

# Deloitte.

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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: **SIXTY-SEVENTH REPORT OF THE COURT APPOINTED  
RECEIVER AND MANAGER OF PERERA SHAWNEE LTD. AND  
PERERA DEVELOPMENT CORPORATION, DATED SEPTEMBER  
16, 2013.**

## **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: 1121589

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SCHEDULE 2      Updated Access Special Resolution and Access Agreement

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SCHEDULE 4      Application filed by the Receiver

## INTRODUCTION

1. On March 3, 2010, Deloitte Restructuring Inc., formerly 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 71 residential condominium units in Phase I of the Project ("**Phase I**"), including the manager suite and sales centre: 55 of which now have been sold and conveyed to purchasers. There are 16 residential units in Phase I that remain unsold as of the date of this report along with various parking stalls and storage units in Phase I (the "**Remaining Phase I Units**").
4. "**Phase II**" and "**Phase III**" (collectively, "**Phases II and III**") of the Project were originally contemplated by PSL, the developer, to include 12 stories with 85 condominium units in each of Phases II and III. When the Receivership commenced, the construction of the parking levels in Phases II and III was incomplete. The Receiver has completed construction on parking level one, parking level two and a portion of parking

level three for Phases II and III to meet the requirements of the City of Calgary (the “**City**”), but does not intend to complete the high-rise condominium buildings planned for Phases II and III. All three phases of the Project (collectively, the “**Lands**”) are under one development plan, namely Condominium Plan No. 0915321 (the “**Condo Plan**”), for which the condominium corporation is Condominium Corporation No. 0915321 (the “**Condo Corporation**”).

5. On August 14, 2013 the Court granted an Order (the “**August 14, 2013 Order**”) that, *inter alia*, directed the Receiver to reject the unsolicited offer from 1204028 Alberta Ltd. (“**120**” and the “**120 Offer**”) and to not establish a further marketing or solicitation process for Phases II and III at that time. The August 14, 2013 Order also approved the Amending Agreement (as defined later herein) and sealed the Confidential Sixty-Third Report of the Receiver dated August 13, 2013 (the “**Sixty-Third Report**”) on the Court file.
  
6. The Receiver is submitting this report pursuant to the Receivership Order in support of its application for an Order (defined below): (i) approving the Statesman Agreement (defined below) (ii) terminating the development of Phases II and III in accordance with the Phased Disclosure Statement and (iii) authorizing The Statesman Group of Companies Ltd. (“**Statesman**”) to apply to the City for subdivision of the Lands in accordance with its proposed development plan (the “**Development Plan**”). In addition, the Receiver is seeking an Order of the Court approving the sale to Statesman of the remaining unsold units in Phase I (the “**Phase I Units**”) and authorizing the Receiver to disburse the Amenities Holdback (defined below) and the Manager and Guest Suite Holdback (defined below) to the current owners of units in Phase I.

## NOTICE TO READER

7. This report constitutes the Sixty-Seventh Report of the Receiver (the "**Report**").

## PURPOSE OF REPORT

8. The purpose of this Report is to:

- (a) disclose to the Court Statesman's Development Plan for Phases II and III and the results of a meeting between Statesman, the Receiver and the owners of units in Phase I (the "**Owners**") held on September 4, 2013 (the "**Condo Corporation Meeting**");
- (b) seek the Court's approval of the sale of the Phase I Units to Statesman pursuant to a purchase and sale agreement dated August 2, 2013 between the Receiver and Statesman (the "**Phase I Agreement**");
- (c) seek the Court's approval of the sale of Phases II and III of the Project to Statesman pursuant to a confidential purchase and sale agreement dated February 13, 2013 between the Receiver and Statesman, as amended by the "**Amending Agreement**" on August 12, 2013 (the "**Statesman Agreement**");
- (d) seek the Court's approval to terminate development of Phases II and III in accordance with the phased disclosure statement registered on title as instrument no. 101 157 679 (the "**Phased Disclosure Statement**");
- (e) seek the Court's approval and authorization for Statesman to apply to the City for subdivision and permits in accordance with its Development Plan without any further authorization, consent or approval from any of the Owners; and

- (f) seek the Court's direction to disburse, to the current Owners, the Amenities Holdback (defined below) and the Manager and Guest Suite Holdback (defined below) held in trust.

