



**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

)

WEDNESDAY, THE 25TH DAY

)

JUSTICE NEWBOULD

)

OF AUGUST, 2010

BETWEEN:

THE EQUITABLE TRUST COMPANY

Applicant

- and -

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

Respondents

APPROVAL AND VESTING ORDER

THIS MOTION, made by Deloitte & Touche Inc. in its capacity as the Court-appointed receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of Tuesday Equities Ltd. and Prince Royal Limited Partnership (together, the "**Debtors**"), acquired for, or used in relation to the business carried on by the Debtors in respect of the Elora Mill Inn, including all proceeds thereof (the "**Property**"), for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Receiver and Pearle Hospitality Inc. (the "**Purchaser**") made as of August 19, 2010 and appended to the Second Report of the Receiver dated August 19, 2010 (the "**Second Report**"), and vesting in the Purchaser the Debtors' right, title and interest in and to the assets

described in the Sale Agreement (the “**Purchased Assets**”), was heard this day at 330 University Avenue, Toronto, Ontario.

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

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and that the Sale Agreement is commercially reasonable and in the best interests of the Debtors and their stakeholders. The Receiver is hereby authorized and directed to complete the Transaction in accordance with the terms of the Sale Agreement, together with such alterations, amendments, deletions and additions as the parties may agree, and to perform its obligations in the Sale Agreement. The execution of the Sale Agreement by the Receiver is hereby authorized and approved, and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver’s certificate to the Purchaser substantially in the form attached as Schedule A hereto (the “**Receiver’s Certificate**”) and the registration in the Land Registry Office for the Land Titles Division of Wellington (No. 61) and the Land Registry Office for the Registry Division of Wellington (No. 61) of an Application for Vesting Order with a copy of this Approval and Vesting Order and the executed Receiver’s Certificate attached as a schedule thereto, all of the Receiver’s (if any) and all of the Debtors’ right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule B hereto shall vest absolutely in the Purchaser, or as the Purchaser may direct, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Cumming dated May 26, 2010; (ii) all charges, security interests or claims evidenced by registrations pursuant to the Personal Property Security Act (Ontario) or

any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the Permitted Encumbrances, easements and restrictive covenants listed on Schedule D hereto) 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 and that the Land Registrar is hereby directed to enter the Purchaser, or as the Purchaser 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.

3. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds (after deducting the usual disposition costs) from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, solely to the extent that the Receiver does not currently hold in trust sale proceeds for assets encumbered by a PPSA registration which assets were disposed of by previous sale (“**Disposition Funds**”) and for which the Receiver holds funds in trust in substitution for the encumbered asset, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances for which the Receiver does not hold Disposition Funds in trust 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. For greater certainty, the Receiver shall be free to deal with the net proceeds from the sale of the Purchased Assets without obligation to retain same in those cases where the Receiver already holds Disposition Funds in trust.

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

5. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Debtors' records pertaining to the Debtors' past and current employees, including personal

information of the "Assumed Employees" as defined in the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtors.

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

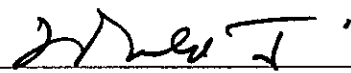
- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtors and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made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

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

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

8. **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.:



AUG 25 2010

NB

Schedule A – Form of Receiver’s Certificate

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

THE EQUITABLE TRUST COMPANY

Applicant

- and -

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

Respondents

RECEIVER’S CERTIFICATE

RECITALS

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

B. Pursuant to an Order of the Court dated August 25, 2010, the Court approved the agreement of purchase and sale made as of August 19, 2010 (the “**Sale Agreement**”) between the Receiver and Pearle Hospitality Inc. (the “**Purchaser**”) in respect of the business carried on by the Debtors with respect to The Elora Mill Inn as described in the Sale Agreement (the

“Purchased Assets”) and provided for the vesting in the Purchaser of the Receiver’s and the Debtors’ right, title and interest in and to the Purchased Assets (as set out in Schedule B), 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 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 the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at [TIME] on ► [DATE].

