

COURT FILE NUMBER 1001-03215  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE 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 LP  
DOCUMENT AFFIDAVIT

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
Josef G.A. Krüger, Q.C.  
Borden, Ladner Gervais LLP  
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File No. 419391-000003



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**AFFIDAVIT OF MICHAEL WHEATLEY**

Sworn on November 12, 2010

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I, Michael Wheatley, the City of Calgary, in the Province of Alberta, SWEAR AND SAY THAT:

1. I am the Assistant Vice President in the Commercial Credit Department at First Calgary Savings & Credit Union Ltd. ("First Calgary") and I am presently involved in the administration of the accounts of Perera Shawnee Ltd. at First Calgary. As such I have personal knowledge of the matters and facts hereinafter deposed to, except where stated to be based on information and belief, and where so stated, I verily believe the same to be true.
2. On or about March 1, 2010 First Calgary commenced Action #1001-03215 (the "Action") against Perera Shawnee Ltd., Perera Development Corporation, Don L. Perera and Shiranie M. Perera. On the same day, First Calgary filed an application for the appointment of a Receiver and Manager of Perera Shawnee Ltd. and Perera Development Corporation (the "Receivership Application"). In support of the Receivership Application, I swore an Affidavit on February 26, 2010 (the "Wheatley Affidavit"). The Wheatley Affidavit was prepared and used solely for the purposes of the Receivership Application.
3. On March 3, 2010, the Honourable Madam Justice C.A. Kent granted a Consent Receivership Order, a copy of which is attached hereto marked as Exhibit "A" (the "Receivership Order"). Perera Shawnee Ltd., Perera Development Corporation and Don L. Perera consented to the Receivership Order.
4. On September 3, 2010 the Defendants filed a Statement of Defence. Perera Shawnee Ltd., Don L. Perera and Shiranie M. Perera purported to file a counterclaim against First Calgary and Deloitte & Touche LLP. A copy of the Statement of Defence and Counterclaim is attached hereto marked as Exhibit "B".
5. On November 9, 2010, the Defendants in the Action served a Statement of Defence and Amended Counterclaim on First Calgary's counsel, a copy of which is attached hereto marked as Exhibit "C".
6. Perera Shawnee Ltd. is in receivership and Don L. Perera, Shiranie M. Perera and Perera Shawnee Ltd. have not been given the consent of the Receiver or the Court to commence any counterclaims against First Calgary and Deloitte & Touche LP. On November 9, 2010 Perera Shawnee Ltd., Don L. Perera and Shiranie M. Perera served an application on First Calgary's counsel seeking advice and directions whether they are at liberty to pursue the counterclaims advanced in the Amended Counterclaim, alternatively seeking leave to be allowed to do so. A copy of the said Application is Exhibit "D".

- 7. On November 10, 2010 First Calgary's counsel sent a letter to the Defendants counsel, a copy of which is marked hereto as **Exhibit "E"**.
- 8. On November 10, 2010, First Calgary filed and served an application to strike out the Amended Counterclaim by Perera Shawnee Ltd., a copy of which application is attached hereto marked **Exhibit "F"**.
- 9. On November 10, 2010, First Calgary filed and served an application to strike out paragraph 38A of the Amended Counterclaim, a copy of which is attached hereto marked **Exhibit "G"**.
- 10. On November 10, 2010, Deloitte & Touche LP filed and served an application to strike out the Counterclaims against it by the individual defendants, Don L. Perera and Shiranie M. Perera, a copy of which application is attached hereto marked as **Exhibit "H"**.
- 11. On November 9, 2010 a Notice of Appointment was served on me, a copy of which is attached hereto and marked **Exhibit "I"**.
- 12. I make this Affidavit in support of an application by First Calgary pursuant to Rule 6.16(3) to resolve a dispute over the Defendants' right to question me on the Wheatley Affidavit.

SWORN BEFORE ME at Calgary, Alberta,  
 this 12 day of November, 2010.

\_\_\_\_\_  
 Commissioner for Oaths in and for the  
 Province of Alberta

**MATT LEMMENS**  
 Solicitor  
 \_\_\_\_\_  
 PRINT NAME AND EXPIRY/LAWYER  
 /STUDENT-AT-LAW

(Signature)

**Michael Wheatley**  
**AVP Commercial Credit**

(Print Name)

**THIS IS EXHIBIT "A"**  
referred to in the Affidavit of  
**MICHAEL WHEATLEY**  
Sworn before me this 12  
day of NOVEMBER, A.D. 2010.



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A Commissioner for Oaths in and  
for the PROVINCE of Alberta  
**MATT LEMMENS**  
Barrister & Solicitor

THE COURT OF QUEEN'S BENCH OF ALBERTA JUDICIAL  
DISTRICT OF CALGARY

BETWEEN:

FIRST CALGARY SAVINGS & CREDIT UNION LTD.

Plaintiff

-and -

PERERA SHAWNEE LTD., PERERA DEVELOPMENT CORPORATION, DON L.  
PERERA and SHIRANIE M. PERERA

Defendants

BEFORE THE HONOURABLE  
MADAM JUSTICE A. KENT  
IN CHAMBERS

) AT THE CALGARY COURTS CENTRE,  
) IN THE CITY OF CALGARY, IN THE  
) PROVINCE OF ALBERTA, ON,  
WEDNESDAY  
) THE 3RD DAY OF MARCH, 2010.

I hereby certify this to be a true copy of  
the original Order

Dated this 3 day of March 2010

[Signature]  
for Clerk of the Court

RECEIVERSHIP ORDER

UPON THE APPLICATION of First Calgary Savings & Credit Union Ltd. (the "Plaintiff") in respect of Perera Shawnee Ltd. and Perera Development Corporation (collectively, the "Debtor"); AND UPON having read the Notice of Motion, the Affidavit of Michael Wheatley (the "Wheatley Affidavit"); AND UPON reading the consent of Deloitte & Touche Inc. to act as receiver and manager of the Debtor ("Receiver"), filed; AND UPON being satisfied that all parties entitled to notice of the application for this Order under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("BIA") have been given such notice; AND UPON hearing counsel for the Plaintiff; IT IS HEREBY ORDERED THAT:

SERVICE

1. The time for service of the notice of application for this order is hereby abridged and service thereof is deemed good and sufficient.

## **APPOINTMENT**

2. Pursuant to section 243(1) of the BIA and section 13(2) of the *Judicature Act*, R.S.A. 2000, Deloitte & Touche Inc. (the "Receiver") is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to the Debtor's business, including all proceeds thereof (the "Property").

## **RECEIVER'S POWERS**

3. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
  - (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
  - (b) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
  - (c) to manage, operate and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part other business, or cease to perform any contracts of the Debtor;
  - (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties including, without limitation, those conferred by this Order;
  - (e) to purchase or lease machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
  - (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
  - (g) to settle, extend or compromise any indebtedness owing to or by the Debtor;
  - (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;

- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding, and provided further that nothing in this Order shall authorize the Receiver to defend or settle the action in which this Order is made unless otherwise directed by this Court.
- (k) to market any or all the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate.
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$250,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,and in each such case notice under subsection 60(8) of the *Personal Property Security Act*, R.S.A. 2000, c. P-7 shall not be required. Notwithstanding the foregoing, the Receiver shall be at liberty to close all Pending Sales (as defined in the Wheatley Affidavit), including to pay customary closing costs such as real estate commissions and legal costs associated with closing (collectively, the "Closing Costs"), without the approval of this Court. The sale proceeds from the Pending Sales, net of Closing Costs, shall be held by the Receiver and not distributed without further Order of this Court;
- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) to assign the Debtor into bankruptcy
- (t) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

- 4. (i) The Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependant on maintaining possession) to the Receiver upon the Receiver's request.
- 5. All Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure.



6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

7. No proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

8. No Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court, provided, however, that nothing in this Order shall prevent any Person from commencing a proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such proceeding is not commenced before the expiration of the stay provided by this paragraph 8.

#### **NO EXERCISE OF RIGHTS OF REMEDIES**

9. All rights and remedies (including, without limitation, set-off rights) against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH THE RECEIVER**

10. No Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court. Nothing in this Order shall prohibit any party to an "eligible financial contract" (as defined in section 11.1(1) of the *Companies' Creditors Arrangement Act*) with the Debtor from terminating such contract or exercising any rights of set-off, in accordance with its terms.

#### **CONTINUATION OF SERVICES**

11. All Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and this Court directs that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

#### **RECEIVER TO HOLD FUNDS**

12. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

#### **EMPLOYEES**

13. Subject to employees' rights to terminate their employment, all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) and 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1.

14. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

15. (a) Notwithstanding anything in any federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:
- (i) before the Receiver's appointment; or
  - (ii) after the Receiver's appointment unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.
- (b) Nothing in sub-paragraph (a) exempts a Receiver from any duty to report or make disclosure imposed by a law referred to in that sub-paragraph.
- (c) Notwithstanding anything in any federal or provincial law, but subject to sub-paragraph (a) hereof, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, the Receiver is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,
- (i) if, within such time as is specified in the order, within 10 days after the order is made if no time is so specified, within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, or during the period of the stay referred to in clause (ii) below, the Receiver:
    - A. complies with the order, or

- B. on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;
- (ii) during the period of a stay of the order granted, on application made within the time specified in the order referred to in clause (i) above, within 10 days after the order is made or within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, by,
  - A. the court or body having jurisdiction under the law pursuant to which the order was made to enable the Receiver to contest the order; or
  - B. the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or
- (iii) if the Receiver had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

Nothing in this Order shall derogate from the protection afforded to the Receiver by Section 14.06 of the BIA or any other applicable legislation.

