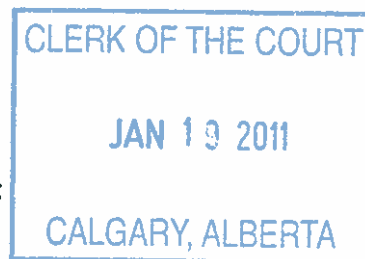


Form 27  
[Rule 6.3]

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  
SHIRANIE M. PERERA

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

DOCUMENT: **APPLICATION BY DELOITTE & TOUCHE  
INC.** in its capacity as Court-appointed receiver and  
manager of Perera Development Corporation  
("PDC") and Perera Shawnee Ltd. ("PSL", or when  
reference is being made to PDC and PSL  
collectively, the "Debtor"), and not in its personal  
capacity (the "Receiver")

**(Re: Distribution of Funds)**

**OSLER, HOSKIN & HARCOURT LLP**

Barristers & Solicitors

Suite 2500, 450 – 1st Street SW

Calgary, AB T2P 5H1

Solicitor: Christa Nicholson

Telephone: (403) 260-7025

Facsimile: (403) 260-7024

File Number: 1121689

## NOTICE TO THE RESPONDENTS

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

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: Monday, January 24, 2011  
Time: 2:00 p.m.  
Where: Calgary Courts Centre, 601-5<sup>th</sup> Street S.W., Calgary, AB T2P 5P7  
Before Whom: The Honourable Madam Justice A. Kent

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

### REMEDY CLAIMED OR SOUGHT:

1. An order that the time for service of this Application (the “**Application**”) is abridged if necessary, that this Application is properly returnable on January 24, 2011, that service of this Application and the Twelfth Report of the Receiver, dated January 18, 2011 (the “**Twelfth Receiver’s Report**”) on the persons listed in Schedule “**B**” to this Application (collectively, the “**Service List**”) is good and sufficient, and that no persons other than those on the Service List are entitled to notice of this Application;
2. an order (the “**Distribution Order**”), substantially in the form attached hereto as Schedule “**A**”, approving distribution of the Funds (as hereinafter defined) in the manner provided for therein; and
3. such further and other relief that the Receiver may seek and this Honourable Court may deem just.

### GROUND FOR MAKING THIS APPLICATION:

4. On March 3, 2010, the Receiver was appointed as receiver and manager of the Debtor pursuant to an order issued by the Honourable Madam Justice A. Kent of the Court of Queen’s Bench of Alberta (the “**Receivership Order**”). The Receivership Order was the result of an application by First Calgary Savings & Credit Union Ltd. (“**First Calgary**”), a secured creditor of the Debtor.
5. At the time that the Receivership Order was issued, PSL was in the process of constructing a condominium development in southwest Calgary known as the Highbury

(the “**Project**”). The Project was planned to be completed in three separate phases (“**Phase One**”, “**Phase Two**” and “**Phase Three**”).

6. There are a total of 70 units (including parking stalls) in Phase One of the Project, which are included in Condominium Plan 0915321:
  - (a) 22 of the units were sold and conveyed by PSL to persons prior to the issuance of the Receivership Order;
  - (b) 3 of the units (parking stalls included) in Phase One (collectively, the “**Penthouses**”) have been sold and conveyed to persons by the Receiver pursuant to vesting orders filed on November 5, 2010 (collectively, the “**Three Vesting Orders**”);
  - (c) 36 of the units (the “**36 Units**”) are owned by PSL and are subject to purchase and sale contracts (the “**Presale Contracts**”) that PSL entered into with various purchasers (collectively, the “**Presale Purchasers**”). Closing dates for 34 of the 36 Units were set for various dates between November 15-18, 2010 and December 6-10, 2010 (collectively, the “**Closing Dates**”) however none of these transactions closed on any of the Closing Dates. While the Receiver has entered into without prejudice discussions with some of the Presale Purchasers to set a new closing date, it is anticipated that several of these transactions will not close with the Presale Purchasers and the units will become available for sale to new purchasers; and
  - (d) 9 of the units have been listed for sale by the Receiver for some time through CondoSource (the “**Unsold Units**”).
7. After closing Presale Contracts with those Presale Purchasers willing to do so, the Receiver intends to sell the balance of the 36 Units that become available for sale as well as the Unsold Units (collectively, the “**Unsold Phase One Units**”).
8. To facilitate the potential closing of various Presale Contracts, this Honourable Court granted numerous Vesting Orders, as amended (collectively, and together with the Three Vesting Orders, the “**Vesting Orders**”).

