



Clerk's stamp:

COURT FILE NUMBER: 1001-03215

COURT OF QUEEN'S BENCH OF
ALBERTA

JUDICIAL CENTRE OF CALGARY

PLAINTIFFS: 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: **THIRTY-NINTH REPORT OF THE COURT APPOINTED
RECEIVER OF PERERA SHAWNEE LTD. AND PERERA
DEVELOPMENT CORPORATION, DATED AUGUST 27, 2012.**

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INTRODUCTION

1. On March 3, 2010, Deloitte & Touche Inc. was appointed by the Court of Queen's Bench of Alberta, Judicial District of Calgary (the "**Court**"), as receiver and manager (the "**Receiver**"), without security, of all the current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof of Perera Shawnee Ltd. ("**PSL**") and Perera Development Corporation ("**PDC**") (PSL and PDC are collectively referred to as "**Perera**" or "**PSL**") (the "**Receivership Order**") in Action No. 1001-03215 (the "**Receivership Proceedings**"). The Receivership Order was amended and restated on January 31, 2011.
2. Perera is a condominium real estate developer which has assets that consist of a three phase condominium real estate project located at 30 Shawnee Hill SW, Calgary, Alberta known as the "**Highbury**" (the "**Project**").
3. There are 70 units in Phase One of the Project: 43 of which have been sold and conveyed to purchasers (the "**Sold Units**"); 19 of which were subject to purchase contracts entered into prior to the Receivership Proceedings by PSL and various purchasers and Vesting Orders (the "**19 Units**"); and 8 of which were unsold (the "**Unsold Units**") at the date of the Receivership Proceedings. Closing notices were issued to most of the purchasers of the 19 Units, however the associated closing dates in respect of those units have passed.
4. Three of the 19 Units, namely "**Unit 3**", "**Unit 7**", and "**Unit 9**" were the subject of presale purchase contracts (collectively, the "**Presale Purchase Contracts**") between PSL and Natalie Bronstein for Unit 3, PSL and AGAM Consulting for Unit 7, and PSL and Judith Poole for Unit 9 (collectively, the "**Initial Purchasers**"). On November 29, 2010, vesting orders were granted for Unit 3, Unit 7, and Unit 9 (collectively, the

“Presale Vesting Orders”) allowing for, among other things, the Receiver to convey Unit 3, Unit 7, and Unit 9 to the respective Initial Purchasers and to discharge any and all of the encumbrances that were registered on title, other than those that were permitted. Copies of the Unit 3, Unit 7, and Unit 9 Presale Vesting Orders are attached as **Schedule “1”, Schedule “2”, and Schedule “3”,** respectively.

5. Closing notices were issued to the Initial Purchasers. The closing date for the sale of Unit 3 to Natalie Bronstein was set at November 22, 2010. The closing date for the sale of Unit 7 to Agam Consulting was set at November 26, 2010. The closing date for the sale of Unit 9 to Judy Poole was set at November 26, 2010. The Initial Purchasers of Unit 3, Unit 7, and Unit 9 each failed to close the transaction on their respective closing dates.
6. In the event that the Initial Purchasers did not close on the Presale Purchase Contracts, the Presale Vesting Orders empowered and authorized the Receiver to, among other things, sell and convey the unit to a third party. The Initial Purchasers did not close on the Presale Purchase Contracts. The Receiver sought from the Court a revised closing process which would allow the 19 Units, including Unit 3, Unit 7, and Unit 9 and the Unsold Units, to be conveyed to new purchasers, and to begin actively marketing these units for sale.
7. On November 29, 2010, an Amended and Restated Closing Process Order (the “**Amended and Restated Closing Process Order**”) was granted. Among other things, the Amended and Restated Closing Process Order permits the Receiver to make an *ex parte* application whereby the Court may grant a vesting order to effect the closing of any

purchase contracts that the Receiver has or may enter into with any persons for the purchase of units in Phase One of the Project, provided that:

- (a) the sale price of each unit is in compliance with Schedule "4", Column "F" of the Confidential Fourth Receiver's Report dated October 7, 2010 (the "**Confidential Fourth Report**");
 - (b) an unredacted purchase contract is filed under seal pursuant to the Third Sealing Order granted October 29, 2010;
 - (c) a redacted purchase contract is filed with the purchaser's address redacted; and
 - (d) the certificate of title to the unit is in the same state as on the date the Amended and Restated Closing Process order was granted, except for New Builder's Registrations (as defined in the Amended and Restated Closing Process Order), in which case, notice must be provided to those lien holders.
8. After the Amended and Restated Closing Process Order was granted, the Receiver actively marketed Unit 3, Unit 7, and Unit 9 for sale. Unit 3, Unit 7, and Unit 9 became subject to new purchase contracts on July 15, 2012.