#### **RECEIVER'S ACCOUNTS**

- 16. The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, including all fees and disbursements incurred by the Receiver pursuant to the Review Monitoring Agreement, as defined in the Wheatley Affidavit, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges, and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
- 17. The Receiver and its legal counsel shall pass their accounts from time to time.
- 18. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including the legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE RECEIVERSHIP**

19. The Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$3,000,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
20. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.
21. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.
22. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

#### ALLOCATION

23. Any interested party may apply to this Court on notice to any other party likely to be affected, for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the various assets comprising the Property.

#### GENERAL

24. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
25. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
26. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an

officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

27. The Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized outside Canada.
28. The Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.
29. Any interested party may apply to this Court to vary or amend this Order on not less than 7 days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

" A. Kent "

J.C.C.Q.B.A.

CONSENTED TO THIS 3 DAY OF MARCH, 2010

MCLEOD & COMPANY

Per: 

Shane King

Counsel for the Defendants, Perera Shawnee Ltd.,  
Perera Development Corporation, and Don L. Perera

ENTERED this 3 day of  
March, 2010  
K. MCAUSLAND 

Clerk of the Court

**SCHEDULE "A"**

**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that Deloitte & Touche Inc., the receiver and manager (the "Receiver") of the assets, undertakings and properties of Perera Shawnee Ltd. and Perera Development Corporation (collectively the "Debtor") acquired for, or used in relation to the Debtor's business, including all proceeds thereof (collectively the "Property"), appointed by Order of the Court of Queen's Bench of Alberta and Court of Queen's Bench of Alberta in Bankruptcy and Insolvency (collectively, the "Court") dated the 3<sup>rd</sup> day of March, 2010 (the "Order") made in action number \_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily] [monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at \*.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 2010.

Deloitte & Touche Inc., solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_  
Name:  
Title:



Action No.:

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IN THE COURT OF QUEEN'S BENCH  
OF ALBERTA

JUDICIAL DISTRICT OF CALGARY

---

BETWEEN:

**FIRST CALGARY SAVINGS & CREDIT  
UNION LTD.**

Plaintiff

-and -

**PERERA SHAWNEE LTD., PERERA  
DEVELOPMENT CORPORATION, DON L.  
PERERA and SHIRANIE M. PERERA**

Defendants

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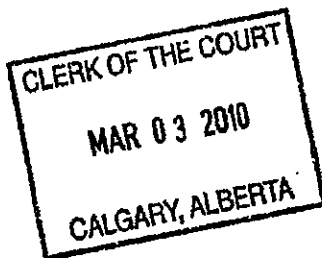
**RECEIVERSHIP ORDER**

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**BORDEN LADNER GERVAIS LLP**  
Barristers and Solicitors  
1000 Canterra Tower  
400 Third Avenue S.W.  
Calgary, Alberta T2P 4H2

Attention: Travis Lysak  
Telephone: (403) 232-9563  
Fax: (403) 266-1395

File No. 419391-000003



**THIS IS EXHIBIT "B"**  
**referred to in the Affidavit of**  
**MICHAEL WHEATLEY**  
**Sworn before me this 12**  
**day of NOVEMBER, A.D. 2010.**



**A Commissioner for Oaths in and**  
**for the Province of Alberta**

**MATT LEMMENS**  
**Barrister & Solicitor**

Action Number: 1001-03215

IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE OF CALGARY

BETWEEN:

FIRST CALGARY SAVINGS & CREDIT UNION LTD.

PLAINTIFF

and

PERERA SHAWNEE LTD., PERERA DEVELOPMENT CORPORATION, DON L.  
PERERA and SHIRANIE M. PERERA

DEFENDANTS

**STATEMENT OF DEFENCE OF PERERA SHAWNEE LTD., PERERA  
DEVELOPMENT CORPORATION, DON L. PERERA and SHIRANIE M. PERERA**

1. The Defendants admit paragraphs 1-4, and agree with the proposal contained in paragraph 50 of the Amended Statement of Claim.
2. Save as admitted hereafter, the Defendants deny each and every other allegation in the Amended Statement of Claim, and put the Plaintiff First Calgary Savings & Credit Union Ltd. to the strict proof thereof.
3. The Defendants adopt the terms as defined in the Amended Statement of Claim.
4. In direct response to the whole of the Amended Statement of Claim the Defendants state that at no time did they make false or misleading representations to First Calgary, expressed or implied, that in anyway misled First Calgary as to the nature of Project. At all material times First Calgary was fully informed as to the nature of the Project, the Defendant PSL's plans to develop the Project and the financial status of PSL and the Project. The Defendants specifically deny any allegation as alleged in the Amended

Statement of Claim or at all, that the Defendant PSL used advances from First Calgary for any other purpose than set out in the PSL Security and the Loan.

5. In further and direct response to the whole of Amended Statement of Claim the Defendants state that at all times the Defendant PSL developed the Project in a manner to be expected of a reasonable and competent developer and communicated at all times with First Calgary and its representatives in an honest and reasonable fashion to be expected by a Borrower in the circumstances of and pursuant to the obligations contained in the PSL Security.
6. In further and direct response to the whole of the Amended Statement of Claim the Defendants state if the Defendant, PSL was at any time prior to December of 2009 in default of its obligations under the PSL Security, which is not admitted but denied, then First Calgary either expressly or impliedly waived such defaults. Without restricting the generality of the foregoing First Calgary did on December 23<sup>rd</sup> and 24<sup>th</sup> 2009 advance to the Defendant PSL the approximate sum of \$992 000 on account of the Loans.
7. In further and direct response to the whole of the Amended Statement of Defence the Defendants state and the fact is that between December 21, 2009 and March 1, 2010 PSL paid to First Calgary the net proceeds of sale of 22 units of the Project in the total sum of \$8 563 275.00. The Defendants state that as at January 21, 2010 the Defendant PSL was not in default of any interest payments due on account of the Loan.
8. The Defendants did on September 1, 2010 serve on the Plaintiff a Demand for Particulars. This Statement of Defence is filed at the request of the Plaintiff and the Defendants have not in any waived its right to the requested particulars or its right to apply to amend its pleadings.
9. In specific response to Paragraph 20 of the Amended Statement of Claim the Defendants state that First Calgary is a sophisticated lender and that at all times,

including prior to the approval of the 2007 Commitment Letter, First Calgary was aware of the nature of the Project and the plans of PSL to develop the project.

#### **The Events of October, November and December 2009**

10. The Accident and events set out in paragraphs 17, 18 and 19 together with the downturn of the World economy in 2007 and 2008 caused delays in the development, completion and sales of the Project. Ongoing discussions between First Calgary and PSL resulted in the June 2009 Loan and Security. Regular and ongoing discussions and communications between the PSL and First Calgary took place through the summer and fall of 2009.
11. In late Fall of 2009 First Calgary and the Defendants were all aware that further capital would be required to finish the first tower of Phase I so as to permit the completion and sale of 70 condominium units of Phase I (the "Phase I Units") and so provide PSL the funds with which to repay the Loans. Discussions were ongoing through this period. In particular First Calgary and PSL were aware that prior to title issuing on the completed units it would be necessary to pay a Municipal Reserve Allowance to the City of Calgary. (the "Municipal Reserve").
12. Contrary to the allegations contained in paragraphs 24 to 30 of the Amended Statement of Claim the Defendants state and the fact is that over the months of November and December PSL and First Calgary worked collaboratively to develop a plan to recapitalize the Project, complete Phase I so as to permit the sale of Phase I Units to be sold and allow the repayment to First Calgary of the bulk of the Loan in the first half of 2010. In the result the Defendants and First Calgary agreed as follows:
  - a) The Defendants D. Perera and S. Perera would refinance the first mortgage on their personal residence (the "New Mortgage") and First Calgary would postpone the Personal Mortgage to the new Mortgage;

- b) All new money from the New Mortgage would be advanced to PSL to be used to pay the liabilities of PSL including the Municipal Reserve;
- c) In addition the Defendants D. Perera and S. Perera would advance the further sum of \$400 000 to PSL to pay the liabilities of PSL;
- d) First Calgary would advance a further loan of \$2 800 000 based on agreements not dissimilar to the July 2007 Loan and Security and the June 2009 Loan and Security;
- e) PSL would negotiate terms with its creditors and suppliers and First Calgary would advance funds to pay out the monies needed with respect to the terms negotiated;
- f) PSL would complete the pre-sold units in the Phase I tower, close with third party purchasers and pay the net proceeds of sale to First Calgary;
- g) PSL would make arrangements with a new lender to pay out First Calgary.

