

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

THE EQUITABLE TRUST COMPANY

Applicant

- and -

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

Respondents

**MOTION RECORD
(Returnable May 31, 2011)**

May 20, 2011

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MOTION RECORD INDEX

TAB	DOCUMENT
1.	Notice of Motion dated May 20, 2011
2.	Fifth Report of the Receiver dated May 20, 2011
A.	Exhibit "A" Appointment Order dated May 26, 2010
B.	Exhibit "B" Revised Marketing Process Order dated August 25, 2010
C.	Exhibit "C" FCMC Sale Agreement dated January 24, 2011
D.	Exhibit "D" Bankruptcy Order dated March 10, 2011
E.	Exhibit "E" Combined Statement of Receipts and Disbursements for the period January 1, 2011 to April 30, 2011 and for the cumulative receivership period May 26, 2010 to April 30, 2011
F.	Exhibit "F" Muskoka Minerals Statement of Claim
G.	Exhibit "G" Affidavit of Paul Casey sworn May 20, 2011
H.	Exhibit "H" Affidavit of Grant Moffat sworn May 19, 2011
I.	Exhibit "I" Affidavit of Leonard Rodness sworn May 19, 2011
3.	Draft Order

TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

THE EQUITABLE TRUST COMPANY

Applicant

- and -

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

Respondents

NOTICE OF MOTION

Deloitte & Touche Inc., in its capacity 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**”), will make a motion to a Judge presiding over the Commercial List on Tuesday, May 31, 2011 at 10:00 a.m. at 330 University Avenue, in the City of Toronto.

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

THE MOTION IS FOR:

1. An order, if necessary, abridging the time for service of the Notice of Motion and Motion Record herein and dispensing with further service thereof.
2. An order approving the Receiver’s activities as described in the Fifth Report of the Receiver dated May 20, 2011 (the “**Fifth Report**”).

3. An order approving a first distribution of \$3,800,000 to The Equitable Trust Company as a partial repayment of its secured advances to the Debtors.
4. An order approving the Receiver's Statement of Receipts and Disbursement for the period from May 26, 2010 to April 30, 2011.
5. An order approving the professional fees and disbursements of the Receiver for the period February 12, 2011 to May 11, 2011, and its independent legal counsel, Thornton Grout Finnigan LLP, for the period from February 1, 2011 to April 30, 2011 and authorizing the Receiver to pay all such fees and disbursements.
6. An order approving the professional fees and disbursements of the Receiver's independent real estate counsel, Torkin Manes LLP, for the period January 31, 2011 to May 18, 2011 and authorizing the Receiver to pay all such fees and disbursements.
7. Such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

1. As set out in the Fifth Report.
2. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The Fifth Report; and
2. Such further and other material as counsel may advise and this Honourable Court may permit.

May 20, 2011

THORNTON GROUT FINNIGAN LLP

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Lawyers for the Receiver

TO: THIS HONOURABLE COURT

AND TO: THE SERVICE LIST

THE EQUITABLE TRUST COMPANY

and

TUESDAY EQUITIES LTD. as General Partner for and on behalf of
PRINCE ROYAL LIMITED PARTNERSHIP
Respondent(s)

Applicant(s)

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at **Toronto**

NOTICE OF MOTION

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TAB 2

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**

Respondent

**FIFTH REPORT OF THE RECEIVER
DATED MAY 20, 2011**

INTRODUCTION

1. By Order of the Ontario Superior Court of Justice (the “**Court**”) dated May 26, 2010 (the “**Appointment Order**”), Deloitte & Touche Inc. (“**Deloitte**”) 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**”). A copy of the Appointment Order is attached hereto as Exhibit “**A**”.
2. The Appointment Order authorized the Receiver to, among other things, take possession of, and exercise control over the Property and any and all proceeds, receipts and disbursements, arising out of, or from, the Property. In addition, the Receiver was authorized to sell, convey, transfer, lease or assign the Property or any part thereof out of the ordinary course:
 - (a) without the approval of the Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$250,000; and

- (b) with the approval of the Court in respect of any transaction exceeding \$100,000 or exceeding \$250,000 in the aggregate.
3. On June 11, 2010, the Receiver issued its First Report to the Court (the “**First Report**”) for the purpose of, *inter alia*, seeking an order of the Court approving the marketing plan proposed by the Receiver for the sale of the Property. By order of the Court dated June 17, 2010 (the “**Marketing Order**”), the Receiver’s plan for marketing the Property as set out in the First Report (the “**Marketing Process**”) was approved.
 4. On August 19, 2010, the Receiver issued its Second Report to the Court (the “**Second Report**”) for the purpose of, *inter alia*, seeking an order of the Court approving an agreement of purchase and sale in connection with The Elora Mill Inn and seeking an order of the Court approving the revised marketing plan proposed by the Receiver for the sale of the remaining Property comprised of Hidden Valley Resort and The Benmiller Inn & Spa. By Order of the Court dated August 25, 2010 (the “**Revised Marketing Process Order**”), the Receiver’s revised marketing plan as set out in the Second Report (the “**Revised Marketing Process**”) was approved. A copy of the Revised Marketing Process Order is attached hereto as Exhibit “**B**”.
 5. Pursuant to a second Order of the Court dated August 25, 2010 (the “**Elora Approval and Vesting Order**”), the Court approved the Agreement of Purchase and Sale between the Receiver and Pearle Hospitality Inc. (“**Pearle**”) dated as of August 19, 2010 (the “**Pearle Sale Agreement**”) and vested in Pearle all of the Debtors’ and the Receiver’s right, title and interest, if any, in and to that part of the Property comprised by The Elora Mill Inn upon closing of that transaction. That transaction closed on November 30, 2010.
 6. On December 17, 2010, the Receiver issued its Third Report to the Court (the “**Third Report**”) for the purpose of, *inter alia*, seeking an order of the Court approving an agreement of purchase and sale in connection with Hidden Valley Resort and seeking an order of the Court approving the activities of the Receiver as described in the Third Report including, without limitation, the steps taken by the Receiver pursuant to the Revised Marketing Process, authorizing and directing the Receiver to continue to offer The Benmiller Inn & Spa for sale pursuant to the Revised Marketing Process, approving certain professional fees and disbursements of the Receiver and its independent legal counsel, and approving the Receiver’s statement of receipts and disbursements.
 7. Pursuant to the Order of the Court dated December 30, 2010 (the “**Hidden Valley Approval and Vesting Order**”), the Court approved the Agreement of Purchase and Sale between the Receiver