NOTICE TO READER

9. This report constitutes the Thirty-Ninth Report of the Receiver (the "**Report**").

PURPOSE OF REPORT

10. The purpose of this Report is to:

- (a) disclose to the Court the conditional sale of Unit 3, Unit 7, and Unit 9 and to obtain its approval of same; and
- (b) request from the Court new vesting orders in respect of Unit 3, Unit 7, and Unit 9 pursuant to the Amended and Restated Closing Process Order so that the Receiver may convey Unit 3, Unit 7, and Unit 9 to the new purchasers, free and clear of all encumbrances, other than permitted encumbrances.

SALE OF UNIT 3

- 11. On July 15, 2012, the Receiver entered into a conditional purchase contract with Michael Rowell and/or Nominee (the “**Unit 3 Purchaser**”) in respect of Unit 3 (the “**Unit 3 Purchase Contract**”).
- 12. A copy of the Unit 3 Purchase Contract (excluding the schedules thereto), with the Unit 3 Purchaser’s address redacted, is attached to this Report as **Schedule “4”**. An unredacted copy of the Unit 3 Purchase Contract (excluding the schedules thereto) is attached to the Confidential Fortieth Report of the Receiver dated August 27, 2012 as Schedule “1”.
- 13. The closing date for Unit 3 is set at August 31, 2012 in the Unit 3 Purchase Contract (the “**Unit 3 Closing Date**”).
- 14. The Unit 3 Purchase Contract is subject to the satisfaction of the following condition precedent on or before the Unit 3 Closing Date:
 - (a) The issuance of an Order of the Court authorizing the Receiver to enter into the Unit 3 Purchase Contract and approve the transfer of Unit 3 to the Unit 3 Purchaser free and clear of all encumbrances, other than Permitted Encumbrances.

15. The purchase price for Unit 3 (as set out in the Unit 3 Purchase Contract) is, in the opinion of the Receiver, commercially reasonable. Further, the Receiver confirms that the Purchase Price for Unit 3 is in compliance with Schedule "4", Column "F" of the Confidential Fourth Report.
16. As at August 27, 2012, the title to Unit 3, attached hereto as **Schedule "5"**, and the Condominium Additional Plan Sheet Certificate, which forms part of the title to Unit 3, and attached hereto as **Schedule "6"**, is in the same state as it was on the date that the Amended and Restated Closing Process Order was granted (except for discharges and a builders' lien that was registered against the title as Instrument No. 101 350 204 that ceased to exist and was cancelled by the Land Titles Office on June 21, 2011 at the Receiver's request).
17. First Calgary Savings & Credit Union, as first secured creditor of Perera, has no objection to this sale.
18. Accordingly, by *ex parte* application, the Receiver seeks the Court's approval of the sale of Unit 3 as well as a vesting order in respect of same in the form provided for and all pursuant to the Amended and Restated Closing Process Order in respect thereof.
19. The schedules to the Unit 3 Purchase Contract are the same as the schedules to the Unit 601 Purchase Contract, as described in paragraphs 18-21 of the Fifteenth Report of the Receiver dated July 6, 2011.

SALE OF UNIT 7

20. On July 15, 2012, the Receiver entered into a conditional purchase contract with Michael Rowell and/or Nominee (the “**Unit 7 Purchaser**”) in respect of Unit 7 (the “**Unit 7 Purchase Contract**”).
21. A copy of the Unit 7 Purchase Contract (excluding the schedules thereto), with the Unit 7 Purchaser’s address redacted, is attached to this Report as **Schedule “7”**. An unredacted copy of the Unit 7 Purchase Contract (excluding the schedules thereto) is attached to the Confidential Fortieth Report of the Receiver dated August 27, 2012 as Schedule “2”.
22. The closing date for Unit 7 is set at August 31, 2012 in the Unit 7 Purchase Contract (the “**Unit 7 Closing Date**”).
23. The Unit 7 Purchase Contract is subject to the satisfaction of the following condition precedent on or before the Unit 7 Closing Date:
 - (a) The issuance of an Order of the Court authorizing the Receiver to enter into the Unit 7 Purchase Contract and approve the transfer of Unit 7 to the Unit 7 Purchaser free and clear of all encumbrances, other than Permitted Encumbrances.
24. The purchase price for Unit 7 (as set out in the Unit 7 Purchase Contract) is, in the opinion of the Receiver, commercially reasonable. Further, the Receiver confirms that the Purchase Price for Unit 7 is in compliance with Schedule “4”, Column “F” of the Confidential Fourth Report.
25. As at August 27, 2012, the title to Unit 7, attached hereto as **Schedule “8”**, and the Condominium Additional Plan Sheet Certificate, which forms part of the title to Unit 7,