(the "Recapitalization Agreement")

13. Pursuant to the Recapitalization Agreement, as agreed:

- a) the Defendants D. Perera and S. Perera advanced \$1 488 000 (the "Perera November Advances") to PSL in the last week of November and First Calgary postponed the Personal Mortgage;
- b) The Defendant PSL used the Perera November Advances to pay out creditors, sub trades and the Municipal Reserve charges as agreed;

- c) PSL obtained occupancy permits and title to 54 of the 70 Phase I Units in the form of individual titles which could be transferred to third party purchasers;
  - d) PSL continued to spend funds, including the Perera November Advance required to complete the sale of units in the expectation that First Calgary would advance funds;
14. During the months of November and December of 2009 PSL, with the knowledge and consent of First Calgary, negotiated with its creditors and sub trades to work out payment programs based on payments to be made to them from the monies to be advanced pursuant to the Recapitalization Agreement. In particular PSL reached agreements with sub trades to wait for payment and not file builder's liens against the PSL Lands, it being understood by all concerned, including First Calgary that the PSL would have to be free of liens if the Phase I Units were to be sold to third party purchasers. In fact no liens or claims were filed against the PSL Lands prior to the issuance of the Statement of Claim in this action.
15. In the meantime, and only after the Perera November Advances First Calgary delayed committing to advancing monies under the Recapitalization Agreement. In December of 2009 the following occurred:
- a) PSL made a formal request for a further advance of \$2 800 000;
  - b) On December 18, 2010 D. Perera met at the site of the Project with the following individuals:
    - i) Vic Krueger of Deloitte & Touche-LLP. ;
    - ii) Bob Stemp, counsel for First Calgary;
    - iii) 3 Representatives of Credit Union Deposit Corporation;
    - iv) Michael Wheatley of First Calgary;

v) Ross Kaplan, counsel for the Defendants.

c) On December 21, 2009 First Calgary presented PSL with the December 2009 Commitment Letter; and

d) On December 22, 2009 First Calgary presented PSL with the Agreement of Intent.

16. PSL, PDC and D. Perera acknowledge that they executed the December 2009 Commitment Letter and the Agreement of Intent. S. Perera did not execute these Agreements. The three Defendants who executed the December 2009 Commitment Letter and the Agreement of Intent did so on the following understandings:

a) That First Calgary would advance approximately \$1 000 000.00 immediately on execution of same and would advance approximately \$900 000 in each of January and February of 2010 to pay sums committed by PSL to creditors and sub trades of PSL;

b) That First Calgary would proceed in good faith and assuming that the Defendants co-operated as contemplated in the December Agreements First Calgary would Advance further funds in January and February of 2010 so as to permit the Defendant PSL to comply with its agreements with creditors and sub trades.

c) The purpose of the appointment of Deloitte was to ensure that the representations made by PSL to First Calgary in the course of negotiating the Recapitalization Agreement were accurate;

d) That Deloitte would prepare a Report for First Calgary and PSL would be given an opportunity to respond;



- e) The Forbearance Agreement contemplated in the Agreement of Intent would fairly represent the terms of the Recapitalization Agreement including a commitment by First Calgary to advance a further \$1 800 000 pursuant to the December 2009 Commitment Letter;
  - f) The Defendant PSL would proceed to close as many pre sold units of the Phase I tower as it could and remit all net proceeds to First Calgary.
17. In accordance with the December 2009 Commitment Letter and the Recapitalization First Calgary advance approximately \$992 000 in three advances on the 23<sup>rd</sup> and 24<sup>th</sup> of December of 2009.

#### **The Events of January and February 2010**

- 18. In the months of January and December representatives of PSL held numerous meetings with representatives of First Calgary and Deloitte & Touche LLP ("Deloitte") and provided First Calgary and Deloitte with full disclosure of the financial status of PSL and the Project.
- 19. PSL, PDC and D. Perera entered into the Review Monitoring Agreement and supplied Deloitte with full disclosure and documentation with respect to every material inquiry made by Deloitte.
- 20. The Review Monitoring Agreement executed by PSL, First Calgary and Deloitte contemplated that Deloitte would prepare a report and that:

*"A draft of the factual sections of the report will be shown to the Company. The Company will have the opportunity to review the draft prior to the submission to the Lender and to provide comments thereon. Deloitte will ask the Company to confirm that the facts, as stated, are accurate in all material respects and that they are not aware of any material matters relevant which have been excluded."*

21. Notwithstanding the fact that PSL provided full disclosure to Deloitte, Deloitte did not, contrary to its obligations to First Calgary and the Defendants pursuant to the Review Monitoring Agreement provide PSL with a copy of its draft report and reported directly to First Calgary. Deloitte charged more than \$25 000.00 which was paid by First Calgary and charged to the account of PSL for a Report that it never delivered or shared with PSL.
22. What, if anything, Deloitte reported to First Calgary is unknown to the Defendants although it is reasonable to believe, based on a reading of Paragraph 38 of the Amended Statement of Claim, that Deloitte did report to First Calgary and that such report was false, misleading, incomplete or inadequate for the purposes set out in the Review Monitoring Agreement.
23. With respect to paragraph 38 of the Amended Statement of Claim the Defendants specifically deny that PSL failed to provide Deloitte with all the information it requested or that any failure on the part of PSL or any of the Defendants in any way hindered Deloitte from preparing a report for review by PSL or First Calgary. If Deloitte provided any report or information to First Calgary as alleged in the Amended Statement of Claim or at all it is in breach of its commitments to PSL to first provide a draft of such report to PSL as set out in Paragraph 20 herein.
24. With respect to paragraph 35 of the Amended Statement of Claim the Defendants admit that they did not execute a Forbearance Agreement. During January and February of 2010 several drafts and amendments of Forbearance Agreements (Collectively the "Forbearance Agreement") were exchanged between counsel for First Calgary and counsel for the Defendants. The Defendants state, and the fact is that it was reasonable, taking into account the terms of the Recapitalization Agreement, the December 2009 Commitment Letter and the Agreement of Intent.

25. In particular First Calgary refused to consider amending Clause 13 of the Forbearance Agreement prepared by its counsel which obliged all of the Defendants to agree as follows:

*13. All of the Obligations of the Lender, express or implied, pursuant to all previous agreements, restructuring arrangements, offers to finance and loan agreements with the Debtors are waived insofar as such obligations conflict with the terms of this Forbearance Agreement, and in particular, it is acknowledged by the Debtors that any obligation by the Lender to advance further loans to the Debtors have been or is hereby terminated.*

(the "Loan Termination Clause")

26. These Defendants state and the fact is that it was a reasonable and implied term of the December 2009 Commitment Letter and the Agreement of Intent that the Defendants would not be compelled under the terms of the Forbearance Agreement to agree to the Loan Termination Clause which would have terminated any obligation on the part of First Calgary to honour its obligations under the December Agreements and the Recapitalization Agreement. This was especially so given the other terms of the Forbearance Agreement and the December Agreements including the requirement that the Defendants consent to judgment against them.

#### **The Bad Faith of First Calgary**

27. At all material times First Calgary was aware that PSL had pre sales of Phase I Units. In November of 2009 First Calgary was fully aware of the financial circumstances of PSL and agreed to postpone the Personal Mortgage. At all times First Calgary was aware of Perera November Advance and the fact that the Perera November Advance was not enough money to finish Phase I without a further loan from First Calgary.
28. From December 21, 2009 to the March 1, 2010 when this claim was filed PSL paid \$8 563 275 to First Calgary on account of the Loan (the "PSL Loan

Payments"). At all times First Calgary insisted that all net proceeds from the 22 sales be paid to it and all net proceeds were paid to it in accordance with the agreements between First Calgary and the Defendants.

29. First Calgary limited its advances under the December loan to less than \$1000000 with the knowledge and expectation that this advance would permit PSL to close the sale of 22 pre sold Phase I units and make the PSL Loan Payments.
30. On March 1, 2010 there were no liens or financial encumbrances registered on the PSL Lands other than the First Calgary Security. The Defendants state and the fact is that on March 1, 2010 that if the PSL Loan Payments are applied to the in accordance with the Loan Agreements with PSL there was no interest outstanding and owing by the Defendant PSL as at January 21, 2010 or March 1, 2010.
31. On March 1, 2010 the Defendants collectively had not less than \$18 000 000.00 net equity investment, after payment of First Calgary and all creditors of the Project, in the PSL Lands and improvements.
32. These Defendants state and the fact is that in the months of October 2009 through to February of 2010 First Calgary, in its dealings with the Defendants, acted in bad faith, particulars of which include:
  - a) insisting that the Forbearance Agreement include the Loan Termination Clause knowing that the legal effect of the Loan Termination Clause would be to terminate the obligations of First Calgary under the December Loan;
  - b) allowing and encouraging the Perera November Advance to be made by the Defendants D. Perera and S. Perera knowing that such an advance would be insufficient to recapitalize the project as contemplated in the Recapitalization Agreement;

- c) failing to request and receive a report from Deloitte;
- d) failing to advance the funds under the December loan;
- e) failing to review the materials provided to it and Deloitte by the Defendant PSL in January and February of 2010;
- f) failing to take into account the devastating negative effect its failure to advance the December 2010 Loan in January and February would have on the future of the project;
- g) breaching its obligations to D. Perera and S. Perera under the terms of the Recapitalization Agreement and encouraging them to make the Perera November Advances when it knew, ought to have known or reasonably could have known that it would not advance sufficient funds to permit the project to continue;
- h) introducing Deloitte as a monitor when its true intention was to not advance any more funds under the December Loan but instead to take the PSL Loan Payment effectively choking off all funds from PSL all with the intention of appointing Deloitte as Receiver after the 22 sales contemplated for January and February were completed;
- i) refused to entertain any third party mezzanine or other financing proposal made by the Defendants.

33. The insistence by First Calgary that the Defendants enter into a Forbearance Agreement that contained the Termination Clause defeated the whole purpose of the Perera November Advances, the December Loan Agreement and the appointment of Deloitte as monitor which was to ensure the survival of the Project as a viable financial entity. It was included by First Calgary as an act of bad faith and contrary to the whole purpose of the agreements reached, orally

and verbally between First Calgary and the Defendants in November and December of 2009.

