Form 27 [Rule 6.3]

Clerk's stamp:

CI FRK OF THE COURT

COURT FILE NUMBER:	1001-03215	NOV - 3 2010
COURT OF QUEEN'S BENCH OF ALBERTA JUDICIAL CENTRE OF CALGARY		CALGARY, ALBERTA
PLAINTIFF:	FIRST CALGARY S LTD.	AVINGS & CREDIT UNION
DEFENDANTS:	PERERA SHAWNE DEVELOPMENT CO PERERA and SHIRA	ORPORATION, DON L.
PLAINTIFFS BY COUNTERCLAIM	PERERA SHAWNE SHIRANIE M. PERE	E LTD., DON L. PERERA and ERA
DEFENDANTS BY COUNTERCLAIM	FIRST CALGARY S LTD. and DELOITT	AVINGS & CREDIT UNION E & TOUCHE LLP
DOCUMENT: APPLICATION I	RV DELOITTE & TO	UCHE INC. in its canacity a

DOCUMENT: <u>APPLICATION BY DELOITTE & TOUCHE INC.</u> 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")

(Re: Unit 801 Vesting Order, Termination Agreement, ANHWP Agreement, etc.)

**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

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### NOTICE TO THE RESPONDENT(S)

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This application is made against you. You are a respondent.

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

### **REMEDY CLAIMED OR SOUGHT:**

- An order that the time for service of this Application (the "Application") is abridged if necessary, that this application is properly returnable on November 4, 2010, that service of the Application and the Seventh Report of the Receiver, dated November 3, 2010 (the "Seventh Receiver's Report") on the persons listed in Schedule "A" to the 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 the Application;
- a sealing order (the "Fourth Sealing Order") sealing on the Court file the Confidential Eight Report of the Receiver, dated November 3, 2010 (the "Confidential Eight Receiver's Report");
- an order approving a termination agreement between Debra Seymour and the Receiver (the "Termination Agreement"), a copy of which is attached as Schedule "3" to the Confidential Eight Receiver's Report;
- a vesting order (the "Unit 801 Vesting Order") in order to effect the closing of the Unit
  801 Purchase Contract (as hereinafter defined) for the purchase of a unit in Condominium
  Plan No. 0915321 as referenced in the Seventh Receiver's Report;
- 5. an order approving an agreement respecting warranty coverage for Phase One of the Project (as hereinafter defined) between the Receiver and the Alberta New Home Warranty Program (the "ANHWP Agreement"), a draft copy of which is attached as Schedule "5" to the Confidential Eight Receiver's Report; and
- 6. such further and other relief that the Receiver may seek and this Honourable Court may deem just.

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

### General

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- 7. 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").
- 8. At the time that the Receivership Order was issued, PSL was in the process of constructing a condominium development in southwest Calgary known as the Highbury (the "Project"). The Project was planned to be completed in three separate phases ("Phase One", "Phase Two" and "Phase Three").
- 9. There are a total of 70 units in Phase One of the Project:
  - (a) 22 of the units had been sold and conveyed by PSL to persons prior to the issuance of the Receivership Order;
  - (b) 37 of the units (the "37 Units") are owned by PSL and are subject to purchase and sale contracts. One of the 37 Units, ("Unit 801") was originally purchased by Ms. Seymour and is now the subject of the Termination Agreement. Unit 801 is also the subject of a new purchase and sale contract dated October, 20, 2010 (the "Unit 801 Purchase Contract"); and
  - (c) the remaining 11 are listed for sale. Two of those units ("Unit 802" and "Unit 804", respectively) are now the subject of purchase and sale contracts dated October 19, 2010 and October 26, 2010, respectively (the "Unit 802 Purchase Contract" and the "Unit 804 Purchase Contract"). In the Notice of Motion filed on October 7, 2010, the Receiver made an application for vesting orders to effect the closing of the Unit 802 Purchase Contract and the Unit 804 Purchase Contract. A vesting order in respect of Unit 802 was granted by Madam Justice Kent on Wednesday, October 27, 2010 and the application for the Unit 804 Purchase Contract was adjourned to November 4, 2010.

## Fourth Sealing Order

a.