and Paul D. Rice, in trust for a corporation to be incorporated under the laws of the Province of Ontario (“**Rice**”), dated October 13, 2010 and as amended by the amending agreement dated November 30, 2010 (together, the “**Rice Sale Agreement**”), and vested in Rice all of the Debtors’ and the Receiver’s right, title and interest, if any, in and to that part of the Property comprised by Hidden Valley Resort upon closing of that transaction. That transaction closed on January 28, 2011.

8. On February 23, 2011, the Receiver issued its Fourth Report to the Court (the “**Fourth Report**”) for the purpose of, *inter alia*, seeking an order of the Court approving an agreement of purchase and sale in connection with The Benmiller Inn & Spa and seeking an order of the Court approving the activities of the Receiver as described in the Fourth Report including, without limitation, the steps taken by the Receiver pursuant to the Revised Marketing Process, approving certain professional fees and disbursements of the Receiver and its independent legal counsel, and approving the Receiver’s statement of receipts and disbursements.
9. Pursuant to the Order of the Court dated March 4, 2011 (the “**Benmiller Approval and Vesting Order**”), the Court approved the Agreement of Purchase and Sale between the Receiver and First Canadian Management Corp. (“**FCMC**”), dated January 24, 2011 (the “**Original Benmiller Sale Agreement**”) together with any further amendments thereto deemed necessary by the Receiver, and vested in FCMC all of the Debtors’ and the Receiver’s right, title and interest, if any, in and to that part of the Property comprised by The Benmiller Inn & Spa upon closing of that transaction. Pursuant to amending agreements dated March 18, 2011, March 29, 2011, April 15, 2011, April 20, 2011 and April 28, 2011 (together, the “**Benmiller Amending Agreements**”) the closing date under the Original Benmiller Sale Agreement, as amended from time to time, was extended to allow FCMC more time to carry out the necessary steps to obtain a new liquor licence for The Benmiller Inn & Spa (the Original Benmiller Sale Agreement together with the Benmiller Amending Agreements, the “**FCMC Sale Agreement**”). A copy of the FCMC Sale Agreement is attached hereto as Exhibit “**C**”.
10. On March 10, 2011, upon application by The Equitable Trust Company (“**Equitable**”), the Court made an Order adjudging the Debtors bankrupt (the “**Bankruptcy Order**”), a copy of which is attached hereto as Exhibit “**D**”. Pursuant to the Bankruptcy Order, Deloitte & Touche Inc. was appointed as Trustee in Bankruptcy of the Debtors. The First Meeting of Creditors of the Debtors was held in Toronto, Ontario on March 30, 2011.

11. The Appointment Order, together with related Court documents and additional Orders, the previous reports of the Receiver (the “**Previous Reports**”) and the Notice to Creditors of First Meeting have been posted on the Receiver’s website at http://www.deloitte.com/view/en_CA/ca/specialsections/insolvencyandrestructuringproceedings/Tuesday-Equities-Ltd-and-Prince-Royal-Limited-Partnership%20%20/index.htm.
12. The purpose of this Fifth report of the Receiver (the “**Fifth Report**”) is to:
 - (a) report on the results of the operations of The Benmiller Inn & Spa for the receivership period commencing on May 26, 2010, the date of the Appointment Order to April 30, 2011, and to provide an update to the Court regarding the closing of the sale of The Benmiller Inn & Spa to FCMC pursuant to the FCMC Sale Agreement; and
 - (b) provide the Court with the evidentiary basis to make an Order:
 - (i) approving a first distribution of net proceeds to Equitable, the Debtors’ senior secured lender, as described herein;
 - (ii) approving the activities of the Receiver as described in the Fifth Report;
 - (iii) approving the professional fees and disbursements of the Receiver for the period February 12, 2011 to May 11, 2011, and its independent legal counsel, Thornton Grout Finnigan LLP (“**TGF**”), for the period from February 1, 2011 to April 30, 2011;
 - (iv) approving the professional fees and disbursements of the Receiver’s independent real estate counsel, Torkin Manes LLP, for the period January 31, 2011 to May 18, 2011; and
 - (v) approving the Receiver’s Statement of Receipts and Disbursements for the period from January 1, 2011 to April 30, 2011.

TERMS OF REFERENCE

13. In preparing the Fifth Report and making the comments contained herein, Deloitte has been provided with and has relied upon unaudited financial information, the Debtors’ books and records, financial information prepared by the Debtors and their advisors, including Crescent Hotels and Resorts Canada Company (“**Crescent**”), the independent property manager engaged by the Debtors, and discussions with management of the Debtors. Deloitte has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the information and,

accordingly, Deloitte expresses no opinion or other form of assurance on the information contained in the Fifth Report.