9. On November 29, 2010, the Honourable Madam Justice A. Kent granted the Amended and Restated Closing Process Order, including a form of *ex parte* vesting order, all of which established a process for the sale and vesting of the Unsold Units and any of the 36 Units that become available for sale where transactions with the Presale Purchasers do not close (collectively, the “Closing Process Order”).
10. Without limitation, the Vesting Orders and Closing Process Order provide that: (a) the Receiver shall hold the Net Proceeds (as defined therein) and not disburse such funds unless an Order allowing for a disbursement of the Net Proceeds is issued by this Honourable Court; and (b) the Net Proceeds shall stand in place and stead of the applicable asset (the “Asset”) and any holder of the Encumbrances (as defined in the Vesting Orders and the Claims Process Order) may assert their claims against the Net Proceeds with the same right and priority such claimants had against the Asset immediately prior to the sale of the Asset, as if the Asset had not been sold and remained in the possession and control of PSL.
11. The Receiver currently holds Net Proceeds in the amount of \$2,373,549 from the sale of the Penthouses.
12. Phase Two and Phase Three are under construction. The Receiver intends to complete construction of both Phase Two and Phase Three to the P1 level and to sell same as a package or together with the Unsold Phase One Units on an en bloc basis.
13. In carrying out its duties under the Receivership Order, the Receiver borrowed \$6,500,000 from First Calgary (the “Receiver’s Borrowings”) and issued receiver’s certificates, pursuant to the Receivership Order and the Additional Borrowings Order granted on October 12, 2010, to First Calgary for the Receiver’s Borrowings.
14. The Receiver has obtained an opinion from independent counsel that, subject to the usual qualifications and limitations, the security granted by Perera to First Calgary is valid and enforceable.
15. Given that all the Liens (as defined in the Twelfth Receiver’s Report) which were registered against title to the Project were registered subsequent in time to First Calgary’s security which was registered against title to the Project and after all funds were

advanced by First Calgary to the Debtor, the Receiver has not investigated in detail the validity of each of the Liens registered. Assuming such security is valid and enforceable, the Receiver submits that: (a) none of the Liens claimed are in priority to First Calgary's security; and (b) none of the claimants with Liens have any claim to the proceeds of the sale of the units in Phase One, Phase Two and Phase Three in priority to First Calgary.

16. PSL and PDC are bankrupt. Hardie & Kelly Inc. was appointed bankruptcy trustee of PSL and PDC pursuant to the Bankruptcy Orders granted by this Honourable Court on December 20, 2010.
17. The Receiver submits that it is reasonable and appropriate in the circumstances to establish a distribution procedure in the manner set out in the Distribution Order.
18. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**MATERIAL OR EVIDENCE TO BE RELIED ON:**

19. The pleadings filed herein, including without limitation, the Confidential Second Receiver's Report dated August 11, 2010, the Confidential Fourth Receiver's Report dated October 7, 2010, the Twelfth Receiver's Report (including the issued Receiver's Certificates), the Vesting Orders, the Closing Process Order, the Receivership Order, and the Additional Borrowings Order granted on October 12, 2010; and
20. such further and other materials as counsel for the Receiver may advise and this Honourable Court may permit.

**APPLICABLE RULES:**

21. The *Alberta Rules of Court*, Alta. Reg. 124/2010 and such further and other rules as counsel for the Receiver may advise and this Honourable Court may permit.

**APPLICABLE ACTS AND REGULATIONS:**

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

24. Such further and other acts and regulations as counsel for the Receiver may advise and this Honourable Court may permit.

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

25. Before the Honourable Madam Justice A. Kent in Chambers at the Calgary Courts Centre, 601-5<sup>th</sup> Street S.W., at Calgary, Alberta, on Monday, January 24, 2011 at 2:00 p.m. or as soon thereafter as counsel may be heard.

**AFFIDAVIT EVIDENCE IS REQUIRED IF YOU WISH TO OBJECT.**

**WARNING**

If you do not come to court either in person or by your lawyer, the court may give the applicant what they want in your absence. You will be bound by any order that the court makes, or another order might be given or other proceedings taken which the applicant is entitled to without any further notice of them to you. If you want to take part in this application, you or your lawyer must attend in court on the date and time shown above. If you intend to rely on an affidavit or other evidence when the originating application is heard or considered, you must reply by giving reasonable notice of that material to the applicant.

**DATED** at Calgary, Alberta on January 18, 2011.

**OSLER, HOSKIN & HARCOURT LLP**



Christa Nicholson

Counsel for the Receiver, Deloitte & Touche Inc.

TO: The Clerk of the Court  
AND TO: The Service List (Schedule "B" hereto)

