Form 27 [Rule 6.3]

Clerk's stamp:

JAN 1 4 2011

CALGARY, ALBERTA

COURT FILE NUMBER:

1001-03215

COURT OF QUEEN'S BENCH OF

**ALBERTA** 

JUDICIAL CENTRE OF CALGARY

PLAINTIFF: FIRST CALGARY SAVINGS & CREDIT UNION

LTD.

DEFENDANTS: PERERA SHAWNEE LTD., PERERA

DEVELOPMENT CORPORATION, DON L.

PERERA and SHIRANIE M. PERERA

PLAINTIFFS BY COUNTERCLAIM PERERA SHAWNEE LTD., DON L. PERERA and

SHIRANIE M. PERERA

DEFENDANTS BY COUNTERCLAIM FIRST CALGARY SAVINGS & CREDIT UNION

LTD. and DELOITTE & TOUCHE LLP

DOCUMENT: APPLICATION BY DELOITTE & TOUCHE

**INC.** in its capacity as Court-appointed receiver and

manager of Perera Development Corporation

("PDC") and Perera Shawnee Ltd. ("PSL", or when

reference is being made to PDC and PSL

collectively, the "Debtor" or "Perera"), and not in

its personal capacity (the "Receiver")

(Re: Receiver's Reports)

### OSLER, HOSKIN & HARCOURT LLP

Barristers & Solicitors

Suite 2500, 450 – 1st Street SW

Calgary, AB T2P 5H1

Solicitor: Christa Nicholson Telephone: (403) 260-7025 Facsimile: (403) 260-7024 File Number: 1121689

#### **NOTICE TO THE RESPONDENTS:**

You have the right to state your side of this matter before the judge.

To do so, you must be in court when the application is heard as shown below:

Date:

Monday, January 24, 2011

Time:

2:00 p.m.

Where:

Calgary Courts Centre, 601-5<sup>th</sup> Street S.W., Calgary, AB T2P 5P7

Before Whom: The Honourable Madam Justice A. Kent

Go to the end of this document to see what else you can do and when you must to it.

### REMEDY CLAIMED OR SOUGHT:

1. An order that the time for service of this Application (this "Application") is abridged if necessary, that this Application is properly returnable on January 24, 2011, that service of this Application and the Eleventh Report of the Receiver, dated January 13, 2011 (the "Eleventh Receiver's Report") on the persons listed in Schedule "B" to this Application (collectively, the "Service List") is good and sufficient, and that no persons other than those on the Service List are entitled to notice of this Application;

- 2. pursuant to Rules 1.4 (1) and (2) of the Alberta Rules of Court, Alta. Reg. 124/2010 (the "New Rules"), granting, for greater clarity, a procedural order amending the Receivership Order, substantially in the form attached hereto as Schedule "A"; and
- 3. such further and other relief that the Receiver may seek and this Honourable Court may deem just.

#### **GROUNDS FOR MAKING THIS APPLICATION:**

- 4. On March 3, 2010, the Receiver was appointed as receiver and manager of the Debtor pursuant to an order issued by the Honourable Madam Justice A. Kent of the Court of Queen's Bench of Alberta (the "Receivership Order"). The Receivership Order was the result of an application by First Calgary Savings & Credit Union Ltd. ("First Calgary"), a secured creditor of the Debtor.
- 5. Don L. Perera, President of Perera, and Shiranie M. Perera are guarantors (collectively, the "Guarantors") of the obligations owed to First Calgary.

- 6. The Receiver has reported on its activities to this Honourable Court on numerous occasions through reports of the Receiver, which it has filed in these proceedings. Such reports were not in affidavit form.
- 7. The Guarantors have raised concerns regarding the consideration of the Receiver's reports under the New Rules in force as of November 1, 2010. The Guarantors have taken the position that such reports should be in affidavit form.
- 8. Historically, the practice in Alberta is for court appointed receivers to file reports that are not in affidavit form, which is consistent with the practices of parallel courts across Canada. Receivers are permitted to file reports in this manner because of their position as an officer of the Court.
- 9. The Receiver does not understand that the intention or the effect of the New Rules is to change such practice.
- 10. The stated purpose of the New Rules is to provide a means by which claims can be fairly and justly resolved in or by a court process in a timely and cost-effective way (Rule 1.2 of the New Rules).
- 11. Pursuant to Rule 1.4(1) of the New Rules, this Honourable Court is permitted to make any order with respect to practice or procedure, or both, in an action, application or proceeding before the Court, subject to any specific provision of the New Rules. In particular, pursuant to Rule 1.4(2)(d) of the New Rules, this Honourable Court is permitted to make a ruling with respect to how or if the New Rules apply in particular circumstances or to the operation, practice or procedure under the New Rules. Rule 6.11(e) contemplates the foregoing.
- 12. The relief being sought herein is reasonable, justified and appropriate in the circumstances.
- 13. Such further and other grounds as counsel may advise and this Honourable Court may permit.

#### MATERIAL OR EVIDENCE TO BE RELIED ON:

14. The pleadings filed herein, including the Eleventh Receiver's Report, the Receivership Order and such further and other materials as counsel for the Receiver may advise and this Honourable Court may permit.

### APPLICABLE RULES:

- 15. The New Rules including, without limitation, Rules 1.2, 1.4 and 6.11.
- 16. Such further and other rules as counsel for the Receiver may advise and this Honourable Court may permit.

### APPLICABLE ACTS AND REGULATIONS:

- 17. Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3.
- 18. *Judicature Act*, R.S.A. 2000, c. J-2.
- 19. Such further and other acts and regulations as counsel for the Receiver may advise and this Honourable Court may permit.