14. Unless otherwise stated, all dollar amounts contained in the Fifth Report are expressed in Canadian dollars.
15. The Benmiller Inn & Spa, The Elora Mill Inn and Hidden Valley Resort are collectively referred to herein as the "Hotels" and each a "Hotel". Unless otherwise provided, all other capitalized terms not otherwise defined in this Fifth Report are as defined in the Previous Reports or the Appointment Order.

BACKGROUND

16. The Receiver has only been appointed over the Property, which is all located in the Province of Ontario.

The Benmiller Inn & Spa

17. The Benmiller Inn & Spa is an historic country inn located in Goderich, Ontario. The Benmiller Inn & Spa consists of 6 main buildings, with 57 guest rooms, food and beverage services that include a 125 seat dining room, 80 seat seasonal patio and 33 seat lounge, 4 meeting rooms, a full service spa and various recreational amenities including an indoor pool, outdoor tennis courts and access to walking/cross-country skiing trails. The Benmiller Inn & Spa also includes a decommissioned turbine generator that has not been operational for the past eight years. As at April 30, 2011, there were 41 active employees at The Benmiller Inn & Spa. FCMC has informed the Receiver that all active employees have been offered employment.
18. As described below, the transaction under the FCMC Sale Agreement closed on May 11, 2011 and the Receiver has filed its Certificate with the Court confirming closing of the transaction. In accordance with the terms of the Benmiller Approval & Vesting Order, the Receiver holds the proceeds under the FCMC Sale Agreement in place and stead of that part of the Property comprised by The Benmiller Inn & Spa.

The Elora Mill Inn

19. The Elora Mill Inn is located in the village of Elora, Ontario. The Elora Mill Inn is a designated historical building consisting of four main buildings with 32 guest rooms and suites, food and

beverage service that includes a 70 seat restaurant, 60 seat lounge and a 16 seat enclosed patio overlooking the Elora Gorge, meeting space comprised of a 1,886 square foot main function room, 594 square foot smaller meeting room, a 583 square foot tea room as well as 528 square feet in the James Ross House. The Elora Mill Inn also includes a non-utility generator that provides electricity to the local power grid. The Debtors employed approximately 55 employees at The Elora Mill Inn until its temporary closure on October 31, 2010.

20. As described in the Third Report, the transaction under the Pearle Sale Agreement closed on November 30, 2010. The Receiver has filed its Certificate with the Court confirming closing of the transaction. In accordance with the terms of the Elora Approval & Vesting Order, the Receiver holds the proceeds under the Pearle Sale Agreement in place and stead of that part of the Property comprised by The Elora Mill Inn.

Hidden Valley Resort

21. The Hidden Valley Resort is located in Huntsville, Ontario on approximately 6 acres of land with waterfront access to Peninsula Lake, directly across from the Hidden Valley Highlands Ski Hill. The resort consists of 94 guest rooms, 2 hospitality suites, a 220 seat restaurant with an adjacent lounge and licensed outdoor patio overlooking Peninsula Lake, meeting space comprised of 2,223 square foot and 2,108 square foot function rooms, as well as indoor and outdoor pools, fitness room, sauna and tennis courts. As at January 27, 2011, the Debtors employed approximately 51 active employees at Hidden Valley Resort. Rice informed the Receiver that all active employees, except for two members of the local management team, were offered employment.
22. As described in the Fourth Report, the transaction under the Rice Sale Agreement closed on January 28, 2011. The Receiver has filed its Certificate with the Court confirming closing of the transaction. In accordance with the terms of the Hidden Valley Approval & Vesting Order, the Receiver holds the proceeds under the Rice Sale Agreement in place and stead of that part of the Property comprised by Hidden Valley Resort.

UPDATE ON OPERATIONS

23. Prior to the appointment of the Receiver, the Hotels were managed by Crescent. Crescent continued as manager of each Hotel following the appointment of the Receiver. The Receiver terminated Crescent as manager of each Hotel effective upon the closing of the sale of each of the Hotels.

The Benmiller Inn & Spa

24. Following the date of the Appointment Order, operations were stabilized and maintained in the normal course at The Benmiller Inn & Spa.
25. Consistent with previous years, certain buildings at The Benmiller Inn & Spa were idled after October 31, 2010 to reflect the reduced occupancy levels in the winter months. Additional units were reopened periodically to accommodate instances of increased demand. Crescent and local management (collectively, "**Benmiller Management**") attempted to implement additional cost cutting initiatives to better manage cash flow during the winter period.
26. Pursuant to paragraph 13 of the Appointment Order, all employees of the Debtors remained employees of the Debtors until such time as the Receiver, on the Debtors' behalf, terminated the employment of such employees. However, the bankruptcy of the Debtors on March 10, 2011, resulted in the termination of the Debtors' remaining employees, all of whom were employed at The Benmiller Inn & Spa. The Receiver notified the staff employed at The Benmiller Inn & Spa that their employment by the Debtors would be terminated effective end of day on March 10, 2011. The Receiver also arranged for the issuance of records of employment and funded the payment by the Debtors of the final payroll, including accrued vacation pay, for the period ended March 10, 2011. The Receiver is also facilitating the preparation and delivery of T4 slips through a third party payroll service provider.
27. In order to continue the operations of The Benmiller Inn & Spa beyond the date of bankruptcy, the Receiver temporarily engaged all of the active employees at The Benmiller Inn & Spa until the earlier of closing of the FCMC Sale Agreement or termination by the Receiver.
28. The Receiver took steps to ensure an orderly transition of operations at The Benmiller Inn & Spa to FCMC. The Receiver worked with Benmiller Management to arrange payment of known accounts payable for the receivership period, to collect outstanding accounts receivable, and to finalize matters relating to payroll.
29. In addition to the Receiver's activities described above, the Receiver has also carried out the following activities subsequent to the issuance of the Fourth Report:
 - (a) continued supervision and funding of the The Benmiller Inn & Spa under the management of Crescent;
 - (b) continued collection of post-receivership accounts receivable owing to this Hotel;