**SCHEDULE "A" TO THE APPLICATION, DATED JANUARY 18, 2011**

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: **ORDER**

**(Re: Distribution of Funds)**

**OSLER, HOSKIN & HARCOURT LLP**

Barristers & Solicitors

Suite 2500, 450 – 1st Street SW

Calgary, AB T2P 5H1

Solicitor: Christa Nicholson

Telephone: (403) 260-7025

Facsimile: (403) 260-7024

File Number: 1121689

**DATE ON WHICH ORDER WAS PRONOUNCED:** January 24, 2011

**NAME OF JUDGE WHO MADE THIS ORDER:** Honourable Madam Justice A. Kent

**ORDER**

**(Re: Distribution of Funds)**

**UPON** the application, dated January 18, 2011 (this “**Application**”) of Deloitte & Touche Inc., in its capacity as Court-appointed receiver and manager of Perera Development Corporation (“**PDC**”) and Perera Shawnee Ltd. (“**PSL**”, or when reference is being made to PDC and PSL collectively, the “**Debtor**”), and not in its personal capacity (the “**Receiver**”); **AND UPON** noting the Order issued by Madam Justice A. Kent on March 3, 2010 (the “**Receivership Order**”) and the Order granted October 12, 2010 increasing the Receiver’s authority to borrow funds; **AND UPON** noting the Affidavit of Service of ●, sworn January ●, 2011 (the “**Affidavit of Service**”); **AND UPON** noting the Confidential Second Receiver’s Report dated August 11, 2010; **AND UPON** noting the Confidential Fourth Receiver’s Report dated October 7, 2010; **AND UPON** reading the Twelfth Report of the Receiver, dated January 18, 2011 (the “**Twelfth Receiver’s Report**”) including noting that the Receiver has issued to First Calgary Savings & Credit Union Ltd. (“**First Calgary**”) Receiver’s Certificates (as defined in the Receivership Order) (the “**Receiver’s Borrowings**”); **AND UPON** noting the various vesting orders, as amended, granted in these Proceedings (collectively, the “**Vesting Orders**”); **AND UPON** noting the Amended and Restated Closing Process Order granted by Madam Justice A. Kent on November 20, 2010 which included a form of *ex parte* vesting order (collectively, the “**Closing Process Order**”); **AND UPON** noting the Bankruptcy Orders respecting PDC and PSL granted by Madam Justice A. Kent on December 20, 2010; **AND UPON** noting the Order (Re: Advice and Directions regarding Service) granted by Madam Justice A. Kent on October 29, 2010 (the “**Service Order**”); **AND UPON** hearing from counsel for the Receiver and counsel for any other persons present; **IT IS HEREBY ORDERED AND DECLARED THAT:**

1. The time for service of this Application and the Twelfth Receiver’s Report is abridged, if necessary, this Application is properly returnable today, service of this Application and the Twelfth Receiver’s Report on the persons listed in Schedule “**B**” to this Application (collectively, the “**Service List**”) in the manner described in the Affidavit of Service is good and sufficient and service on any persons other than those listed on the Service List is dispensed with.



2. The Receiver is hereby authorized and directed to pay and disburse the Net Proceeds (as defined in the Vesting Orders and the Closing Process Order) it receives from the sale of units in Phase One as well as the net proceeds it receives from the sale of Phase Two and Phase Three of the condominium development in southwest Calgary known as the Highbury (the “**Project**”), in the following priority:
  - (a) First, subject to paragraph 17 of the Receivership Order, to the Receiver an amount equal to the estimated reasonable fees and disbursements of the Receiver and its counsel, from time to time;
  - (b) Second, to the Receiver, an amount sufficient to fully repay all outstanding Receiver's Certificates (as defined in the Receivership Order) from time to time which shall be applied by the Receiver in reduction and satisfaction of the Receiver's Borrowings. For greater certainty, nothing herein shall preclude the operation of paragraph 23 of the Receivership Order;
  - (c) Third, provided a Court Order is obtained declaring that First Calgary’s security is valid and enforceable, all amounts required to fully repay the amounts owing by the Debtor to First Calgary (the “**Indebtedness**”) which shall be applied by First Calgary as received in reduction of the Indebtedness. Such repayments shall be without prejudice to any right of the Defendants to claim repayment from First Calgary of such amounts should any Court subsequently find that First Calgary was not entitled to receive such repayments;
  - (d) Fourth, any balance thereafter to the Receiver which shall establish a pool of all such funds (the “**Pool**”) and shall allocate the funds in the Pool on a pro rata basis among each of the applicable assets of the Project (collectively, the “**Asset(s)**”) based on the amount of proceeds obtained from the sale of and attributable to the same (the “**Allocated Proceeds**”) and subject to any further directions of this Court relating to this paragraph 2(d) which the Receiver determines are necessary, where:
    - (i) in respect of the Allocated Proceeds relating to each of the Assets comprising Phase One of the Project, any holder of Encumbrances (as

defined in the Vesting Orders and the Closing Process Order) and only the holders of such Encumbrance(s) may assert their claim respecting such Encumbrance(s) against the Allocated Proceeds with the same priority as such Encumbrance( s) had under and pursuant to the Vesting Orders and the Closing Process Order;

(ii) in respect of the Allocated Proceeds relating to each Asset comprising Phase Two and Phase Three of the Project, any holder of encumbrances which were registered against the land titles for the Assets in Phase Two and Phase Three as at the date of closing of sales of such Assets (the "Closing Date") (and only the holders of such encumbrances) may assert their claim respecting such encumbrances against the applicable Allocated Proceeds with the same right and priority that such claimant had against the applicable Asset immediately prior to the sale of such Asset, as if such Asset had not been sold and remained in the possession and control of PSL; and

(iii) valid claims made pursuant to and in accordance with paragraphs 2(d)(i) and 2(d)(ii) above (the "Valid Claims") shall be paid by the Receiver from the applicable Allocated Proceeds of the Pool in amounts and the manner authorized by the Court; and

(e) Finally, to Hardie & Kelly Inc., in its capacity as bankruptcy trustee of PSL and PDC, for the benefit of the respective bankruptcy estates of PSL and PDC, any portion of the Pool not paid pursuant to paragraph 2(d)(iii) for the Valid Claims.

3. Service of this Order in accordance with the Service Order to the persons listed on the Service List shall constitute good and sufficient service of this Order.

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J.C.Q.B.A.