The Confidential Eight Receiver's Report contains confidential information including 10. purchasers' addresses in respect of Unit 804 and Unit 801, information related to the sales price of Unit 804 and Unit 801, and the terms of the Termination Agreement and the ANHWP Agreement. The purchasers' addresses are personal and confidential and dissemination of this information may raise privacy concerns. Publication of information related to the sales price of Unit 804 and Unit 801 may prejudice the marketing of the balance of the units in the Project and may undermine the efforts of the Receiver in closing the Unit 804 Purchase Contract and the Unit 801 Purchase Contract and selling any other units. Finally, publication of the information in the Termination Agreement or the ANHWP Agreement would be a breach of the terms of those agreements and may also prejudice any claims that the Receiver may have against those who purchased the 37 Units. The issuance of the Fourth Sealing Order is needed for the reasons set out above, in the Seventh Receiver's Report and in the Confidential Eighth Report. The Receiver is not aware of any suitable alternative measures to protect the information contained in the Confidential Eighth Report from being disseminated.

## **Termination** Agreement

11. PSL and Ms. Seymour entered into a purchase contract dated October 21, 2007 in respect of Unit 801 (the "Seymour Purchase Contract"). On May 7, 2010 Ms. Seymour commenced Action No. 1001-06841 in the Court of Queen's Bench of Alberta, claiming, among other things, that she terminated the Seymour Purchase Contract. The Termination Agreement, which is subject to approval of this Honourable Court, represents a compromise of a dispute between the Receiver and Ms. Seymour, who claims she is not obliged to and will not close the purchase of Unit 801.

#### Unit 801 Vesting Order

- Paragraph 3(l)(ii) of the Receivership Order requires the Receiver to obtain approval of the Court in respect of any transaction in which the purchase price exceeds \$100,000.
- 13. The issuance of the Unit 801 Vesting Order will:

- (a) provide for the closing of the Unit 801 Purchase Contract and the discharge of encumbrances registered against Unit 801;
- (b) preserve the sale proceeds from the closing of the Unit 801 Purchase Contract pending further order of the Court; and
- (c) be in the best interests of the estate of the Debtor.

# Agreement with the Alberta New Home Warranty Program

- 14. On or about January 30, 2008, PSL and the Alberta New Home Warranty Program ("ANHWP") entered into an agreement providing for various warranty protection relative to Phase One of the Project. On March 9, 2010, ANHWP purported to terminate PSL as a builder member of ANHWP effective March 9, 2010.
- 15. The Receiver and ANHWP expect to enter into the ANHWP Agreement, which confirms and clarifies warranty coverage in respect of Phase One of the Project subject to the terms and conditions stated therein. Such terms and conditions include approval of this Honourable Court.
- 16. The approval of the ANHWP Agreement will be in the best interests of the estate of the Debtor.

# MATERIAL OR EVIDENCE TO BE RELIED ON:

- 17. The pleadings filed herein, including the First Report of the Receiver dated July 30, 2010, the Confidential Second Report of the Receiver dated August 11, 2010, the Third Report of the Receiver dated October 7, 2010, the Confidential Fourth Report of the Receiver dated October 7, 2010, the Fifth Report of the Receiver dated October 26, 2010, the Confidential Sixth Report of the Receiver dated October 26, 2010, the Seventh Receiver's Report, the Confidential Eight Receiver's Report and the Receivership Order; and
- 18. such further and other materials as counsel for the Receiver may advise and this Honourable Court may permit.

### **APPLICABLE RULES:**

- 19. The Alberta Rules of Court, Alta. Reg. 390/68; and
- 20. the Alberta Rules of Court, Alta. Reg.124/2010.

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

 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 Thursday, November 4, 2010 at 8:30 a.m. or as soon thereafter as counsel may be heard.

### NOTICE TO RESPONDENT(S)

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

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

Date:	Thursday, November 4, 2010
Time:	8:30 a.m.
Where:	Calgary Courts Centre, 601-5 <sup>th</sup> Street S.W.,
	Calgary, Alberta
Before Whom:	Madam Justice A. Kent

#### WARNING

If you do not come to court either in person or by your lawyer, the court may give the applicant(s) 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(s) is/are 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 November <u>3</u>, 2010.