and attached hereto as **Schedule "6"**, is in the same state as it was on the date that the Amended and Restated Closing Process Order was granted (except for discharges and a builders' lien that was registered against the title as Instrument No. 101 350 204 that ceased to exist and was cancelled by the Land Titles Office on June 21, 2011 at the Receiver's request).

26. First Calgary Savings & Credit Union, as first secured creditor of Perera, has no objection to this sale.
27. Accordingly, by *ex parte* application, the Receiver seeks the Court's approval of the sale of Unit 7 as well as a vesting order in respect of same in the form provided for and all pursuant to the Amended and Restated Closing Process Order in respect thereof.
28. The schedules to the Unit 7 Purchase Contract are the same as the schedules to the Unit 601 Purchase Contract, as described in paragraphs 18-21 of the Fifteenth Report of the Receiver dated July 6, 2011.

SALE OF UNIT 9

29. On July 15, 2012, the Receiver entered into a conditional purchase contract with Michael Rowell and/or Nominee (the "**Unit 9 Purchaser**") in respect of Unit 9 (the "**Unit 9 Purchase Contract**").
30. A copy of the Unit 9 Purchase Contract (excluding the schedules thereto), with the Unit 9 Purchaser's address redacted, is attached to this Report as **Schedule "9"**. An unredacted copy of the Unit 9 Purchase Contract (excluding the schedules thereto) is attached to the Confidential Fortieth Report of the Receiver dated August 27, 2012 as Schedule "3".

31. The closing date for Unit 9 is set at August 31, 2012 in the Unit 9 Purchase Contract (the “**Unit 9 Closing Date**”).
32. The Unit 9 Purchase Contract is subject to the satisfaction of the following condition precedent on or before the Unit 9 Closing Date:
 - (a) The issuance of an Order of the Court authorizing the Receiver to enter into the Unit 9 Purchase Contract and approve the transfer of Unit 9 to the Unit 9 Purchaser free and clear of all encumbrances, other than Permitted Encumbrances.
33. The purchase price for Unit 9 (as set out in the Unit 9 Purchase Contract) is, in the opinion of the Receiver, commercially reasonable. Further, the Receiver confirms that the Purchase Price for Unit 9 is in compliance with Schedule “4”, Column “F” of the Confidential Fourth Report.
34. As at August 27, 2012, the title to Unit 9, attached hereto as **Schedule “10”**, and the Condominium Additional Plan Sheet Certificate, which forms part of the title to Unit 9, and attached hereto as **Schedule “6”**, is in the same state as it was on the date that the Amended and Restated Closing Process Order was granted (except for discharges and a builders’ lien that was registered against the title as Instrument No. 101 350 204 that ceased to exist and was cancelled by the Land Titles Office on June 21, 2011 at the Receiver’s request).
35. First Calgary Savings & Credit Union, as first secured creditor of Perera, has no objection to this sale.

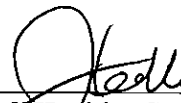
36. Accordingly, by *ex parte* application, the Receiver seeks the Court's approval of the sale of Unit 9 as well as a vesting order in respect of same in the form provided for and all pursuant to the Amended and Restated Closing Process Order in respect thereof.
37. The schedules to the Unit 9 Purchase Contract are the same as the schedules to the Unit 601 Purchase Contract, as described in paragraphs 18-21 of the Fifteenth Report of the Receiver dated July 6, 2011.

CONCLUSION

38. The Receiver respectfully requests that the Court grant the relief set out in the Receiver's *ex parte* application made by letter dated August 27, 2012, a copy of which (excluding attachments) is attached hereto as **Schedule "11"**.

DELOITTE & TOUCHE INC.,
In its capacity as Receiver and Manager of
Perera Shawnee Ltd. and Perera Development
Corporation and not in its personal capacity

Per: _____


Jeff Keeble, CA • CIRP, CBV
Senior Vice President