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

Per: _____
Name:
Title:

Schedule B – Purchased Assets

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

The Elora Mill Inn, consisting of the real property located at 77 Mill Street West, Village of Elora, Province of Ontario, together with the buildings situate thereon containing 32 guest rooms and suites, restaurant, lounge, meeting rooms and a tea room, legally described as:

PIN 71410-0083 (LT) – LT 4 N/S W MILL ST PL 181 ELORA; LT 5 N/S W MILL ST PL 181 ELORA; CENTRE WELLINGTON

PIN 71410-0072(R) – PT LT 1 BRUCE PLACE NW GRAND RIVER PL 181 ELORA; PT LT 2 S/S W MILL ST PL 181 ELORA; PT LT 3 S/S W MILL ST PL 181 ELORA; PT LT GRIST MILL PL 181 ELORA; CENTRE WELLINGTON

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

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

PIN 71410-0083 (LT)

1. Transfer by The Elora Mill Limited in favour of 2006311 Ontario Inc. registered as Instrument No. LT86874 on July 3, 2002 and subject to Execution Nos. 02-00063, 02-00086 and 02-00133, if enforceable;
2. Charge in favour of The Equitable Trust Company (“**Equitable**”) securing the principal amount of \$2,700,000.00 registered as Instrument No. WC110538 on August 26, 2005;
3. Notice of Assignment of Rents – General in favour of Equitable registered as Instrument No. WC110539 on August 26, 2005 relating to Instrument No. WC110538;
4. Charge in favour of 432567 B.C. Ltd. (“**432567**”) securing the principal amount of \$3,000,000.00 registered as Instrument No. WC199620 on January 15, 2008;
5. Charge in favour of Checkers Properties G.P. Inc. (“**Checkers**”) securing the principal amount of \$3,000,000.00 registered as Instrument No. WC199622 on January 15, 2008; and
6. Transfer of Charge in favour of Ashiana Holdings Ltd. (“**Ashiana**”) and Ballycurkeen Investment Corp. (“**Ballycurkeen**”) registered as Instrument No. WC246598 on June 4, 2009.

PIN 71410-0072 (R)

1. Charge in favour of Equitable securing the principal amount of \$2,700,000.00 registered as Instrument No. RO819767 on August 26, 2005;
2. Notice of Assignment of Rents – General in favour of Equitable registered as Instrument No. RO819768 on August 26, 2005 relating to Instrument No. RO819767;
3. Charge in favour of 432567 securing the principal amount of \$3,000,000.00 registered as Instrument No. RO820421 on January 15, 2008;
4. Charge in favour of Checkers securing the principal amount of \$3,000,000.00 registered as Instrument No. RO820422 on January 15, 2008; and
5. Transfer of Charge in favour of Ashiana and Ballycurkeen registered as Instrument No. RO820709 on June 5, 2009.

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

(unaffected by the Vesting Order)

Permitted Encumbrances with respect to the Property means:

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

Without limiting the foregoing Permitted Encumbrances include the following:

PIN 71410-0083 (LT)

6. Servicing Agreement between The Corporation of the Village of Elora (the “**Village**”) and Penstock Inns Limited (“**Penstock**”) registered as Instrument No. ROS518346 on November 28, 1985;
7. Encroachment Agreement between The Elora Mill Limited (“**Elora Mill**”) and the Village registered as Instrument No. RO659593 on February 10, 1992;
8. Transfer in favour of 2006311 Ontario Inc. registered as Instrument No. LT86874 on July 3, 2002 and subject to Executions 02-00063, 02-00086 and 02-00133, if enforceable; and
9. Application to Register Court Order re Order of the Ontario Superior Court of Justice dated May 26, 2010 appointing Deloitte & Touche Inc. as the Receiver registered as Instrument No. WC279708 on June 3, 2010.