**SCHEDULE "B" TO THE APPLICATION, DATED JANUARY 18, 2011**

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: SERVICE LIST

**OSLER, HOSKIN & HARCOURT LLP**

Barristers & Solicitors  
Suite 2500, 450 – 1st Street SW  
Calgary, AB T2P 5H1  
Solicitor: Christa Nicholson  
Telephone: (403) 260-7025  
Facsimile: (403) 260-7024  
File Number: 1121689

<i>Counsel/Party</i>	<i>Email Address</i>	<i>Fax</i>	<i>Representing</i>
<b>Borden Ladner Gervais LLP</b> 1900 Centennial Place 520 3 <sup>rd</sup> Avenue S.W. Calgary, Alberta T2P 0R3  Travis Lysak Phone: (403) 232-9719  Josef Kruger Phone: (403) 232-9563  Robert Stemp Phone: (403) 232-9404  Jeffrey D. Vallis, Q.C.	tlysak@blgcanada.com  jkruger@blg.com  rstemp@blgcanada.com  jvallis@blgcanada.com	(403) 266-1395	First Calgary Savings and Credit Union Ltd.   OZZ Electric Inc. Quest Window Systems Inc.
<b>Osler, Hoskin &amp; Harcourt LLP</b> Suite 2500, TransCanada Tower 450 – 1 <sup>st</sup> Street S.W. Calgary, Alberta T2P 5H1  Christa Nicholson Phone: (403) 260-7025  Morgan Fowler Phone: (403) 260-7057	cnicholson@osler.com  mfowler@osler.com	(403) 260-7024	Deloitte & Touche Inc.
<b>Deloitte &amp; Touche Inc.</b> 3000 Scotia Centre 700 – 2 <sup>nd</sup> Street SW Calgary, Alberta T2R 1J8 Phone: (403) 267-1700  Greg Stevens  Victor Kroeger  David Adams  Stefan DuChene	gstevens@deloitte.ca  vkroeger@deloitte.ca  davidadams@deloitte.ca  stduchene@deloitte.ca	(403) 264 2871	Receiver of Debtors

<i>Counsel/Party</i>	<i>Email Address</i>	<i>Fax</i>	<i>Representing</i>
<b>Deloitte &amp; Touche LLP</b> 3000 Scotia Centre 700 – 2 <sup>nd</sup> Street SW Calgary, Alberta T2P 0S7			
<b>Poole Lawyer</b> Barrister and Solicitor #126, 2526 Battleford Avenue S.W. Calgary, Alberta T3E 7J4 Phone: (403) 685-2012  Jeffrey D. Poole	jdpoole@poolelawyer.com	(403) 284-3693	Don L. Perera and Shiranie M. Perera
<b>Hardie &amp; Kelly Inc.</b> 206-5800 – 2 <sup>nd</sup> Street SW Calgary, AB T2H 0H2  Marc Kelly	mkelly@insolvency.net		Trustee
<b>Bennett Jones</b> 4500 Bankers Hall East 855 2nd Street SW Calgary, AB T2P 4K7  Chris Simard	simardc@bennettjones.com		Solicitors for the Trustee
<b>City Of Calgary Law Department</b> Calgary Municipal Building 12 <sup>th</sup> Floor, 800 Macleod Tr. S.E. Calgary, Alberta T2G 2M3 Phone: (403) 268-1802  Paul Frank  Jocelyne J. Caldwell	Paul.Frank@calgary.ca  jocelyne.caldwell@calgary.ca	(403) 268-4634	City of Calgary

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

<b><i>Counsel/Party</i></b>	<b><i>Email Address</i></b>	<b><i>Fax</i></b>	<b><i>Representing</i></b>
<p><b>Warren Tettensor Amantea LLP</b> 1413 – 2<sup>nd</sup> Street S.W. Calgary, Alberta T2R 0W7</p> <p>Tara L. Petersen Phone: (403) 228-8383</p> <p>Joe Amantea Phone: (403) 228-8374</p>	<p>petersen@warren.ab.ca</p> <p>amantea@warren.ab.ca</p>	<p>(403) 244-1948</p> <p>(403) 228-8360</p>	<p>Alberta New Home Warranty Program</p> <p>JMMK Plumbing &amp; Heating Inc. Global Stone Inc. Novastone Inc.</p>
<p><b>Burnet, Duckworth &amp; Palmer LLP</b> 1400, 350 - 7th Avenue S.W. Calgary, Alberta, T2P 3N9 Phone: (403) 260-0189</p> <p>Kevin S. Burron</p>	<p>kburron@bdplaw.com</p>	<p>(403) 260-0332</p>	<p>Marcel and Adrianna Mirzan</p>
<p><b>Hoffman Dorchik LLP</b> 600, 5920 Macleod Trail S Calgary, Alberta T2H 0K2 Phone: (403) 258-0800</p> <p>Al Styles</p>	<p>astyles@coastappliances.com</p>		<p>Coast Wholesale Appliances GP Inc.</p>
<p><b>Smith Mack Lamarsh</b> 450, 808-4 Ave SW Calgary, Alberta T2P 3E8 Phone: (403) 234-7779</p> <p>Karen D. Jacobson</p>	<p>slamarsh@telusplanet.net</p>	<p>(403) 263-7897</p>	<p>United Rentals of Canada, Inc.</p>
<p><b>Masuch Albert LLP</b> 209, 10836 – 24 Street SE Calgary, Alberta T2Z 4C9 Phone: (403) 543-1100</p> <p>Gerald E. Masuch</p>	<p>gerald.masuch@manlaw.com</p>	<p>(403) 543-1111</p>	<p>Dr. Mouneissa Maiga</p>