### **SEALING ORDER**

9. The Receiver recommends that an Order (the "**Sealing Order**") be granted sealing the Confidential Sixty-Eighth Report of the Receiver dated September 16, 2013 (the "**Confidential Sixty-Eighth Report**") and directing that it remain under seal unless otherwise ordered by this Court to preserve the confidentiality of its contents and to avoid any negative impact that could result from the dissemination of the information contained in the Confidential Sixty-Eighth Report. The Confidential Sixty-Eighth Report is provided only to the Court and to First Calgary Savings & Credit Union ("**First Calgary**"), as first secured creditor of Perera.
10. The Confidential Sixty-Eighth Report contains sensitive commercial and/or confidential information regarding the selling prices of Phase I and Phases II and III, details of the confidential Statesman Agreement and the Phase I Agreement and confidential and/or commercially sensitive details of the valuations of the Project completed by the Receiver and details of the other en-bloc offers received by the Receiver during the Receivership Proceedings. The Statesman Agreement contains terms requiring that it be kept confidential. Publication of this information may prejudice the future marketing of the Project and may undermine the Receiver's efforts to close the agreements the Receiver has executed for the sale of Phase I and Phases II and III. The Receiver is not aware of any suitable alternative measures to protect the confidentiality of the Statesman

Agreement or the other information contained in the Confidential Sixty-Eighth Report from being disseminated.

11. The Receiver recommends that the Sealing Order include a provision that any interested party may apply, on notice to the Receiver, to vary the terms of the sealing Order or to unseal the Confidential Sixty-Eighth Report of the Receiver.

### **MARKETING OF THE PROJECT**

12. The marketing activities of the Receiver with respect to Phases II and III of the Project were detailed in its Sixty-Second Report dated August 13, 2013 (the "**Sixty-Second Report**"). The Receiver outlined in the Sixty-Second Report that it had been actively marketing Phases II and III, with the assistance of professional realtors, since approximately June 2010 and that the Project had been appropriately marketed and extensively exposed to the market for approximately three years. The Court issued the August 14, 2013 Order that directed that no further marketing or solicitation process needed to be established for Phases II and III at that time.
13. The Receiver has also been marketing the Phase I units, both individually and en-bloc, since it was appointed. In April 2010, an initial sales and marketing contract between the Receiver and CondoSource Inc. ("**CondoSource**") was finalized, giving CondoSource the rights to sell four condominiums and seven townhouses, as the remainder of the units were either sold prior to the Receivership Proceedings or were subject to pre-sale contracts. In December 2010, after the Receiver obtained an Order allowing the re-marketing and sale of Phase I units, the Receiver and CondoSource entered into a listing agreement whereby CondoSource was given the sales listing contract to market and sell the remaining unsold Phase I units (the "**December 2010 CondoSource Agreement**").

14. In January 2011, the Receiver was informed that CondoSource was not a licensed broker under the Real Estate Act. Accordingly, the Receiver submitted its Thirteenth Report seeking an order authorizing the termination of the December 2010 CondoSource Agreement and seeking approval to retain Ms. Judy Poole, a licensed realtor through Royal LePage Benchmark. Such Order was granted and Ms. Poole, a former employee of Perera with in-depth knowledge of the Project, was given the listing contract to market and sell the remaining Phase I units. The Receiver did not renew the listing contract with Ms. Poole after October 2012.
15. Following a review process with several interested parties, the Receiver signed a listing contract with Mr. Ron Jobbagy, a licenced realtor with Re/Max Rockyview Real Estate, on October 25, 2012 to sell the remaining 24 units in Phase I (excluding the manager's suite). Since that time, the Receiver has renewed the listing contract with Mr. Jobbagy who has sold and closed nine sales, with a further three units due to close within the next 60 days.
16. Upon entering into the Statesman Agreement and pursuant to a term of the Statesman Agreement, the Receiver suspended marketing Phases II and III, but has continued to market and sell units in Phase I.
17. In the Receiver's opinion, the individual Phase I units have been appropriately marketed and extensively exposed to the market through realtors and the multiple listing service for over three years.



**STATESMAN AGREEMENT (PHASES II AND III)**

18. The Statesman Agreement (including the Amending Agreement) were discussed in detail and were attached to the Sixty-Third Report as Schedule "1" and Schedule "2", respectively. The Court approved the Amending Agreement by the August 14, 2013 Order. The current status of the Statesman Agreement is disclosed in the Confidential Sixty-Eighth Report.
  
19. The Development Plan requires subdivision of the Lands by, *inter alia*, terminating the existing Phased Development Statement, incorporating portions of Phases II and III into the common property of Phase I, removing the remainder of Phases II and III from the Condo Plan, and amending the Condo Plan so that all 10,000 unit factors in the Condo Plan are allocated amongst units in Phase I only. The Development Plan contemplates building a senior's care facility to be called Parkview Village on Phases II and III. Given the complexity and inter-relatedness of the three phases, certain agreements will need to be executed by the Receiver, the Condo Corporation, Statesman and/or the City. Several City approvals are also required, including subdivision approval to implement the Development Plan.
  