PIN 71410-0072 (R)

Discharge of Charge registered as Instrument No. MS59312 on October 12, 1966 discharging a Charge registered as Instrument No. MS13815;

10. Transfer in favour of Aileen Dunkeld Harris registered as Instrument No. MS87753 on September 2, 1969;
11. Transfer in favour of Victor A. Stumpf and Florence Emma Stumpf registered as Instrument No. MS129993 on June 21, 1973;
12. Transfer in favour of Aileen Dunkeld Harris registered as Instrument No. MS129994 on June 21, 1973;
13. Discharge of Charge registered as Instrument No. ROS145266 on June 4, 1974 discharging a Charge registered as Instrument No. MS7154;
14. Transfer in favour of William A. M. Gregg registered as Instrument No. ROS146033 on June 19, 1974;
15. Transfer in favour of Granmill Holdings Limited registered as Instrument No. ROS146035 on June 19, 1974;
16. Charge in favour of Gwyneth Cooper-Jones securing the principal amount of \$50,000 registered as Instrument No. ROS171467 on May 12, 1976;
17. Transfer in favour of Gwyneth Cooper-Jones registered as Instrument No. ROS172909 on June 16, 1976;

18. Quit Claim Transfer in favour of Grand River Conservation Authority registered as Instrument No. ROS212503 on January 12, 1979;
19. Transfer in favour of Henry Bruce Glista registered as Instrument No. ROS227810 on March 14, 1980;
20. Transfer in favour of William A. M. Gregg registered as Instrument No. ROS231332 on July 17, 1980;
21. Transfer in favour of Grandmill Holdings Limited registered as Instrument No. ROS231335 on July 17, 1980;
22. Transfer in favour of Penstock Inns Limited registered as Instrument No. ROS231417 on July 21, 1980;
23. Transfer of Easement to and in favour of the Village registered as Instrument No. ROS247940 on November 12, 1981 to construct, operate, install, maintain, inspect, alter, remove, replace, reconstruct and repair municipal services and/or facilities;
24. Transfer in favour of Ronald Arthur Wilson and Caroline Wilson registered as Instrument No. ROS273752 on September 21, 1983;
25. Quit Claim Transfer in favour of Grand River Conservation Authority registered as Instrument No. ROS387680 on August 17, 1984;
26. Transfer in favour of Penstock Inns Limited registered as Instrument No. ROS400464 on July 2, 1985;
27. Bylaw registered as Instrument No. ROS584830 on October 19, 1988 designating the property known municipally as 77 Mill Street West, Elora as being of architectural and/or historical value or interest;
28. Transfer in favour of 907172 Ontario Limited registered as Instrument No. ROS634313 on November 22, 1990;
29. Transfer in favour of The Elora Mill Limited registered as Instrument No. RO655691 on December 3, 1991;
30. Encroachment Agreement between Elora Mill and the Village registered as Instrument No. RO659593 on February 10, 1992;
31. Charge in favour of Jane Cynthia Lett securing the principal amount of \$650,000 registered as Instrument No. RO816258 on August 17, 2000;
32. Transfer in favour of 2006311 Ontario Inc. registered as Instrument No. RO818742 on July 3, 2002;

33. Court Order registered as Instrument No. RO818744 on July 3, 2002 declaring that the sale from Elora Mill to 2006311 be exempted from the application of the *Bulk Sales Act* and that the Charge registered as Instrument No. RO816258 be discharged;
34. Court Order registered as Instrument No. RO818745 on July 3, 2002 amending the Court Order registered as Instrument No. RO818744 to include the name of the Land Registry Division;
35. Discharge of Charge registered as Instrument No. RO818758 on July 23, 2002 discharging a Charge registered as Instrument No. RO634921;
36. Transfer in favour of Tuesday Equities Ltd. registered as Instrument No. RO820420 on January 15, 2008; and
37. Court Order re Order of the Ontario Superior Court of Justice dated May 26, 2010 appointing Deloitte & Touche Inc. as the Receiver registered as Instrument No. RO820913 on June 4, 2010.

THE EQUITABLE TRUST COMPANY

Applicant

and

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

Respondent(s)

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

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

Proceedings commenced at Toronto

APPROVAL AND VESTING ORDER

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