# OSLER, HOSKIN & HARCOURT LLP

por Christa Nicholson

Counsel for the Receiver, Deloitte & Touche Inc.

TO: The Clerk of the Court

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AND TO: The Service List (Schedule "A" hereto)

# SCHEDULE "A" TO THE APPLICATION, DATED NOVEMBER 3, 2010

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>SERVICE LIST</u>	

## **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

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Counsel/Party	Telephone	Fax	Representing
BORDEN LADNER GERVAIS LLP			
1900 Centennial Place			
520 3 <sup>rd</sup> Avenue S.W. Calgary, Alberta T2P 0R3			
Calgary, Alberta 121 0103			
Travis Lysak	(403) 232-9719	(403) 266-1395	First Calgary Savings
tlysak@blgcanada.com			and Credit Union Ltd.
Detail McContine	(402) 222 0441		
Patrick McCarthy pmccarthy@blg.com	(403) 232-9441		
Robert Stemp	(403) 232-9404		OZZ Electric Inc.
rstemp@blgcanada.com			Quest Window Systems
			Inc.
Jeffrey D. Vallis, Q.C. jvallis@blgcanada.com			
Osler, Hoskin & Harcourt	(403) 260-7025	(403) 260-7024	Deloitte & Touche Inc.
LLP			
Suite 2500, TransCanada Tower			
$450 - 1^{\text{st}}$ Street S.W.			
Calgary, Alberta T2P 5H1			
Christa Nicholson			
cnicholson@osler.com			
Robert Anderson			
randerson@osler.com			
Morgan Fowler			
mfowler@osler.com			

\* \*

-

Counsel/Party	Telephone	Fax	Representing
<b>DELOITTE &amp; TOUCHE INC.</b> 3000 Scotia Centre 700 – 2 <sup>nd</sup> Street SW Calgary, Alberta T2R 1J8	(403) 267-1700	(403) 264 2871	Receiver of Debtors
Greg Stevens gstevens@deloitte.ca			
Victor Kroeger vkroeger@deloitte.ca			
David Adams davidadams@deloitte.ca			
Stefan DuChene stduchene@deloitte.ca			
<b>DELOITTE &amp; TOUCHE LLP</b> 3000 Scotia Centre 700 – 2 <sup>nd</sup> Street SW Calgary, Alberta T2P 0S7			
<b>POOLE LAWYER</b> Barrister and Solicitor #126, 2526 Battleford Avenue S.W. Calgary, Alberta T3E 7J4	(403) 685-2012	(403) 284-3693	Don L. Perera and Shiranie M. Perera
Jeffrey D. Poole jdpoole@poolelawyer.com			
CITY OF CALGARY LAW DEPARTMENT Calgary Municipal Building 12 <sup>th</sup> Floor, 800 Macleod Tr. S.E. Calgary, Alberta T2G 2M3	(403) 268-1802	(403) 268-4634	City of Calgary
Paul Frank Paul.Frank@calgary.ca			
Jocelyne J. Caldwell jocelyne.caldwell@calgary.ca			

•

Counsel/Party	Telephone	Fax	Representing
McLENNAN Ross LLP 1600, 300 – 5 Avenue SW Calgary, Alberta T2P 3C4			
Jamie Flanagan jflanagan@mross.com	(403) 303-9102	(403) 543-9150	Emco Corporation 1412705 Alberta Ltd.
James L. Lebo jlebo@mross.com	(403) 303-9111	(403) 543-9150	C. & T. Reinforcing Steel Co. (Alberta) Ltd.
<b>VOGEL &amp; COMPANY LLP</b> #1050, 10201 Southport Road S.W.	(403) 692-5214	(403) 253-8036	Waldemar and Maria Geier
Calgary Alberta T2W 4X9			Purchaser (Phase One and Phase Two)
Bernice Wong bwong@vogelcomp.com			
<b>BENNETT JONES LLP</b> 4500 Bankers Hall East 855-2 Street SW Calgary, Alberta T2P 4K7	(403) 298-3148	(403) 265-7219	Mircom Distribution (BC) Inc.
Lawrence Ator atorl@bennettjones.com			
McLEOD & COMPANY Third Floor, 14505 Bannister Road S.E. Calgary, Alberta T2X 3J3			Former Counsel to Debtors
Robin G. Lokhorst rglokhorst@mcleod-law.com	(403) 225-6405	(403) 271-1769	
Shane King sking@mcleod-law.com	(403) 254-3849	(403) 271-1769	
RANCHLANDS LEGAL SERVICES Mobile Legal Services – Serving Clients in Their Homes 307 Ranch Estates Dr. NW Calgary, Alberta T3G 1K7	(403) 875-1729	(403) 375-0520	Marcel and Adriana Mirzan
Emerson Dunlop emerson@ranchlandslaw.ca			