20. The purchase price for Phases II and III (as set out in the Statesman Agreement) is, in the opinion of the Receiver, commercially reasonable and is in the best interests of the estate. This sale eliminates significant carrying costs for the remaining units and the professional fees associated with continuing to manage, market and sell these units.
  
21. First Calgary, as first secured creditor of Perera, has no objection to the sale contemplated in the Statesman Agreement.

## **STATESMAN PHASE I AGREEMENT**

22. The closing of the Phase I Agreement is linked to the Statesman Agreement. A condition of the Phase I Agreement is that, on the closing date of the Phase I Agreement, the Statesman Agreement is in full force and effect, and there shall exist no impediment to the closing of the Statesman Agreement, other than the terms of the Statesman Agreement itself. The other terms of the Phase I Agreement are outlined in the Confidential Sixty-Third Report and an update is included in the Confidential Sixty-Eighth Report.
23. The purchase price for the Phase I Units (as set out in the Phase I Agreement) is, in the opinion of the Receiver, commercially reasonable and is in the best interests of the estate. This sale eliminates significant carrying costs and the professional fees associated with continuing to manage, market and sell these Phase I Units individually.
24. First Calgary, as first secured creditor of Perera, has no objection to the sale contemplated in the Phase I Agreement.

## **PHASE I OWNER APPROVAL**

25. The Condo Corporation Meeting took place on September 4, 2013 and, at this meeting, Statesman presented the Owners with its Development Plan. Approximately 40 out of a total of 55 Owners attended the meeting in person or via telephone. Including the Receiver, the Condo Corporation Meeting was attended by representatives holding approximately 80% of the unit factors of the Condo Corporation and a majority of the individual owners were in attendance at this meeting.

26. Statesman provided details and drawings of the proposed border between Phase I and Phases II and III along with a description of the proposed buildings to be constructed by Statesman on Phases II and III. A copy of the presentation to the Owners and further details of the Development Plan are included in the Confidential Sixty-Eighth Report. Statesman answered several questions from the Owners in attendance and, in the view of the Receiver, the Owners were very supportive of the Development Plan and did not object to the Development Plan proceeding. At the Condo Corporation Meeting, the Receiver requested that the Owners:

- (a) Sign a special resolution to terminate the existing phased development of Phases II and III and to discharge the Phased Disclosure Statement, subject to Court approval;
- (b) Sign a special resolution to allow the Condominium Corporation to enter into an access easement agreement with the City, which the City has been seeking for several years (the “**Access Special Resolution**”); and
- (c) Authorize Statesman to apply to the City, on behalf of the Owners, for subdivision approval and any necessary development or building permits to proceed with the Development Plan.

27. The Receiver had presented the Owners with special resolutions and an authorization prior to the Condo Corporation Meeting along with a copy of the Proposed Access Easement Agreement with the City (the “**Access Agreement**”). The original materials that were provided by the Receiver to the Owners are attached as **Schedule “1”** to this Report. The Receiver, in consultation with its legal counsel, made some subsequent amendments to the Access Special Resolution and the Access Agreement in order to

better clarify the terms and conditions of the Access Agreement and the Access Special Resolution.

28. The updated Access Special Resolution and Access Agreement, along with the other special resolution and authorization were available at the Condo Corporation Meeting, but the Owners had no interest in discussing or signing any documents at the Condo Corporation Meeting. The Owners advised that they would not sign any of the materials provided until the Receiver resolved an unrelated issue relating to construction and building issues in Phase I identified in a technical audit (the “**Audit Claim**”). The Receiver has been in discussions with the Owners regarding the Audit Claim, however this issue is subject to a Court application set to be heard on October 1, 2013 and will not be resolved before September 20, 2013. The Audit Claim is unrelated to the sale of Remaining Phase I Units, or Phases II and III, or Statesman’s Development Plan, and the sales to Statesman will not prejudice the Owners or the Audit Claim.
29. The updated Access Special Resolution and Access Agreement, attached as **Schedule “2”** to this Report, were provided to the property manager on September 11, 2013 who confirmed that the information was emailed to the Owners that same day.
30. The Owners did not sign any of the special resolutions or the authorization before or at the Condo Corporation Meeting. However, 15 Owners, representing seven Phase I Units, have signed the resolutions and authorization provided by the Receiver since the Condo Corporation Meeting.
31. Statesman has advised that it is not prepared to waive the remaining conditions to the Statesman Agreement unless the Court grants an order in the form substantially attached to the Receiver’s application of September 19, 2013, which would provide Statesman

with the necessary comfort that it is authorized to apply to the City for subdivision and permits in pursuit of its Development Plan. The agreement with Statesman stipulates that Statesman has agreed that all remaining substantive conditions to the Statesman Agreement (except standard closing conditions) are waived if the Court grants the Final Approval and Vesting Order before September 20, 2013. A copy of the agreement with Statesman is attached as **Schedule “3”** to this Report.

