

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: APPROVAL AND VESTING ORDER

(Re: Purchase by The Statesman Group of Companies Ltd. of Remaining Unsold Units in Phase I)

OSLER, HOSKIN & HARCOURT LLP
Barristers & Solicitors
Suite 2500, 450 - 1st Street SW
Calgary, AB T2P 5H1
Solicitor: A. Robert Anderson, Q.C. / Michael Bokhaut
Telephone: (403) 260-7004 / 7023
Facsimile: (403) 260-7024
File Number: 1121689

DATE ON WHICH ORDER WAS PRONOUNCED: September 19th, 2013

NAME OF JUDGE WHO MADE THIS ORDER: Honourable Justice Romaine

I hereby certify this to be a true copy of the original order
Dated this 19th day of Sept 2013
[Signature]
for Clerk of the Court

**APPROVAL AND VESTING ORDER**  
**(Re: Purchase by The Statesman Group of Companies Ltd. of Remaining Unsold Units in Phase I)**

UPON the application dated September 19, 2013 (the “**Application**”) of Deloitte Restructuring Inc., formerly 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 “**Debtors**”), 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 and restated on January 31, 2011 (the “**Receivership Order**”); **AND UPON** noting the Order (Re: Distribution of Funds) granted by Madam Justice A. Kent January 31, 2011 (the “**Distribution Order**”); **AND UPON** noting the Order (re: Distribution of Funds to the Plaintiff) granted by Madam Justice A. Kent on May 5, 2011 (the “**Plaintiff Distribution Order**”); **AND UPON** noting the Order (Re: Purchase by The Statesman Group of Companies Ltd. of Phases II and III) granted September 19, 2013; **AND UPON** reading the Sixty-Seventh Report of the Receiver, dated September 16, 2013 (the “**Sixty-Seventh Receiver’s Report**”); **AND UPON** reading the Confidential Sixty-Eighth Report of the Receiver, dated September 16, 2013 (the “**Confidential Sixty-Eighth Receiver’s Report**”); **AND UPON** reading the Confidential Sixty-Third Report of the Receiver, dated August 13, 2013; **AND UPON** noting that the property of PSL includes, *inter alia*, a residential condominium development known as the “**Highbury**” (the “**Project**”) in Calgary, Alberta registered as Condominium Plan No. 0915321 that comprises the following: “**Phase I**” which is a high-rise condominium building with 71 residential units, many of which have already been sold, and “**Phases II and III**”, construction of which has not been completed; **AND UPON** noting the Agreement of Purchase and Sale (the “**Phase I Purchase Contract**”) dated August 2, 2013, entered into between the Receiver and The Statesman Group of Companies Ltd. (the “**Purchaser**”) for the en bloc sale by the Receiver to the Purchaser of all remaining unsold units owned by PSL in Phase I of Condominium Plan No. 0915321, including residential units, storage units and parking stalls (the “**Phase I Units**”); **AND UPON** noting that the Phase I Purchase Contract is subject to the approval of this Honourable Court; **AND UPON** noting that the Receiver and the Purchaser have entered into an Agreement of Purchase and Sale dated February 13, 2013 as amended on August 12, 2013 (the “**Phases II and III Purchase Contract**”) which contemplates that the Purchaser will implement a development plan more fully described in Schedule “1” to the Confidential Sixty-Eighth Receiver’s Report; **AND UPON**

noting that pursuant to the Development Plan, the amenities centre (the “**Amenities Centre**”) described in the phased disclosure statement registered on title as instrument no. 101 157 679 (the “**Phased Disclosure Statement**”) will not be built; **AND UPON** noting that the Phased Disclosure Statement contemplated the eventual purchase of a manager’s suite and a guest suite for the benefit of Owners in Phase I (the “**Manager and Guest Suite**”) and PSL had deducted an amount from the proceeds of the sale of units in Phase I and placed the holdbacks in trust with McLeod and Company LLP (“**McLeod**”) to fund the eventual construction of the Amenities Centre (the “**Amenities Centre Holdback**”) and the eventual purchase of the Manager and Guest Suite (the “**Manager and Guest Suite Holdback**”); **AND UPON** noting that the termination of the Phased Disclosure Statement and the granting of this Order will result in the Manager and Guest Suite not being available to the other Owners in Phase I; **AND UPON** reference being made to any other materials filed by the Receiver; **IT IS HEREBY ORDERED, ADJUDGED AND DECLARED THAT:**

#### **APPROVAL OF THE SALE OF PHASE I UNITS**

1. The sale contemplated by the Phase I Purchase Contract regarding the Phase I Units legally described in Schedule “A” to this Order for the Purchase Price (as that term is defined in the Purchase Contract) is hereby approved.