<i>Counsel/Party</i>	<i>Email Address</i>	<i>Fax</i>	<i>Representing</i>
<b>Sodagar &amp; Company Law Corporation</b> Barristers & Solicitors, Trade-Mark Agents Suite 1400, 1500 West Georgia St. Vancouver, BC V6G 2Z6 Phone: (604) 602-1626  Ali R. Sodagar	ali@sodagar.ca	(604) 602-1622	Ms. Jamaledin Hedayat  Ms. Nayereh Azam Kazemian  Purchasers (Phase Two)
<b>Walsh Wilkins Creighton LLP</b> 2800, 801 - 6th Avenue SW Calgary, Alberta T2P 4A3 Phone: (403) 267-8421  Paul J. Piddie	ppidde@wwclawyers.com	(403) 264-9400	Aluma Systems Inc.
<b>The Finishing Centre Ltd.</b> 2719-5th Avenue NE Calgary, Alberta T2A 2L6  Chris Van Hees			
<b>Weeks Law</b> 1000 Bankers Hall West 1000 888 3rd St. SW, Calgary, Alberta T2P 5C5 Phone: (403) 209-4988  Kevin Weeks	kevweeks@weekslaw.com	(403) 444-6827	Ihab El Saghir
<b>Gregory Law Office</b> 1250, 717 7 <sup>th</sup> Avenue SW Calgary, Alberta T2P 0Z3 Phone: (403) 243-8363  Russell Q. Gregory	gregory.law@hotmail.com	(403) 770-8577	Doka Canada Ltd.



<b>Counsel/Party</b>	<b>Email Address</b>	<b>Fax</b>	<b>Representing</b>
<b>Fraser Milner Casgrain LLP</b> Bankers Court 850 – 2 <sup>nd</sup> Street SW Calgary, Alberta T2P 0R8 Phone: (403) 268-6359  Corey Sandquist	corey.sandquist@fmc-law.com	(403) 268-3100	Spring Advertising Ltd.
<b>Carscallen Leitch LLP</b> 1500, 407 – 2 <sup>nd</sup> Street SW Calgary, Alberta T2P 2Y3  Michael B. Niven Phone: (403) 298-8464  Justin Sherman Phone: (403) 298-8462  Grant W.D. Cameron	mniven@cclawyers.com info@tonydesilva.com paw105@shaw.ca vperera@shaw.ca  sherman@cclawyers.com  cameron@cclawyers.com	(403) 262-2952	Tony De Silva – 702  Pat Morris and David Morris – 501 147 Hawkmount Heights NW Calgary, Alberta T3G 3S4 (403) 246-3150  BIZ-IQ and David Caul – 146191/T2H  Nawagamuwage A.J. Perera – 201  Nissan Canada
<b>Billington Barristers</b> 600 Bow Valley Square II 205 – 5 <sup>th</sup> Avenue SW Calgary, Alberta T2P 2V7 Phone: (403) 705-3413  Richard N. Billington Q.C.	RBillington@BillingtonBarristers.com	(403) 705-3418	E. David Podborski and Gwendolyn Podborski
<b>Justice Canada</b> Suite 510, 606 – 4 <sup>th</sup> Street SW Calgary, Alberta T2P 1T1 Phone: (403) 299-3985  Jill Medhurst-Tivadar	jill.medhurst-tivadar@justice.gc.ca	(403) 299-3966	Canada Revenue Agency

<i>Counsel/Party</i>	<i>Email Address</i>	<i>Fax</i>	<i>Representing</i>
<b>Ritchie Mills Law Office</b> 102 – 10171 Saskatchewan Drive Edmonton, Alberta T6E 4R5 Phone: (780) 431-1444  Neil Fenna	n.fenna@rmlo.com		Adler Firestopping Ltd.
<b>Gowling LaFleur Henderson LLP</b> 1400, 700 – 2 Street SW Calgary, Alberta T2P 4V5 Phone: (403) 292-9875  Stephen Carter-Edwards	stephen.carter-edwards@gowlings.com	(403) 695-3475	Citywide Door & Hardware Inc.
<b>Precision Aluminum Manufacturing Ltd.</b> #10, 5935 – 35 Street SE Calgary, Alberta T2C 2H1 Phone: (403) 301-3790  Warren Moore		(403) 301-3795	
<b>Kennedy Agrios LLP</b> 1325 Manulife Place 10180-101 Street Edmonton, Alberta T5J 3S4 Phone: (780) 969-6900  Ronald Haggett	rhaggett@kennedyagrios.com	(780)	Kordick Enterprises Ltd.
<b>Thornborough Smeltz LLP</b> 630 11012 MacLeod Trail South Calgary, Alberta, T2J 6A5 Phone: (403) 271-3221  Morris H. Smeltz	morris@thornsmeltz.com	(403) 271-6684	Cannex Contracting 2000 Inc.