### **AMENITIES HOLDBACK**

32. The Phased Disclosure Statement describes the development of Phases II and III as it was to be constructed according to the plan developed by Perera and contemplates the construction of an amenities centre (the “**Amenities Centre**”). The Amenities Centre would only be completed once construction of Phases II and III (as originally planned by the Debtors) was complete.
  
33. The Receiver’s understanding is that, prior to the commencement of the Receivership Proceedings, PSL deducted an amount from the proceeds of the sale of each unit in Phase I (the “**Amenities Holdback**”) and held that money in trust at PSL’s lawyers, McLeod and Company LLP (“**McLeod**”), pursuant to s. 14(5) of the *Condominium Property Act*, R.S.A. 2000, c. C-22. The Amenities Holdback was to provide sufficient funding for the eventual construction of the Amenities Centre. Upon commencement of the Receivership Proceedings, the Receiver continued to deduct the Amenities Holdback from the sale of each unit in Phase I. The Amenities Holdback from the sale of each unit in Phase I is currently held in trust with McLeod for the pre-receivership sales and with the Receiver for the post-receivership sales.

34. The termination of the phased development of Phases II and III in accordance with the Phased Disclosure Statement will result in the Amenities Centre never being built, therefore the Receiver recommends that it stop deducting the Amenities Holdback from the sale proceeds of units sold, and for units previously sold in Phase I by the Receiver or PSL, to disburse the Amenities Holdback held in trust from the proceeds of the sale of such units to the respective current owner.

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

35. The Receiver's understanding is that prior to the commencement of the Receivership Proceedings, PSL deducted an amount from the proceeds of the sale of each unit in Phase I to provide sufficient funding for the eventual purchase of two units in Phase I to serve as a Guest Suite and Manager Suite (the "**Manager and Guest Suite Holdback**") and held the Manager and Guest Suite Holdback in trust with McLeod. The Receiver decided to not continue to deduct the Manager and Guest Suite Holdback from the sale of the Phase I units after the Receivership Proceedings.
36. The termination of the phased development of Phases II and III in accordance with the Phased Disclosure Statement, along with the sale of the Remaining Phase I Units to Statesman, will result in the Guest Suite and Manager Suite never being purchased for use by other owners in Phase I, therefore the Receiver recommends that it disburse the Manager and Guest Suite Holdback held in trust by McLeod from the proceeds of the sale of each unit sold by PSL to the current Owner of that unit.

#### **RECOMMENDATIONS**

37. The Confidential Sixty-Eighth Report will provide further detail of the following:

- (a) An analysis of the Statesman Agreement based upon recent events since the Receiver's last Court appearance;
  - (b) The valuations of Phase I and/or Phases II and III commissioned by the Receiver and comparisons to the purchase prices in the Phase I Agreement and the Statesman Agreement;
  - (c) The other en-bloc offers received by the Receiver on Phase I and/or Phases II and III and comparisons to the purchase prices in the Phase I Agreement and the Statesman Agreement; and
  - (d) Statesman's Development Plan.
38. Based on the Receiver's analysis, and the information and analysis included in the Confidential Sixty-Eighth Report, the Receiver recommends that the Court:
- (a) Grant the Final Approval and Vesting Order relating to the sale of Phases II and III;
  - (b) Grant the Approval and Vesting Order relating to the sale of Remaining Phase I Units;
  - (c) Terminate the development of Phases II and III as described in the Phased Disclosure Statement;
  - (d) Authorize Statesman to apply to the City to pursue its Development Plan, including applying for subdivision, development permits and building permits and that no authorization, consent or approval from any Owner, other than Statesman, is or shall be required to do so; and

- (e) Authorize the Receiver to disburse the Amenities Holdback and the Manager and Guest Suite Holdback to the current owners of applicable units in Phase I.

**CONCLUSION**

- 39. The Receiver respectfully requests that the Court grant the relief set out in the Application by Deloitte Restructuring Inc., attached as **Schedule "4"** to this Report

**DELOITTE RESTRUCTURING INC.,**

In its capacity as Court Appointed 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