- (c) negotiated the terms and supervised the delivery of events, banquets and other functions at The Benmiller Inn & Spa;
- (d) authorized and funded necessary repairs and maintenance to The Benmiller Inn & Spa; and
- (e) arranged with Crescent to renew appropriate insurance coverage in respect of this Hotel.

UPDATE ON THE SALE OF THE BENMILLER INN & SPA

30. The closing date under the Original Benmiller Sale Agreement was scheduled to be no later than March 21, 2011. However, FCMC encountered delays in completing the required inspections and other requirements of the Alcohol and Gaming Commission of Ontario (the "AGCO") in connection with the issuance of a new liquor licence for The Benmiller Inn & Spa ("**New Liquor Licence**"), which was a condition of closing of the Original Benmiller Sale Agreement. Pursuant to the Benmiller Amending Agreements, the closing date under the Original Benmiller Sale Agreement, as amended from time to time, was extended to permit the Purchaser the opportunity to obtain the New Liquor Licence.
31. As part of the application process for the New Liquor Licence, FCMC was required by the AGCO to carry out certain health and building inspections of The Benmiller Inn & Spa. These inspections revealed certain deficiencies with the Hotel, including certain deficiencies identified by the Goderich Fire Department requiring rectification in order to comply with the applicable fire code.
32. FCMC advised the Receiver that it was not prepared to close the transaction under the FCMC Sale Agreement absent an abatement of the purchase price to address the cost of rectifying these deficiencies. Following consultation with and approval of the proposed amendments by CB Richard Ellis Canada and Equitable, the Receiver agreed pursuant to the fifth and final Benmiller Amending Agreement dated April 28, 2011, to reduce the total purchase price under the FCMC Sale Agreement from \$1,600,000 to \$1,550,000, but only on the condition that the issuance of the New Liquor Licence be eliminated as a condition of closing and that a firm outside closing date (ultimately agreed as May 16, 2011) be established.
33. The transaction under the FCMC Sale Agreement closed on May 11, 2011 and the New Liquor Licence was issued on May 12, 2011. The Receiver has filed its Receiver's Certificate with the Court confirming the closing of the transaction. In accordance with the terms of the Benmiller

Approval & Vesting Order, the Receiver holds the proceeds under the FCMC Sale Agreement in place and stead of that part of the Property comprised by The Benmiller Inn & Spa.

34. FCMC informed the Receiver that all active employees at The Benmiller Inn & Spa have been offered employment.
35. FCMC did not wish to take an assignment of the Crescent hotel management agreement with respect to The Benmiller Inn & Spa. Accordingly, the Receiver terminated Crescent's engagement as manager of The Benmiller Inn & Spa effective as at the close of business on May 10, 2011.
36. Certain parties ("**Patrons**") entered into contracts with the Debtors, the Hotel or the Receiver to hold an event at the Hotel ("**Event Contracts**") or to occupy a room or rooms at the Hotel ("**Room Contracts**") on or after the closing date under the FCMC Sale Agreement. The Debtors did not hold in a segregated account the deposits paid to the Debtors prior to the Receiver's appointment under the Event Contracts or Room Contracts ("**Pre-Receivership Deposits**"). However, the Receiver maintained in a separate trust account deposits paid to the Receiver following its appointment for events to be held at the Hotel ("**Event Deposits**") or rooms to be occupied at the Hotel ("**Room Deposits**"). As part of the FCMC Sale Agreement, all Event Contracts and the corresponding Event Deposits and all Room Contracts and the corresponding Room Deposits have been assigned to FCMC. FCMC has also agreed to account to all Patrons for the Pre-Receivership Deposits. The Receiver has notified the Patrons of the sale of The Benmiller Inn & Spa and that their Event or Room Contracts have been assigned to FCMC.

STATEMENT OF RECEIPTS AND DISBURSEMENTS

37. Attached as Exhibit "**E**" is the Combined Statement of Receipts and Disbursements for the period January 1, 2011 to April 30, 2011 and for the cumulative receivership period May 26, 2010 to April 30, 2011. As at April 30, 2011, the closing cash balance was approximately \$3,400,000. No distributions have been made from the receivership estate to date.
38. For the four-month period from January 1, 2011 to April 30, 2011, there was a surplus of cash receipts over disbursements of approximately \$1,257,000. This amount includes the receipt of the balance of proceeds from the sale of Hidden Valley Resort of \$2,200,000, the funding of significant, seasonal operating losses of Hidden Valley Resort to January 28, 2011 and The Benmiller Inn & Spa to April 30, 2011, and professional and management fees paid during the period.

39. The balance of the proceeds for the sale of The Benmiller Inn & Spa in connection with the FCMC Sale Agreement was collected after April 30, 2011 upon the closing of that transaction.