<i>Counsel/Party</i>	<i>Email Address</i>	<i>Fax</i>	<i>Representing</i>
<p><b>Peacock Linder &amp; Halt LLP</b>                      850, 607-8 Avenue SW                      Calgary, Alberta T2P 0A7                      Phone: (403) 296-2280</p> <p>G. Stephen Panunto</p>	spanunto@plhlaw.ca	(403) 296-2299	Nordstar Kitchens Ltd.
<p><b>Bryan &amp; Company</b>                      1200, 645-7 Avenue SW                      Calgary, Alberta T2P 4G8                      Phone: (403) 269-7220</p> <p>Ryan J. Lee Chee</p>	rjleechee@bryanco.com	(403) 269-9304	Domenico Fanelli
<p><b>Pittman Macisaac &amp; Roy</b>                      2600 West Tower, Sun Life                      Plaza                      144-4<sup>th</sup> Avenue SW                      Calgary, Alberta T2P 3N4                      Phone: (403) 237-6566</p> <p>Shaun T. Macisaac</p>	stm@pmrlaw.ca	(403) 237-6594	Distinctive Floors Ltd.
<p><b>Macleod Dixon LLP</b>                      3700 Canterra Tower                      400 Third Avenue SW                      Calgary Alberta T2P 4H2                      Phone: (403) 267-8142</p> <p>Kevin E. Barr</p>	barrk@macleoddixon.com	(403) 264-5973	Unsecured Creditors
<p><b>Robert Schuett Professional Corporation</b>                      200, 602 11 Ave SW                      Calgary, Alberta T2R 1J8                      Phone: (403) 705-1267</p> <p>Adrianna Worman</p>	adrianna.worman@schuettlaw.com	(403) 705-1265	Ridgeline Sheet Metal Inc.  Peace Lutheran Church of Calgary  759450 Alberta Ltd. o/a Interior Finishing
<p><b>Tiro Clarke Professional Corporation</b>                      301, 522 – 11th Avenue SW                      Calgary, Alberta T2R 0C8</p>	tiro@tiroclarke.com trina@tiroclarke.com		Modern Industrial Rentals (1978) Ltd.

<i>Counsel/Party</i>	<i>Email Address</i>	<i>Fax</i>	<i>Representing</i>
<b>Radke Law Office</b> 205, 5917 1A Street SW Calgary, Alberta T2H 0G4 Attn: Allan Radke Phone: (403) 252-4466	aradke@radkeandassociates.com	(403) 258-0695	On Track Excavating Ltd.
<b>Field Law LLP</b> 604 – 1 <sup>st</sup> Street SW Calgary, AB T2P 1M6 Attn: Ian MacDonald, Q.C., C.	imacdonald@fieldlaw.com		1050299 Alberta Ltd./Colrado Hilmer
<b>Carrie Mason</b> Phone: 1-800-363-6330 ext 42493	Carrie_Mason@avivacanda.com		
<b>Coast Wholesale Appliances Ltd./Coast Wholesale Appliances LP</b> 6128 Centre Street SE Calgary, Alberta T2H 0C4			
<b>Complete General Contracting Ltd.</b> 1031 Maitland Drive NE Calgary, Alberta T2A 5C6			
<b>ServusCredit Union Ltd.</b> Sunridge Branch c/o 601, 4901-48 Street Red Deer, Alberta T4N 6M4 Phone: (403) 343-0144		(403) 342-4547	
<b>Canadian Western Bank</b> 6127 Barlow Trail SE Calgary, Alberta T2C 4W8 Phone: (403) 269-9882		(403) 269-9883	
<b>Workers' Compensation Board/Collection Unit</b> 9925 – 107 Street, 8 <sup>th</sup> Floor Edmonton, Alberta T5J 2S5 Phone: (780) 498-3999		(780) 498-7871	

<i>Counsel/Party</i>	<i>Email Address</i>	<i>Fax</i>	<i>Representing</i>
<b>Alberta New Home Warranty Program</b> 301, 30 Springborough Blvd. SW Calgary, Alberta T3H 0N9			
<b>Natalie Bronstein</b> Unit 9, 64 Woodacres Crescent SW Calgary, Alberta T2W 4V6 (403) 225-6411  Private & Confidential McLeod & Company LLP 3 <sup>rd</sup> Floor, 14505 Bannister Road SE Calgary, Alberta T2X 3J3	nbronstein216@gmail.com		Purchaser
<b>Judith Poole</b> 1558 Lake Bonavista Drive SE Calgary, Alberta T2J 3H1 Phone: (403) 617-2501	judypoole@pereradevelopments.com	(403) 212-5870	Purchaser
<b>Beaumont Church LLP</b> 300, 2912 Memorial Drive SE Calgary, Alberta T2A 6R1 Phone: (403) 261-8340 Jamie Clark	jamie.clark@beaumontchurch.com	(403) 264-0478	Agam Consulting &/or nominee  Purchaser
<b>Barinder Sanghera/Jaswinder Sanghera</b> c/o 1432 W. Hastings Street Vancouver, BC V6G 3J6  c/o 638 Nicola Street Vancouver, BC V6G 3J5  Douglas Soo	coldwellcitycentre@gmail.com		Purchaser