1 e

Counsel/Party	Telephone	Fax	Representing
WARREN TETTENSOR AMANTEA LLP 1413 – 2 <sup>nd</sup> Street S.W.			
Calgary, Alberta T2R 0W7 Tara L. Petersen petersen@warren.ab.ca	(403) 228-8383	(403) 244-1948	Alberta New Home Warranty Program
Joe Amantea amantea@warren.ab.ca	(403) 228-8374	(403) 228-8360	JMMK Plumbing & Heating Inc. Global Stone Inc. Novastone Inc.
BURNET, DUCKWORTH & PALMER LLP 1400, 350 - 7th Avenue S.W. Calgary, Alberta, T2P 3N9 Kevin S. Burron kburron@bdplaw.com	(403) 260-0189	(403) 260-0332	Marcel and Adrianna Mirzan
CAPITOL LAW OFFICE 1013-1 <sup>st</sup> Ave NE Calgary, Alberta T2E 9C6 Terry Lloyd Capitolrealestate_tl@shaw.ca	(403) 289-2033	(403) 289-2015	Larry Sinkey
HOFFMAN DORCHIK LLP 600, 5920 Macleod Trail S Calgary, Alberta T2H 0K2 Al Styles	(403) 258-0800		Coast Wholesale Appliances GP Inc.
SMITH MACK LAMARSH 450, 808-4 Ave SW Calgary, Alberta T2P 3E8 Karen D. Jacobson	(403) 234-7779	(403) 263-7897	United Rentals of Canada, Inc.
MASUCH ALBERT LLP 209, 10836 – 24 Street SE Calgary, Alberta T2Z 4C9 Gerald E. Masuch gerald.masuch@manlaw.com	(403) 543-1100	(403) 543-1111	Dr. Mouneissa Maiga

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Counsel/Party	Telephone	Fax	Representing
SODAGAR & COMPANY LAW CORPORATION Barristers & Solicitors, Trade- Mark Agents Suite 1400, 1500 West Georgia St. Vancouver, BC V6G 2Z6	(604) 602-1626	(604) 602-1622	Ms. Jamaleddin Hedayat Ms. Nayereh Azam Kazemian
Ali R. Sodagar ali@sodagar.ca			Purchasers (Phase Two)
WALSH WILKINS CREIGHTON LLP 2800, 801 - 6th Avenue SW Calgary, Alberta T2P 4A3 Paul J. Piddie ppidde@wwclawyers.com	(403) 267-8421	(403) 264-9400	Aluma Systems Inc.
<b>THE FINISHING CENTRE LTD.</b> 2719-5th Avenue NE Calgary, Alberta T2A 2L6 Chris Van Hees			
MORWEST CRANE & SERVICES LTD. c/o 3408- 114 Avenue SE Calgary, Alberta T2Z 3V6 Jason Talman			
WEEKS LAW 1000 Bankers Hall West 1000 888 3rd St. SW, Calgary, Alberta T2P 5C5 Kevin Weeks kevweeks@weekslaw.com	(403) 209-4988	(403) 444-6827	Ihab El Saghir
<b>GREGORY LAW OFFICE</b> 1250, 717 7 <sup>th</sup> Avenue SW Calgary, Alberta T2P 0Z3 Russell Q. Gregory gregory.law@hotmail.com	(403) 243-8363	(403) 770-8577	Doka Canada Ltd.