FIRST DISTRIBUTION TO THE SENIOR SECURED LENDER

40. As described in greater detail in the Third Report, the Receiver obtained an independent legal opinion on the validity and enforceability of the security granted by the Debtors in favour of Equitable, subject to the usual qualifications.
41. According to the proof of claim submitted by Equitable in the bankruptcy proceedings of the Debtors, Equitable had made secured advances of approximately \$10,700,000 to the Debtors, including accrued interest, as at March 31, 2011. Accounting for the net realizations to April 30, 2011 and proceeds from the closing of the sale of The Benmiller Inn & Spa received on May 11, 2011, Equitable is expected suffer a shortfall exceeding \$5 million on the recovery of its secured advances to the Debtors. As such, there will be no surplus generated from the receivership administration available for distribution to other secured and unsecured creditors of the Debtors.
42. As the Receiver has now sold the three Hotels comprising the Property, it is appropriate for the Receiver to make a first distribution to Equitable of \$3,800,000 to partially repay its secured advances.
43. This initial distribution has been calculated with reference to the net surplus of receipts over disbursements as at April 30, 2011 of \$3,400,000, adding the net closing proceeds from the FCMC Sale Agreement received after April 30, 2011 of approximately \$1,300,000, and deducting a holdback for accrued and future remaining receivership liabilities for payroll amounts and taxes, trade, utility and other operating expenses, commissions, management fees and professional fees and costs to complete the receivership administration.
44. The Receiver is not aware of any significant claims against the Property which would rank in priority to the security held by Equitable. Muskoka Minerals & Mining Inc. ("**Muskoka Minerals**") registered a claim for lien against Hidden Valley Resort and commenced an action against the Debtors seeking payment of the sum of \$1,395, together with interest thereon to the date of payment in respect of the supply by Muskoka Minerals of certain aggregate materials to the Debtors for an improvement at Hidden Valley Resort. In the Receiver's view, the foregoing claim by Muskoka Minerals does not enjoy priority to the Security held by Equitable upon the

Debtors' assets. A copy of the Muskoka Minerals Statement of Claim is attached hereto as Exhibit "F".

PROFESSIONAL FEES

45. The Receiver, TGF, and Torkin Manes LLP have maintained detailed records of their professional time and costs since the issuance of the Appointment Order. Pursuant to paragraph 18 of the Appointment Order, the Receiver and its legal counsel were directed to pass their accounts from time to time before this Honourable Court. Pursuant to an Order of the Court dated March 4, 2011, the fees and disbursements of the Receiver to February 11, 2011, TGF to January 31, 2011, and Torkin Manes LLP to January 31, 2011, were authorized and approved.
46. The total fees of the Receiver during the period from February 12, 2011 to May 11, 2011, amount to \$179,080.00, together with expenses and disbursements in the sum of \$1,922.33 and harmonized sales tax ("HST") in the amount of \$23,530.31, totalling \$204,532.64 (the "Receiver's Fees"). The time spent by the Receiver is more particularly described in the Affidavit of Paul Casey of Deloitte & Touche Inc., sworn May 20, 2011 (the "Casey Affidavit") in support hereof and attached hereto as Exhibit "G".
47. The total legal fees incurred by the Receiver during the period February 1, 2011 to April 30, 2011, for services provided by TGF as the Receiver's independent legal counsel amount to \$31,495.00, together with disbursements in the sum of \$577.30 and HST in the amount of \$4,139.64, totalling \$36,211.94. The time spent by TGF personnel is more particularly described in the Affidavit of Grant Moffat, a partner of TGF, sworn May 19, 2011 (the "Moffat Affidavit") in support hereof and attached hereto as Exhibit "H".
48. The total legal fees incurred by the Receiver during the period January 31, 2011 to May 18, 2011, for services provided by Torkin Manes LLP as the Receiver's independent legal counsel amount to \$15,663.00, together with disbursements in the sum of \$864.00 and HST in the amount of \$2,129.57, totalling \$18,656.57. The time spent by Torkin Manes LLP personnel is more particularly described in the Affidavit of Leonard Rodness, a partner of Torkin Manes LLP, sworn May 19, 2011 (the "Rodness Affidavit") in support hereof and attached hereto as Exhibit "I".
49. In accordance with paragraph 19 of the Appointment Order, the Receiver has periodically paid fees and disbursements incurred by the Receiver and its legal counsel subject to approval of such accounts by Equitable and the Court.

RECEIVER'S RECOMMENDATIONS

50. For the reasons set out above, the Receiver recommends that the Court make an Order:
- (a) approving a first distribution of \$3,800,000 to Equitable as a partial repayment of its secured advances to the Debtors;
 - (b) approving the activities of the Receiver as described in the Fifth Report;
 - (c) approving the Receiver's Statement of Receipts and Disbursements for the period from January 1, 2011 to April 30, 2011; and
 - (d) approving the professional fees and disbursements of the Receiver and its independent legal counsel set out herein and authorizing the Receiver to pay all such fees and disbursements.

All of which is respectfully submitted at Toronto, Ontario this 20th day of May, 2011.

Deloitte & Touche Inc.

solely in its capacity as the Court-appointed receiver and manager of the Property (as defined herein) of Tuesday Equities Ltd. and Prince Royal Limited Partnership and without personal or corporate liability

Per: P. Casey
Paul M. Casey, CA-CIRP
Senior Vice-President

TAB A

EXHIBIT "A"

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.