<i>Counsel/Party</i>	<i>Email Address</i>	<i>Fax</i>	<i>Representing</i>
<b>Alex Pimentel/Adriana Pimentel</b> c/o 1432 W. Hastings Street Vancouver, BC V6G 3J6 Phone: (604) 408-0008  c/o 638 Nicola Street Vancouver, BC V6G 3J5  Douglas Soo	coldwellcitycentre@gmail.com		Purchaser
<b>Jinah/Mohamed</b> 6325 E. Broadway Burnaby, BC V5B 2Y4 Phone: (604) 710-4555	rjinah@uniserve.com	(604) 437-7020	Purchaser
<b>Philip Soo</b> c/o 1432 W. Hastings Street Vancouver, BC V6G 3J6 Phone: (604) 408-0008  Douglas Soo	coldwellcitycentre@gmail.com		Purchaser
<b>Cleci Blauth</b> c/o 1432 W. Hastings Street Vancouver, BC V6G 3J6 Phone: (604) 408-0008  c/o 638 Nicola Street Vancouver, BC V6G 3J5  Douglas Soo	coldwellcitycentre@gmail.com		Purchaser
<b>Karim Allibhai</b> c/o 1432 W. Hastings Street Vancouver, BC V6G 3J6 Phone: (604) 408-0008  c/o 638 Nicola Street Vancouver, BC V6G 3J5  Douglas Soo	coldwellcitycentre@gmail.com		Purchaser

<i>Counsel/Party</i>	<i>Email Address</i>	<i>Fax</i>	<i>Representing</i>
<b>Marilyn S. Meek/Denis M. Meek</b> 51, 2979 Panorama Drive Coquitlam, BC V3E 2W8 Phone: (604) 942-8787	mmeek@shaw.ca	(604) 942-8787	Purchaser
<b>Jane O'Neil/Luther Cutts</b> 11 Palomino Boulevard Calgary, Alberta T3Z 1B9 Phone: (403) 286-1989	janelinden@hotmail.com		Purchaser
<b>Balraj Sanghera</b> c/o 1432 W. Hastings Street Vancouver, BC V6G 3J6 Phone: (604) 408-0008  c/o 638 Nicola Street Vancouver, BC V6G 3J5  Douglas Soo	coldwellcitycentre@gmail.com		Purchaser
<b>Douglas Soo/Marjan Mazaheri</b> c/o 1432 W. Hastings Street Vancouver, BC V6G 3J6 Phone: (604) 408-0008  c/o 638 Nicola Street Vancouver, BC V6G 3J5  Douglas Soo	remaxdsoo@gmail.com  coldwellcitycentre@gmail.com		Purchaser
<b>Rose Robertson</b> 2578 Westhill Close West Vancouver, BC V7S 3E4 Phone: (604) 922-7673	610granville@gmail.com (send via email, then follow up with hard copies by mail)	(604) 922-7673	Purchaser
<b>Donald J. Robertson</b> 3107, 610 Granville Street Vancouver, BC V6C 3T3 Phone: (604) 922-7673  2578 Westhill Close West Vancouver, BC V7S 3E4	610granville@gmail.com	(604) 922-7673	Purchaser

<i>Counsel/Party</i>	<i>Email Address</i>	<i>Fax</i>	<i>Representing</i>
<b>Tempo Real Estate Ltd.</b> <b>(Operating As Royal LePage Benchmark)</b> 430, 7220 Fisher Street SE Calgary, Alberta T2H 2H8 Phone: (403) 253-1901	clyall@royallepage.ca	(403) 259-5580	Purchaser
<b>Usha Mehta</b> c/o 1432 W. Hastings Street Vancouver, BC V6G 3J6 Phone: (604) 408-0008  c/o 638 Nicola Street Vancouver, BC V6G 3J5  Douglas Soo	coldwellcitycentre@gmail.com		Purchaser
<b>Hemanshu Mehta</b> c/o 1432 W. Hastings Street Vancouver, BC V6G 3J6 Phone: (604) 408-0008  c/o 638 Nicola Street Vancouver, BC V6G 3J5  Douglas Soo	coldwellcitycentre@gmail.com		Purchaser
<b>Insight Dynamic Solutions</b> <b>c/o Don Lal Perera</b> 5 Mount Alberta View SE Calgary, Alberta T2Z 3G6 Phone: (403) 257-4564 Phone: (403) 242-2138	lperera@insighteng.com	(403) 257-4570	Purchaser
<b>Akbar Mazaheri/ Manouchehr Talebian/ Mansour Payam</b> c/o 1432 W. Hastings Street Vancouver, BC V6G 3J6 Phone: (604) 408-0008  c/o 638 Nicola Street Vancouver, BC V6G 3J5  Douglas Soo	coldwellcitycentre@gmail.com		Purchaser