## HOW THE APPLICATION IS PROPOSED TO BE HEARD OR CONSIDERED:

20. Before the Honourable Madam Justice A. Kent in Chambers at the Calgary Courts Centre, 601-5<sup>th</sup> Street S.W., at Calgary, Alberta, on Monday, January 24, 2011 at 2:00 p.m. or as soon thereafter as counsel may be heard.

# AFFIDAVIT EVIDENCE IS REQUIRED IF YOU WISH TO OBJECT.

## WARNING

If you do not come to court either in person or by your lawyer, the court may give the applicant what they want in your absence. You will be bound by any order that the court makes, or another order might be given or other proceedings taken which the applicant is entitled to without any further notice of them to you. If you want to take part in this application, you or your lawyer must attend in court on the date and time shown above. If you intend to rely on an affidavit or other evidence when the originating application is heard or considered, you must reply by giving reasonable notice of that material to the applicant.

# **DATED** at Calgary, Alberta on January 13, 2011.

# OSLER, HOSKIN & HARCOURT LLP

Christa Nicholson

Counsel for the Receiver, Deloitte & Touche Inc.

TO:

The Clerk of the Court

AND TO:

The Service List (Schedule "B" hereto)

## SCHEDULE "A" TO THE APPLICATION, DATED JANUARY 13, 2011

Clerk's stamp:

COURT FILE NUMBER:

1001-03215

COURT OF QUEEN'S BENCH OF

ALBERTA

JUDICIAL CENTRE OF CALGARY

PLAINTIFF:

FIRST CALGARY SAVINGS & CREDIT UNION

LTD.

**DEFENDANTS:** 

PERERA SHAWNEE LTD., PERERA

DEVELOPMENT CORPORATION, DON L.

PERERA and SHIRANIE M. PERERA

PLAINTIFFS BY COUNTERCLAIM

PERERA SHAWNEE LTD., DON L. PERERA and

SHIRANIE M. PERERA

DEFENDANTS BY COUNTERCLAIM

FIRST CALGARY SAVINGS & CREDIT UNION

LTD. and DELOITTE & TOUCHE LLP

DOCUMENT:

<u>ORDER</u>

(Re: Receiver's Reports)

### OSLER, HOSKIN & HARCOURT LLP

Barristers & Solicitors Suite 2500, 450 – 1st Street SW Calgary, AB T2P 5H1

Solicitor: Christa Nicholson Telephone: (403) 260-7025 Facsimile: (403) 260-7024 File Number: 1121689

DATE ON WHICH ORDER WAS PRONOUNCED: January 24, 2011

NAME OF JUDGE WHO MADE THIS ORDER: Honourable Madam Justice A. Kent

### **ORDER**

(Re: Receiver's Report)

UPON the application dated January 13, 2011 (the "Application") of Deloitte & Touche Inc., in its capacity as Court-appointed receiver and manager of Perera Development Corporation ("PDC") and Perera Shawnee Ltd. ("PSL", or when reference is being made to PDC and PSL collectively, the "Debtor"), and not in its personal capacity (the "Receiver"); AND UPON noting the Order issued by Madam Justice A. Kent on March 3, 2010, as amended (the "Receivership Order"); AND UPON noting the Affidavit of Service of ●, sworn January ●, 2011 (the "Affidavit of Service"); AND UPON reading the Eleventh Report of the Receiver, dated January 13, 2011 (the "Eleventh Receiver's Report"); AND UPON noting the Order (Re: Advice and Directions regarding Service) granted by Madam Justice A. Kent on October 29, 2010 (the "Service Order"); AND UPON hearing from counsel for the Receiver and counsel for any other persons present; IT IS HEREBY ORDERED AND DECLARED THAT:

- 1. The time for service of the Application and the Eleventh Receiver's Report is abridged, if necessary, the Application is properly returnable today, service of the Application and the Eleventh Receiver's Report on the persons listed in Schedule "B" to the Application (collectively, the "Service List") in the manner described in the Affidavit of Service is good and sufficient and service on any persons other than those listed on the Service List is dispensed with.
- 2. Pursuant to Rules 1.4 (1) and (2) of the Alberta Rules of Court (the "New Rules"), the Receivership Order is hereby amended by inserting, as paragraph 3.1 thereof, the following procedural language:
  - "3.1 The Receiver shall report to this Court from time to time, which reporting need not be in Affidavit form and such reports shall be considered as evidence in making a decision about an application, unless otherwise ordered by this Court.".

3.	Service of this Order in accordance with the Service Order to the persons listed on the
	Service List shall constitute good and sufficient service of this Order.

J.C.Q.B.A.

# SCHEDULE "B" TO THE APPLICATION, DATED JANUARY 13, 2011

# Clerk's stamp:

COURT FILE NUMBER:

1001-03215

COURT OF QUEEN'S BENCH OF

ALBERTA

JUDICIAL CENTRE OF CALGARY

PLAINTIFF:

FIRST CALGARY SAVINGS & CREDIT UNION

LTD.

**DEFENDANTS:** 

PERERA SHAWNEE LTD., PERERA

DEVELOPMENT CORPORATION, DON L.

PERERA and SHIRANIE M. PERERA

PLAINTIFFS BY COUNTERCLAIM

PERERA SHAWNEE LTD., DON L. PERERA and

SHIRANIE M. PERERA

DEFENDANTS BY COUNTERCLAIM

FIRST CALGARY SAVINGS & CREDIT UNION

LTD. and DELOITTE & TOUCHE LLP

DOCUMENT:

**SERVICE LIST** 

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