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Counsel/Party	Telephone	Fax	Representing
<b>FABER BICKMAN LEON</b> 350, 603 – 7 Avenue SW Calgary, Alberta T2P 2T5	(403) 234-1196	(403) 269-2653	Debra Seymour
Renee M. Roy rroy@fbllaw.ca			
David M. Bickman dbickman@fbllaw.ca			
<b>FRASER MILNER CASGRAIN LLP</b> Bankers Court 850 – 2 <sup>nd</sup> Street SW Calgary, Alberta T2P 0R8	(403) 268-6359	(403) 268-3100	Spring Advertising Ltd.
Corey Sandquist corey.sandquist@fmc-law.com			
CARSCALLEN LEITCH LLP 1500, 407 – 2 <sup>nd</sup> Street SW Calgary, Alberta T2P 2Y3			Tony De Silva – 702 Pat Morris and David Morris – 501
Michael B. Niven mniven@cllawyers.com	(403) 298-8464	(403) 262-2952	BIZ-IQ and David Caul – 146191/T2H
Justin Sherman sherman@cllawyers.com	(403) 298-8462		Nawagamuwage A.J. Perera – 201
Grant W.D. Cameron cameron@cllawyers.com			Nissan Canada
<b>BILLINGTON BARRISTERS</b> 600 Bow Valley Square II 205 – 5 <sup>th</sup> Avenue SW Calgary, Alberta T2P 2V7	(403) 705-3413	(403) 705-3418	E. David Podborski and Gwendolyn Podborski
Richard N. Billington Q.C. RBillington@BillingtonBarristers. com			
JUSTICE CANADA Suite 510, 606 – 4 <sup>th</sup> Street SW Calgary, Alberta T2P 1T1	(403) 299-3985	(403) 299-3966	Canada Revenue Agency
Jill Medhurst-Tivadar jill.medhurst-tivadar@justice.gc.ca			

i 9

Counsel/Party	Telephone	Fax	Representing
RITCHIE MILLS LAW OFFICE 102 – 10171 Saskatchewan Drive Edmonton, Alberta T6E 4R5 Neil Fenna n.fenna@rmlo.com	(780) 431-1444		Adler Firestopping Ltd.
GOWLING LAFLEUR HENDERSON LLP 1400, 700 – 2 Street SW Calgary, Alberta T2P 4V5 Stephen Carter-Edwards stephen.carter- edwards@gowlings.com	(403) 292-9875	(403) 695-3475	Citywide Door & Hardware Inc.
PRECISION ALUMINUM MANUFACTURING LTD. #10, 5935 – 35 Street SE Calgary, Alberta T2C 2H1 Warren Moore	(403) 301-3790	(403) 301-3795	
KENNEDY AGRIOS LLP 1325 Manulife Place 10180-101 Street Edmonton, Alberta T5J 3S4 Ronald Haggett rhaggett@kennedyagrios.com	(780) 969-6900	(780)	Kordick Enterprises Ltd.
<b>THORNBOROUGH SMELTZ LLP</b> 630 11012 MacLeod Trail South Calgary, Alberta, T2J 6A5 Morris H. Smeltz morris@thornsmeltz.com	(403) 271-3221	(403) 271-6684	Cannex Contracting 2000 Inc.

• •

Counsel/Party	Telephone	Fax	Representing
<b>PEACOCK LINDER &amp; HALT LLP</b> 850, 607-8 Avenue SW Calgary, Alberta T2P 0A7	(403) 296-2280	(403) 296-2299	Nordstar Kitchens Ltd.
G. Stephen Panunto spanunto@plhlaw.ca			
BRYAN & COMPANY 1200, 645-7 Avenue SW Calgary, Alberta T2P 4G8	(403) 269-7220	(403) 269-9304	Domenico Fanelli
Ryan J. Lee Chee rjleechee@bryanco.com			
<b>PITTMAN MACISAAC &amp; ROY</b> 2600 West Tower, Sun Life Plaza 144-4 <sup>th</sup> Avenue SW Calgary, Alberta T2P 3N4	(403) 237-6566	(403) 237-6594	Distinctive Floors Ltd.
Shaun T. Macisaac stm@pmrlaw.ca			
MACLEOD DIXON LLP 3700 Canterra Tower 400 Third Avenue SW Calgary Alberta T2P 4H2	(403) 267-8142	(403) 264-5973	Unsecured Creditors
Kevin E. Barr barrk@macleoddixon.com			
<b>ROBERT SCHUETT PROFESSIONAL</b> <b>CORPORATION</b> 200, 602 11 Ave SW Calgary, Alberta T2R 1J8	(403) 705-1267	(403) 705-1265	Ridgeline Sheet Metal Inc. Peace Lutheran Church of Calgary
Adrianna Worman adrianna.worman@schuettlaw.com			759450 Alberta Ltd. o/a Interior Finishing
<b>TIRO CLARKE PROFESSIONAL</b> <b>CORPORATION</b> 301, 522 – 11th Avenue SW Calgary, Alberta T2R 0C8			Modern Industrial Rentals (1978) Ltd.