### **The Receivership**

34. On March 3, 2010 Deloitte was appointed by this Court as Receiver of the Defendants PSL and PDC. The Receivership will result in the realization on the assets of PSL. The Defendants state and the fact is that as at March 3, 2010 the fair market value of the assets over which Deloitte was appointed as Receiver exceeded \$45 000 000 and it can be reasonably anticipated that the result of the Receivership will be no deficiency owed by the Defendants as alleged or at all. It is reasonable and appropriate in the circumstances that no proceedings be permitted by this Court against the Defendants until the Receivership is completed and the deficiency on the Loans, if any, is crystallized.

**WHEREFOR THE DEFENDANTS PRAY THAT THE WITHIN ACTION BE  
DISMISSED WITH COSTS**

Action Number: 1001-03215

**IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE OF CALGARY**

**BETWEEN:****PERERA SHAWNEE LTD., DON. L. PERERA and SHIRANIE M. PERERA****PLAINTIFFS BY COUNTERCLAIM**

and

**FIRST CALGARY SAVINGS & CREDIT UNION LTD. and DELOITTE & TOUCHE  
LLP.****DEFENDANTS BY COUNTERCLAIM**

35. The Defendants/Plaintiffs by Counterclaim repeat and adopt the allegations and definitions set forth in the attached Statement of Defence.
36. As set out in the Statement of Defence the Defendants D. Perera and S. Perera advance to PSL the Perera November Advance in the sum of \$1 488 000.00 in good faith that First Calgary would work collaboratively to maximize the return for First Calgary and the Defendants from the PSL Lands and the improvements thereon.
37. The December Loan Agreement was more onerous than contemplated by the Defendants but nonetheless all of the Defendants other than S. Perera executed the December Loan Agreements including the December Commitment Letter and the Agreement of Intent. The Forbearance Agreement contained that Termination Agreement which was an act of bad faith insofar as it defeated the purpose of the December Loan Agreements and the Defendants refused to execute the Forbearance Agreement prepared by counsel for First Calgary.
38. In the result First Calgary claim that the Defendants defaulted under the December 2009 Agreements which they did not. They quite reasonable refused

to execute the Forbearance Agreement and the Agreements which were part of the Forbearance Agreement but they did, in all other respects, abide by and comply with the December 2009 Agreements.

39. As a result of the breaches by First Calgary of the Recapitalization Agreement and the December 2009 Agreements as set out herein and in the Statement of Defence the Defendants have suffered damage as follows:

- a) The Defendants D. Perera and S. Perera have lost or will lose the Perera November Advance in the sum of \$1 400 000;
- b) The Defendant PSL has or will lose its equity in the PSL Lands in the sum of not less than \$18 000 000;
- c) The Defendant PSL will lose future profits from the development of the PSL Lands in the sum of not less than \$40 000 000.00.

40. As a result of the breaches by Deloitte of the Review Monitoring Agreement as set out in the Statement of Defence the Defendants have suffered damage as follows:

- a) The Defendants D. Perera and S. Perera have lost or will lose the Perera November Advance in the sum of \$1 488 000.00;
- b) The Defendant PSL has or will lose its equity in the PSL Lands in the sum of not less than \$18 000 000.00;
- c) The Defendant PSL will lose future profits from the development of the PSL Lands in the sum of not less than \$40 000 000.00.

41. The Plaintiffs by Counterclaim propose that the trial of this Counterclaim proceed together with the trial of the Statement of Claim at the Calgary Courts Centre in the City of Calgary, Alberta.



**WHEREFORE THE PLAINTIFFS BY COUNTERCLAIM CLAIM AS AGAINST THE DEFENDANTS BY COUNTERCLAIM AS FOLLOWS:**

**A. The Defendants Don L. Perera and Shiranie M. Perera claim as against the Defendants jointly and severally:**

1. Judgment in the amount of \$1 488 000.00;
2. Interest;
3. Costs;
4. Such further and other relief as the Court may deem just.

**B. The Defendant Perera Shawnee Ltd. claims as against the Defendants jointly and severally:**

5. Judgment in the amount of \$ 18 000 000.00 or such other amount of equity in the PSL Lands as may be lost;
6. Judgment in the amount of \$40 000 000.00 for loss of profit from the future development of the PSL Lands;
7. Interest;
8. Costs;
9. Such further and other relief as the Court may deem just.

**DATED** at the City of Calgary, in the Province of Alberta, this 3<sup>rd</sup> day of September, 2010, **AND DELIVERED** by **JEFFREY D. POOLE**, Barrister and Solicitor, Solicitor the Plaintiffs by Counterclaim whose address for service in the care of said Solicitor at 126, 2526 Battleford Avenue S.W., Calgary, AB T3E 7J4.

**ISSUED** out of the office of the Clerk of the Court of Queen's Bench of Alberta, Judicial District of Calgary, this 3<sup>rd</sup> day of September, 2010,

Action No. 1001-03215

**THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL DISTRICT OF CALGARY**

**TO: Defendants by Counterclaim  
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UNION LTD. and DELOITTE &  
TOUCHE LLP,**

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CREDIT UNION LTD.**

**Plaintiff**

and

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M. PERERA**

**Defendants**

**AND BETWEEN:**

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PERERA**

**Plaintiffs by Counterclaim**

and

**FIRST CALGARY SAVINGS & CREDIT UNION LTD. and  
DELOITTE TOUCH LLP.**

**Defendants by Counterclaim**

**WARNING:** If you do not do both things within 15 days, you may automatically lose the lawsuit. The Plaintiffs by Counterclaim (Defendants) may get a Court judgment against you if you do not file, or do not give a copy to the PLAINTIFFS BY COUNTERCLAIM (DEFENDANTS), or do either thing late.

**STATEMENT OF DEFENCE AND COUNTERCLAIM  
OF PERERA SHAWNEE LTD., PERERA DEVELOPMENT  
CORPORATION, DON L. PERERA and SHIRANIE M.  
PERERA**

Jeffrey D. Poole  
#126-2526 Battleford Ave S.W.  
Calgary, AB T3E 7J4  
Telephone: (403) 685-2012  
Telecopier: (403) 284-3693  
jdpool@poolerlawyer.com

CLERK OF THE COURT  
SEP 01 2010  
CALGARY, ALBERTA

**THIS IS EXHIBIT "C"**  
**referred to in the Affidavit of**  
**MICHAEL WHEATLEY**  
**Sworn before me this 12**  
**day of NOVEMBER, A.D. 2010.**



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**A Commissioner for Oaths in and  
for the Province of Alberta**

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CLERK OF THE COURT

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NOV - 8 2010

CALGARY, ALBERTA

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a) That First Calgary would advance approximately \$1 000 000.00 immediately on execution of same and would advance approximately \$900 000 in each of January and February of 2010 to pay sums committed by PSL to creditors and sub trades of PSL;

b) That First Calgary would proceed in good faith and assuming that the Defendants co-operated as contemplated in the December Agreements First Calgary would Advance further funds in January and February of 2010 so as to permit the Defendant PSL to comply with its agreements with creditors and sub trades.

c) The purpose of the appointment of Deloitte was to ensure that the representations made by PSL to First Calgary in the course of negotiating the Recapitalization Agreement were accurate;

d) That Deloitte would prepare a Report for First Calgary and PSL would be given an opportunity to respond;

- e) The Forbearance Agreement contemplated in the Agreement of Intent would fairly represent the terms of the Recapitalization Agreement including a commitment by First Calgary to advance a further \$1 800 000 pursuant to the December 2009 Commitment Letter;
- f) The Defendant PSL would proceed to close as many pre sold units of the Phase I tower as it could and remit all net proceeds to First Calgary.

17. In accordance with the December 2009 Commitment Letter and the Recapitalization First Calgary advance approximately \$992 000 in three advances on the 23<sup>rd</sup> and 24<sup>th</sup> of December of 2009.

#### **The Events of January and February 2010**

18. In the months of January and December representatives of PSL held numerous meetings with representatives of First Calgary and Deloitte & Touche LLP ("Deloitte") and provided First Calgary and Deloitte with full disclosure of the financial status of PSL and the Project.
19. PSL, PDC and D. Perera entered into the Review Monitoring Agreement and supplied Deloitte with full disclosure and documentation with respect to every material inquiry made by Deloitte.
20. The Review Monitoring Agreement executed by PSL, First Calgary and Deloitte contemplated that Deloitte would prepare a report and that:

"A draft of the factual sections of the report will be shown to the Company. The Company will have the opportunity to review the draft prior to the submission to the Lender and to provide comments thereon. Deloitte will ask the Company to confirm that the facts, as stated, are accurate in all material respects and that they are not aware of any material matters relevant which have been excluded."

21. Notwithstanding the fact that PSL provided full disclosure to Deloitte, Deloitte did not, contrary to its obligations to First Calgary and the Defendants pursuant to the Review Monitoring Agreement provide PSL with a copy of its draft report and reported directly to First Calgary. Deloitte charged more than \$25 000.00 which was paid by First Calgary and charged to the account of PSL for a Report that it never delivered or shared with PSL.
22. What, if anything, Deloitte reported to First Calgary is unknown to the Defendants although it is reasonable to believe, based on a reading of Paragraph 38 of the Amended Statement of Claim, that Deloitte did report to First Calgary and that such report was false, misleading, incomplete or inadequate for the purposes set out in the Review Monitoring Agreement.
23. With respect to paragraph 38 of the Amended Statement of Claim the Defendants specifically deny that PSL failed to provide Deloitte with all the information it requested or that any failure on the part of PSL or any of the Defendants in any way hindered Deloitte from preparing a report for review by PSL or First Calgary. If Deloitte provided any report or information to First Calgary as alleged in the Amended Statement of Claim or at all it is in breach of its commitments to PSL to first provide a draft of such report to PSL as set out in Paragraph 20 herein.
24. With respect to paragraph 35 of the Amended Statement of Claim the Defendants admit that they did not execute a Forbearance Agreement. During January and February of 2010 several drafts and amendments of Forbearance Agreements (Collectively the "Forbearance Agreement") were exchanged between counsel for First Calgary and counsel for the Defendants. The Defendants state, and the fact is that it was reasonable, taking into account the terms of the Recapitalization Agreement, the December 2009 Commitment Letter and the Agreement of Intent.