)

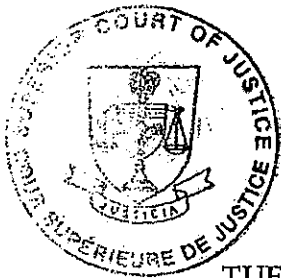
WEDNESDAY, THE 26TH DAY

)

JUSTICE CUMMING

)

OF MAY, 2010



THE EQUITABLE TRUST COMPANY

Applicant

- and -

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

Respondent

ORDER

THIS Application made by the Applicant for an Order pursuant to section 243(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 Deloitte & Touche Inc as receiver and manager (in such capacities, the "Receiver") without security, of certain assets, undertakings and properties of Tuesday Equities Ltd. and Prince Royal Limited Partnership (the "Debtors") acquired for, or used in relation to a business carried on by the Debtors, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Andrew Moor sworn February 18, 2010 and the Exhibits thereto, the supplemental affidavit of Andrew Moor sworn May 14, 2010 and the Exhibits thereto, and on hearing the submissions of counsel for The Equitable Trust

Company, the Receiver, a representative of Ballycurkeen Investment Corp., and on reading the consent of Deloitte & Touche Inc. to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, Deloitte & Touche Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties (including, without limitation, the real property as set out in the legal descriptions attached at Schedule "B") of the Debtors acquired for, or used in relation to the following businesses carried on by the Debtors, including all proceeds thereof: (1) The Benmiller Inn & Spa, (2) The Elora Mill Inn and (3) the Hidden Valley Resort (collectively, the "Property").

RECEIVER'S POWERS

3. 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 of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property, including but not limited to the bank accounts associated with the Property, which are with the Royal Bank of

Canada in the name of Shaner Solutions, LP, 1965 Waddle Road,
State College, PA, USA 16803;

- (b) to receive, preserve, and protect 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 with respect to the Property, including the powers to enter into any agreements, incur and pay 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 in respect of the Property;
- (d) to pay any obligations of the Debtors in respect of trade creditors in existence as at the date of this order;
- (e) to honour the pre-Receivership deposits of customers of the Debtors for room, event and restaurant reservations;
- (f) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons (including, without limitation, affiliates of the Receiver) from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (g) without limiting the forgoing, to continue the engagement of Crescent Hotels and Resorts Canada (the "Management Company") by the Debtors under the agreement between the

Debtors and the Management Company ("Management Agreement") and to make payments, as required, under the Management Agreement, provided that the Receiver shall not incur or assume any liability under the Management Agreement by making any such payments. The Receiver shall not be deemed to have adopted or otherwise become a party to the Management Agreement or any other agreement to which the Debtors are a party unless the Receiver agrees by written notice to all parties to such agreement to adopt or become a party to such agreement;

- (h) in the alternative to subparagraph (g), to enter into a new agreement with the Management Company to continue the management of the Property, or such other hotel management company as it sees fit;
- (i) 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;
- (j) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors with respect to the Property and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (k) to settle, extend or compromise any indebtedness owing to the Debtors in respect of the Property;
- (l) 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;

- (m) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtors;
- (n) 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 in relation to the Property, the Property or the Receiver, and to settle or compromise any such proceedings. 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;
- (o) 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;
- (p) 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 \$100,000.00, provided that the aggregate consideration for all such transactions does not exceed \$250,000.00; 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* shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (q) 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;
- (r) to report to, meet with and discuss with such affected Persons (as defined below) 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;
- (s) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (t) 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;
- (u) to enter into agreements 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;
- (v) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and

- (w) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

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 (as defined below), including the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, 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 the existence 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.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Property, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, 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 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 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 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

7. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

8. 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

9. THIS COURT ORDERS that all rights and remedies against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

10. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, food and beverage services, laundry services, security, internet services, utility or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names in respect of the Property, provided in each case

that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

12. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

13. THIS COURT ORDERS that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. In this regard, the Receiver may confirm the continuation of the employment by the Debtors of any of their employees pursuant to a letter from the Receiver on behalf of the Debtors. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

14. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *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

15. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law 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 nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental

Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

16. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

17. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, as well as for any expenditures or liabilities properly made or incurred by the Receiver, and that the Receiver's Charge 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, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

18. THIS COURT ORDERS that 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 hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

19. 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

20. 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 \$250,000.00 (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 and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. 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.

22. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

23. 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, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

GENERAL

24. 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.

25. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

26. 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.

27. 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, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

28. THIS COURT ORDERS that the Applicant, the Receiver, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the service list from time to time, in accordance with the E-filing protocol of the Commercial List to the extent practicable, and the Receiver may post a copy of any or all such materials on its website.

29. THIS COURT ORDERS that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estate with such priority and at such time as this Court may determine.

30. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than 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.

May 26, 2010 Peter A. Cumming J.

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

MAY 26 2010

PER / PAR:

JS

Joanne Nicoara
Registrar, Superior Court of Justice.

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

31. THIS IS TO CERTIFY that Deloitte & Touche Inc., the receiver and manager (the "Receiver") of assets, undertakings and properties of Tuesday Equities Ltd. and Prince Royal Limited Partnership (the "Debtors") acquired for, or used in relation to the following businesses carried on by the Debtors, including all proceeds thereof (the "Property"): (1) The Benmiller Inn & Spa, (2) The Elora Mill Inn and (3) the Hidden Valley Resort, appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the 26TH day of May, 2010 (the "Order") made in an action having Court file number CV-10-8592-00CL, 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 \$250,000.00 which the Receiver is authorized to borrow under and pursuant to the Order.

32. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded monthly not in advance on the 1st day of each month after the date hereof at a notional rate per annum equal to the rate of 4.65 per cent above the prime commercial lending rate of The Equitable Trust Company from time to time.

33. 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, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

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

35. 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.

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

37. 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 _____, 20__.

