calgary@peoplestrust.com	<b>Ontario Region</b> <input type="checkbox"/> Citigroup Place, 123 Front St. W., Suite No. 901 Toronto, ON M5J 2M2 Telephone: 416-368-3266 Fax: 416-368-3328 Email: toronto@peoplestrust.com
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PEOPLES TRUST COMPANY

- and -

PARAGON HEALTH CARE INC. and 1508669 ONTARIO LIMITED

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

(PROCEEDING COMMENCED AT TORONTO)

**MOTION RECORD  
(Returnable September 4, 2012)**

**GOWLING LAFLEUR HENDERSON LLP**  
Barristers and Solicitors  
Suite 1600, 1 First Canadian Place  
100 King Street West  
Toronto, Ontario M5X 1G5

**Clifton 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 the  
current and future assets, undertakings and  
properties of Paragon Health Care Inc., Paragon  
Health Care (Ontario) Inc. and 1508669 Ontario  
Limited