25. In particular First Calgary refused to consider amending Clause 13 of the Forbearance Agreement prepared by its counsel which obliged all of the Defendants to agree as follows:

13. All of the Obligations of the Lender, express or implied, pursuant to all previous agreements, restructuring arrangements, offers to finance and loan agreements with the Debtors are waived insofar as such obligations conflict with the terms of this Forbearance Agreement, and in particular, it is acknowledged by the Debtors that any obligation by the Lender to advance further loans to the Debtors have been or is hereby terminated.

(the "Loan Termination Clause")

26. These Defendants state and the fact is that it was a reasonable and implied term of the December 2009 Commitment Letter and the Agreement of Intent that the Defendants would not be compelled under the terms of the Forbearance Agreement to agree to the Loan Termination Clause which would have terminated any obligation on the part of First Calgary to honour its obligations under the December Agreements and the Recapitalization Agreement. This was especially so given the other terms of the Forbearance Agreement and the December Agreements including the requirement that the Defendants consent to judgment against them.

#### **The Bad Faith of First Calgary**

27. At all material times First Calgary was aware that PSL had pre sales of Phase I Units. In November of 2009 First Calgary was fully aware of the financial circumstances of PSL and agreed to postpone the Personal Mortgage. At all times First Calgary was aware of Perera November Advance and the fact that the Perera November Advance was not enough money to finish Phase I without a further loan from First Calgary.
28. From December 21, 2009 to the March 1, 2010 when this claim was filed PSL paid \$8 563 275 to First Calgary on account of the Loan (the "PSL Loan

Payments"). At all times First Calgary insisted that all net proceeds from the 22 sales be paid to it and all net proceeds were paid to it in accordance with the agreements between First Calgary and the Defendants.

29. First Calgary limited its advances under the December loan to less than \$10000000 with the knowledge and expectation that this advance would permit PSL to close the sale of 22 pre sold Phase I units and make the PSL Loan Payments.
30. On March 1, 2010 there were no liens or financial encumbrances registered on the PSL Lands other than the First Calgary Security. The Defendants state and the fact is that on March 1, 2010 that if the PSL Loan Payments are applied to the in accordance with the Loan Agreements with PSL there was no interest outstanding and owing by the Defendant PSL as at January 21, 2010 or March 1, 2010.
31. On March 1, 2010 the Defendants collectively had not less than \$18 000 000.00 net equity investment, after payment of First Calgary and all creditors of the Project, in the PSL Lands and improvements.
32. These Defendants state and the fact is that in the months of October 2009 through to February of 2010 First Calgary, in its dealings with the Defendants, acted in bad faith, particulars of which include:
  - a) insisting that the Forbearance Agreement include the Loan Termination Clause knowing that the legal effect of the Loan Termination Clause would be to terminate the obligations of First Calgary under the December Loan;
  - b) allowing and encouraging the Perera November Advance to be made by the Defendants D. Perera and S. Perera knowing that such an advance would be insufficient to recapitalize the project as contemplated in the Recapitalization Agreement;

- c) failing to request and receive a report from Deloitte;
- d) failing to advance the funds under the December loan;
- e) failing to review the materials provided to it and Deloitte by the Defendant PSL in January and February of 2010;
- f) failing to take into account the devastating negative effect its failure to advance the December 2010 Loan in January and February would have on the future of the project;
- g) breaching its obligations to D. Perera and S. Perera under the terms of the Recapitalization Agreement and encouraging them to make the Perera November Advances when it knew, ought to have known or reasonably could have known that it would not advance sufficient funds to permit the project to continue;
- h) introducing Deloitte as a monitor when its true intention was to not advance any more funds under the December Loan but instead to take the PSL Loan Payment effectively choking off all funds from PSL all with the intention of appointing Deloitte as Receiver after the 22 sales contemplated for January and February were completed;
- i) refused to entertain any third party mezzanine or other financing proposal made by the Defendants.

33. The insistence by First Calgary that the Defendants enter into a Forbearance Agreement that contained the Termination Clause defeated the whole purpose of the Perera November Advances, the December Loan Agreement and the appointment of Deloitte as monitor which was to ensure the survival of the Project as a viable financial entity. It was included by First Calgary as an act of bad faith and contrary to the whole purpose of the agreements reached, orally

and verbally between First Calgary and the Defendants in November and December of 2009.

**The Receivership**

34. On March 3, 2010 Deloitte was appointed by this Court as Receiver of the Defendants PSL and PDC. The Receivership will result in the realization on the assets of PSL. The Defendants state and the fact is that as at March 3, 2010 the fair market value of the assets over which Deloitte was appointed as Receiver exceeded \$45,000,000 and it can be reasonably anticipated that the result of the Receivership will be no deficiency owed by the Defendants as alleged or at all. It is reasonable and appropriate in the circumstances that no proceedings be permitted by this Court against the Defendants until the Receivership is completed and the deficiency on the Loans, if any, is crystallized.

**WHEREFOR THE DEFENDANTS PRAY THAT THE WITHIN ACTION BE  
DISMISSED WITH COSTS**

IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE OF CALGARY

BETWEEN:

PERERA SHAWNEE LTD., DON. L. PERERA and SHIRANIE M. PERERA

PLAINTIFFS BY COUNTERCLAIM

and

AMENDED this <sup>8th</sup> FIRST CALGARY SAVINGS & CREDIT UNION LTD. and DELOITTE & TOUCHE  
November, 2010 Pursuant to LLP.

Rule 3.62  
dated the 8 day of November 2010

DEFENDANTS BY COUNTERCLAIM

AMENDED COUNTERCLAIM

~~CLERK OF THE COURT~~

- 35. The Defendants/Plaintiffs by Counterclaim repeat and adopt the allegations and definitions set forth in the attached Statement of Defence.
- 36. As set out in the Statement of Defence the Defendants D. Perera and S. Perera advanced to PSL the Perera November Advance in the sum of \$1 488 000.00 in good faith that First Calgary would work collaboratively to maximize the return for First Calgary and the Defendants from the PSL Lands and the improvements thereon.
- 37. The December Loan Agreement was more onerous than contemplated by the Defendants but nonetheless all of the Defendants other than S. Perera executed the December Loan Agreements including the December Commitment Letter and the Agreement of Intent. Attached to the December Agreement was a letter addressed to PSL dated December 21, 2009 from Robert Stemp of the law firm Borden Ladner Gervais ("BLG"), Counsel to First Calgary (the "BLG Letter"). The BLG Letter outlined the conditions of the Forbearance Agreement. The Forbearance Agreement prepared by BLG contemplated forbearance by First



Calgary in the exercise of its rights and remedies with respect to PSL until September 30, 2010 and contained an acknowledgement that First Calgary:

"acknowledges that many condominium units which make up the PSL Security are closing, and continue to close, and further acknowledges that proceeds are being remitted to the Lender when and as required"

37 A Paragraph 13 of the Forbearance Agreement prepared by BLG contains a provision whereby the obligations of First Calgary to advance further funds in accordance with the December Loan Agreement were terminated.

---

38. In the result First Calgary claim that the Defendants defaulted under the December 2009 Agreements which they did not. They quite reasonable refused to execute the Forbearance Agreement and the Agreements which were part of the Forbearance Agreement but they did, in all other respects, abide by and comply with the December 2009 Agreements.

38A From late December of 2009 to and including the date of the commencement of this action, Assistant Vice President of the Credit Department of First Calgary Michael Wheatley ("Wheatley") was the Officer of First Calgary in charge of instructing BLG and the administration and conduct of First Calgary relating to the loans which are the subject of these proceedings. Wheatley, as the Officer of First Calgary, was privy to and knowledgeable in all respects of the conduct of the Defendants in complying with the terms of the December Agreement and the Review Monitoring Agreement. Wheatley swore an Affidavit on February 26, 2010 (the "Wheatley Affidavit") which was subsequently filed in this Action. The Plaintiffs by Counterclaim state and the fact is that the Wheatley Affidavit contains materially false statements including but not limited to portions of the statements contained in paragraphs 26, 27, 28, 29, 30, 33, 34, 35, 36, 37, 38, 39, 40 and 42.

39. As a result of the breaches by First Calgary of the Recapitalization Agreement and the December 2009 Agreements as set out herein and in the Statement of Defence the Defendants have suffered damage as follows:

- a) The Defendants D. Perera and S. Perera have lost or will lose the Perera November Advance in the sum of \$1 400 000;
- aa) The Defendants D. Perera and S. Perera have lost or will lose their equity and shareholder loans due to them from PSL and PDC in the sum of not less than \$18 000 000;
- b) The Defendant PSL has or will lose its equity in the PSL Lands in the sum of not less than \$18 000 000;
- c) The Defendant PSL will lose future profits from the development of the PSL Lands in the sum of not less than \$40 000 000.00.