•

Counsel/Party	Telephone	Fax	Representing
RADKE LAW OFFICE 205, 5917 1A Street SW Calgary, Alberta T2H 0G4 Attn: Allan Radke aradke@radkeandassociates.com	(403) 252-4466	(403) 258-0695	On Track Excavating Ltd.
FIELD LAW LLP 604 – 1 <sup>st</sup> Street SW Calgary, AB T2P 1M6 Attn: Ian MacDonald, Q.C., C. imacdonald@fieldlaw.com			1050299 Alberta Ltd./Colrado Hilmer
CARRIE MASON Carrie_Mason@avivacanada.com	1-800-363-6330 ext 42493		
COAST WHOLESALE APPLIANCES LTD./COAST WHOLESALE APPLIANCES LP 6128 Centre Street SE Calgary, Alberta T2H 0C4			
<b>COMPLETE GENERAL</b> <b>CONTRACTING LTD.</b> 1031 Maitland Drive NE Calgary, Alberta T2A 5C6			
SERVUSCREDIT UNION LTD. Sunridge Branch c/o 601, 4901-48 Street Red Deer, Alberta T4N 6M4	(403) 343-0144	(403) 342-4547	
CANADIAN WESTERN BANK 6127 Barlow Trail SE Calgary, Alberta T2C 4W8	(403) 269-9882	(403) 269-9883	
WORKERS' COMPENSATION BOARD/COLLECTION UNIT 9925 – 107 Street, 8 <sup>th</sup> Floor Edmonton, Alberta T5J 2S5	(780) 498-3999	(780) 498-7871	
ALBERTA NEW HOME WARRANTY PROGRAM 301, 30 Springborough Blvd. SW Calgary, Alberta T3H 0N9			
NATALIE BRONSTEIN Unit 9, 64 Woodacres Crescent	(403) 225-6411		Purchaser

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Counsel/Party	Telephone	Fax	Representing
SW			
Calgary, Alberta T2V 4W6			
2 <sup>rd</sup> Flags 14505 Densister Dend			
3 <sup>rd</sup> Floor, 14505 Bannister Road SE			
Calgary, Alberta T2X 3J3			
Calgary, Alberta 12A 555			
JUDITH POOLE	(403) 617-2501	(403) 212-5870	Purchaser
1558 Lake Bonavista Drive SE			
Calgary, Alberta T2J 3H1			
judypoole@pereradevelopments.co			
m			
BEAUMONT CHURCH LLP	403 - 261-8340	264-0478	Agam Consulting &/or
300, 2912 Memorial Drive SE			nominee
Calgary, Alberta T2A 6R1			
Jamie Clark			D. 1
jamie.clark@beaumontchurch.com			Purchaser
BARINDER	······································		Purchaser
SANGHERA/JASWINDER			1 dronasor
SANGHERA			
c/o 1432 W. Hastings Street			
Vancouver, BC V6G 3J6			
c/o 638 Nicola Street			
Vancouver, BC V6G 3J5			
Douglas Soo			
coldwellcitycentre@gmail.com			
ALEX PIMENTEL/ADRIANA	(604) 408-0008		Purchaser
PIMENTEL			
c/o 1432 W. Hastings Street			
Vancouver, BC V6G 3J6			
c/o 638 Nicola Street			
Vancouver, BC V6G 3J5			
Douglas Soo			
coldwellcitycentre@gmail.com			
L			