#### **CLOSING OF THE TRANSACTION**

2. The closing of the Phase I Purchase Contract and conveyance of title to the Phase I Units to the Purchaser (the “**Transaction**”) shall be effected in accordance with the terms of the Phase I Purchase Contract and upon such trust conditions as may be agreed upon between the conveyancing solicitors for the Receiver, Kathleen Davis, (the “**Receiver’s Conveyancing Solicitors**”) and the solicitors for the Purchaser, Morgan F. Tingle Professional Corporation (the “**Purchaser’s Solicitors**”).
3. The closing date for the Transaction shall be as provided for in the Phase I Purchase Contract (the “**Closing Date**”). There shall be an adjustment, in accordance with sections 3, and 6 of the Phase I Purchase Contract of, *inter alia*, taxes on the Closing Date.
4. Prior to the closing of the Transaction, the Receiver’s Conveyancing Solicitors shall provide to the Registrar of the South Alberta Land Titles Office (the “**Registrar**”) a letter

(the “**Written Request**”) that instructs the Registrar to take the steps outlined in paragraph 5.

5. Subject to paragraph 4 and 6, upon delivery of a certified copy of this Order to the Registrar and the Written Request from the Receiver’s Conveyancing Solicitors, the Registrar shall promptly:
  - (a) cancel the existing certificates of title for each of the Phase I Units (the “**Old Titles**”);
  - (b) issue new certificates of title for each of the Phase I Units (the “**New Titles**”) in the name of the Purchaser (or such nominee as may be described in the Written Request), which shall include only:
    - (i) the Permitted Encumbrances listed in Schedule “B” to this Order (the “**Permitted Encumbrances**”); and
    - (ii) any encumbrances registered after September 19, 2013 which are found on the Old Titles for the Phase I Units.
  - (c) discharge, as it pertains to the Phase I Units including the Purchaser’s share in the common property, on the condominium additional plan sheet certificate (the “**CAPSC**”) all encumbrances registered against the CAPSC on or before September 19, 2013 , other than the Permitted Encumbrances listed in Schedule “C” to this Order (the “**Discharged CAPSC Encumbrances**”)
6. Subject to paragraph 4, the Registrar shall perform the steps specified in paragraph 5 of this Order:
  - (a) in the order specified in paragraph 5 of this Order; and
  - (b) notwithstanding the requirements of section 191(1) of the *Land Titles Act*, R.S.A. 2000, c. L – 4 (the “**LTA**”).
7. With respect to Legal Unit 64 (Suite 705) (“**Suite 705**”) which is subject to a conditional pending sale to another buyer, if the sale of Suite 705 becomes a firm and unconditional

sale to such other buyer at least 7 days prior to the Closing Date of the Phase I Purchase Contract, the Receiver may apply, on an *ex parte* basis, to remove Suite 705 from the list of Phase I Units (found at Schedule "A" to this Order) being sold to the Purchaser pursuant to the Phase I Purchase Contract.

#### **VESTING OF TITLE TO THE UNIT**

8. Upon the Registrar issuing a certified copy of the New Title in accordance with paragraphs 5 and 6 of this Order all right, title, interest, estate and equity of redemption of PSL, if any, and any persons claiming by, through or under PSL, in and to the Phase I Units shall vest absolutely in the Purchaser free and clear of and from all security interests (whether contractual, statutory or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (a) any encumbrances or charges created by the Receivership Order or by any other Order(s) in these or any other proceedings and (b) any encumbrances other than Permitted Encumbrances that are found on the Old Titles (all of which are collectively referred to as the "**Encumbrances**", which term shall include the Claims but shall not include the Permitted Encumbrances) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Phase I Units are hereby expunged and discharged as against the Phase I Units.
9. Upon the Registrar completing the steps identified in paragraphs 5 and 6 of this Order, the Registrar shall forthwith make available to the Purchaser's Solicitors a certified copy of the New Titles.

#### **AMENITIES HOLDBACK AND MANAGER AND GUEST SUITE HOLDBACK**

10. There shall be no requirement to deduct, and the Receiver shall not be required to deduct from the amounts paid by the Purchaser's Solicitors to the Receiver's Conveyancing Solicitors pursuant to the Phase I Purchase Contract (collectively, the "**Total Proceeds**") any holdback related to the Amenities Centre.

11. McLeod shall pay to the Receiver all amounts held by it in trust as the Amenities Holdback or the Manager and Guest Suite Holdback.
12. For each unit in Phase I sold by the Receiver or sold before the Receiver was appointed, for which an amount was withheld and placed in trust in relation to the Amenities Centre, the Receiver shall disburse the Amenities Holdback to the current owner(s) of the applicable units.
13. For each unit in Phase I sold before the Receiver was appointed, for which an amount was withheld and placed in trust in relation to the Manager and Guest Suite, the Receiver shall disburse the Manager and Guest Suite Holdback to the current owner(s) of the applicable units.