39A The Plaintiffs by Counterclaim state and the fact is that in addition to breaching its contractual obligations under the Review Monitoring Agreement Deloitte negligently carried out those obligations by:

- a) Failing to review the material provided by PSL in a manner to be expected of a reasonably competent Monitor carrying on business in the City of Calgary, Alberta;
- b) Failing to reasonably interpret the material provided by PSL and reaching conclusions that were demonstrably wrong and misleading;

39B The Plaintiffs by Counterclaim state and the fact is that in addition to their negligence and their breaching its contractual obligations under the Review Monitoring Agreement Deloitte breached its fiduciary obligations to the Plaintiffs by Counterclaim by:

- a) Preferring their own interest to the interest of the Plaintiffs by Counterclaim and urging First Calgary to appoint Deloitte & Touche Inc. as Receiver in this action rather than providing First Calgary and the Plaintiffs by Counterclaim with the reporting contemplated in the Monitoring Agreement;
- b) Failing to disclose to First Calgary and the Plaintiffs by Counterclaim that Deloitte & Touche LLP did not have the competence or professional credentials to act as Receiver of PSL and PDC in a manner that could reasonably realize the value of the assets of those companies.

40. As a result of the breaches by Deloitte of the Review Monitoring Agreement, the negligence of Deloitte and the breaches of fiduciary obligation of Deloitte as set out in the Statement of Defence and in this Amended Counterclaim the Plaintiffs by Counterclaim have suffered damage as follows:

- a) The Defendants D. Perera and S. Perera have lost or will lose the Perera November Advance in the sum of \$1 488 000.00;
- aa) The Defendants D. Perera and S. Perera have lost or will lose their equity and shareholder loans due to them from PSL and PDC in the sum of not less than \$18 000 000;
- b) The Defendant PSL has or will lose its equity in the PSL Lands in the sum of not less than \$18 000 000.00;
- c) The Defendant PSL will lose future profits from the development of the PSL Lands in the sum of not less than \$40 000 000.00.

41. The Plaintiffs by Counterclaim propose that the trial of this Counterclaim proceed together with the trial of the Statement of Claim at the Calgary Courts Centre in the City of Calgary, Alberta.

**WHEREFORE THE PLAINTIFFS BY COUNTERCLAIM CLAIM AS AGAINST THE DEFENDANTS BY COUNTERCLAIM AS FOLLOWS:**

- A. The Defendants Don L. Perera and Shiranie M. Perera claim as against the Defendants jointly and severally:**

1. Judgment in the amount of \$1 488 000.00;

1A. Judgment in the sum of \$18 000 000.00;

2. Interest;

3. Costs;

4. Such further and other relief as the Court may deem just.

- B. The Defendant Perera Shawnee Ltd. claims as against the Defendants jointly and severally:**

5. Judgment in the amount of \$ 18 000 000.00 or such other amount of equity in the PSL Lands as may be lost;

6. Judgment in the amount of \$40 000 000.00 for loss of profit from the future development of the PSL Lands;

7. Interest;

8. Costs;

9. Such further and other relief as the Court may deem just.

**DATED** at the City of Calgary, in the Province of Alberta, this 3<sup>rd</sup> day of September, 2010, **AND DELIVERED** by **JEFFREY D. POOLE**, Barrister and Solicitor,

Solicitor the Plaintiffs by Counterclaim whose address for service in the care of said  
Solicitor at 126, 2526 Battleford Avenue S.W., Calgary, AB T3E 7J4.

**ISSUED** out of the office of the Clerk of the Court of Queen's Bench of Alberta,  
Judicial District of Calgary, this 3<sup>rd</sup> day of September, 2010.

Action No. 1001-03215

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THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL DISTRICT OF CALGARY

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**TO: Defendants by Counterclaim**  
**FIRST CALGARY SAVINGS & CREDIT**  
**UNION LTD. and DELOITTE &**  
**TOUCHE LLP,**

**BETWEEN:**

**FIRST CALGARY SAVINGS &**  
**CREDIT UNION LTD.**

**Plaintiff**

and

**PERERA SHAWNEE LTD., DON L. PERERA and SHIRANIE**  
**M. PERERA**

**Defendants**

**AND BETWEEN:**

**PERERA SHAWNEE LTD., PERERA DEVELOPMENT**  
**CORPORATION, DON L. PERERA and SHIRANIE M.**  
**PERERA**

**Plaintiffs by Counterclaim**

and

**FIRST CALGARY SAVINGS & CREDIT UNION LTD. and**  
**DELOITTE TOUCH LLP.**

**Defendants by Counterclaim**

You have been sued. You are a Defendant by Counterclaim. You have only ~~35~~ <sup>20</sup> days to file and serve a Statement of Defence to Counterclaim or Demand of Notice. You or your lawyer must file your Statement of Defence to Counterclaim or Demand of Notice in the office of the Clerk of the Court of Queen's Bench in CALGARY, Alberta. You or your lawyer must also leave a copy of your Statement of Defence to Counterclaim or Demand of Notice at the address for service for the Plaintiffs by Counterclaim named in this Statement of Defence and Counterclaim.

**WARNING:** If you do not do both things within ~~35~~ <sup>20</sup> days, you may automatically lose the lawsuit. The Plaintiffs by Counterclaim (Defendants) may get a Court judgment against you if you do not file, or do not give a copy to the PLAINTIFFS BY COUNTERCLAIM (DEFENDANTS), or do either thing late.

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**STATEMENT OF DEFENCE AND AMENDED**  
**COUNTERCLAIM OF PERERA SHAWNEE LTD.,**  
**PERERA DEVELOPMENT CORPORATION, DON L.**  
**PERERA and SHIRANIE M. PERERA**

---

Jeffrey D. Poole  
#126-2526 Battleford Ave S.W.  
Calgary, AB T3E 7J4  
Telephone: (403) 685-2012  
Telecopier: (888) 747-7569  
jdp@poolelawyer.com

**THIS IS EXHIBIT "D"**  
**referred to in the Affidavit of**  
**MICHAEL WHEATLEY**  
**Sworn before me this 12**  
**day of NOVEMBER, A.D. 2010.**



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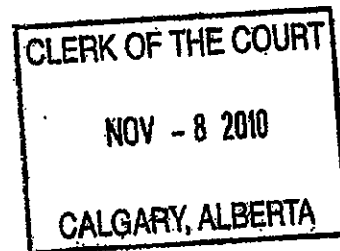
**A Commissioner for Oaths in and**  
**for the Province of Alberta**

**MATTI LEMMENS**  
**Barrister & Solicitor**

**Form 27**

**[Rule 6.3]**

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  
(APPLICANTS) SHIRANIE M. PERERA

DEFENDANTS BY COUNTERCLAIM FIRST CALGARY SAVINGS & CREDIT UNION  
(RESPONDENTS) LTD. and DELOITTE & TOUCHE LLP

DOCUMENT: APPLICATION BY PERERA SHAWNEE LTD., DON L. PERERA  
and SHIRANIE PERERA, DEFENDANTS / PLAINTIFFS BY  
COUNTERCLAIM

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS DOCUMENT

Jeffrey D. Poole  
Barrister and Solicitor  
#126, 2526 Battleford Ave S.W.  
Calgary, AB T3E 7J4  
[jdpoole@jpoolelawyer.com](mailto:jdpoole@jpoolelawyer.com)  
Phone 403 685 2012  
Fax 888 747 7569



**NOTICE TO RESPONDENTS (S)**

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 do it.

**Remedy claimed or sought:**

1. The Applicants seek advice and directions respecting the Receivership Order granted by Madame Justice A. Kent in these proceedings on March 3, 2010 (the "Receivership Order") on the following issues:
  - a. The question of whether the Receivership Order allows the individual defendants and directors of the Perera Corporations from retaining, at their expense, counsel to act for the Perera Corporations to file pleadings and otherwise on behalf in this action; and
  - b. The question of whether the Receivership Order allows Perera Shawnee Ltd. to file the Amended Counterclaim it has filed without leave of this Court.
2. If this Court should find that leave is required before the Perera Corporations may file the Amended Counterclaim, the Applicants seek an Order that this Court grant the Perera Corporations leave to file the pleadings that they have filed in this Action.
3. Such further and other relief that the Applicants may seek and this Honourable Court may deem just.

**Grounds for making this application:**

4. The Plaintiff commenced this action seeking, *inter alia*, judgment against the Defendants including the Perera Corporations;
5. On March 3, 2010 Justice A. Kent granted the Receivership Order;

6. On September 3, 2010 the Defendants filed a Statement of Defence and Counterclaim including a Counterclaim against the Plaintiff and Deloitte Touche LLP.
7. On November 8, 2010 the Plaintiffs by Counterclaim filed an Amended Counterclaim.
8. Counsel for the Receiver Deloitte and Touche Inc. has advised counsel for the Defendants that the Perera Companies may require leave of this court to file pleadings in this action pursuant to the terms of the Receivership Order.
9. The Parties have agreed that it is appropriate that application be made to this Honourable Court for advice and Directions on these issues.

**Material or evidence to be relied upon:**

10. The Applicants will be relying on the following materials or evidence:
  - a. the Pleadings in this action;
  - b. the Receivership Order of March 3, 2010;
  - c. the Demand for Particulars filed September 1, 2010;
  - d. the Reply to Demand for Particulars dated September 8, 2010;
  - e. the Affidavit of Michael Wheatley sworn February 26, 2010 (the "Wheatley Affidavit");
  - f. a Cross Examination of Michael Wheatley on the Wheatley Affidavit;  
and
  - g. the Costs Undertaking of D. Perera.