, î N

Counsel/Party	Telephone	Fax	Representing
JINAH/MOHAMED 6325 E. Broadway Burnaby, BC V5B 2Y4 rjinah@uniserve.com	(604) 710-4555	(604) 437-7020	Purchaser
PHILIP SOO c/o 1432 W. Hastings Street Vancouver, BC V6G 3J6 Douglas Soo coldwellcitycentre@gmail.com	(604) 408-0008		Purchaser
CLECI BLAUTH c/o 1432 W. Hastings Street Vancouver, BC V6G 3J6 c/o 638 Nicola Street Vancouver, BC V6G 3J5 Douglas Soo coldwellcitycentre@gmail.com	(604) 408-0008		Purchaser
KARIM ALLIBHAI c/o 1432 W. Hastings Street Vancouver, BC V6G 3J6 c/o 638 Nicola Street Vancouver, BC V6G 3J5 Douglas Soo coldwellcitycentre@gmail.com	(604) 408-0008		Purchaser
MARILYN S. MEEK/DENIS M. MEEK 51, 2979 Panorama Drive Coquitlam, BC V3E 2W8 mmeek@shaw.ca	(604) 942-8787	(604) 942-8787	Purchaser

s }

Counsel/Party	Telephone	Fax	Representing
JANE O'NEIL/LUTHER CUTTS 11 Palomino Boulevard Calgary, Alberta T3Z 1B9 janelinden@hotmail.com	(403) 286-1989		Purchaser
DAVID MORRIS/PATRICIA	(403) 246-3150		Purchaser
MORRIS 147 Hawkmount Heights NW Calgary, Alberta T3G 3S4			
paw105@shaw.ca			
<b>BALRAJ SANGHERA</b> c/o 1432 W. Hastings Street Vancouver, BC V6G 3J6	(604) 408-0008		Purchaser
c/o 638 Nicola Street Vancouver, BC V6G 3J5			
Douglas Soo coldwellcitycentre@gmail.com			
DOUGLAS SOO/MARJAN MAZAHERI c/o 1432 W. Hastings Street Vancouver, BC V6G 3J6	(604) 408-0008		Purchaser
c/o 638 Nicola Street Vancouver, BC V6G 3J5			
remaxdsoo@gmail.com			
Douglas Soo coldwellcitycentre@gmail.com			
<b>ROSE ROBERTSON</b> 2578 Westhill Close West Vancouver, BC V7S 3E4	(604) 922-7673	(604) 922-7673	Purchaser
610granville@gmail.com			

•

Counsel/Party	Telephone	Fax	Representing
<b>DONALD J. ROBERTSON</b> 3107, 610 Granville Street Vancouver, BC V6C 3T3	(604) 922-7673	(604) 922-7673	Purchaser
2578 Westhill Close West Vancouver, BC V7S 3E4			
610granville@gmail.com			
TEMPO REAL ESTATE LTD. (OPERATING AS ROYAL LEPAGE BENCHMARK) 430, 7220 Fisher Street SE Calgary, Alberta T2H 2H8	(403) 253-1901	(403) 259-5580	Purchaser
clyall@royallepage.ca			
USHA MEHTA c/o 1432 W. Hastings Street Vancouver, BC V6G 3J6	(604) 408-0008		Purchaser
c/o 638 Nicola Street Vancouver, BC V6G 3J5			
Douglas Soo coldwellcitycentre@gmail.com			
HEMANSHU MEHTA c/o 1432 W. Hastings Street Vancouver, BC V6G 3J6	(604) 408-0008		Purchaser
c/o 638 Nicola Street Vancouver, BC V6G 3J5			
Douglas Soo coldwellcitycentre@gmail.com			
DON LAL PERERA	(403) 257-4564	(403) 257-4570	Purchaser
5 Mount Alberta View SE Calgary, Alberta T2Z 3G6	(403) 242-2138		
AKBAR MAZAHERI/ MANOUCHEHR TALEBIAN/ MANSOUR PAYAM c/o 1432 W. Hastings Street Vancouver, BC V6G 3J6	(604) 408-0008		Purchaser