<i>Counsel/Party</i>	<i>Email Address</i>	<i>Fax</i>	<i>Representing</i>
<b>Frank Henzler</b> 102 - 1814 29th Avenue SW Calgary, Alberta T2T 1M8 Phone: (403) 650-8400	frankhenzler@hotmail.com		Purchaser
<b>Marivic Protacio</b> 134 Everwillow Circle Calgary, Alberta T2Y 4V1	mavictp@yahoo.ca		Purchaser
<b>Yaletown Investments</b> c/o Galib Kara 907-583 Beach Crescent, Vancouver BC V6Z 3E6	galibkara@novuscom.net		Purchaser
<b>Elaine Semkuley/Myron Semkuley</b> 288 Canterville Drive SW Calgary, Alberta T2W 3X2 Phone: (403) 251-1300	semkuley@gmail.com	(403) 251-4679	Purchaser
<b>Rent-Me Storage Systems Inc.</b> c/o Robb & Evenson Professional Corp 506, 933-17 Ave SW Calgary, Alberta T2T 5R6  Calvin C. Robb	crobb@robbevenson.com		
<b>1165767 Alberta Ltd.</b> 212, 339-50 Ave SE Calgary, Alberta T2G 2B3  Harold Coates			
<b>Flashings Plus Ltd.</b> 14856 Deer Run Dr. SE Calgary, Alberta T2V 5V3  Clive Scott			
<b>Kozmyk Holdings/Shaw Properties</b> c/o Barry Kozmyk c/o Registered Office 110, 7330 Fisher Street SE Calgary, Alberta T2H 2H8			Purchaser (Phase Two)

<i>Counsel/Party</i>	<i>Email Address</i>	<i>Fax</i>	<i>Representing</i>
<b>Frostbite Holdings Inc.</b> c/o Janet Frost 14 Noble Court Port Moody, BC V3H 3Z5	jfrost36@shaw.ca		Purchaser (Phase Two)
<b>Kathleen Davis</b> Kathleen S. Davis Professional Corporation Phone: (403) 543-8580	kathleen@ksdavislaw.ca		
<b>First Choice Post Construction Cleaning</b> 216 Stanley Avenue Okotoks, Alberta T1S 1M4 Debbie Lorenz			
<b>Tingle Merrett LLP</b> <b>Douglas V. Allison</b> 1250 Standard Life Building 639 – 5 <sup>th</sup> Ave. SW Calgary, AB T2P 0M9 Phone: (403) 441-1219	dallison@tinglemerrett.com	(403) 571-8008	Alcon Electrical Corp.
<b>Aladen Painting Ltd.</b> 311 Canterbury Drive SW Calgary, Alberta T2W 1H7 Phone: (403) 238-9752  Mazen Sanaoubar			
<b>Inland Pipe A division of Lehigh Hanson Materials Ltd.</b> 12640 Inland Way Edmonton, Alberta T5V 1K2  Dennis Odding	MBillingham@lehighcement.com		
<b>Wendy Bohn</b> 23 Sussex Crescent SW Calgary, Alberta T2W 0L4			
<b>Davison Worden LLP</b> 1710, 540 – 5 <sup>th</sup> Avenue SW Calgary, Alberta T2P 0M2 Carl Hall Ryana K. Mather	rmather@davisonworden.com		Great Shades Ltd.
<b>Cooney's Trucking Ltd.</b> 409 Lakeside Greens Place Chestermere, Alberta T1X 1C6  Chris Cooney			

<i>Counsel/Party</i>	<i>Email Address</i>	<i>Fax</i>	<i>Representing</i>
<b>Macs Landscaping &amp; Concrete</b> 194 Crystal Shores Drive Okotoks, Alberta T1S 2L1 Chris Makowsky	cjmak@telus.net		
<b>OMC Renovations</b> 329 – 2 <sup>nd</sup> Avenue, P.O. Box 34 Cluny, Alberta T0J 0S0 Phone: 705-288-0886  Orel R. Madden	omc- renovations@hotmail.ca		
<b>R. Kipp Craig</b> Craig Law LLP	kipp@craiglaw.ca		Morwest Crane Services
Kelly James Welding Ltd. c/o Beaumont Church LLP Suite 300 2912 Memorial Drive SE Calgary, AB T2A 6R1  John Cumming	john.cumming@beaumont church.com		Phase Two and Three Lien Holder
<b>Alberta Specialty Services Ltd.</b> Rear Bay 4, 2705 – 5 Ave NE Calgary AB T2A 2L6	ethel@albertaspecialtyservi ces.com	403-253-4560	Phase Two and Three Lien Holder
<b>Kerridge Concrete Ltd.</b> 9716-44 St. SE Calgary, AB T2C 2N4			Phase Two and Three Lien Holder
<b>AGAM Consulting Inc.</b> 425-78 Ave SW Calgary, AB T2V 5K5  Anwar Dean			Phase Two Lien Holder
<b>1399855 Alberta Ltd.</b> 92 Cimarron Vista Circle Okotoks, AB T1S 0H8			Phase Two Lien Holder
<b>1399830 Alberta Ltd.</b> 92 Cimarron Vista Circle Okotoks, AB T1S 0H8			Phase Two Lien Holder
<b>1399827 Alberta Ltd.</b> 88 Cimarron Vista Circle Okotoks, AB T1S 0H8			Phase Two Lien Holder
<b>Williams Engineering Canada Inc.</b> N195, 3015-5 <sup>th</sup> Ave NE Calgary, AB T2A 6T8			Phase Three Lien Holder