**Applicable Acts and Regulations:**

11. The Applicants will be relying on the following Acts and Regulations:
- a. *Judicature Act*, R.S.A. 2000, c. J-2, s. 8; and
  - b. Such further and other materials as counsel for the Applicants may advise and this Honourable Court may allow.

**How the application is proposed to be heard or considered:**

12. The Applicants propose that this Application be heard at a full day special scheduled before Madame Justice Kent commencing at 10 am on Monday December 20, 2010.

**NOTICE TO THE RESPONDENTS:**

You have the right to state your side of this matter before Justice Kent. To do so, you must be in court when the application is heard as shown below:

|        |                             |
|--------|-----------------------------|
| Date   | Monday, December 20, 2010   |
| Time   | 10 AM                       |
| Where  | The Courthouse, Calgary, AB |
| Before | Madame Justice Kent         |

**WARNING:**

If you do not come to Court either in person or by your lawyer, the Court may give the Applicants what they want in your absence. You will be bound by any order that the Court makes. 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 application is heard or considered, you must reply by giving reasonable notice of the material to the Applicants.

**THIS IS EXHIBIT "E"**  
**referred to in the Affidavit of**  
**MICHAEL WHEATLEY**  
**Sworn before me this 12**  
**day of NOVEMBER, A.D. 2010.**



---

**A Commissioner for Oaths in and**  
**for the Province of Alberta**  
**MATTI LEMMENS**  
**Barrister & Solicitor**

JOSEF G.A. KRÜGER, Q.C.  
T 403-232-8563  
F 403-268-1385  
jkruger@blg.com  
File no. 419391.000003

Borden Ladner Gervais LLP  
Centennial Place, East Tower  
1800, 520 - 3rd Ave S.W.  
Calgary, AB, Canada T2P 0R3  
T 403.232.9500  
F 403.268.1385  
blg.com



November 9, 2010

Jeffrey D. Poole  
#126 - 2526 Battleford Avenue S.W.  
Calgary, AB T3E 7J4

Dear Mr. Poole:

**Re: First Calgary Savings & Credit Union Ltd. ("First Calgary") v. Perera Shawnee Ltd., Perera Development Corporation, Don L. Perera and Shiranie M. Perera QB action no. 1001-03215 (the "Action")**

As you know, we represent First Calgary and Deloitte & Touche LP ("Deloitte").

We have received your email dated November 9, 2010 to which was attached an Amended Counterclaim filed November 8, 2010, an application by your clients for "advice and directions" and an unsigned draft undertaking as to costs by Mr. Don Perera.

The Statement of Defence has been filed on behalf of all of the defendants, including the corporate defendants, Perera Shawnee Ltd. ("PSL") and Perera Development Corporation (the "Corporate Defendants"). The Amended Counterclaim purports to have been filed on behalf of PSL and the individual defendants Don Perera and Shiranie Perera (the "Individual Defendants"). Our clients do not take issue with the ability of the Board of Directors of the Corporate Defendants causing the Corporate Defendants to defend the Action. Our clients don't take issue with the standing of the Individual Defendants to pursue counterclaims against our clients (subject of course to such counterclaims disclosing reasonable claims, which is not conceded to be the case). Our clients do however take issue with the standing of the Individual Defendants to cause PSL to pursue the counterclaims purportedly reflected in the Amended Counterclaim. Such counterclaims form part of the "Property" (as defined in the Receivership Order) of PSL, which claims are vested in the Receiver. The Individual Defendants can only cause PSL to pursue such counterclaims with leave of the Court and upon proper conditions. Our clients will therefore oppose the application by the Defendants for leave to be granted to PSL to pursue the purported counterclaims.

The counterclaims purportedly filed on behalf of PSL are improper, constitute an abuse of process, and is an irregularity. Accordingly, the Amended Counterclaim, to the extent that it purports to contain counterclaims by PSL, falls to be struck out, and our clients will apply for an order pursuant to Rule 3.68.

Our clients take the position that unless and until the Court grants leave to PSL to pursue the alleged counterclaims, PSL has no standing in the Action and it is not entitled to invoke the Alberta Rules of Court for any purpose other than to make application for leave to pursue the alleged counterclaims.

We notice your clients' intention stated in the application for advice and directions to cross examine Michael Wheatley on his Affidavit sworn February 26, 2010. Mr. Wheatley's affidavit was sworn and filed in support of the application for the Receivership Order. The Corporate Defendants and Mr. Don Perera consented to the Receivership Order, and your clients are not entitled to question Mr. Wheatley on that affidavit. First Calgary will not make Mr. Wheatley available to be questioned on his affidavit, unless ordered to do so by the Court.

Regarding the costs undertaking of Mr. Don Perera to be provided, please provide as soon as possible evidence to our clients that Mr. Don Perera has the financial wherewithal to pay the costs of the Action should the defendants be unsuccessful in the Action. We require sight of Mr. Don Perera's Income Tax Returns for 2009, his latest financial statements, and a Statutory Declaration disclosing all his assets. As you know Mr. Don Perera is obliged to provide a Statutory Declaration to First Calgary, and we refer you in this regarding to our earlier letter attached hereto.

We notice your demand for a Statement of Defence to the Amended Counterclaim of the Individual Defendants by no later than November 30, 2010. First Calgary will file such a Statement of Defence to the Amended Counterclaim of the Individual Defendants, but Deloitte intend filing an application to also be heard on December 20, 2010 to strike the claims by the Individual Defendants against Deloitte. We suggest that in the circumstances the Individual Defendants agree that Deloitte need not file a Statement of Defence to the Amended Counterclaim of the Individual Defendants until a reasonable period after the December 20, 2010 applications have been heard and decided.

Paragraph 38A of the Amended Counterclaim discloses no reasonable claim, is frivolous, irrelevant, improper, and an abuse of the process and First Calgary will apply on December 20 for such paragraph to be struck out.

Our clients' cross applications will be filed and served no later than November 15, 2010.

Sincerely,

**BORDEN LADNER GERVAIS LLP**

Josef G.A. Krilger, Q.C.

Enc.



**BORDEN  
LADNER  
GERVAIS**

Via Email

Delivered via email

Poole Lawyer  
126, 2526 Battleford Ave SW  
Calgary, Alberta T3E 7J4

Attention: Jeffrey Poole

Dear Sir:

**Re: First Calgary Savings & Credit Union Ltd. v. Don L Perera and Shiranie Perera et a;**

Please find enclosed the filed Reply to Demand for Particulars.

We also enclose two Net Worth Statements which we ask that both Don and Shiranie Perera complete and return to our office within 10 days in accordance with commitments made by them in December of 2009.

Yours truly,

**BORDEN LADNER GERVAIS LLP**

  
**TRAVIS P. LYSAK**

cc: Mike Wheatley (Via Email)  
First Calgary Savings & Credit Union

Borden Ladner Gervais LLP  
Lawyers • Patent & Trade-mark Agents  
Centennial Place, East Tower  
1900, 520 Third Avenue S.W.  
Calgary, Alberta, Canada T2P 0R3  
tel.: (403) 232-9500 fax: (403) 236-1395  
www.blgcanada.com

**TRAVIS P. LYSAK**  
direct tel.: (403) 232-9788  
e-mail: tlysak@blgcanada.com  
file no: 419391-000003

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::ODMA\FCDOS\CAL01\804432\1

**THIS IS EXHIBIT "F"**  
**referred to in the Affidavit of**  
**MICHAEL WHEATLEY**  
**Sworn before me this 12**  
**day of NOVEMBER, A.D. 2010.**

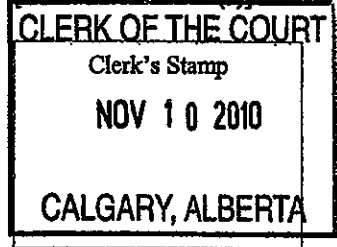


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**A Commissioner for Oaths in and  
for the Province of Alberta**

**MATTI LEMMENS**  
**Barrister & Solicitor**





COURT FILE NUMBER 1001-03215  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE 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 LLP**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
Josef G.A. Krüger, Q.C.  
Borden, Ladner Gervais LLP  
1900, 520 3<sup>rd</sup> Ave. S.W.  
Calgary, AB T2P 0R3  
Telephone: (403) 232-9563  
Facsimile: (403) 266-1395  
Email: [jkruger@blg.com](mailto:jkruger@blg.com)  
File No. 419391-000003



**NOTICE TO RESPONDENTS: Don L. Perera and Shiranie M. Perera**

This application is made against you. You are 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        | December 20, 2010   |
| Time        | 10:00 a.m.  |
| Where       | Calgary Court Centre, 601-5 <sup>th</sup> Street S.W., Calgary, Alberta |
| Before Whom | The Honourable Justice C. A. Kent                                       |

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

**Remedy claimed or sought:**

1. An Order that the Amended Counterclaim of the Respondents, Don L. Perera and Shiranie M. Perera filed November 8, 2010 against Deloitte & Touch LLP under Action #1001-03215 be struck out.
2. Costs of this Application and of the Action.

**Grounds for making this application:**

3. The Amended Counterclaim discloses no reasonable claim against the Applicant, Deloitte & Touche LLP;
4. The facts relied upon by the Respondents in the Amended Counterclaim cannot support a finding that Deloitte & Touche LLP owed the Respondents any fiduciary obligation;
5. The Respondents claim against Deloitte & Touche LLP as shareholders of Perera Shawnee Ltd. . The Respondents as shareholders have no action recognized in the law for damages allegedly caused to Perera Shawnee Ltd.