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Counsel/Party	Telephone	Fax	Representing
c/o 638 Nicola Street Vancouver, BC V6G 3J5			
Douglas Soo			
coldwellcitycentre@gmail.com			
FRANK HENZLER	(403) 650-8400		Purchaser
102 - 1814 29th Avenue SW Calgary, Alberta T2T 1M8			
frankhenzler@hotmail.com			
MARIVIC PROTACIO			Purchaser
134 Everwillow Circle			
Calgary, Alberta T2Y 4V1			
mavictp@yahoo.ca			
YALETOWN INVESTMENTS		· · · · · · · · · · · · · · · · · · ·	Purchaser
1701, 1495 Richards Street Vancouver, BC V6Z 3E3			
ELAINE SEMKULEY/MYRON	(403) 251-1300	(403) 251-4679	Purchaser
<b>SEMKULEY</b> 288 Canterville Drive SW			
Calgary, Alberta T2W 3X2			
semkuley@gmail.com			
Rent-Me Storage Systems Inc.			
c/o Robb & Evenson Professional			
Corp 506, 933-17 Ave SW			
Calgary, Alberta T2T 5R6			
Calvin C. Robb			
1165767 ALBERTA LTD.			
212, 339-50 Ave SE Calgary, Alberta T2G 2B3			
Harold Coates			

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Counsel/Party	Telephone	Fax	Representing
FLASHINGS PLUS LTD.			
14856 Deer Run Dr. SE			
Calgary, Alberta T2V 5V3			
Clive Scott			
KOZMYK HOLDINGS/SHAW			Purchaser (Phase Two)
PROPERTIES			
C/O BARRY KOZMYK			
c/o Registered Office			
110, 7330 Fisher Street SE			
Calgary, Alberta T2H 2H8			
FROSTBITE HOLDINGS INC.			Purchaser (Phase Two)
14 Noble Court			
Port Moody, BC V3H 3Z5			
LAWRENCE W.			Purchaser (Phase Two)
SINKEY/MARGARET SINKEY			
2011 Christie Road NW			
Calgary, Alberta T2L 0V6			
<b>ROBERT VON OSTENFELD-SUSKE</b>			
P.O. Box 2321, Station "M"			
Calgary, Alberta T2P 2M6			
KATHLEEN DAVIS		-	
Kathleen S. Davis Professional			
Corporation			
kathleen@ksdavislaw.ca	(403) 543-8580		
FIRST CHOICE POST			
CONSTRUCTION CLEANING			
216 Stanley Avenue			
Okotoks, Alberta T1S 1M4			
Debbie Lorenz			
TINGLE MERRETT LLP		(403) 571-8008	Alcon Electrical Corp.
<b>D</b> OUGLAS V. ALLISON			
1250 Standard Life Building			
$639 - 5^{\text{th}}$ Ave. SW			
Calgary, AB T2P 0M9			
	(403) 441-1219		
dallison@tinglemerrett.com			
ALADEN PAINTING LTD.	(403) 238-9752		
311 Cantebury Drive SW		<u> </u>	

\* \*

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Counsel/Party	Telephone	Fax	Representing
Calgary, Alberta T2W 1H7			
Mazen Sanaoubar			
INLAND PIPE A DIVISION OF			
LEHIGH HANSON MATERIALS			
LTD.			
12640 Inland Way			
Edmonton, Alberta T5V 5K5			
Dennis Odding			
WENDY BOHN			
23 Sussex Crescent SW			
Calgary, Alberta T2W 0L4			
DAVISON WORDEN LLP			Great Shades Ltd.
$1710, 540 - 5^{\text{th}}$ Avenue SW			
Calgary, Alberta T2P 0M2			
Carl Hall			
Ryana K. Mather			
rmather@davisonworden.com			
COONEY'S TRUCKING LTD.			
409 Lakeside Greens Place			
Chestermere, Alberta T1X 1C6			
Chris Cooney			
MACS LANDSCAPING &			
CONCRETE			
194 Crystal Shores Drive			
Okotoks, Alberta T1S 2L1			
Chris Makowsky			
OMC RENOVATIONS			
329 – 2 <sup>nd</sup> Avenue, P.O. Box 34			
Cluny, Alberta T0J 0S0			
Orel R. Madden			
R. KIPP CRAIG			Morwest Crane Services
Craig Law LLP			
kipp@craiglaw.ca			

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