Deloitte & Touche Inc., solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

SCHEDULE "B"

LEGAL DESCRIPTION

THE BENMILLER INN & SPA

PIN 41361-0104 (LT) - PT LT 19 PL 205 COLBORNE; PT LT 20 PL 205 COLBORNE; PT LT 1 CON 1 ED COLBORNE AS IN R282493 (SEVENTHLY); TOWNSHIP OF ASHFIELD-COLBORNE- WAWANOSH

PIN 41361-0129 (LT) - PT LT 1 CON 1 ED COLBORNE AS IN LT5242 (4THLY); TOWNSHIP OF ASHFIELD- COLBORNE-WAWANOSH

PIN 41361-0133 (LT) - PT LT 1 CON 1 ED COLBORNE PT 2, 22R788, PT 1, 22R535 & AS IN R282493 (FIFTHLY); S/T INTEREST IN R177511; TOWNSHIP OF ASHFIELD-COLBORNE- WAWANOSH

PIN 41361-0134 (LT) - PT BLK B PL 206 COLBORNE PT 1, 22R439 & PART BLOCK B, PLAN 206 COLBORNE AS DESCRIBED AS PART LOT 1, CONCESSION 1, EASTERN DIVISION; COLBORNE AS IN R282493 (FIRSTLY) "DESCRIPTION AMENDED BY L. SWANSON, LAND REGISTRAR 00/12/13" TOWNSHIP OF ASHFIELD-COLBORNE-WAWANOSH

PIN 41361-0094 (LT) - LT 1 PL 205 COLBORNE; LT 2 PL 205 COLBORNE; LT 3 PL 205 COLBORNE; TOWNSHIP OF ASHFIELD-COLBORNE-WAWANOSH

Part of PIN 41118-0090 (R) - PT LT 1 CON 2 ED COLBORNE; PT LT 2 CON 2 ED COLBORNE; TOWNSHIP OF ASHFIELD-COLBORNE-WAWANOSH, more particularly described as follows:

Part of Lots 1 and 2, Concession II, Eastern Division, Township of Colborne, the boundaries of which are more particularly described as follows:

BEGINNING at the southeast angle of Lot 1, Concession II, Eastern Division;

THENCE South 89 degrees 58 minutes West along the southerly limit of the said lot, a distance of 69.60 feet;

THENCE North 46 degrees West along the southwesterly limit of the said lot, a distance of 275.85 feet;

THENCE North 62 degrees 37 minutes East along the northwesterly limit of Instrument No. 30756, a distance of 28.49 feet to the point of commencement of the parcel herein described;

THE ELORA MILL INN

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

HIDDEN VALLEY RESORT

PIN 48082-0346 (LT) - PT LT 32 CON 1 CHAFFEY; PT LT 32 CON 2 CHAFFEY PT 3 35R8715, PT 1 TO 5, 24 TO 26 35R14094 S/T DM251182, DM251183; S/T DM182153, DM250232, DM251180, DM251181, DM251590, DM251591; S/T EXECUTION 02-00078, IF ENFORCEABLE; HUNTSVILLE ; THE DISTRICT MUNICIPALITY OF MUSKOKA

PIN 48082-0049 (LT) - CL 32961 SEC MUSKOKA; FIRSTLY: PT LT 1 PL M419 CHAFFEY; PT LT 2 PL M419 CHAFFEY PT 10 35R8715; SECONDLY: PT LT 33 CON 2 CHAFFEY PT 6-8 & 10 35R14094 S/T PT 6, 8, 10 35R14094 AS IN LT162591, S/T PT 8 & 10 35R14094 AS IN LT163267, S/T PT 10 35R14094 AS IN LT163268, S/T PT 8 & 10 35R14094 AS IN LT163512 & LT163513; THIRDLY: PT 1 FT RESERVE AROUND WLY END OF VALLEY RD PL M419 CHAFFEY PT 14 35R14094 S/T PT 14 35R14094 AS IN LT23495; FOURTHLY: PT LT 33 CON 2 CHAFFEY PT 9 35R8715; FIFTHLY: PT 1 FT RESERVE ADJOINING VALLEY RD PL M419 CHAFFEY PT 12 35R8715 S/T PT 3 35R8712 AS IN LT118308; SIXTHLY: PT VALLEY RD PL M419 CHAFFEY CLOSED BY LT168265 PT 13 35R8715 S/T PT 2 35R8712 AS IN LT163270, T/W PT 23 35R14094 AS IN LT163270 & T/W PT 11, 20 & 22 35R14094 AS IN LT163270 (S/T LT103237, LT103983, LT122177, LT143636, LT147767, LT148784, LT153713, LT153718, LT147766 & LT153717); HUNTSVILLE ; THE DISTRICT MUNICIPALITY OF MUSKOKA

The Equitable Trust Company
Applicant

and
Tuesdays Equities Ltd. as General Partner for and
on behalf of Prince Royal Limited Partnership
Respondent

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

ORDER

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Lawyers for the Applicant

1771742x3

TAB B

EXHIBIT "B"

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



ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.)