**Material or evidence to be relied on:**

6. Amended Counterclaim of the Respondents;

**Applicable rules:**

7. Rule 3.68 of the Alberta *Rules of Court*.

**Applicable Acts and regulations:**

8. *Alberta Business Corporations Act.*

**Any irregularity complained of or objection relied on:**

9. See paragraphs 3-5.

**How the application is proposed to be heard or considered:**

10. In person with some or all parties present.

**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. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

**THIS IS EXHIBIT "G"**  
**referred to in the Affidavit of**  
**MICHAEL WHEATLEY**  
**Sworn before me this 12**  
**day of NOVEMBER, A.D. 2010.**

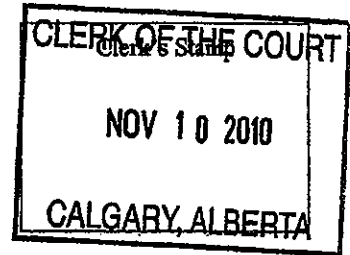


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**A Commissioner for Oaths in and  
for the Province of Alberta**

**MATTI LEMMENS**  
**Barrister & Solicitor**

COURT FILE NUMBER 1001-03215  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE 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 FIRST CALGARY SAVINGS & CREDIT UNION LTD. and DELOITTE & TOUCHE LLP**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Josef G.A. Krüger, Q.C.  
Borden, Ladner Gervais LLP  
1900, 520 3<sup>rd</sup> Ave. S.W.  
Calgary, AB T2P 0R3  
Telephone: (403) 232-9563  
Facsimile: (403) 266-1395  
Email: [jkruger@blg.com](mailto:jkruger@blg.com)  
File No. 419391-000003

**BLG**  
Borden Ladner Gervais

**NOTICE TO RESPONDENTS: Perera Shawnee Ltd., Don L. Perera and Shiranie M. Perera**

This application is made against you. You are 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        | December 20, 2010   |
| Time        | 10:00 a.m.  |
| Where       | Calgary Court Centre, 601-5 <sup>th</sup> Street S.W., Calgary, Alberta |
| Before Whom | The Honourable Justice C. A. Kent                                       |

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

**Remedy claimed or sought:**

1. Striking out paragraph 38A of the Amended Counterclaim filed by the Respondents on November 8, 2010 (the "Amended Counterclaim");
2. Costs of this application in favour of the Applicant, First Calgary Savings & Credit Union Ltd. (the "Applicant")

**Grounds for making this application:**

3. Paragraph 38A of the Amended Counterclaim is frivolous, irrelevant, improper and constitutes an abuse of process.

**Material or evidence to be relied on:**

4. Amended Counterclaim of the Respondents;

**Applicable rules:**

5. Rule 3.68 of the Alberta *Rules of Court*.

**Applicable Acts and regulations:**

6. The *Judicature Act*, R.S.A. 2000 c.J-2

**Any irregularity complained of or objection relied on:**

7. See paragraph 3.

**How the application is proposed to be heard or considered:**

8. In person with some or all parties present.

**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. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

**THIS IS EXHIBIT "H"**  
**referred to in the Affidavit of**  
**MICHAEL WHEATLEY**  
**Sworn before me this 12**  
**day of NOVEMBER, A.D. 2010.**



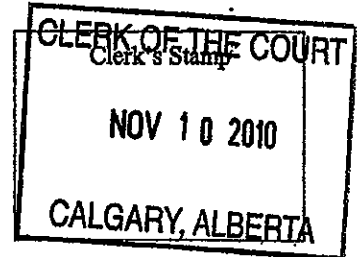
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**A Commissioner for Oaths in and**  
**for the Province of Alberta**

**MATTI LEMMENS**  
**Barrister & Solicitor**



COURT FILE NUMBER **1001-03215**  
COURT **COURT OF QUEEN'S BENCH OF ALBERTA**  
JUDICIAL CENTRE **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 FIRST CALGARY SAVINGS & CREDIT UNION LTD. DELOITTE & TOUCHE LLP**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
Josef G.A. Krüger, Q.C.  
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File No. 419391-000003

**BLG**  
Borden Ladner Gervais

**NOTICE TO RESPONDENTS: Perera Shawnee Ltd., Don L. Perera and Shiranie M. Perera**

This application is made against you. You are 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        | December 20, 2010  |
| Time        | 10:00 a.m.   |
| Where       | Calgary Court House, 601-5 <sup>th</sup> Street S.W., Calgary, Alberta |
| Before Whom | The Honourable Justice A. Kent   |

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

**Remedy claimed or sought:**

1. Striking out the counterclaims of the corporate Defendant, Perera Shawnee Ltd. ("PSL"); and
2. Costs of this application in favour of the Applicants, First Calgary Savings & Credit Union Ltd. and Deloitte & Touche LLP (the "Applicants")

**Grounds for making this application:**

3. PSL is insolvent;
4. On March 3, 2010, a receiver (the "Receiver") was appointed over, *inter alia*, PSL's property (the "Property"). PSL consented to the Receivership Order;
5. The counterclaims that PSL seeks to advance in this action against the Applicants include and contemplate the Property (as defined in the Order) of PSL;
6. Pursuant to the terms of the Order, the Property vests in the Receiver;
7. Neither the Receiver nor the Court gave consent to PSL, Don L. Perera or Shiranie M. Perera to commence the counterclaims filed by PSL the Applicants; and
8. The claims that the Respondents seek to advance are therefore improper and constitute an abuse of process.

**Material or evidence to be relied on:**

9. The pleadings filed in this action; and
10. Such further and other material as counsel may advise and this Honourable Court may permit.

**Applicable rules:**

11. Rule 3.68 of the Alberta *Rules of Court*.

**Applicable Acts and regulations:**

12. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3; and
13. *Judicature Act*, R.S.A. 2000, c. J-2.

**Any irregularity complained of or objection relied on:**

14. Neither the Receiver nor the Court gave consent to PSL, Don L. Perera or Shiranie M. Perera to commence the counterclaims filed by PSL against the Applicants.

**How the application is proposed to be heard or considered:**

15. In person with all parties present.

**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. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

**THIS IS EXHIBIT "I"**  
referred to in the Affidavit of  
**MICHAEL WHEATLEY**  
Sworn before me this 12  
day of NOVEMBER, A.D. 2010.



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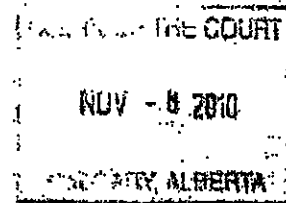
A Commissioner for Oaths in and  
for the Province of Alberta

**MATTI LEMMENS**  
Barrister & Solicitor

**Form 29**

**[Rule 6.17]**

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: NOTICE OF APPOINTMENT FOR QUESTIONING

CROSS-EXAMINATION ON THE AFFIDAVIT OF MICHAEL WHEATLEY, OFFICER OF FIRST CALGARY, SWORN FEBRUARY 26, 2010

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Jeffrey D. Poole  
Barrister and Solicitor  
#126, 2526 Battleford Ave.S.W.  
Calgary, AB T3E 7J4  
[jdpoole@poolelawyer.com](mailto:jdpoole@poolelawyer.com)  
Phone 403 685 2012  
Fax 888 747 7569

**NOTICE TO WITNESS MICHAEL WHEATLEY**

This notice requires you to attend for questioning. Read this document to see what you must do and when you must do it.

**NOTICE TO PERSON REQUIRED TO ATTEND APPOINTMENT FOR QUESTIONING**

You must attend at the date, time, place, and for the period specified below:

**DATE:** November 16, 2010  
**TIME:** 9:00 AM  
**PLACE:** Poole Lawyer  
#120, 2526 Battleford Avenue SW  
Calgary, AB, T3E 7J4  
**PERIOD OF ATTENDANCE:** 8 hours

You must also bring any records described below.

You are not required to bring any documents,

or

You must also bring the following records:

- a) A copy of the pleadings of First Calgary in this matter;
- b) A copy of your Affidavit sworn February 26, 2010 (the "Affidavit"), and all Exhibits listed in the Affidavit;
- c) Any documents not attached as Exhibits to the Affidavit, but that were referred to during the drafting of the Affidavit but are not covered by solicitor - client privilege;
- d) Any other documents in your possession relevant to the proceedings and the applications before the Court.

An allowance that is required to be paid to you for attending as a witness accompanies this notice.

The allowance is calculated as follows:

|  |                |
|--|----------------|
| Allowance payable for each day or part of a day necessarily spent by you as a witness: | \$50.00        |
| Meals (Lunch only)   | \$11.60        |
| Accommodation  | N/A            |
| Transportation (based on distance of 14.32 km, at \$0.505 per km)                      | \$7.23         |
| <b>TOTAL</b>   | <b>\$68.83</b> |

**NOTICE TO THE RESPONDENTS:**

The Court may order a person to attend for questioning, at a date, place and time specified by the Court, if the person:

- a) is required to be questioned under these rules,
- b) was served with a notice of appointment for questioning under these rules,
- c) was provided with an allowance, determined in accordance with Schedule B [Court Fees and Witness and Other Allowances], if so required by these rules, and
- d) did not attend the appointment.

The Court may order the person to be questioned to bring records to the questioning that the person could be required to produce at trial.