#### **HOLDING OF THE NET PROCEEDS**

14. The Receiver shall hold the Total Proceeds, less any holdback the Receiver may be required to make in order to obtain or verify (if necessary) Alberta New Home Warranty Program warranty coverage for the Phase I Units, less closing costs including real estate commissions, taxes, conveyancing costs of the Receiver, and other usual closing costs (the "**Net Proceeds**") pursuant to and in accordance with the terms of this Order.
15. The Net Proceeds shall stand in the place and stead of the Phase I Units and any holder of the Encumbrances ("**Encumbrancers**") may assert their Claims against the Net Proceeds with the same right and priority that the Encumbrancers had against the Phase I Units immediately prior to the sale of the Phase I Units, as if the Phase I Units had not been sold and remained in the possession and control of PSL.
16. Unless otherwise ordered, the Net Proceeds may be disbursed by the Receiver in accordance with the Distribution Order and the Plaintiff Distribution Order.

#### **FEES ASSOCIATED WITH THE ISSUANCE OF THE NEW TITLE**

17. All costs, fees and disbursements associated with the steps outlined in paragraphs 5 and 6 of this Order, including the registration of any mortgage against the Phase I Units in favour of the Purchaser's lender, shall be for the Purchaser's account.

**SERVICE OF THIS ORDER**

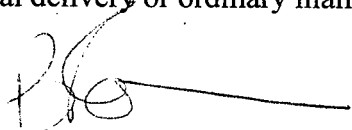
18. Service of this Order shall be deemed good and sufficient by serving the same on:

- (a) the persons listed on the Service List (as the Service List may be amended from time to time and found at Schedule "C" to this Order);
- (b) all current Owners of the Condominium Plan, other than those units for which the Debtor is the registered owner;
- (c) the Purchaser or on the Purchaser's solicitors; and
- (d) by posting a copy of this Order on the Receiver's website at:

[http://www.deloitte.com/view/en\\_CA/ca/specialsections/insolvencyandstructuringproceedings/perera/index.htm](http://www.deloitte.com/view/en_CA/ca/specialsections/insolvencyandstructuringproceedings/perera/index.htm)

and no other persons are entitled to be served with a copy of this Order.

19. Service of this Order shall be deemed good and sufficient regardless of whether service is effected by PDF email, facsimile, courier, personal delivery or ordinary mail.

  
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J.C.Q.B.A.

**SCHEDULE "A" TO THE APPROVAL AND VESTING ORDER**  
**PHASE I UNITS BEING SOLD TO THE PURCHASER**



**Schedule of Units purchased by Statesman in Phase I**

Remaining Condo Units		
Number	Suite #	Legal Unit #
1	14601	12
2	14603	11
3	14609	8
4	14615	5
5	14617	4
6	14621	2
7	14623 (sales)	1
8	205	24
9	207	26
10	307	34
11	407	42
12	705	64
13	Mgr Suite	13

Extra Storage Units	
Number	Legal Unit #
1	73
2	74
3	75
4	76
5	77
6	78
7	79
8	80
9	81
10	82
11	84
12	85
13	87
14	88
15	89
16	90
17	91
18	92
19	93
20	94
21	95
22	96
23	97
24	98
25	99
26	100
27	101
28	102
29	103
30	127
31	138

Extra Parking Stalls	
Number	Legal Unit #
1	128
2	131
3	135
4	137
5	139
6	140
7	141
8	110
9	111
10	115
11	120
12	121
13	122
14	123
15	124

**SCHEDULE "B" TO THE ORDER**  
**PERMITTED ENCUMBRANCES TO THE PHASE I UNITS**

<b>REGISTRATION NUMBER</b>	<b>DATE (D/M/Y)</b>	<b>PARTICULARS</b>
861 205 323	11/12/1986	UTILITY RIGHT OF WAY GRANTEE – THE CITY OF CALGARY AS TO PORTION OR PLAN: 8611330
871 142 214	10/08/1987	CAVEAT RE: SEE CAVEAT CAVEATOR – FRANCES LORRAINE REHMAN
071 476 257	24/09/2007	CAVEAT RE: RESTRICTIVE COVENANT
091 088 418	02/04/2009	UTILITY RIGHT OF WAY GRANTEE – ENMAX POWER CORPORATION AS TO PORTION OR PLAN: 0911884 THAT PORTION SHOWN AS R/W "B"
091 368 708	07/12/2009	CAVEAT RE: RESTRICTIVE COVENANT
091 374 432	10/12/2009	RESTRICTIVE COVENANT
091 374 433	10/12/2009	RESTRICTIVE COVENANT

**SCHEDULE "C" TO THE ORDER**

**PERMITTED ENCUMBRANCES AS TO THE CONDOMINIUM  
ADDITIONAL PLAN SHEET CERTIFICATE FOR  
CONDOMINIUM CORPORATION NO. 0915321**

091 372 552	10/12/2009	CHANGE OF DIRECTORS
091 372 553	10/12/2009	CHANGE OF BY-LAWS