WEDNESDAY, THE 25th

)

JUSTICE NEWBOULD)

DAY OF AUGUST, 2010

THE EQUITABLE TRUST COMPANY

Applicant

- and -

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

Respondents

ORDER (Revised Marketing Process)

THIS MOTION, made by Deloitte & Touche Inc., in its capacity as receiver and manager (in such capacity, the "Receiver") of all of the assets, undertakings and properties of Tuesday Equities Ltd. and Prince Royal Limited Partnership (together, the "Debtors"), acquired for, or used in relation to the following businesses carried on by the Debtors, including all proceeds thereof: (i) The Benmiller Inn & Spa; (ii) The Elora Mill Inn; and (iii) the Hidden Valley Resort (collectively, the "Property") for relief with respect to the matters set out in the Notice of Motion dated August 19, 2010, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report of the Receiver dated August 19, 2010 (the "Second Report") and the Exhibits thereto, and on hearing submissions of counsel for the Receiver, the Applicant and any other party appearing,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record herein be and is hereby abridged such that this motion is properly returnable today and that further service thereof upon any other interested party is hereby dispensed with.
2. **THIS COURT ORDERS** that capitalized terms not otherwise defined in this Order shall have the meanings ascribed thereto in the Second Report.
3. **THIS COURT ORDERS** that the Second Report and the activities and conduct of the Receiver described in the Second Report, including, without limitation the rejection by the Receiver of all offers received to purchase the Property pursuant to the Marketing Process other than the Pearle Offer, are hereby ratified and approved.
4. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to accept the Pearle Offer in respect of the sale of the Receiver's right, title and interest, if any, in and to that part of the Property comprised by The Elora Mill Inn.
5. **THIS COURT ORDERS** that if the Pearle Sale Agreement is terminated in accordance with its terms, the Receiver is authorized and directed to commence negotiations with any other party or parties identified by the Receiver through the Marketing Process, the Revised Marketing Process (as defined below) or otherwise whereby the Receiver shall sell The Elora Mill Inn to such party or parties.
6. **THIS COURT ORDERS** that the Receiver's revised marketing plan for that part of the Property comprised by The Benmiller Inn & Spa and Hidden Valley Resort (the "**Remaining Property**") as described in the Second Report, together with any amendments thereto deemed necessary and appropriate by the Receiver (hereinafter, the "**Revised Marketing Process**") be and it is hereby approved and the Receiver is hereby authorized and directed to carry out the Revised Marketing Process.
7. **THIS COURT ORDERS** that the conditions of sale ("**Conditions of Sale**") approved pursuant to the Order of this Honourable Court dated June 17, 2010 shall be amended as described in the Second Report (as amended, the "**Revised Conditions of Sale**"), together with any further amendments thereto deemed necessary and appropriate by the Receiver.

8. **THIS COURT ORDERS** that the Receiver be and is hereby authorized to:
- (a) proceed to market and offer for sale the Receiver's right, title and interest in the Remaining Property in the manner more particularly described in the Second Report and in accordance with and on the terms of the Revised Marketing Process and the Revised Conditions of Sale;
 - (b) enter into discussions with any and all parties in respect of the Remaining Property;
 - (c) disclose to and review with the Applicant, any of its advisors and CB Richard Ellis Canada any and all potential or actual offers received by the Receiver to purchase some or all of the Remaining Property;
 - (d) accept an offer to purchase some or all of the Remaining Property, the terms of which, in the Receiver's sole opinion, are in the best interests of the estate herein, subject to approval of this Court if required in accordance with the Appointment Order; and
 - (e) enter into agreements of purchase and sale in respect of some or all of the Remaining Property on the terms of the Template Agreement (as defined in the Revised Conditions of Sale), together with any amendments or additions thereto deemed necessary by the Receiver in its sole opinion, subject to approval of this Court if required in accordance with the Appointment Order.
9. **THIS COURT ORDERS** that, in accordance with the Revised Conditions of Sale, the Receiver is not obligated to accept any offer or offers to purchase some or all of the Remaining Property.
10. **THIS COURT FURTHER ORDERS** that the Receiver shall have no personal or corporate liability in connection with offering the Receiver's right, title and interest in the Remaining Property for sale, including, without limitation:
- (a) by advertising the Remaining Property and/or the Revised Marketing Process;
 - (b) by exposing the Remaining Property to any and all parties, including, but not limited to, those who have made their interest known to the Receiver;

- (c) by carrying out the Revised Marketing Process;
- (d) by responding to any and all requests or inquiries in regards to due diligence conducted in respect of the Remaining Property;
- (e) through the disclosure of any and all information presented by the Receiver and its solicitors or agents (including, without limitation, CB Richard Ellis Canada), arising from, incidental to, or in connection with the Revised Marketing Process;
- (f) pursuant to any and all offers received by the Receiver in accordance with the Revised Marketing Process; and
- (g) pursuant to any agreement of purchase and sale entered into by the Receiver in respect of the sale of any of the Remaining Property.

11. **THIS COURT ORDERS** that the Receiver be and is hereby authorized, *nunc pro tunc*, to redact from the version of the Second Report served on any party other than the Applicant and the Court, Confidential Exhibit "C" to the Second Report.

12. **THIS COURT ORDERS** that Confidential Exhibit "C" to the Second Report filed with the Court be sealed from the public record until further Order of this Honourable Court.

13. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and its legal counsel, as set out in the Second Report and the Gerstein Affidavit and Moffat Affidavit attached as exhibits thereto, are hereby authorized and approved.

14. **THIS COURT ORDERS** that the Monitor be and it is hereby authorized to pay its fees and disbursements and the fees and disbursements of its legal counsel and agents in the amounts set out in the Second Report.

15. **THIS COURT FURTHER ORDERS** that the costs of the Receiver in preparation of this motion and of these proceedings, up to and including the hearing of this motion and the entry of this order (including applicable Harmonized Sales Tax) be paid to the Receiver from the estate herein.

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

_____ *James J.*

AUG 25 2010

FEB / PAR:

NB

THE EQUITABLE TRUST COMPANY

Applicant(s)

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

ORDER
(Revised Marketing Process)

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